

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 352 OF 2001

Shivaji s/o Pandurang Bhalerao,
Age 36 years, Occu. Agriculture,
R/o Kasbe Tadvale, Taluka and
District Osmanabad

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr V.S. Tanwade, Advocate for appellant
Mr S.D. Ghayal, A.P.P. for respondent

WITH
CRIMINAL APPEAL NO. 392 OF 2001

The State of Maharashtra,
through Dhanaji Vithal Bhalerao,
Age 36 years, R/o Tadvale,
Taluka and District Osmanabad

.. Appellant

Versus

1. Magan Pandurang Bhalerao,
Age 51 years,
2. Chhagan Pandurang Bhalerao,
Age 45 years
3. Gangabai Shivaji Bhalerao,
Age 28 years,

All r/o Kabse Tadvale,
Taluka and Dist. Osmanabad

.. Respondents

WITH
CRIMINAL APPEAL NO. 395 OF 2001

The State of Maharashtra,
through Dhanaji Vithal Bhalerao,
Age 36 years, R/o Tadvale,
Taluka and District Osmanabad

.. Appellant

Versus

Shivaji Pandurang Bhalerao,
Age 32 years, Occu. Kabse Tadvale,
Taluka and District Osmanabad

.. Respondents

Mr S.D. Ghayal, A.P.P. for appellant
Mr R.R. Suryawanshi, Advocate (appointed) for respondents-accused

**CORAM : T.V. NALAWADE AND
A.M. DHAVAL, JJ**

DATE : 3.10.2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. In Sessions Case No.58/1997, by judgment dated 29.6.2001, learned Sessions Judge, Osmanabad convicted accused no.1 Shivaji under Sections 307 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for four years and to pay fine of Rs.10,000/-, in default further rigorous imprisonment for nine months with direction that the entire fine amount, if recovered, be paid as compensation to the informant-Dhanaji. Accused no.2 Magan and accused No.3 Chhagan brothers of accused no.1 - Shivaji and accused no.4 Gangabai, wife of Shivaji were acquitted.

2. Accused no.1 - Shivaji has preferred Criminal Appeal No.352/2001 against his conviction. Criminal Appeal No. 395 of 2001 is filed by the State for enhancement of the sentence of accused no.1 Shivaji, while Criminal Appeal No.392 of 2001 is filed by the State against the order of acquittal of accused nos.2 to 4. Since common questions of law and facts are involved, all these appeals are heard together and shall be disposed of by this common judgment.

3. The facts of the prosecution case for the purpose of deciding the appeals may be stated as follows :

P.W.1 - Dhanaji is the informant and the victim of assault. P.W.2 Laxman, brother of P.W.1 Dhanaji is also victim of assault and eye witness. As per F.I.R., they had sown crop of jawar in their field situated at Tadvale Taluka Osmanabad. All the accused are owners of the adjacent land. On 23.2.1996 in the morning, when P.W.1 Dhanaji and his brother P.W.2 had been to their field, they saw that their crop of jawar was uprooted. They accosted the accused persons, as to why they had uprooted their crop. There upon, accused no.1 Shivaji and accused no.2 Magan abused them and accused no.1 Shivaji inflicted blows of knife on his chest, shoulder, waist, on right hand fingers and above his right ear. That time, accused no.2 Magan assaulted P.W.1 Dhanaji and P.W.2 Laxman by means of horse bridle and stick, while accused no.3 Chhagan assaulted his brother Laxman on his skull by sickle. Accused no.4 Gangabai inflicted sickle blow on the skull of P.W.1 Dhanaji. P.W.3 Janardan and one Manohar Nikalje intervened and rescued P.W.1 Dhanaji and P.W.2 Laxman. P.W.1 Dhanaji was shifted to P.H.C. Dhoki, but he was referred to General Hospital, Osmanabad while P.W.2 Laxman was admitted there. After obtaining the certificate of Medical Officer, his F.I.R. was recorded at 3.55 p.m. like dying declaration. Crime was registered at '0' number under Sections 307, 323, 324, 506 read with sec.34 of Indian Penal Code and the same was forwarded to Police Station, Dhoki, where it was registered at C.R. No.23/1996 at 8.35 p.m. P.W.11 took over the investigation. He arrested accused persons and on the next day, drew

spot panchnama, collected blood mixed soil and grass and blood stained clothes of injured Dhanaji from the spot. Accused no.1 Shivaji made voluntary statement and discovered all the weapons of offence and his clothes from his house. Those were seized by drawing memorandum and panchnama. The seized articles were forwarded for chemical analysis and the Chemical Analyst's report was obtained disclosing human blood on the weapons and clothes of accused no.1. After completion of investigation, charge-sheet was submitted in the Court of Chief Judicial Magistrate, Osmanabad. The case was duly committed to the Court of Sessions.

