

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.617 OF 2012

1.Popat Shivaji Hajare

2.Avinash Popat Hajare. ...Appellants

Versus

The State of Maharashtra ...Respondent

Ms.Nasreen Ayubi for the appellants.

Mr. V.V.Gangurde, APP for the State

CORAM: A.M. BADAR, J.

DATED: 15th DECEMBER 2017

ORAL JUDGMENT:

1. This is an appeal by convicted accused Nos.1 and 3 challenging the judgment and order dated 8.6.2012 passed by the learned Additional Sessions Judge, Solapur convicting both of them for the offence punishable under Section 307 of the Indian Penal Code and sentencing them to suffer Rigorous Imprisonment for five years apart from

payment of fine of Rs.2,000/- and in default directing them to undergo Simple Imprisonment for two months by each of them.

2. Heard Ms. Ayubi the learned advocate appearing for the appellants/accused Nos.1 and 3. By drawing my attention to the spot panchnama as well as evidence of PW-1 Ashok Sukhdeo Pawar, a panch witness to the spot panchnama, the learned advocate argued that the recitals in the spot panchnama are not in tune with the evidence of prosecution witnesses and there is serious doubt about the exact spot where the alleged incident took place. This according to the learned advocate appearing for the appellants/accused amounts to suppression of genesis of the prosecution case making it suspect. The learned advocate further argued that though according to the prosecution case, two knives are recovered at the instance of the appellant/accused. There is no description of the knife in the evidence adduced by the prosecution. The blood was not

found on the spot of the incident making version of the prosecution in respect of the incident is doubtful. The learned advocate further argued that accused persons were not medically examined by the investigator after their arrest. Similarly, injured witness PW-5 Sidram Nivrutti Pawar was also not medically examined. In all probabilities, injuries found on persons of PW-6 Tulshiram Nivrutti Pawar might have been caused to him during the course of scuffle between two groups for which, the present appellants/accused cannot be made responsible. Therefore, in submission of the learned advocate appearing for the appellants/accused, it cannot be said that, the prosecution has established its case beyond all reasonable doubts.

3. The learned APP supported the impugned judgment and order of conviction by relying on version of injured witness PW-6 Tulshiram Nivrutti Pawar, so also eye witnesses namely, PW-5 Sidram Nivrutti Pawar and PW-9 Ambir Basha Mahiboob Mujawar. The learned APP argued

that the evidence of PW-10 Dr.Pradeep Sandipan Kasbe coupled with duly proved papers of medical treatment of injured PW-6 Tulshiram Nivrutti Pawar unerringly points out commission of offence punishable under Section 307 of the Indian Penal Code by the appellants/accused.

4. I have carefully considered the rival submissions and also perused the Record and Proceedings including deposition of witnesses as well as documentary evidence adduced by the prosecution on record.

5. The incident in question, according to the prosecution case, allegedly took place at about 10.00 a.m. on 23.9.2007 in the field of Janabai on Gunjegaon-Akole Road. According to the prosecution case, PW-5 Sidram Nivrutti Pawar and PW-6 Tulshiram Nivrutti Pawar are real brothers. One of their brother namely, Nagnath Pawar was murdered by a member of accused party in the year 2007. Janabai is daughter of said Nagnath Pawar. She was given in marriage to

Rajendra Hajare. Said Rajendra Hajare died seven years prior to the incident in question. Thereafter, Janabai filed a suit for partition and separate possession against the relatives of her husband i.e. members of the accused party. In the said suit, she got share in ancestral property of Hajare family. That is how Janabai Hajare came in possession of the field with a well, where the incident in question took place. Accused No.1 Popat Shivaji Hajare, Accused No.4 Chandrakant Shivaji Hajare, accused No.5 Tanaji Shivaji Hajare are real brothers of deceased Rajendra Hajare-husband of Janabai Hajare. Accused No.3- Avinash Popat Hajare is son of accused No.1 Popat Shivaji Hajare.

