

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

CRIMINAL APPEAL NO. 66 OF 2003

The State of Maharashtra
Through Police Station
Officer, Police Station
Talwada, Tq. : Georai,
Dist. : Beed.

**.... APPELLANT/
[ORI.COMPLAINANT]**

V E R S U S

1. Ganpati @ Rambhaji s/o
Bhanudas Surnar
Age : 45 Yrs., Occ. : Agri.
2. Asaram s/o Ramkisan Kale
Age : 38 Yrs., Occ. : Agri.
3. Vitthal Bhanudas Surnar
[Died, abated as per Order
below Exh. 57].
4. Nanabhau Bapusaheb Pandhare
Age : 25 Yrs., Occ. : Agri.
5. Kadaji Rambhaji Surnar
Age : 22 Yrs., Occ. : Agri.

6. Asaram Bhanudas Parekar
Age : 28 Yrs., Occ. : Agri.
7. Shivaji Sitaram Pandhare
Age : 40 Yrs., Occ. : Agri.
8. Ankush Uttam Kale
Age : 20 Yrs., Occ. : Agri.
9. Vijay Rambhaji Surnar
Age : 19 Yrs., Occ. : Agri.
10. Pandurang Kundlik Pandhare
Age : 23 Yrs., Occ. : Agri.,
11. Navnath Ramkisan Kale
Age : 21 Yrs., Occ. : Agri.
12. Tulshiram Baburao Pandhare
Age : 23 Yrs., Occ. : Agri.
13. Waman Rambhau Sarak
Age : 45 Yrs., Occ. : Agri.
14. Baban Arjun Bandgar
Age : 25 Yrs., Occ. : Agri.
15. Vilas Waman Sarak
Age : 21 Yrs., Occ. : Agri.
16. Kalyan Sakharam Bandgar
Age : 22 Yrs., Occ. : Agri.

17. Baburao Janba Surnar
Age : 65 Yrs., Occ. : Agri.
18. Mahadeo Ashruba Deshmukh
Age : 35 Yrs., Occ. : Agri.
19. Babu Sitaram Pandhare
Age : 55 Yrs., Occ. : Agri.
20. Bhima Maruti Ghargude
Age : 55 Yrs., Occ. : Agri.
21. Chhagan Bhima Ghargude
Age : 25 Yrs., Occ. : Agri.
22. Mahadeo Bhanudas Parekar
Age : 25 Yrs., Occ. : Agri.
23. Bandu Ramkisan Kale
Age : 25 Yrs., Occ. : Agri.
24. Narayan Baburao Surnar
Age : 35 Yrs., Occ. : Agri.

All R/o : Deshmukhwadi,
Tq. : Georai, Dist. Beed.

.... **RESPONDENTS/
[ORI.ACCUSED]**

.....

Shri. S.D.Ghayal, A.P.P. for Appellant - State.

Shri. V.S.Bedre, Advocate for R – 1,2,4 to 24.

.....

WITH
CRIMINAL REVISION APPLICATION NO. 372 OF 2003

Asaram s/o Ramkishan Kale

Age : 35 Yrs., Occ. : Agri.,

R/o : Deshmukhwadi, Post :

Rampuri, Tq. : Georai,

Dist. Beed.

.... APPLICANT/
[ORI.COMPLAINANT]

V E R S U S

1. The State of Maharashtra
Through Police Station
Officer, Police Station
Talwada, Tq. : Georai,
Dist. : Beed.
2. Dnyanoba Kisan Sarak
Age : 40 Yrs., Occ. Agri.
3. Rambhau Appa Yamgar
Age : 67 Yrs., Occ. Agri.
4. Arjun Appa Yamgar
Age : 46 Yrs., Occ. Agri.
5. Pintu @ Kisan Dnyanoba Sarak
Age : 24 Yrs., Occ. Agri.
6. Bhagwan Maroti Yamgar
Age : 25 Yrs., Occ. Agri.

7. Pandurang Arjun Yamgar
Age : 26 Yrs., Occ. Agri.
8. Laxman Dnyanoba Pandhare
Age : 33 Yrs., Occ. Agri.
9. Bhagwat Vithal @
Gabbulal Satpute
Age : 24 Yrs., Occ. Agri.
10. Prabhu Vithal Satpute
Age : 36 Yrs., Occ. Agri.
11. Vitthal @ Gabbulal
Tatyabhau Satpute
Age : 54 Yrs., Occ. Agri.
12. Arjun Rambhau Pingale
Age : 40 Yrs., Occ. Agri.
13. Jaywant Dnyanoba Pandhare
Age : 35 Yrs., Occ. Agri.
14. Vitthal Dnyanoba Pandhare
Age : 48 Yrs., Occ. Agri.
15. Maruti Rambhau Yamgar
Age : 54 Yrs., Occ. Agri.
16. Shrirang Tukaram Pandhare
Age : 64 Yrs., Occ. Agri.