4. The learned Sessions Judge framed charge against all the accused at Exh.36 under Sections 307/34 of Indian Penal Code, 506/34 of Indian Penal Code. The prosecution examined eleven witnesses. The defence of accused is of total denial. According to them, P.W.1 Dhanaji and P.W.2 Laxman had enmity with them. As per suggestions, P.W.1 Dhanaji and P.W.2 Laxman sustained injuries by horns of bullock or by fall and they have falsely implicated the accused. The learned Sessions Judge accepted the story as against accused no.1 and convicted him under Section 307 of Indian Penal Code. The evidence against accused nos.2 to 4 was not accepted and they were acquitted. Hence, these appeals.

5. Learned Advocate Mr R.R. Suryawanshi was appointed to represent the respondents (accused) in Criminal Appeal Nos.392 of 2001 and 395 of 2001. During the pendency of the appeals, accused no.2 Magan (respondent no.2 in Criminal Appeal No.392/2001) died

and the appeal against him stands abated.

6. Heard learned Advocate Mr V.S. Tanwade for the appellants in Criminal Appeal No.352 of 2001 Learned A.P.P. Mr S.D. Ghayal for the respondent - State, and for appellants in Criminal Appeals No.392 and 395 of 2001, and learned Advocate Mr R.R. Suryawanshi for the respondents (accused) in Criminal Appeal No.392 of 2001 and 395 of 2001.

7. The learned Advocates have taken us through the evidence on record. Learned A.P.P. submitted that there is reliable evidence of P.W.1 Dhanaji and P.W.2 Laxman giving role to each accused. There was serious attack. Accused no.1 Shivaji inflicted blows of knife on neck and chest of P.W.1 Dhanaji. P.W.1 Dhanaji has deposed consistently with his F.I.R. P.W.2 Laxman supported him in all material particulars. P.W.3 Janardan came to the spot just after the incident was over and he had seen accused nos.2 and 3 holding P.W.2 Laxman, while P.W.1 Dhanaji was having injuries on neck, chest and waist, P.W.2 Laxman was also having two injuries, 1 contused lacerated wound and one contusion. P.W.3 Janardan had accompanied them to the Police Station and had tied his turban on the injury on waist of P.W.1 Dhanaji. The complicity of the accused was duly proved. There are medical certificates showing corresponding injuries to P.W.1 Dhanaji and P.W.2 Laxman. The enmity between the parties is admitted. P.W.1 Dhanaji was serious and was injured patient for around one month. There was ample material to record conviction against all the accused. The F.I.R. was lodged promptly

considering the critical condition of P.W.1 Dhanaji. He, therefore, argued that learned trial Judge should have convicted all the accused and should have sentenced accused no.1 for a term of atleast ten years of rigorous imprisonment. Hence, he argued that both the State appeals No.392 of 2001 and 395 of 2001 be allowed Sentence of accused no.1 Shivaji be enhanced, while accused nos.2 to 4 be held guilty and convicted under Section 307/34 of Indian Penal Code.

8. Per contra, learned Advocate Mr R.R. Suryawanshi appointed at State expense for respondents (accused) in Criminal Appeals No.392/2001 and 395/2001 argued that the evidence of P.W.1 Dhanaji and P.W.2 Laxman is not trustworthy and reliable. As per F.I.R. Exh.46, P.W.1 Dhanaji had sustained seven injuries, while P.W.2 Laxman had sustained injuries by horse bridle, stick and sickle. However, only four injuries were found on the person of P.W.1 Dhanaji and two injuries on the person of P.W.2 Laxman. The medical certificate of P.W.2 Laxman Exh.56 shows that the history given as assault by somebody. In spite of request of the accused, the Medical Officer was not examined (the medical certificates were earlier admitted by Advocate for the accused and were exhibited). He argued that the injuries do not match with the nature of weapons and the number of injuries also do not match with the ocular evidence. Admittedly, there was old enmity between the accused and P.W.1 Dhanaji and P.W.2 Laxman. There were several complaints filed by both against each other. P.W.1 Dhanaji's statement in the form of dying declaration was recorded, but it was not brought on record. The discoveries are not proved as the evidence of panch witnesses is not

reliable. The blood group of blood found on the clothes of the accused could not be determined. The injuries were possible by horns of bullock or by fall. There is delay in lodging the F.I.R. P.W.3 Janardan is father-in-law of P.W.2 Laxman. He has no field in the near vicinity. Hence, State appeal against accused no.1 Shivaji should be dismissed and the appeal of accused no.1 Shivaji should be allowed and his conviction should be set aside. Learned Advocate for accused nos.3 and 4 has supported the judgment of acquittal contending that the learned trial Judge has rightly discarded the evidence of P.W.2 Laxman. There are material contradictions in the evidence of P.W.1 Dhanaji and P.W.2 Laxman with respect to role of accused nos.3 and 4. Therefore, the State appeal against accused nos.3 and 4 should be rejected.