6. According to the prosecution case, as Janabai got possession of agricultural field, accused persons were annoyed and they created dispute when Janabai was intending to lay a water pipe line in her field from the well. Accused persons opposed that move which resulted in filing of a complaint by Janabai Hajare with Mandrup Police Station.

7. It is the case of the prosecution that, Gunjegaon, where prosecuting and accused party were residing, was having a Dispute Resolution Committee made for amicable settlement of disputes between the resident of the village. The matter went to the said Dispute Resolution Committee of village Gunjegaon. The President of said Committee invited both the parties to the field of Janabai Hajare on 23.9.2007 for amicable settlement of the dispute. Other members of the committee were also invited. That is how members of the prosecuting party as well as accused persons were present on the scene of occurrence at about 10.00 a.m on 23.9.2007. The prosecution averred that all accused persons who were six in numbers had formed an unlawful assembly with common object of murdering PW-5 Sidram Pawar as well as PW-6 Tulshiram Pawar. They indulged in rioting, on the scene of occurrence while prosecuting common object of the assembly. At that time they were armed with dangerous weapons. The prosecution further averred that accused persons being

members of the unlawful assembly caused harm to first informant Sidram Pawar as well as PW-6 Tulshiram Pawar. They attempted to commit murder of both these prosecution witnesses in prosecuting the common object of the assembly.

8. After due trial, the learned Additional Sessions Judge, Solapur held that the prosecution has failed to prove that accused persons had formed unlawful assembly with common object of attempting to commit murder of PW-5 Sidram Pawar and PW-6 Tulshiram Pawar. Rest of the charges levelled against the accused persons were also held to be not proved. However, the learned trial Court was pleased to held that both the appellants/accused Nos.1 and 3 have independently attempted to commit murder of PW-6 Tulshiram Pawar. That is how by the impugned judgment and order dated 8.6.2012, the learned Additional Sessions Judge acquitted the accused persons for the offences punishable under Sections 307, 147, 148, 323, 504 r/w 149 of the Indian Penal Code but convicted the appellants/accused

Nos.1 Popat Hajare and appellants/accused No.3 Avinash Hajare of the offence punishable under Section 307 of the Indian Penal Code. They both are sentenced to suffer Rigorous Imprisonment for five years for the said offence apart from directing them to pay fine of Rs.2,000/- each and in default to undergo further Simple Imprisonment for two months.

9. I have carefully considered the submissions advanced by the learned advocate appearing for the appellants/accused as well as the learned APP. The State has chosen not to file appeal in respect of acquittal of accused persons for the charges levelled against them with the aid of Section 149 of the Indian Penal Code. Let us therefore examine whether the learned trial Court has committed any error in convicting the appellants/accused for the offence punishable under Section 307 of the Indian Penal Code.

10. Sofar as the spot of the incident is concerned, the spot panchnama Exhibit 38 reveals that the incident occurred at Gunjegaon-Akole road and particularly towards Northern portion of the road. Evidence of prosecution witnesses and particularly that of PW-5 Sidram Pawar and PW-6 Tulshiram Pawar as well as PW-9 Ambir Basha Mahiboob Mujawar goes to show that field of Janabai Hajare is located at Gunjegaon-Akole road which is having a well. The said field is on the Gunjegaon-Akole road and the well is also near that road. Evidence adduced by the prosecution shows that the scuffle started at the field of Janabai Hajare where the Dispute Resolution Committee of the village had decided to meet both the parties for settlement of dispute. PW-6 Tulshiram Pawar has stated that the incident took place near the well. Evidence of PW-12 Harun Papamiyan Mulani-API, who investigated the crime shows that the place of the incident was towards Northern side of the road. Thus evidence on record indicates that the incident took place in between the field of Janabai and Gunjegaon- Akole road. Evidence of

prosecution witnesses is clear on this aspect and therefore, this cannot be a case, where it can be said that the prosecution has suppressed genesis of the incident making the prosecution case suspect.

