

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.391 OF 1999**

The State of Maharashtra,  
Through Police Inspector,  
Police Station, Naldurg,  
Tq-Naldurg, Dist-Osmanabad.

**...APPELLANT**

**VERSUS**

1) Bhimrao Daulatrao Kadam,  
Age-59 years,  
(**Appeal against Respondent No.1 abated**)

2) Vinayak Daulatrao Kadam,  
Age-42 years,  
(**Appeal against Respondent No.2 abated**)

3) Haridas Daulatrao Kadam,  
Age-40 years,

4) Shankar Bhimrao Kadam,  
Age-27 years,  
(**Appeal against Respondent No.4 abated**)

5) Shridhar Bhimrao Kadam,  
Age-24 years,  
(**Appeal against Respondent No.5 abated**)

All R/o- Jalkot, Tq-Tuljapur,  
Dist-Osmanabad.

**...RESPONDENTS**

...  
 Mr.S.J. Salgare, A.P.P. for Appellant-State.  
 Mr. N.G. Kale Advocate for Respondent  
 No.3 (**Absent**)  
 Appeal against Respondent Nos.1, 2, 4 and 5  
 abated as they are no more.

...

**WITH**

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**...RESPONDENTS**

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Mr.S.J. Salgare, A.P.P. for Appellant-State.  
Mr.Satej S. Jadhav Advocate for Respondent No.3.  
Appeal against Respondent Nos.1, 2, 4 and 5  
abated as they are no more.

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**CORAM: S.S. SHINDE AND  
S.M. GAVHANE, JJ.**

**DATE : 12TH JUNE, 2017.**

**JUDGMENT [PER S.S. SHINDE, J.] :**

1. As both these Criminal Appeals are arising out of one and the same Judgment and order passed by the trial Court, both the Appeals are being decided by this common Judgment.

2. Criminal Appeal No.391 of 1999 is directed against the Judgment and order dated 18th September, 1999, passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.149 of 1994 thereby acquitting all the accused persons from the offence punishable under Section 307 of the Indian Penal Code (for short "I.P. Code"). The

trial Court convicted all the accused persons for the offence punishable under Sections 147, 148, 324 read with 149 of the I.P. Code. For the offence under Section 147 of the I.P. Code, each of the accused is sentenced to fine of Rs.500/- and in default to suffer simple imprisonment for three months. For the offence under Section 148 of the I.P. Code, each of the accused is sentenced to fine of Rs.750/- and in default to suffer simple imprisonment for six months. For the offence under Section 324 read with 149 of the I.P. Code, each of the accused is sentenced to fine of Rs.2000/- and in default to suffer simple imprisonment for nine months. Criminal Appeal No.392 of 1999 is filed by the State for enhancement of sentence.

3. The prosecution case, in brief, is as under:-

A) The complainant Pundlik Patil was the owner of Gut No.729 of village Jalkot, Tq-

Tuljapur. Gut No.719 belonging to the accused is adjacent to the land of the complainant. There was dispute between the parties in respect of the common Bundh as well as cart-track on it. They have filed reciprocal suits for injunction and obtained order of temporary injunction against each other. A criminal litigation was also filed by them in connection with the dispute of common Bundh and cart-track.

B) On 9th July, 1992 at about 10.30 a.m. the complainant deceased Pundlik was present in his land. The accused persons entered in his land armed with sticks, axe and spade. They threatened the complainant and assaulted him. Accused No.1 - Bhimrao assaulted by means of spade, accused No.5 - Shridhar assaulted by meas of sticks, accused No.3 Haridas and accused No.2 - Vinayak assaulted by means of sticks. The complainant sustained injuries to his head, hands and legs. The adjoining cultivators - Shivaji Birajdar, Dattu

Kadam and Arun Kadam came there and they rescued the complainant. Accused No.5 - Shridhar threw chilly powder in the eyes of the complainant and then all the accused persons ran away. The complainant's son Ashok learnt about the assault, so he came to the spot. The complainant also narrated the incident to his son Ashok. Ashok took the complainant to civil hospital, Solapur and he was treated there.

