

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

CRIMINAL APPEAL NO. 598 OF 2002

The State of Maharashtra
(through P.S.O. Tahsil Police
Station, Dhule)

.. Appellants

Versus

1. Dilip Ratan Gaikwad,
Age 27 years, Occu.Labourer
2. Dinesh Nimba Gaikwad,
Age 18 years, Occu. Labourer
3. Gotu Uttam Gaikwad,
Age 23 years, Occu. Labourer
4. Rajendra Ratan Gaikwad,
Age 35 years, Occu. Labourer
5. Ratan Vitthal Gaikwad,
Age 65 years, Occu. Labourer
6. Bhaskar Manga Pawar,
Age 40 years, Occu. Labourer
- [7] Dashrath Vitthal Gaikwad,
Age 62 years, Occu. Labourer
8. Pintya Dashrath Gaikwad,
Age 19 years, Occu. Labourer
9. Himmat Pundlik Gaikwad,
Age 32 years, Occu. Labourer
10. Pintu Fakira Pawar,
Age 21 years, Occu. Labourer
11. Bapu Vitthal Gaikwad,
Age 45 years, Occu. Labourer

All r/o Village Shirud, Tahsil/
District Dhule

.. Respondents

Mr V.S. Badakh, A.P.P. for appellant
Mr N.B. Suryawanshi, Advocate for respondents no. 1 to 6
Mr B.B. Deshmukh, Advocate for legal representatives of deceased

Appeal as against respondent no.7 abated as per Court's order dated 21.6.2017

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

DATE : 18.12.2017

PER COURT

1. At this stage of hearing on the point of sentence, learned Advocate Mr N.B. Suryawanshi submitted that accused no.1 is dead. His death certificate is filed. Learned A.P.P. confirms that accused no.1 is dead. Police report to that effect is produced.

2. Accused no.2 is reported to be in jail in another offence at Nasik. Accused nos.3 and 6 are present. They are heard on the point of sentence.

3. Learned Advocate Mr Suryawanshi submits that the accused have compromised the matter with the legal representatives of the deceased injured. He relied on the judgment in **Surendra Nath Mohanty and anr. Vs. State of Orissa AIR 1999 SC 2181**, wherein the Supreme Court showed leniency and sentenced the accused to the period already undergone and fine. He submits that the incident has taken place before seventeen years and accused nos.3 and 6 were in jail for one month and four days and one month and eleven days, respectively.

4. Learned A.P.P. opposes the application on the ground that there was assault by two accused by axe and accused no.6 has assaulted with stick.

5. Learned Advocate Mr B.B. Deshmukh, appearing for legal representatives of deceased injured has filed death certificate of

deceased injured and affidavit of son of the deceased along with affidavit of his mother.

6. Considering the fact that the matter has been compromised, we find this is a fit case for showing leniency. However, considering the gravity of offence, it is necessary to impose substantial fine amount so as to compensate the widow of the victim.

7. Taking into consideration all the facts, we find that the sentence of imprisonment for the period already undergone and fine of Rs.15,000/- each to accused nos.2, 3 and 6 will meet the ends of justice. Hence, we pass the following order:

ORDER

- (i) Appeal against accused no.1 stands abated.
- (ii) Appeal against accused nos.4, 5, 7, 8, 9, 10 and 11 is dismissed.
- (iii) Accused nos.2, 3 and 6 are convicted under Section 326 read with Sec.34 of the Indian Penal Code and they are sentenced to suffer imprisonment for the period already undergone by them in jail and to pay fine of Rs.15,000/- each, in default to undergo imprisonment for one year each.
- (iv) The fine amount shall be deposited in the trial Court. On recovery of the fine amount, same shall be paid as compensation to the widow of the deceased (Smt.Bhagrathabai Pandurang Patil).
- (v) Time of one month is granted to accused nos.2, 3 and 6 to deposit the fine amount. They be released for the time being for

making arrangement for payment of fine and if they failed to deposit the fine amount within one month, they shall be taken into custody for undergoing the in default sentence.

(vi) Criminal Application No.7087 of 2017 for compounding is disposed of as the offence is not compoundable.

(A.M. DHAVAL, J.)

(T.V.NALAWADE, J.)

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