

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 42 OF 1997

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Bajirao Kondi Patil,
Aged : 50 yrs
(Appeal stands abated
as against respondent
no.1 as per court's
order dated 7.9.2012

2. Prashant @ Dadu Bajirao Patil,
Aged : 23 years

3. Madhukar @ Ashok Rajaram
Patil, Aged : 29 years

Occupatin of all-Agriculture
at Yede-Nipani, Taluka-Walwa,
Dist-Sangli

....Respondents
(Orig. Accused)

* * * * *

Mr. K.V. Saste, Additional Public Prosecutor for the State,
appellant.

Mr. M.K. Kocharekar, a/w. Mr. Omkar Nagvekar,
Advocate for respondents no.2 and 3.

CORAM :- SANDEEP K. SHINDE, J.

DATE :- 6TH FEBRUARY, 2018.

JUDGMENT :-

1. The State has preferred this Appeal against the order of acquittal dated 30th April, 1996 recorded by the IInd Additional Sessions Judge, Sangli in Sessions Case No. 211 of 1995 whereby he acquitted all the three accused of the offences punishable under Sections 147, 148, 307 and 326 read with Section 149 of the Indian Penal Code and of the offence punishable under Section 30 of the Indian Arms Act.

2. The gravamen of the charge is that, accused nos.1 to 3 alongwith two unknown persons on 8th July, 1995 at about 8.30 p.m. at Village-Yede-Nipani in the area of 'Gurav Galli' formed an unlawful assembly, the object of which was to commit murder of Shivaji Ganpatrao Jadhav. In pursuance of the said common object, all the accused were armed with swords, sticks and stones and to

be used as weapons to commit the offence which was likely to cause death. It was alleged that, during the said period, an attempt was made by all the accused to commit murder of Shivaji by means of swords, stones and sticks. It is alleged that, they caused grievous hurt as was likely to cause death of Shivaji and that they were found to be possessing the weapons contrary to the provisions of the Arms Act.

3. Shivaji Ganpatrao Jadhav (P.W.7), victim is also from Village-Yede-Nipani, Taluka-Walwa, District-Sangli. Accused nos.1 and 2 are father and son who were residing near the house of the victim, Shivaji. Accused no.3 is also their relative. It is the prosecution's case that, victim Shivaji was residing with his mother Akkatai, his wife and children at Village-Yede-Nipani.

4. On 8th July, 1995 when Shivaji was returning to home at about 6.30 p.m., he saw accused no.1 on the road near wine shop. Accused no.1, Bajirao on seeing Shivaji gave calls in his name and started giving abuses.

This was witnessed by the mother of Shivaji who then came and took Shivaji to the house and made him understand not to raise any quarrel. It is the prosecution's case that, thereafter at about 8.00 p.m., he left to his field on his motorcycle. On the way, when he went to purchase a cigarette, he saw accused no.1, Bajirao and his son, Prashant standing near the wine shop armed with swords. Shivaji had also seen Madhukar armed with a stick and standing alongwith accused nos.1 and 2. It is the prosecution's case that, accused no.1 inflicted blows on his head by sword. Shivaji fell down and thereupon accused no.2 gave a blow on his stomach and accused no.3 gave blows with his stick. He cried for help and upon hearing his shouts, his wife and mother came to rescue him. Incidentally, Police Patil, Vishnu Sutar was also called. Shivaji was carried to the General Hospital in the jeep. He was accompanied by his wife with other person to the hospital at Sangli. Dr. Sanjay, P.W.8 got Shivaji admitted to the hospital at about 10.45 p.m. Dr. Sanjay

found Shivaji was well oriented and also gave history of assault. He disclosed the names of accused nos.1 and 2, but, could not disclose the names of two other unknown persons. Shivaji had sustained about 25 injuries, majority of which were with sharp cutting instruments like sword. Shivaji was discharged on 23rd July, 1995.