C) The statement of the complainant was recorded by A.P.I. Tilekar (Exhibit-90) and Crime No.83 of 1992 under Sections 143, 147, 148, 149, 506, 324, 325 of the I.P. Code was registered and investigation was handed over to P.S.I. Jadhav. P.S.I. Jadhav went on the spot and he prepared panchnama Exhibit-59 on 9th July, 1992. He seized the blood-stained clothes of the deceased on 10th July, 1992 (Exhibit-24). He recorded statements of witnesses from time to time. He arrested the accused persons on 16th July, 1992 and obtained

their police custody remand on 17th July, 1992. On 21st July, 1992 accused No.2 - Vinayak discovered blood-stained axe, as well as stick from his cattle-shed and P.S.I. Jadhav seized those articles under discovery panchnamas (Exhibit-55 and Exhibit-56). P.S.I. Jadhav seized the clothes of the accused on 21st July, 1992. He got prepared the map of the scene of the offence through revenue circle inspector (Exhibit-71). He collected injury certificate of the complainant (Exhibit-34). Thereafter complainant expired on 25th October, 1992 and so his dead body was sent for nursing and Crime No.82 of 1992 was registered in Naldurg Police Station. The said crime was investigated and R.C.C. No.147 of 1993 was filed in the Court of the Judicial Magistrate, First Class, Tuljapur on 18th August, 1993 for the offence under Sections 324, 325, 34 of the I.P. Code. Thereafter as both the said crimes were arisen out of one and the same incident, the counter case was also committed to the Court of

Sessions, Osmanabad and it was numbered as Sessions Case No.206 of 1996.

4. A charge was framed by the Additional Sessions Judge, Osmanabad against all the accused persons for the offence punishable under Sections 147, 148, 307 read with Section 149 of the I.P. Code. The accused pleaded not guilty and claimed to be tried.

5. After recording the evidence and conducting full fledged trial, the trial Court convicted all the accused persons for the offence punishable under Sections 147, 148, 324 read with 149 of the I.P. Code and sentenced them to pay fine, as stated above in Para-2 of the Judgment.

6. Learned A.P.P. appearing for the State, submitted that though all the accused were held guilty by the trial Court for the offence punishable under Sections 147, 148, 324 read with

149 of the I.P. Code, instead of imposing major punishment of imprisonment, the trial Court has sentenced them to pay fine only. The Learned A.P.P. appearing for the State invites our attention to the evidence of PW-1 Maruti Manik Kadam and PW-4 Shivaji Sadashiv Birajdar and submits that both these witnesses were present on the spot when the incident took place and further submits if the evidence of both the eye witnesses is considered, they clearly stated that all the accused, armed with the weapons such as stick, spade and axe, beat Pundlik with intention to commit his murder. He further submitted that the trial Court has not properly considered the evidence of these eye witnesses and acquitted the accused persons from the offence punishable under Section 307 of the I.P. Code. It is submitted that evidence of PW-2 Sharadkumar Patil, Medical Officer clearly shows that there were multiple injuries on the person of Pundlik Patil. Therefore, he submits that the accused be held

guilty for the offence punishable under Section 307 of the I.P. Code. He therefore, submits that both the Appeals may be allowed.

7. The learned counsel appearing for Respondent No.3 in Criminal Appeal No.392 of 1999 submitted that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. He further submitted that the trial Court, after considering the entire evidence on record, age of the accused persons and considering the fact that there was no criminal background of the accused, sentenced each of the accused to pay fine. He, therefore submits that both the Appeals may be rejected.

8. Before considering the oral evidence on record, it has to be noted that, accused No.1 - Bhimrao Daulatrao Kadam, accused No.2 - Vinayak Daulatrao Kadam, accused No.4 - Shankar Bhimrao Kadam and accused No.5 - Shridhar Bhimrao Kadam,

died during the pendency of these Appeals, and thus we have to consider both these Appeals in respect of accused No.3 - Haridas Daulatrao Kadam only.