17. Bhimrao Rambhau Yamgar
Age : 40 Yrs., Occ. Agri.
18. Tulsabai Vitthal Pandhare
Age : 34 Yrs., Occ. Agri.
19. Dropadibai Laxman Pandhare
Age : 32 Yrs., Occ. Agri.
20. Laxmabai Jaiwanta Pandhare
Age : 28 Yrs., Occ. Agri.
21. Sanjevani Arjun Pingale
Age : 27 Yrs., Occ. Agri.

All R/o : Deshmukhwadi,
Tq. : Georai, Dist. Beed.

.... RESPONDENTS/
[ORI.ACCUSED]

.....

Shri. V.S.Bedre, Advocate for Applicant.
Shri. S.D.Ghayal, A.P.P. for R – 1 - State.
Shri. A.S.Barlota h/f Shri. S.K.Barlota,
Advocate for R – 2 to 21.

.....

**CORAM : SUNIL P. DESHMUKH &
P.R.BORA, JJ.**

DATE : 18th JANUARY, 2018

.....

ORAL JUDGMENT : [PER – P.R.BORA, J.]

1. The Judgment and Order passed by the Additional Sessions Judge, Beed on 25/09/2002 in Sessions Case No. 81/2000 is challenged by the State in Criminal Appeal No. 66 of 2003, whereas the Order passed in Sessions Case No. 80 of 2000 arising out of the same incident is questioned in Criminal Revision Application No. 372 of 2003. The original complainant has preferred the Criminal Revision Application.

2. The incident happened on 22/09/1998 at village Deshmukhwadi, had given rise for filing two complaints, one by Laxman Dnyanoba Pandhare and other by Asaram Ramkishan Kale. In the complaint filed by Laxman Dnyanoba Pandhare, he had alleged that on 22/09/1998 at about 1.00 p.m., Kashibai Narayan Surnar had been to the back-yard of their house and had attempted to pluck the gourds [Dev-dangar in the words of complainant]. Kashibai was prevented from plucking the gourds by the sister-in-law of complainant Laxman viz. Tulsabai Vithal Pandhare. At that time, Kashibai left the said place without plucking any gourd. However, at about 3.00 p.m. when the complainant Laxman, his brothers, his uncle and cousin had been to their house for taking afternoon meals, Narayan Baburao Surnar, etc. entered in their house with sticks and stones in their

hands and started abusing and beating them. As alleged in the complaint, Narayan Surnar had made an assault on Laxman with axe and injured him. Some other accused were also alleged to have made assaults with the axes and sticks in their hands on other members in the house. The stones were also alleged to have been pelted on the said persons. Complainant Laxman Pandhare had alleged that an attempt was made by the accused to cause his death and to cause serious injuries to his other family members. Laxman lodged the report of the said incident at police station Talwada, Taluka Georai, District Beed, whereupon the crime was registered against Ganpati Surnar etc. 24 vide Crime No. 0053/1998 for the offences punishable u/s 307,326,323,338,452, 147,148,149 and 504 of I.P.C. and the investigation was set in motion.

3. As against the complaint filed by Laxman Pandhare, Asaram Ramkisan Kale also filed complaint in police station Talwada, Taluka Georai, District Beed against Dnyanoba Kisan Sarak, etc. 20 alleging that on 22/09/1998, Kashibai Surnar and Pushpabai Asaram Parekar, when had been to the well for fetching water, were abused by Tulsabai Pandhare, Dropadabai, Laxmibai and Sanjivani. It was also alleged that on instigation of one Shrirang Tukaram Pandhare, said women made assaults on Kashibai and Pushpabai. It was also the complaint of Asaram that

when he and Narayan Surnar, etc. tried to prevent Tulsabai, etc. from making assaults on Kashibai and Pushpabai, other accused persons entered on the said spot and scuffled with them. Asaram had also alleged that the assailants were holding axe, sticks and stones in their hands. Asaram also made a grievance that because of the assaults made by Dnyanoba Kisan Sarak, etc. the injuries were caused to the persons who were on his side. Asaram, therefore, lodged report of the said incident, whereupon the crime was registered against Dnyanoba Kisan Sarak, etc. 20 for the offence punishable u/s 326,504,147,148,149 of I.P.C. and the investigation was set in motion.

4. The material on record reveal that after completing the investigation in both the aforesaid crimes, the charge sheets were filed in both the cases against the persons who were named assailants in the respective complaints. Since some of the offences alleged against respective assailants in the respective complaints were exclusively triable by the Court of Sessions, both the cases were committed to the Sessions Court and the case initiated on complaint of Laxman Pandhare was registered as Sessions Case No. 81 of 2000, whereas the case based on complaint of Asaram Kale was registered as Sessions Case No. 80 of 2000. The record further reveals that both the cases were tried by First Ad-hoc Additional Sessions Judge, Beed and separate Judgments were

delivered in both the aforesaid Sessions cases on 25/09/2002. The learned trial Judge acquitted all the accused in both the Sessions cases of all the charges levelled against them.