5. It appears, after the incident, mother of Shivaji returned home. In the meanwhile, Investigation Officer, P.W.9 came to know about the occurrence at Yede-Nipani and thus visited the house of Shivaji for enquiring about the incident with Shivaji's mother, Akkatai. Thereafter, Akkatai went to Vishrambaug Police Station and lodged a complaint at 2.30 a.m. which is at Exhibit-22. On her statement, Crime No. 35 of 1995 under Section 307 of the Indian Penal Code was registered against accused nos.1 and 2. The investigation was taken over by P.W.9, Gaikwad. On the next day, he drew a panchanama of the place of offence. He had also attached the clothes of the injured under the panchanama, Exhibit-13. He effected

arrest of accused nos.1 to 3 on 21st July, 1995.

6. It appears on 25th, accused no.1 while in the police custody disclosed the place where he had concealed the swords and sticks. Thus, articles were recovered under the panchanama (Exhibit-11). The report from the Chemical Analyser was obtained at Exhibits-34 and 35. The Investigation Officer, thus filed chargesheet. The case was committed to the Court of Sessions.

7. The prosecution, in support of its case, examined eye witnesses, technical witnesses and also placed on record the documentary evidence in the form of Chemical Analysis Reports and so on. The Learned trial Judge, after appreciating the evidence, recorded the order of acquittal having found the evidence of the prosecution was not reliable, cogent and/or consistent.

8. That, aggrieved by the order of acquittal recorded by the Learned Judge in the said case, the State has preferred this Appeal.

9. Heard Mr. Saste, Learned Additional Public

Prosecutor and Mr. Kocharekar, Learned Counsel for accused nos.2 and 3. The record shows that, during the pendency of the Appeal, accused no.1 had died and as such vide order dated 7th September, 2012, the Appeal ordered to be abated against accused/respondent no.1.

10. Mr. Saste, Additional Public Prosecutor has taken me through the evidence of P.W.7 Shivaji the victim, P.W.5, eye-witness, P.W.8 Dr. Sanjay, P.W.9 Investigation Officer, Gaikwad, and the Chemical Analyser's report.

11. Mr. Saste, would urge that, there was a concurrent, consistent and reliable evidence adduced by the prosecution to prove the charges. He would submit, the Learned trial Judge has not subscribed convincing reasons for disbelieving the evidence of injured, Shivaji. Mr. Saste, would submit that, the names of accused nos.1 and 2 were disclosed by Shivaji to the Doctor immediately on his admission, as evident from the entries made in the Medico-Legal Register. Mr. Saste, has taken me through the evidence of Dr. Sanjay who has deposed that, when

Shivaji was admitted in the hospital, he was well oriented. He had described the incident and had also disclosed the names of accused nos.1 and 2 and the weapons used by them. Mr. Saste, further submitted, the presence of the accused at the place of incidence was witnessed by P.W.5 who eventually had a shop near the spot. Mr. Saste, further submitted that, the incident was also witnessed by the mother of Shivaji, may be from a distance and therefore she had also disclosed the names to the police when she had lodged a complaint on the date of the incident at 2.30 a.m. Mr. Saste, therefore submitted there was no occasion and/or reason for the trial Court to disbelieve the consistent evidence of the injured, Dr. Sanjay, mother of Shivaji and P.W.5

12. Mr. Saste, has pointed out reasons recorded by the Learned trial Court for disbelieving prosecution evidence like; that Shivaji held a criminal background/antecedents and at the given point of time, was also under the influence of alcohol.

13. In my view, both the reasons are absolutely irrelevant. Be that as it may, the Learned Judge has held that, Shivaji ought to have disclosed the names of the assailants to his wife or to his relatives who had removed him to the hospital. On any count, it is not acceptable reason for disbelieving the evidence of Shivaji. Infact, Shivaji immediately after reaching the hospital, disclosed to Doctor the names of accused nos.1 and 2, described the incident and particulars of the weapons used therein. Yet, another reason subscribed by the Learned Judge while disbelieving the evidence is, the visit of P.W.9, the Investigating Officer to the house of Shivaji, I fail to understand how this could be a circumstance to disbelieve the evidence of the mother of the victim.