9. Prosecution examined PW-2 Sharadkumar Masudhan Patil, Medical Officer, Civil Hospital, Solapur. He deposed that he examined Pundlik Patil on 9th July, 1992. He further deposed that on examination, he noticed following injuries on the person of Pundlik:-

i) Cross-type of CLW 4 cm. X 1/2 cm. X 3 cm. X 1/2 cm. muscle deep left partial to vertex region.

ii) Contusion, diffuse up to middle 3 up-to middle 3, right knee joint,

iii) Contusion M/3 TIF diffuse, left knee joint

iv) Contusion right wrist diffuse, right wrist,

v) Contusion diffuse CLW 2 cm. X 1 cm. muscle deep, left maxilla to left ear front.

10. Prosecution also examined PW-3 Dr. Jarasandh Baburao Wadane, Medical Officer of P.H.C. Naldurg. He deposed that on 25th October, 1992 he carried out postmortem on the dead body of Pundlik Patil. He deposed that on external examination, he noticed following injuries:-

- i) Scar of old injury over forehead,
- ii) Scar of old injury over right eye brow,
- iii) Scar of old injury on lower part of right forearm, 5 c.m. above wrist joint,
- iv) Scar of old injury interior and middle part of forearm,
- v) Old fracture of right tibia, Ellizerove instrument (rod),
- vi) Old fracture of lower and of right ulna.

11. To prove its case, the prosecution has examined PW-1 Maruti Manik Kadam. He deposed that incident took place six years back. About the incident, he deposed that on the day of incident

he was working as labourer with Pundlik Patil and he himself and Ratan Chavan were digging near boundary bundh of land of Pundlik Patil. He deposed that at about 9.30 to 10.00 Bhimrao Kadam, Haridas Daulatrao Kadam, Vinayak Daulatrao Kadam, Shridhar Kadam and Shankar Kadam came from their cattle-shed while hurling abuses. They were armed with stick, spade and axe. All the accused started beating Pundlik Patil. Accused Bhimrao Patil gave blow of spade on the head of Pundlik Patil, accused Shridhar gave blow of axe near the ear of Pundlik Patil, accused Haridas, Vinayak and Shankar gave blows of sticks and yoke pin on the hand, back and legs of Pundlik Patil.

. During the course of cross-examination, PW-1 Maruti deposed that at the time of recording of his statement, he stated before police that he was constructing water channel near the bundh. He stated that he cannot assign any reason as to why said fact is not mentioned in his statement.

12. PW-4 Shivaji Sadashiv Birajdar deposed that he knew all the accused. The incident took place before six years. On the day of incident at about 10 to 10.30 a.m. he had been to his field and he was working in his field. He further stated that he heard cry of Pundlik Patil as "Melo re Melo" and he rushed towards the spot of incident. He stated that when he was at 50 ft. distance from the spot, he saw accused Bhimrao Kadam giving blow of spade on the head of Pundlik Patil, accused Shridhar gave a blow of an axe on the left ear of the Police Patil. He stated that Haridas Kadam, Vinayak Kadam and Shankar Kadam were giving blows of sticks on the person of Pundlik Patil on his legs, hands and on the back. When Pundlik Patil fell down, Shridhar Kadam threw chilly powder in the eyes of Pundlik Patil and then accused ran away from the spot.

. During the course of cross-examination,

PW-4 Shivaji admitted that Pundlik was his relative. He admitted that there was dispute between Pundlik Kadam and Bhim Kadam on the ground of boundary bundh. He stated that assailants did not use iron bar. He stated that in his statement before police he has not stated that iron bar was used for assaulting Pundlik Patil. He stated that he cannot assign any reason as to why it is mentioned in his statement before police that besides stick, axe and spade, iron bar was also used for assaulting Pundlik Patil. He further stated that he does not know whether the incident of quarrel took place on the ground of boundary bundh. He can not remember, whether he had stated before police that incident of quarrel took place on the ground of boundary bundh. He stated that contents in the statement before police that the incident of quarrel took place on the ground of boundary bundh situated between the land of Pundlik Patil and Bhim Kadam are not correct. He admitted that he has stated before police that

Pundlik Patil told Ashok Patil that the accused assaulted him with spade, axe and sticks. He cannot assign any reason as to why above said fact is not mentioned in his statement before police. He deposed that he stated before police that accused took away with them an axe. He cannot assign any reason why the same is not mentioned in his statement before police.