11. According to the prosecution case, murderous assault was on PW-5 Sidram Pawar as well as PW-6 Tulshiram Pawar. So far as PW-5 Sidram Pawar is concerned, it is not seen from the evidence of prosecution that he was medically examined and evidence of this witness also does not show that this witness had suffered any injury in the incident in question. Though this witness claimed that accused Chandrakant Hajare had given a blow of knife upon his chest, for want of any medical evidence corroborating this version of PW-5 Sidram Pawar the learned trial Court disbelieved this part of evidence of PW-5 Sidram Pawar. The learned trial Court ultimately held that there was murderous assault on PW-6 Tulshiram Pawar by both the appellants/accused.

12. It is in the evidence of PW-6 Tulshiram Pawar that by taking a call of the Dispute Resolution Committee of the village, he alongwith his brother PW-6 Tulshiram Pawar, Janabai, Jagannath as well as members of the Dispute Resolution Committee gathered in the field of Janabai on 23.9.2007. This witness further deposed that accused persons were also present in the field of Janabai. How the incident in question took place has also come on record from the version of PW-6 Tulshiram Pawar. He deposed that appellant/accused Popat Hajare questioned the propriety of holding the meeting in the field of Janabai by demanding that the meeting should be held in his place of residence. PW-6 Tulshiram Hajare has stated that the appellant/accused No.1 Popat Hajare uttered that his brother is killed. Then as per version of PW-6 Tulshiram Pawar, the appellant/accused No.1 Popat Hajare rushed on his person. Appellant/accused No.1 Popat Hajare then took out a knife concealed in his shirt and gave a blow of it on his chest. As stated by PW-6 Tulshiram Pawar then appellant/accused No.3 Avinash Pawar took out a knife from

his shirt and gave a blow thereon on his stomach. PW-6 Tulshiram Pawar testified that then he was taken to Ashwin Hospital for medical treatment where he was admitted for one month. This witness identified seized knives. In cross-examination this witness has admitted that he was assaulted by appellant/accused Popat Hajare, appellant/accused Avinash Hajare as well as accused Chandrakant Hajare by means of knife. This witness further admitted in his cross-examination that when appellant/accused Popat Hajare assaulted him by knife, he did not try to restrain Popat Hajare. This witness further stated in cross-examination that blows of knives were given to him forcefully, causing oozing of the blood and resulted in unconscious. This material elicited from the cross-examination of PW-6 Tulshiram Pawar in no way shakes his testimony in respect of assault on him by the appellants/accused.

13. PW-9 Ambir Basha Mahiboob Mujawar has deposed that when members of the Resolution Committee

asked Janabai about her complaint on the spot of the incident, appellant/accused Popat Hajare asked that the dispute needs to be resolved at his residential area and thereupon injured Tulshiram Hajare insisted that the dispute needs to be resolved in the field itself. As per version of PW-9 Ambir Basha Mahiboob Mujawar then appellant/accused Popat rushed on person of PW-6 Tulshiram Pawar, took out a knife and gave a blow thereof on chest of PW-6 Tulshiram Pawar . Thereafter, as deposed by PW-9 Ambir Basha Mahiboob Mujawar, appellant/accused Avinash Hajare took out a knife and gave a blow thereof on stomach of PW-6 Tulshiram Pawar. PW-9 Ambir Basha Mahiboob Mujawar has spoken about presence of PW-6 Sidram Pawar when the incident took place. There is nothing in cross-examination of this witness to disbelieve his version in respect of the incident in question. This witness was not having inimical disposition against accused persons. This witness has not implicated other accused persons in the crime in question and that is how they are acquitted by the learned Trial Court. It is seen from

version of this witness that he is a witness of truth and has not implicate anybody else in the crime in question except the assailants. I see no reason to disbelieve version of this independent eye witness PW-9 Ambir Basha Mahiboob Mujawar. Presence of PW-5 Sidram Pawar on the scene of occurrence is vouched by injured PW-6 Tulshiram Pawar as well as independent eye witness PW-9 Ambir Basha Mahiboob Mujawar. PW-5 Sideram Pawar appears to have added embellishment to his version by attributing role of other accused persons in the crime in question. By sifting truth from the version of this witness, his evidence to the extent of implicating appellant/accused No.1 Popat Hajare and appellant/accused No.3 Avinash Hajare is accepted by the learned trial Court. Let us see what this witness has stated about role of the appellants/accused. PW-5 Sidram Pawar has deposed that on 23.9.2007 he alongwith his brother Tulshiram and others were present in the field of Janabai. Members of the dispute Resolution Committee were also present there so also the accused persons. PW-5 Sidram Pawar