9. The points for our consideration with our findings are as follows:

- | | | |
|-------|--|-------------------------------------|
| (i) | Whether the prosecution has proved that accused nos.1 to 4 in furtherance of their common intention attempted to commit murder of P.W.1 Dhanaji and thereby committed offence under Section 307 of Indian Penal Code ? | .. Proved against accused no.1 only |
| (ii) | Whether the sentence passed against accused no.1 Shivaji is inadequate and needs enhancement ? | .. In the negative |
| (iii) | Whether accused nos.2 to 4 deserve to be convicted under Section 307/34 of Indian Penal Code | .. In the negative |

(iv) What order ?

..All the appeals are dismissed. Accused no.1 Shivaji shall surrender before the trial Judge to undergo remaining sentence.

REASONS

10. The prosecution has examined following witnesses :

GROUP 'A'

- (i) P.W.1 Dhanaji, injured and informant
- (ii) P.W.2 Laxman, injured and eye witness
- (iii) P.W.3 Janardan - arrived on spot just after the incident

GROUP 'B' (Panchas)

- (i) P.W.4 Shahaji Panch to the seizure of blood stained turban of P.W.3 Janardan Exh.50
- (ii) P.W.5 Rajendra - Panch to the memorandum and discovery by accused no.1 Shivaji Exh.59 of clothes and blood stained clothes of Shivaji (articles 10 to 16)
- (iii) P.W.6 Bhaskar, spot panch to panchnama Exh.61 (he is son of sister of P.W.1 and P.W.2)
- (iv) P.W.7 Dashrath, panch to the seizure of underwear, baniyan and shirt of P.W.1 Dhanaji from hospital.. **Exh.63 (Articles 4 to 8)**

OTHER 'C'

(v) P.W.8 Pandit, who received letter to record dying declaration Exh.65 and who recorded F.I.R. Exh.46.

(vi) P.W.9 A.S.I. Kashinath who has received F.I.R. Exh.46 at 3.55 p.m. at Osmanabad police station. He registered crime under Section 307 of Indian Penal Code and forwarded the same to Dhoki Police Station for further investigation.

(vii) P.W.10 P.C.B. Shabbir who has carried the seized articles along with covering letter Exh.68 to the Chemical Analyst's office.

(viii) P.W.11 P.S.I. Vishwanath Kadam, Investigating Officer, who has deposed about the investigation carried out by him and drawing of spot panchnama Exh.61, seizure of turban of P.W.3 Janardan Exh.50, seizure of clothes of P.W.1 Dhanaji Exh.63, memorandum and seizure panchnama as per statement of accused no.1 Shivaji Exh.59, issuing covering letter Exh.68 to P.W.10 Tamboli for taking sealed articles in a sealed and packed condition to Chemical Analyst's office and Chemical Analysis reports Exh.70 to 74. Besides, the medical certificates Exh.55 and 56 were admitted by the defence.

11. In the present case, evidence of P.W.1 Dhanaji and P.W.2 Laxman is the most material evidence. They are injured persons. P.W.1 Dhanaji deposed that he had grown crop of Jawar in his field and on the date of incident, when he and his brother P.W.2 Laxman had been to the field, they found that the crop was uprooted. They

accosted accused nos.1 to 4, who were present in their field adjacent to the field of P.W.1 and P.W.2. The accused got annoyed by act of P.W.1 Dhanaji. Accused no.1 Shivaji inflicted blow of knife on his chest and neck. While accused no.1 attempted another blow, P.W.1 Dhanaji held the knife in his right hand, thereby sustaining injury to his finger. He stated that Gangabai inflicted a blow of sickle on his waist. Medical Certificate Exh.55 shows four corresponding injuries as follows :

- 1) Stab injury 2½" x 1½" x 2" on right side of chest, just below the medial end of clavicle Bleeding ++
- 2) stab injury 3" x 1½" x 2" on left side of the neck..Bleeding ++
- 3) Stab injury 3" x 2" x 4" over left side back over gluteal region
- 4) Incised wound two in number - 2 cm x 2 cm x ½ cm each over right index finger.