5. As noted herein above, the State has filed Appeal against the Judgment and Order delivered in Sessions Case No. 81 of 2000 whereas Criminal Revision Application is filed by the original complainant against the Judgment delivered in Sessions Case No. 80 of 2000. The State has not preferred any Appeal against the Judgment and Order passed in Sessions Case No. 80/2000.

6. Shri. S.D.Ghayal, the learned A.P.P. assails the Judgment passed in Sessions Case No. 81/2000, whereas Shri. V.S.Bedre, the learned counsel appearing for the revision applicant criticized the Judgment passed in Sessions Case No. 80/2000. Shri. V.S.Bedre resisted the submission made on behalf of learned A.P.P. in Criminal Appeal No. 66 of 2003, whereas Shri. S.K.Barlota, the learned counsel opposed the submissions made by the revision applicant in Criminal Revision Application No. 372 of 2003.

7. Since the aforesaid matters are arising out of one incident, we have heard the arguments in both the matters

simultaneously and deem it appropriate to decide both the matters by common reasons.

8. After having heard the learned A.P.P. and the learned counsel appearing for the respective parties in both the aforesaid matters and on perusal of the Judgment delivered in Sessions Case Nos. 80/2000 and 81/2000 by the learned First Ad-hoc Additional Sessions Judge, Beed; apparently it does not appear to us that any interference may be required in the impugned Judgments.

9. It is not in dispute that some dispute had arisen between two groups, one led by Laxman Pandhare and another led by Asaram Kale on 22/09/1998 at village Deshmukhwadi in the afternoon. Though both the groups have come out with different stories for a dispute between them, the fact remains that both the groups had scuffled with each other and as alleged by them some of the members from both the groups were injured in the said fight because of the assaults received to them at the hands of members of rival group. According to the complaint lodged by Laxman Pandhare, the cause for the dispute was that one Kashibai Surnar had attempted to pluck the gourds, grown in the house of his backyard, whereas according to the complaint lodged by Asaram Kale, the dispute had arisen on account of fetching water from the well.

10. In Sessions Case No. 81/2000, the prosecution has examined as many as 11 witnesses and has also relied upon certain documents. In Sessions Case No. 80/2000, as many as 14 witnesses were examined and the documentary evidence of-course was also relied upon. After having perused evidence on record in both the aforesaid Sessions cases, it is noticed by us that in none of the Sessions case any such unimpeachable evidence has come on record so as to hold any of the accused guilty in the aforesaid Sessions cases for the offences charged against them. The medical certificates on record clearly demonstrate that none of the injured has received any severe injury. The injuries noticed to have been caused were all simple in nature. More importantly the prosecution has failed in both the aforesaid Sessions cases to bring on record any cogent and sufficient evidence to prove as to which accused had caused the injury to the injured in the rival group. Though some witnesses have certainly deposed about the assaults made on them, their testimony has not been corroborated by any other witness.

11. It is further revealed that though the prosecution witnesses have alleged in their evidence before the Court that they were assaulted by axe, the medical evidence has completely negated their evidence. Medical evidence does not demonstrate that there was any possibility of making assaults by any of the

assailant with axe. As is revealing from the medical certificates, the injuries were noticed to have been caused with some blunt object. It is further revealed that in so far as the spot of occurrence is concerned, a very inconsistent evidence has come on record.

12. We reiterate and specifically state that though in each of the aforesaid Sessions case as many as 10 to 14 witnesses respectively are examined, none of the witness has corroborated the version of another witness on material particulars. The inconsistency is apparently noticed between the ocular account given by the witnesses of the alleged incident and the medical evidence on record. After having considered the evidence brought on record in both the aforesaid Sessions cases, we have no hesitation in holding that no conviction could have been based of any of the accused in the respective Sessions cases on the basis of such evidence. As has been observed by the learned Additional Sessions Judge, though admittedly there was a free fight between two groups, none of them has succeeded in proving the allegations against each other. In absence of any cogent and sufficient evidence brought on record against any of the accused in aforesaid Sessions cases, everyone was entitled to be given benefit of doubt and in our opinion the learned Additional Sessions Judge has rightly extended the said benefit and has resultantly acquitted all

the accused in aforesaid Sessions cases.

13. After having considered the entire material on record, it does not appear to us that the learned Additional Sessions Judge has committed any inherent error so as to cause interference in the finding of acquittal recorded by it in both the aforesaid Sessions cases. We have to note that even the learned A.P.P. and the learned counsel appearing in the Revision Application were finding it very difficult to object the conclusions recorded by the learned Additional Sessions Judge.

14. In the foregoing circumstances and for the reasons recorded above, Criminal Appeal No. 66 of 2003 as well as Criminal Revision Application No. 372 of 2003 deserve to be dismissed and are accordingly dismissed.

[P.R.BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE