

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

CRIMINAL APPEAL NO. 506 OF 2002

1. Yadav S/o Natha Koli,
Age : 60 Years, Occ. Labour,
R/o. Shwada, Taluq Sindhkheda,
District Dhule.
2. Jagan S/o Yadav Koli,
Age : 25 Years, Occ. Labour,
Dist. Dhule
3. Magan s/o yadav Koli,
Age : 18 Years, Occ. Labour,
R/o. Shevda, Tq. Sindhkheda,
District Dhule.
4. Ishwar s/o Santosh Koli,
Age : 19 Years, Occ. Labour,
R/o. Shevda, Tq. Sindhkheda,
Dist. Dhule.

.. APPELLANTS.
(Ori. Accused).

VERSUS

The State of Maharashtra,

..RESPONDENT.

..

Mr. N. L. Chaudhari, Advocate for Appellants No. 1 to 4.

Mr. P. G. Borade, Addl. Public Prosecutor for the State.

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CRIMINAL APPEAL NO. 652 OF 2002

The State of Maharashtra.

.. APPELLANT.
(Ori. Complainant)

VERSUS

1. Yadav Natha Koli,
Age : 60 Years, Occ. Labour,
2. Jagan yadav Koli,
Age : 25 years, Occ. Labour
3. Magan Yadav Koli,
Age : 18 Years, Occ. Labour
4. Ishwar Santosh Koli,
Age : 19 years, Occ. Labour

All r/o Shevade, Tq. Sindhkheda,
Dist. Dhule.

... RESPONDENTS.
(Ori. Accused)

....

Mr. P.G. Borade, Addl. Public Prosecutor for the State.
Mr.N.L. Chaudhari, Advocate, for Respondent No. 1 to 4.

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

DATE : 6TH December, 2017.

JUDGMENT (PER T.V. NALAWADE, J.) :-

1. Both the appeals are filed against the Judgment and order of Sessions Case No. 43 of 1998, which was pending in the Court of learned

Sessions Judge Dhule. The trial Court has convicted the Appellant from Appeal No. 506 of 2002 for the offence punishable under Section 325 read with 34 of the Indian Penal Code and sentence of one year rigorous imprisonment is given and fine is imposed. As acquittal is given in respect of the offence punishable under Section 302 read with 34 of the Indian Penal Code, the State has challenged the decision of acquittal by filing Criminal Appeal No. 652 of 2002. Both the sides are heard.

2. In short the facts leading to the institution of two appeals can be stated as follows :-

3. Deceased Rupchand Koli was the father of the first informant Naranyan Koli. Accused No.1 Yadav is the real brother of the deceased and the accused No.2 and 3 are sons of accused No.1. The accused No.4 is a son of other brother of the deceased. Partition had taken place, amongst the deceased and his brothers, two years prior to the date of incident. But after the partition, there was dispute about the shares. The deceased had filed civil case, out of this dispute against the accused.

4. The relationship between the families of the deceased and the accused were strained due to aforesaid dispute. The first incident took place on 11.11.1997 at about 10 a.m The first informant was taking his

bullock-cart through a field. He was not allowed to take the bullock-cart by that way by the accused No.1 to 4. The first informant refrained without quarreling with the accused persons. On 12.11.1997, Rupchand alone went to his field at about 9.00 a.m to have round of the field as there was standing crop of cotton in the field. The first informant and his sister Jijabai Koli also followed him to the field for plunking cotton.

5. When the first informant and Jijabai entered into the field they noticed that at some distance, all the accused were assaulting Rupchand with fist blow and kicks. Rupchand was shouting, calling for help. When first informant and Jijabai rushed towards the spot, the accused ran away. This incident was witnessed by other persons like Vithal Koli and Nanabhau Koli who were working in adjoining fields.