P.W.1 Dhanaji further stated that accused nos.2 Magan and accused no.3 Chhagan started assaulting Laxman by stick and by sickle. Accused Gangabai inflicted a sickle blow on skull of P.W.1 Dhanaji whereby he sustained bleeding injury.

12. The difference is that P.W.1 Dhanaji stated that accused no.4 Gangabai inflicted blow of sickle on his waist and head whereas the injury no.3 is shown at his gluteal region and he has no injury on head.

Other injuries match with the ocular evidence of P.W.1 Dhanaji except alleged injury on head by Gangabai and injury on waist is admittedly on buttocks.

13. P.W.1 Dhanaji deposed that he sustained profusely bleeding injuries and Janardan and Sopan rescued him. He was brought to P.H.C. In a bullock-cart. P.W.3 Janardan tied his turban on his waist, while shirt of P.W.2 Laxman was tied on his chest to stop the flow of blood. He stated that after some time a jeep was called and he was shifted to jeep and then taken to Dhoki, but doctor did not give him treatment and referred him to General Hospital, Osmanabad. He stated that before reaching the Civil Hospital, Osmanabad, Laxman had given oral report to the Police, but it was not recorded. He has identified his blood stained white shirt, white baniyan, full pant and blue underwear, which were seized by Police (Articles 4 to 7). He identified blood stained turban of P.W.3 Janardan and blood stained shirt of P.W.2 Laxman (Article 8). He has identified knife and sickle, Court article 10 as weapon of offence. He deposed that there was previous case of assault between him and accused, which was compromised in Loknyayalaya. Following facts are brought on record:

(I) Land Gat No.405 does not stand in his name in the revenue record. The partition document is also not produced.

(II) The incident lasted for two to three minutes and he was conscious throughout.

(III) He was not enquired about previous incident dated 22.2.1996 while recording the F.I.R. Exh.46.

(IV) The accused had filed complaint case against him, his brother Laxman and father on 18.2.1981 and since then their relations with the accused were inimical.

(V) P.W.3 Janardan is father-in-law of P.W.2 Laxman and cousin of his mother.

(VI) P.W.2 Laxman and others had gone to the police station by jeep and the police had seen the injuries, but his F.I.R. was not recorded. He had given history to the Medical Officer that unknown persons had assaulted.

(VII) P.W.2 Laxman has deposed that on 23.2.1996 at 8.00 a.m., he and Dhanaji had been to the field on bicycle. They found crop of Jawar uprooted and damaged. They accosted the accused and the accused started assaulting and abusing Dhanaji. Accused no.1 gave blow of knife on the neck and chest of Dhanaji. Accused no.4 Gangabai gave two blows of sickle to Dhanaji, one on head and other on waist. Accused no.3 Chhagan assaulted him with sickle and stick. He sustained injury on his head by sickle, while accused No.2 Magan assaulted him with horse bridle on his back.

14. Out of eleven witnesses, the main witnesses are P.W.1 to 3 only. P.W.4 to P.W.11 have not deposed anything to disclose the role of accused nos.2 to 4.

15. As far as accused nos.2 to 4 are concerned, P.W.1 Dhanaji deposed that accused nos.2 and 3 had assaulted P.W.2 Laxman by horse bridle, stick and sickle. There is no specific evidence as to which weapon was used by accused no.2 and which weapon was used by accused no.3. P.W.2 Laxman has also stated that after assault by accused nos.1 and 4 on P.W.1 Dhanaji, accused nos.2 and 3 started assaulting him. Accused no.3 Chhagan assaulted him with sickle and stick and he sustained injury on his head by sickle while accused no.2 assaulted him by horse bridle and he sustained injury on his back. P.W.3 Janardan who is father-in-law of P.W.2 Laxman came late when the assault was almost over. He stated that accused nos.2 and 3 were holding P.W.2 Laxman. Evidence of P.W.3 Janardan is inconsistent with the evidence of P.W.1 and P.W.2. When the evidence of P.W.1 Dhanaji and P.W.2 Laxman is considered in the light of medical certificate Exh.56 of P.W.2 Laxman, it is seen that he had sustained only one contused lacerated wound of 2 cm x 2 cm x 1 cm on scapular region and one contusion of the size of 4 cm x 4 cm x 1 cm on occipital region. No elongated weal marks of blow of sticks were found on his person. P.W.2 Laxman stated that accused no.3 Chhagan assaulted him with sickle and stick. If P.W.2 Laxman was assaulted by accused no.3 as well as accused no.4 at least two sickle injuries should have been found on his person, but there is only one sickle injury on the skull. There is no medical opinion that injury no.2 contusion of 4 cm x 4 cm on scapular region sustained by P.W.2 Laxman was possible by blow of horse bridle, the evidence about the role of accused nos.2 to 4 in causing injury to P.W.2 Laxman is quite

exaggerated and does not tally with the medical evidence.