13. Prosecution examined PW-10 Ashok Pundlikrao Patil. He deposed that deceased Pundlikrao Kadam (Patil) was his father. He deposed that Maruti Kadam, who was serving as labourer with him, told PW-10 Ashok that Bhimrao, Shridhar, Shankar, Haridas and Vinayak beat his father. He immediately went towards the land. When he went to the land, he saw his father lying on the earth. His father had sustained bleeding injury. After inquiry, his father told him that on the ground of common bundh accused persons assaulted him.

. During the course of cross-examination, PW-10 Ashok admitted that since last fifteen years dispute was going on between them and accused on the ground of common boundary bundh. He stated that Pandurang Bhimrao Kadam has filed Regular Civil Suit No.122 of 1992 against him and his father for injunction to restrain them from causing obstruction to him in using common bundh as foot way. He stated that he had filed complaint against Bhimrao on the ground of boundary bundh to the police station. He admitted that 10 to 15 days prior to the date of incident, PSI Naldurg police station had come to their boundary bundh and he gave warning to both the parties not to cause damage to the boundary till the decision of the Civil Court.

14. The evidence on record shows that civil dispute was going on since long between Pundlik and accused on the ground of boundary bundh, and

both the groups had filed cases against each other and obtained order of temporary injunction. The trial Court has observed that the accused sought to produce the injury certificates of their medical examination, which shows that injuries were also caused to accused No.2 Vinayak, accused No.4 Shankar and accused No.5 Shridhar, and the nature of the injuries was contused lacerated wounds and contusions, which were the simple injuries. The trial Court has further observed that all the said injuries must have been sustained by the accused persons during the course of the common incident which took place on the same day and at the same time. Thus it is clear that the incident took place due to the dispute between the parties on the ground of common bundh and the accused had no intention to commit murder of Pundlik. Further it has come on record in the cross-examination of PW-10 Ashok Patil that complainant Pundlik was taking treatment in the hospital for about 2 and 1/2 months after the

incident and when he was discharged from the hospital, the doctor advised him to visit the hospital once in a week for medical check up. It has come on record that incident took place on 9th July, 1992 and Pundlik died on 25th October, 1992, i.e. three months after the incident. PW-2 Dr. Sharadkumar Patil admitted in the cross-examination that injury Nos.2, 3 and 4 are not on vital part of body. PW-2 though stated that injury Nos.1 and 5 were on vital part of the body, however he further admitted that those injuries were simple in nature. Thus the trial Court has rightly concluded that, taking into consideration the admission of Dr. Patil it cannot be said that the assailants (accused) by causing injury Nos.1 to 5 to the complainant had intention to commit his murder. Therefore, the trial Court has rightly acquitted all the accused from the offence punishable under Section 307 of the I.P. Code. It is also relevant to mention that, even accused also suffered injuries. However, the prosecution

witnesses have not stated about said injuries. Therefore, reasonable inference can be drawn that prosecution tried to suppress the genesis of the incident.

15. The trial Court after considering entire evidence on record, convicted the accused persons for the offence punishable under Sections 147, 148 and 324 read with 149 of the I.P. Code and sentenced them to pay fine. The trial Court has considered the prayer made on behalf of the accused that a fine sentence may be awarded against them instead of sentencing them to suffer imprisonment. The trial Court has considered the age of the accused persons and also observed that there was no criminal background of the accused in the form of proved conviction and sentenced them to pay fine. We are therefore convinced that, the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution and the sentence of fine imposed

by the trial Court also appears to be proper. There is no perversity as such. The view taken by the trial Court is plausible.

16. The Supreme Court in the case of ***Muralidhar alias Gidda and another Vs. State of Karnataka***<sup>1</sup> in para 12 held thus:-

12. *The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288,*

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1. 2014 [4] Mh.L.J.[Cri.] 353

*Umedbhai Jadavbhai Vs. Sate of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415.*

*It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate*

Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and (iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

[Underlines added]

17. In the light of discussion herein above, we are of the opinion that there is no merit in both the Appeals filed by the State. Both the Criminal Appeals stand dismissed. Bail Bonds, if any, of accused No.3 - Haridas Daulatrao Kadam, stands cancelled.

**[S.M. GAVHANE, J.]**

asb/JUN17

**[S.S. SHINDE, J.]**