

Vidya Amin

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

CRIMINAL APPEAL NO. 696 OF 2017

The State of Maharashtra ... Appellant
VS.
Narayan Shivaji Thorat & Ors. ... Respondents

Ms. S.S. Kaushik, APP for the appellant-State.
Mr. Shekhar Ingawale, i/b. Mr. Ashok M. Masal, Advocate for
respondent nos. 1 to 6.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 1st October, 2018**

ORDER : (PER MRS. MRIDULA BHATKAR, J.)

1. This Appeal is filed for enhancement of sentence under section 377 of the Code of Criminal Procedure against the judgment and order dated 17th August, 2016 passed by the learned District Judge-1 and Additional Sessions Judge, Islampur, District Sangli. Respondent nos. 1 to 6 were prosecuted and charged for the offence punishable under sections 302, 326, 324 r/w. 149 and sections 323, 147, 148 of the Indian Penal Code. Respondent nos. 1 to 6 were acquitted from the offence under sections 302, 326 and are convicted for the offences punishable under sections 324 r/w. 149 of Indian Penal Code and they are sentenced to suffer R.I. for one month and to pay compensation of Rs.35,000/- each

within 15 days and in default to suffer S.I. for 3 months. The respondents/accused are also found guilty under section 323 r/w. 147, 148 of Indian Penal Code. The amount of compensation, if released, it should be given equally to PW-6 Sonali Prakash Thorat and PW-7 Dipali Prakash Thorat, daughters of deceased Prakash. Hence, this Appeal.

2. The facts of the case are as follows:

The respondents/accused are the resident of Gotkhindi. The deceased had purchased 1.5 acres of land from Narayan Shivaji Thorat- accused no. 1 in 2001, however, sale deed was not executed by him of 5 gunthas out of this land and there was some dispute between deceased Prakash and accused no. 1-Narayan Thorat. On 16th August, 2008, the accused formed unlawful assembly and they attacked Prakash, his cousin Dattajirao Thorat and Shobha, wife of Dattajirao with sticks. Accused no. 5 Vikram Hanmant Thorat gave fist and kick blows to Prakash Thorat. Prakash was also beaten with sticks by all the respondents. He was shifted to hospital immediately. He was treated in the hospital, however, he succumbed to the injuries on 17th August, 2008.

3. Learned APP has submitted that the learned Judge ought to have taken into account the evidence of PW-6 Sonali Prakash Thorat and PW-7 Deepali Prakash Thorat. Both the girls have stated that on the night of 16th August, 2008 at around 11 p.m. the quarrel was going on near the house of injured Dattajirao and Shobha between the respondents and all the respondents were assaulting Dattajirao and Shobha with kick and fist blows and also with sticks. At that time, their father Prakash rushed to the spot. After sometimes, both the girls also went there. They found that Dattaji and Prakash were lying on the road in injured condition and thereafter they were shifted to the hospital. Learned APP has submitted that though Dattaji and Shobha did not support the case of the prosecution, the evidence of PW-6 Sonali and PW-7 Dipali is very material. On the point of injuries, PW-17 Dr. Manohar Nabhiraj Kabade has stated that Prakash was brought in the hospital at 2 a.m. in injured condition and on the next day, he died due to injury caused to head after having convulsion. The conviction given by the learned trial Judge only under sections 324 and 323 is inadequate and it is to be enhanced and respondents/accused are to be convicted under section 302 or atleast under section 326 of Indian Penal Code.

4. The learned counsel for the respondents/accused has supported the judgment and order passed by the learned trial Court. He submitted that the cause of death of Prakash was due to head injury and PW-17 Dr. Manohar Kabade gave admission in the cross-examination that patient Prakash when was brought to the hospital, his general condition was normal. He also gave admission that if a person is assaulted with blunt object like stick then CLW could cause and not incised wound. The incised wound may cause due to fall on sharp edged object. He has submitted that if the said injury, as admitted by the doctor, is possible due to fall on sharp edge, then the prosecution has failed to prove that his death was due to assault by sticks and fist and kick blows from the respondents. He pointed out that PW-12 Shobha did not support the case of the prosecution. Other panch witnesses on seizure of clothes also did not support the prosecution's case.

5. Perused the evidence of PW-6 Sonali Thorat and PW-7 Dipali Thorat, who are the main witnesses of the prosecution on the point of incident. These two witnesses have stated that they have seen respondents armed with sticks and have assaulted

Dattaji, Shobha and their father Prakash when quarrel was going on during the midnight of 16th August, 2008. Their evidence that thereafter Prakash was lying injured on the road and he was shifted to the hospital, cannot be doubted, as the evidence is found consistent. PW-17 Dr. Manohar Kabade, who has examined Prakash, has stated about the injuries on his person. However, certain major circumstances and evidence is missing to complete the chain. Though these two girls are eye witnesses, they have not specifically stated as to who has actually assaulted Prakash. The cause of death of Prakash is due to head injury, which is in the form of incised wound. Our attention is drawn to the cross-examination of the doctor who has admitted that such wound can occur due to fall on pointed or sharp stone. The witnesses have stated that they saw their father running towards the spot of the quarrel and thereafter they saw their father and uncle lying on the road. Thus, the incident described by PW-6 Sonali and PW-7 Dipali and the injuries sustained on the person of Prakash and his cause of death cannot be established that Prakash died due to intended assault of the respondents. Moreover, the respondents were quarrelling with Dattaji and Shobha in their house which was away from the house of Prakash. Prakash went to rescue Dattaji

and both got injured. The learned Judge of the trial Court has properly appreciated the evidence of the assault and the injuries and has rightly convicted the respondents under section 324 r/w. 149 and section 323 r/w. 147 and 148 of Indian Penal Code. The condition of the deceased was normal when he was brought to the hospital and treated initially. The deceased died on next day after having convulsion. Out of 22 witnesses, 13 witnesses did not support the prosecution. Thus, the prosecution has not established the charge under section 302 or section 326 of the Indian Penal Code. Hence, we found that the judgment passed by the trial Court is legal and no interference is required. Appeal is dismissed.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)