16. P.W.1 Dhanaji has stated that accused no.4 Gangabai inflicted one blow of sickle on his waist and one on his head. Similar is the evidence of P.W.2 Laxman with regard to the role of accused no.4, but the injury certificate Page 98 does not show any injury on the head of P.W.1 Dhanaji. Besides, he has not sustained injury on waist but on gluteal region. The evidence of P.W.2 and P.W.3 with regard to injuries by accused no.4 does not match with the injury sustained by P.W.1 Dhanaji. In view of above facts, the evidence of P.W.1 to 3 with regard to role of accused nos.2 to 4 in the incident is not reliable and trustworthy. It is not consistent with the medical evidence. Hence, the learned trial Judge has rightly considered these facts and acquitted accused nos.2 to 4. We find no reason to interfere with the findings, as the view taken by him is reasonable and probable view.

17. As far as accused no.1 Shivaji is concerned, there is consistent evidence of P.W.1 Dhanaji and P.W.2 Laxman that accused no.1 Shivaji first inflicted blow of knife on chest of P.W.1 Dhanaji and thereafter he inflicted a blow of knife on his neck. P.W.1 Dhanaji stated that accused no.1 Shivaji tried to inflict another blow and he caught the blade and sustained injuries on his fingers. His evidence is consistent with the contents of the F.I.R. as well as it is well corroborated by P.W.2 Laxman, who has deposed similarly about knife blows on chest and neck of P.W.1 Dhanaji. As per evidence of P.W.5 Rajendra and P.W.11 P.S.I. Kadam, on 25.2.1996, accused no.1 Shivaji has given a voluntary statement showing willingness to discover the

weapons of offence, which were kept in his house and also his blood stained clothes. His seizure memorandum was accordingly recorded at Exh.59. Then he led the Police and panchas to his house and discovered knife and his blood stained clothes. P.W.5 Rajendra has given certain admissions and, therefore, his evidence is not trustworthy, however, he has signed the panchnama. Evidence of P.W.11 - Investigating Officer Kadam on the point of discovery is reliable. He has identified the articles and he forwarded the articles through P.W.10 Carrier P.C.B. Shabbir to Chemical Analyst office along with covering letter Exh.68. The Chemical Analyst's reports received at Exhs.70 to 74 disclosed that human blood was found on the blade of knife (Article 10). Besides, the clothes of the accused, payjama and baniyan were also having blood stains of human blood group 'A'. Blood group of the accused no.1 Shivaji could not be determined, but blood group of P.W.1 Dhanaji is 'A'. In the light of this corroborative evidence, we find the evidence of P.W.1 Dhanaji and P.W.2 Laxman reliable and trustworthy with regard to the injuries caused by accused no.1. Shivaji. Considering the nature of injuries and the sizes of injuries, the learned Judge of the trial Court has rightly held that accused no.1 Shivaji attempted to commit murder of P.W.1 Dhanaji. Therefore, the findings of learned Judge of the trial Court that accused no.1 committed offence punishable under Section 307 of Indian Penal Code cannot be interfered with.

18. Learned Sessions Judge has awarded sentence of four years of rigorous imprisonment and fine of Rs.10,000/- with direction that the find amount shall be paid as compensation to P.W.1 Dhanaji.

According to learned A.P.P. sentence is not adequate. However, we find that the quarrel has taken place all of a sudden over a land dispute. The incident has taken place about 21 years back. Considering the nature of offence and particularly, in view of long period of 21 years elapsed, we are not inclined to enhance the sentence. Hence, we hold that all the appeals deserve to be dismissed. Hence, we pass the following order :

ORDER

- (I) All the criminal appeals are dismissed.
- (II) Accused no.1 Shivaji s/o Pandurang Bhalerao shall surrender to his bail bonds to undergo the remaining sentence. He shall be entitled for set off as per rules.
- (III) We appreciate the valuable assistance provided by learned Advocate Mr R.R. Suryawanshi, appointed at the State expense. He shall be paid fees, quantified at Rs.4,000/- (Rs.Four thousand).

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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