6. On that day, there was police force in the village of first informant, as there was some disturbance in the village. The first informant shifted his injured father Rupchand in bullock-cart first to the village, and then in the office of the village Panchayat he disclosed the incident to the police. Police also made enquiry with the injured and then reference letter was given by police for shifting Rupchand to Rural Hospital, Sidhkheda, on the same day. In Sidhkheda Rural Hospital, Rupchand succumbed to the injuries. After the death of Rupchand, the first informant Narayan gave

report against the accused persons and crime came to be registered as C.R. No. 76 of 1997 in the Sindhkhedda Police Station for the offence punishable under Section 302 read with 34 of the Indian Penal Code.

7. The Police referred the dead body for post mortem after preparing inquest panchnama. During the investigation, statements of the witnesses came to be recorded and spot panchnama was also prepared. The death took place due to haemorrhagic shock due to intraperitoneal haemorrhage, due to injury to liver, spleen and right kidney and due to multiple rib fractures.

8. All the accused came to be arrested and charge sheet came to be filed against them for the aforesaid offence. The charge was framed and plea was recorded. All the accused pleaded not guilty. Prosecution examined in all seven witnesses. The accused took defence of total denial but no defence evidence was given. The Trial Court has believed the eye witnesses. The Trial Court, however, has held that there was no intention of murder but there was intention to cause injury and as the accused caused grievous injuries with common intention by using hands and legs, the Trial Court has convicted them for the offence punishable under Section 325 read with 34 of the Indian Penal Code.

9. It appears that the defence admitted the post mortem report. However, on safer side prosecution has examined Dr. Kirti Vasantrao Lote (P.W. No.7) who conducted the post mortem on the dead body. She found following surface wounds on the dead body :-

- 1) C.L.W in right parietal region posterior part 3x 0.5 x 0.5 cm.
- 2) Abrasion on right wrist lateral and posterior aspect 1 x 1 cm.
- 3) Abrasion on back right side 5x2 cm. (middle part)
- 4) Multiple linear abrasion on left thigh upper 1/3rd postero aspect 3 cms each.
- 5) Abrasion on right elbow lateral aspect 4 x1 cm.

Doctor found following external injuries on the dead body

- 1) Fracture of ribs right side 7th rib lateral part.
- 2) Fracture of ribs left side 3,4,5,6,7,8 lateral part.
- 3) Sternal fracture horizontal in middle 1/3.

10. Doctor has given evidence in accordance with P. M. notes and has opined that aforesaid all these injuries were ante-mortem in nature and due to these injuries there was internal bleeding. She has deposed there was fracture of rib Nos. 3 to 8 of left side and rib Nos. 7 of the right side. According to her, the injury had caused Intraperitoneal haemorrhage and

about 500 CC of the blood was found there. Inardominal cavity- and haemorrhage was found and in mesentry of small intestine, And there were injuries to the Kidneys, Spleen, Liver. Opinion is given that death took place due to these injuries.

11. In the cross-examination, doctor has admitted that the deceased could have been saved, but due to his old age and the time required for taking him to the Hospital, the death took place.

12. To prove that accused are authors of the aforesaid injuries the prosecution has direct evidence of Narayan Rupchand Koli (P.W. No.1) who was eye witness of the incident. He has deposed that on that day his father Rupchand left the house at 8.00 p.m. and then he and his sister Jijabai also followed the father to the fields. He has deposed that from some distance they noticed that accused Nos. 1 to 4 were assaulting his father with fist blows and kick blows. He has deposed that, when they rushed ahead, the accused ran away. He has deposed that after reaching to the father, the father narrated the incident to him. He has given evidence that Police were also present in the village and they gave reference letter and so he shifted his father to the Government Hospital Sindhkheda. He

has deposed in the evidence that in the Hospital it was informed that father was dead. The FIR is duly prove in his evidence as Exh.24. The FIR is consistent on the material points with aforesaid evidence.

13. The first informant was cross-examined at length and dispute in between these families is brought on record. Nothing could be brought on the record to create a probability that Narayan had no opportunity to witness the incident. It appears that the litigation was started by deceased, the relations between the accused and the deceased were strained but that does not mean that they are falsely implicated due to litigation or civil dispute.

14. Jijabai (P.W. No.2) daughter of the deceased has given evidence that she was in the company of Narayan at the relevant time and she also witnessed the incident. Her evidence is similar to the evidence of Narayan.

