

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

Criminal Appeal No. 256 of 2007

* The State of Maharashtra
Through Udgir (Rural)
Police Station, Udgir. **.. Appellant.**

Versus

1) Sudhakar Sangram Kamble
Age 30 years.

2) Shrimant Sangram Kamble,
Age 55 years
Both R/o Lohara,
Taluka Udgir, District Latur. **.. Respondents.**

Shri. P.G. Borade, Additional Public Prosecutor, for
appellant - State.

Smt. Maya R. Jamdhade, Advocate, for respondent Nos.1
and 2.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 24 APRIL 2018

JUDGMENT(Per T.V. Nalawade, J.)

1) The appeal is filed against the judgment and
order of Sessions Case No.7/2006 which was pending in
the Court of the Ad-hoc Sessions Judge-1, Udgir, District

Latur. The trial Court has acquitted the respondents of the offences punishable under sections 307, 324, 323, 504, 506 read with 34 of Indian Penal Code. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

3) The respondents are brothers *inter se*. The first informant Narsing and the accused persons are residents of Lohara, Tahsil Udgir. There was no dispute between them in the past and the incident took place out of petty quarrel.

4) On 19-7-2005 at about 9.00 p.m. when Balu, nephew of the first informant aged about 5 years was present on the road with his father Amruta, bicycle of juvenile accused Anil gave dash to Amruta. Due to that Balu fell on the road. When Amruta started questioning Anil, juvenile accused, for his act, other accused like Shrimant, Sunil and Sudhakar came there. They picked up quarrel and assaulted Amruta.

5) Allegations are made that during incident accused Sudhakar gave blow of stick on a leg of Amruta. Accused Sunil gave blow of axe on the head of Amruta and when the first informant Narsing tried to intervene, juvenile accused, Anil gave blow of stone on his head and Shrimant gave blow of stick on a leg of Narsing. This incident was witnessed by some persons of the village and they separated the quarrel. Narsing and Amruta were injured and they were shifted to Government Hospital. First information report was given by Narsing on 19-7-2005 itself and the crime at CR No.123/2005 was registered in Udgir (Rural) Police Station initially for offences punishable under sections 324, 323, 504, 506, 34 of IPC. After collecting medical record and recording of statements when it was realised that weapons like axe or knife were used, section 307 IPC was added and charge-sheet was filed for that offence also. After committal of the case charge was framed for aforesaid offences and plea was recorded. Both the accused pleaded not guilty. Separate report was filed before Juvenile Court against the Anil and Sunil. Statement is made that they are acquitted.

6) Before the trial Court prosecution examined in all 10 witnesses who include two injured eye witnesses. Due to inconsistencies found in the previous statements and also in the evidence given by the eye witnesses the trial Court has given benefit of doubt to both the accused.

7) The F.I.R. was given by Narsing (PW-2). In the present matter prosecution wanted to prove that Sudhakar and Shrimant had attempted to finish Amruta. FIR was given by Narsing and he had made allegation against Sudhakar that he had given blow of stick on a leg of Amruta. Anil, juvenile accused had assaulted Narsing by using stone. Allegations were made that beating was given by fist blows and kicks but those allegations are vague. Thus, there was no allegation made in the first disclosure that either Sudhakar or Shrimant had used dangerous weapon against Narsing or Amruta. Allegations were made that juvenile accused Sunil Sangram Kamble had given blow of axe on the head of Amruta. This circumstance cannot be ignored as the material shows that the incident took place all of a sudden, without premeditation and there was no previous dispute between

the two sides. In view of these circumstances, it was necessary to show that there was common intention developed and the present respondents had intention to finish either Narsing or Amruta.

8) Narsing (PW-2) in the substantive evidence has stated that juvenile accused Sunil gave axe blow on the head of Amruta. Vague evidence is given that both Shrimant and Sudhakar had assaulted Amruta by using sticks. He has given evidence that accused Anil, juvenile accused, had given blow of axe on his head and accused Shrimant had given blow of stick on his left leg. He has given evidence that FIR at Exhibit 29 was given by him on the same day and then he was referred to Government Hospital Udgir by police. Thus the evidence given by PW-2 Narsing is little bit different though he remained consistent on his previous version that juvenile accused Sunil had given blow of axe on the head of Amruta.

9) Amruta (PW-6) has given evidence that present two accused and two juvenile accused had assaulted him by using stick, axe and belt. He has given substantive

evidence that accused Shrimant assaulted him by using stick and accused Sudhakar assaulted by using axe and due to that he sustained injuries to head and leg and after that he became unconscious. Thus, the version of Amruta (PW-6) in respect of injuries sustained on the head is not consistent with the version of Narsing (PW-2). It can be said that subsequently allegations were made against Sudhakar by Amruta (PW-6) so that said injury was attributed to Sunil.

10) Maruti (PW-7) is examined as eye witness. His evidence shows that both the first informant and Amruta are his close relatives. He has deposed that juvenile accused Sunil had given knife blow on the head of Amruta and present respondents-accused had assaulted Amruta by using stick on his back, head and leg. He has deposed that Narsing was assaulted by stone thrown at him and stick blow was also given by Shrimant on his left leg. Dhulba (PW-8) has given evidence that Sunil gave blow of axe on the head of Amruta. Shrimant gave blow of stick on the leg of Narsing and both Sudhakar and Shrimant assaulted Amruta by stick on his back and leg. His

evidence also shows that he is close relative of the first informant and his brother.

11) Dr. Shankar (PW-3) is examined to prove the injuries which were found on the person of Narsing and Amruta. Dr. Shankar has given evidence that on 19-7-2005 he examined Narsing in Rural Hospital Udgir and he found following three injuries on his person:-

(1) Contused lacerated wound on left part of the occipital area, obliquely placed having size 2.1/2 x 1/4 cm into bone deep.

(2) Contused lacerated wound on anterior surface of left leg on the middle, horizontally placed, having size 2 x 1/4 cm into bone deep.

(3) Diffused swelling on right side of back medial to right scapula with bruise over its surface, having size 4 cm x 3 cm having size of bruise 5 x 2 cm.

He has deposed that such injury can be caused by weapon like stick. Injury certificate is proved at Exhibit 31.

12) Dr. Shankar (PW-3) has given evidence that on the same day he examined Amruta and he found following injuries on the person of Amruta.

(1) Contused lacerated wound over frontal area, vertically placed having size 6 x 1/4 cm into bone deep.

- (2) Contused lacerated wound on right right front recess area vertically placed having size 6 x 1/4 cm into bone deep.
- (3) Diffused orbital swelling around left eye, painful, around left eye.
- (4) Crush injury on the left index finger on vertical surface.

He has deposed that all the injuries were caused by hard and blunt object. Injury certificate is proved at Exhibit 32. He has tried to say that such injury can be caused by axe and stick.

13) There is possibility that due to aforesaid petty incident there was virtually scuffle also. However, in view of the initial disclosure which was made in the FIR it does not look probable that either of the two accused had used dangerous weapon like axe and they had intention to finish either Narsing or Amruta. On the contrary, there is evidence of other witnesses that juvenile accused had used dangerous weapon. Considering the number of injuries and the nature of injuries which were found on the person of the first informant and Amruta, this Court holds that there is possibility of exaggeration and implication of the accused persons in the present matter.

14) The trial Court has considered all the aforesaid circumstance and the trial Court had given benefit of doubt. Learned counsel for the respondent-accused has placed reliance on some observations made by the Apex Court in the case reported as **AIR 2009 SC 1872 (State of Rajasthan v. Mohan Lal)**. At paragraph 27 observations are made that if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the finding of the trial Court. The observations made in the previously decided case like **Bhim Singh v. State of Maharashtra (AIR 1974 SC 286)** are used. There cannot be dispute over this proposition. Considering the reason for which the incident started and the initial disclosure made in the FIR against juvenile accused this Court holds that it is not possible to interfere in the decision of acquittal given by the trial Court in favour of the present accused. Further the evidence is not convincing to make out the case of attempt of murder. In the result, the appeal stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)