has stated that in the said meeting that appellant/accused Popat Hajare raised the dispute by stating that meeting should be held at his residence and then PW-6 Tulshiram Pawar insisted that the meeting should be held in the field itself. Then appellants/accused took out a knife and gave blow thereof on the chest of PW-6 Tulshiram Pawar. As stated by this witness, appellant/accused Avinash Hajare also took out a knife from his shirt and gave blow thereof on the stomach of Tulshiram Pawar. Despite searching cross-examination there is nothing to disbelieve the version of this witness sofar as role of the appellants/accused in the crime in question .

14. PW-6 Tulshiram Pawar had suffered injuries in the incident in question and as such there is no reason to disbelieve his version regarding the incident. Evidence of this injured witness is fully corroborated by evidence of PW-10 Dr. Pradip Kasbe, Medical officer, who at the relevant time was attached to Ashwin Hospital. PW-10 Dr. Pradeep Kasbe had examined PW-6 Tulshiram Pawar on 23.9.2007. Following

injuries were found by him on the person of PW-6 Tulshiram Pawar.

- a) *Stab injury near left epigastric region below coastal margin , 5X1 cm, ribs felt on Palpation*
- b) *Stab injury over left iliac fossa, deep with collection of blood all around the heart.*

15. Evidence of PW-10 Dr.Pradeep shows that PW-6 Tulshiram was then operated and thoracotomy was done. He opined that injuries caused to Tulshiram Pawar were likely to cause his death, if he was not treated in time. This witness has duly proved papers of medical treatment of PW-6 Tulshiram Pawar which are at Exhibit 89. Those papers are corroborating the version of PW-10 Dr.Pradeep Kasbe. Perusal of papers of medical treatment of PW-6 Tulshiram Pawar shows that his chest was required to be opened for performing thoracotomy. Thus, the medical evidence adduced

by the prosecution had fully supported version of PW-6 Tulshiram Pawar in respect of wounds caused to him.

16. Apart from ocular evidence in respect of the incident in question, the prosecution has adduced evidence regarding recovery on the basis of confessional statement of both accused persons. Evidence of PW-2 Dattatraya Bhimrao Bhagale a panch witness coupled with that of PW-12 Harun Papamiyan Mulan -investigating officer shows that on the basis of confessional statement of appellant/accused No.1 Popat Hajare a knife came to be recovered and it was sent for medical examination. Similarly evidence of PW-3 Mallinath Appanna Mendkudale a panch witness coupled with evidence of PW-12 Harun Papamiyan Mulani investigating officer shows that another knife came to be recovered on the basis of confessional statement of appellant/accused No.3 Avinash Hajare. Both those knives were sent for chemical analysis and report of the chemical analyser at Exhibit 48 shows that those knives were stained with blood. Thus forensic evidence also

supports case of the prosecution sofar as the appellants/accused are concerned.

17. Considering the nature of injuries, weapons, chosen for inflicting the blow and the harm caused by the force of blow, it needs to be held that the prosecution has established that the appellants/accused had committed an attempt to commit murder of injured PW-6 Tulshiram Pawar. The intention is reflected from the overt act done by them by using knives and choosing the chest and abdomen of PW-6 Tulshiram Pawar for giving forceful blows of knife.

18. The learned trial Court upon considering entire evidence available on record has rightly held that both the appellants/accused guilty of the offence punishable under section 307 of the Indian Penal Code. The sentence imposed on the appellants/accused is also proper and needs no interference.

19. In the result, the appeal is devoid of merits and the same is therefore dismissed.

(A.M. BADAR, J)