15. Vitthal (P.W. no.3) the person whose name is mentioned in the FIR has turn hostile.

16. The other person mentioned in the FIR was not examined by the prosecution.

17. Madhukar Pandu Pawar (P.W No. 4) Police Head Constable who was present in the village on that day has given evidence that Narayan had brought Rupchand in Bullock cart to the village Panchayat office and then incident was narrated to him. He has deposed that he had made enquiry with Rupchand also and Rupchand had disclosed that he was beaten by accused No.1 to 4 in the field by fist and kick blows. He has given evidence that constable Jagtap took Rupchand first to Police Station and in the Police Station, reference letter was given to the deceased and deceased was referred to Sindhkheda Rural Hospital.

18. In the cross-examination of Madhukar Pawar (P.W. No.4) it is suggested to him that accused Nos. 1 to 4 were in the company of Rupchand when Rupchand was sent to Sindkheda Police Station. In the cross-examination of the other Police Officer like Madan Gite (P.W. No.5) it is brought on record that all four accused were in the Company of Narayan and Rupchand when they were taken to the Police Station. Copy of the reference letter is at Exh. 30 and it shows that due to assault, Rupchand had sustained injuries and so he was referred by police to the Government Hospital.

19. In the evidence of Rajendra Jagtap (P.W. No.6) other police constable it is brought on record that Police had made enquiry with Rupchand when

he was brought to the village and Rupchand had disclosed names of four accused persons as they had assaulted him.

20. The aforesaid evidence shows that there is not only direct evidence but there is evidence of disclosure made by the deceased to the aforesaid witnesses. Considering the nature of the injuries which were sustained by the deceased and the circumstance that he was immediately shifted to the village, this Court holds that evidence given on disclosure made by the deceased needs to be believed and used under Section 32 of Evidence Act.

21. The defence has not disputed the spot panchnama which is at Exh. 18, it was prepared on 12.11.1997 between 16.00 hours to 16.30 hours. The spot was shown by the first informant. There were marks in the field of the accused showing that deceased was virtually dragged at a distance of 50 to 60 feet. However, it appears that the incident has started in the field of the accused Yadav and from there, they dragged the deceased towards common band and there he was kept by the accused person. Thus the spot panchnama is consistent with the version given by the eye witnesses. Only one circumstances which can be considered in favour of the accused from spot panchnama is that the deceased had probably entered the field of the accused persons and incident had started there. However, it needs kept in

the mind that accused No.1 is real brother of the deceased and the evidence on record shows that he and his three sons, youngsters assaulted the deceased who had crossed at the age of 70 years.

22. The evidence of the Dr. Kirti Lote (P.W. No.7) shows that such injuries can be caused by fist blows and kicks blows. Thus no weapon was used by the accused persons. The accused are close relatives of the deceased and circumstance that they did not use weapon shows that they had no intention of murder. There is possibility that due to dragging and due to use of un-necessarily force aforesaid injuries were inflicted to the deceased. They had no intention of murder and no such knowledge that by such act they will cause the death of the deceased was there. In view of the nature of the injuries caused to the deceased which are mentioned above, and the circumstance that no weapon was used by the accused persons and also circumstances that incident probably started in the field of the accused, this Court holds that intention was only to cause injury and teach a lesson to the deceased. As the accused intentionally caused injury of aforesaid nature of injuries like fractures, internal grievous injuries, this Court holds that trial Court has not committed any error in holding that accused are guilty of the offence punishable under Section 325 of the Indian Penal Code. Considering the nature of the dispute which was going on between

the families and the circumstance that no weapon was used this Court holds the Trial Court has not committed any error for giving rigorous imprisonment for a period of one year only. This Court holds that it was not possible to convict the accused under Section 302 read with 34 of the Indian Penal Code. In the result both the appeals need to be dismissed.

ORDER

1. Criminal Appeal No. 506 of 2002 and Criminal Appeal No. 652 of 2002 are dismissed.

(A.M. DHAVALA, J.)

(T.V. NALAWADE, J.)