

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

5 CRIMINAL APPEAL NO.57 OF 2002

1. Kishan s/o Nagorao Hapse
Age : 49 years, Occu : Labour,
R/o. Talegaon, Tq. Hadgaon,
Dist. Nanded

2. Yashwant S/o. Nagorao Hapse
Age : 32 years, Occu : Agri,
R/o. Talegaon, Tq. Hadgaon,
Dist. Nanded

3. Gyanoba S/o Nagorao Hapse,
Age : 47 years, Occu : Labour,
R/o. Talegaon, Tq. Hadgaon,
Dist. Nanded

.. Appellants
(Orig. Accused Nos.1, 3 & 4)

VERSUS

The State of Maharashtra

.. Respondent

....

Advocate for Appellants : Smt S.G. Chincholkar
APP for Respondent – State : Shri A.V. Deshmukh

.....

CORAM : P.R. BORA, J.
Dated : December 07, 2017

ORAL JUDGMENT :

1. The appellants-accused have preferred the present appeal against the Judgment and order passed in Sessions Case No.140 of 1995 by the learned Ad-hoc Additional Sessions Judge, Nanded on 09.01.2001.

2. The appellants along with other six were prosecuted in the aforesaid Sessions Case for the offences punishable under

Sections 147, 148, 307 read with 149 of Indian Penal Code.

3. It was the case of the prosecution that, on 12th July, 1995 at about 08:00 p.m., there was a scuffle between one Vijay Bhaurao Dhule, his mother Janabai Bhaurao Dhule and the accused persons. Accused no.5 Yashodabai along with one Sayabai had sat for defecation in front of the house of the complainant and that gave rise for a scuffle between the complainant and the accused persons. It was alleged that, the initial altercations resulted in making assaults by the accused persons on one Vijay and Janabai by sticks and axe etc. The complaint was lodged by one Praful the brother of Vijay and the investigation was set in motion. Vijay and Janabai both were sent to the hospital for their medical examination. The statement of the witnesses were recorded and the charge-sheet was filed against total 9 accused in the Court of Judicial Magistrate, First Class, Hadgon. Since the offences were exclusively triable by the Court of Sessions, the case was committed to the Sessions Court and was tried by the Ad-hoc additional Sessions Judge. Original accused no.2 died during pendency of the Sessions trial and trial against him, hence stood abated. In order to prove the guilt of the accused, total 11 witnesses were examined. The defence of the accused persons was of total denial and false implication. The learned Sessions Judge, however, held the accused persons guilty and imposed upon the present

appellants i.e. original accused nos.1, 3 and 4 sentence of imprisonment. Though accused nos.5 to 9 were also held guilty, the learned Sessions Judge instead of sentencing them to suffer any sentence, extended them benefit of Probation of Offenders Act. The convicted accused have presented the present appeal.

4. Heard Smt S.G. Chincholkar, the learned Counsel appearing for the appellants and Shri A.V. Deshmukh, learned APP appearing for the respondent – State.

5. The learned Counsel submitted that, the prosecution examined all the interested witnesses and no independent witness has been examined though it was not impossible for the prosecution to examine such witness. The learned Counsel further submitted that, the prosecution has utterly failed in proving that, which of the accused made assault either on victim Vijay or Janabai and in such circumstances, according to the learned Counsel, none of them could have been held guilty for the offence punishable under Section 324 of the I.P.C. and other offences. The learned Counsel further submitted that, the evidence which has come on record does not inspire confidence and as such, the benefit of doubt must have been given to the accused persons and the accused must have been acquitted of all the charges levelled against them.

6. Learned APP Shri Deshmukh has supported the impugned Judgment and order. The learned APP read over the evidence of PW No.4 Praful and PW No.10 Vijay and the medical evidence. The learned APP submitted that, the Sessions Court has passed the well reasoned order and no interference is required in the Judgment and order so passed.

7. After having considered the submissions advanced by the learned Counsel appearing for the appellants and the learned APP and on perusal of the impugned Judgment as well as the evidence on record, it is apparently revealed that, sufficient evidence has come on record against the appellants so as to hold them guilty for the offences, with which, they were charged. I have carefully perused the evidence of victim Vijay and other witnesses. The scuffle, which had taken place between the two parties, has been sufficiently proved. The FIR in the matter was promptly lodged. Two persons were injured in the said scuffle namely Vijay and Janabai and both were sent by the police to the Government Hospital for their medical examination. The concerned doctors have been examined in the present matter as a witnesses. It has been sufficiently proved that, Vijay and Janabai both were assaulted by the accused persons. As has come on record, accused nos.1 to 3 made assault on Vijay with the aid of stick and Janabai was beaten by the other accused persons

with fists and kicks. Janabai did not make any allegation against the present appellants. It is the matter of record that, the learned Sessions Judge has given the benefit of Probation of Offenders Act to the accused, who were alleged to have beaten Janabai by fists and kicks.

8. After having considered the entire evidence on record, it does not appear to me that, the learned Additional Sessions Judge has committed any error in holding the present appellants guilty for the offences charged against them. The only question, which deserves to be considered in the present appeal, is the alternate submissions which was made by the learned Counsel appearing for the appellants. During the course of arguments, it was alternatively submitted by the learned Counsel that, after the gap of about 22 years, it may not be proper to send the present appellants to suffer the sentence of imprisonment. The learned Counsel had submitted that, they may be subjected to pay some more fine amount and that may serve the purpose.

9. After having considered the evidence on record, it appears to me that, the alternate submission so made by the learned Counsel deserves to be considered. Even otherwise, it is not revealed that, any serious injury was caused to victim Vijay. I have already

noted that, there was no involvements of present appellants in making assaults on Janabai. As is revealing from record, Vijay was soon discharged from the hospital, and discharge card shows that, the nature of injuries caused to him were not that serious. It has to be further taken into account that, the altercations started at the spur of moment and scuffle took place on a very trifle issue. The material on record further reveals that, the appellants and the accused both are neighbours of each other. In the circumstances, though I am not inclined to set aside the order of conviction, I am inclined to modify the sentence imposed by the learned Additional Sessions Judge. It appears to me that, for the incident which had occurred in the year 1995, there is no propriety now in sending the present appellants to suffer the sentence of imprisonment as awarded by the learned Additional Sessions Judge. The offences which are proved against the appellants, provide for the sentence of imprisonment or fine. In the circumstances, according to me, it would be appropriate if the appellants are subjected to pay some more fine than awarded by the learned Sessions Judge and that would meet the ends of justice. In the circumstances, the following order is passed.

ORDER

1. The conviction of the appellants i.e. original accused nos.1, 3 and 4 as ordered by the trial Court is maintained; however, the sentence awarded by the trial Court is modified as under :

i) The appellants – accused are sentenced to pay fine of Rs.5,000/- each, in default to suffer simple imprisonment for 1 month for the offence punishable under Section 324 r/w. Section 149 of I.P.C.

ii) Appellant – accused no.1 is sentenced to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for 15 days for the offence punishable under Section 148 of I.P.C.

iii) The appellant nos.2 and 3 i.e. accused nos.3 and 4 are sentenced to pay fine of Rs.2,000/- each, in default to suffer simple imprisonment for 15 days for the offence punishable under Section 147 of I.P.C.

iv) If the fine amount is paid by the appellants – accused, Rs.20,000/- out of the same be paid to victim Vijay Bhaurao Dhule. The trial Court shall issue notice to the said victim and on identification release the said amount in his favour.

. The appeal thus stands partly allowed.

(PR. BORA, J.)