14. Besides, the ocular evidence of P.W.5, P.W.6 and P.W.7, prosecution led the evidence, which corroborates the incident of assault by the accused with swords and sticks. The evidence of such kind is, like, recovery of swords at the instance of the accused no.1 and

Chemcial Analyser's report.

15. The evidence shows that, the clothes of the victim were attached on 9th July, 1995 vide Articles-8, 9, 10 and 11. On 21st July, 1995 the clothes on the person of the accused were attached at Articles-12, 13, 14, 15 and

16. On 23rd July, 1995 the accused produced two swords and bamboo stick which are marked as Articles-17, 18 and 19. These articles were sent to the Chemical Analyser on 4th September, 1995 and the report dated 14th February, 1995 then obtained, is at Exhibit-34. That human blood was detected on Articles-8, 9, 10 and 11 (clothes of the victim). Likewise, on Articles-17, 18 and 19 human blood was detected. The blood detected on the clothes of the victim was blood of 'B' Group and the blood detected on the weapons on the Articles-17, 18 and 19 was the blood of B-Group. Besides, the earth which was collected from the place of the incident was found stained with the blood of B-Group.

17. Thus, report of the Chemical Analyser,

panchanama attaching clothes of the victim, recovery of swords at the instance of the accused no.1, detection of blood of B-Group on the said weapons, if read alongwith the evidence of P.W.7 and the evidence of the Doctor, I have every reason to hold that, on the date of the incident i.e. on 8th July, 1995, Shivaji was assaulted by the accused with an intention to cause his murder with the deadly weapons. This fact is further fortified by the evidence of Dr. Sanjay who has placed on record the Injury Certificate and proved Shivaji had suffered as many as 25 injuries. Dr. Sanjay, deposed to the effect that, the injuries on the person of Shivaji were grievous in nature and were caused within six hours and were inflicted by sharp and cutting instruments. Thus, having gone through the evidence of the witnesses, as aforesaid, in my view, the prosecution has proved its case that, Shivaji was assaulted with deadly weapons by three accused in furtherance of their common object and intention was to cause his murder.

respondents no.2 and 3 has taken me through the evidence of P.W.8-Dr. Sanjay Bhavé and the Medico Legal Certificate and would submit that the Certificate does not show that, Shivaji had disclosed the name of the accused nos.2 and 3 to the Doctor. I am unable to comprehend with such submission because even in the cross-examination, Dr. Sanjay deposed that the patient gave him the history of assault and accordingly he made the entries in the Medico-Legal register.

19. Mr. Kocharekar, the Learned Advocate for the accused, has taken me through the evidence of Dr. Sanjay and would submit that, injuries 1 to 7, 8, 10, 11, 14, 15, 16, 17, 18, 20 and 21 were found to be of different size and on different parts of the body and these injuries were possible by using different weapons like axe, sickle, knife, etc. He would submit that Dr. Sanjay has admitted in the cross-examination that except injury in length about 10 c.m., rest of the injuries were possibly not inflicted with the sword. Mr. Kocharekar would,

therefore, submit that the investigation has not been carried out to trace the other persons, who were possibly armed with axe, sickle, knife, etc. He would further submit that, even otherwise Shivaji in his evidence has also stated that, accused nos.1 and 2 were also accompanied with two unknown persons but police did not make investigation from this angle. Mr. Kocharekar further submitted that some of the injuries were possibly caused by stones and as such, it has to be inferred and held that there were more persons who possibly inflicted injuries on Shivaji either by weapons or by pelting stones. It is, therefore, his submission that in absence of any material brought on record by the prosecution on these aspects, it cannot be concluded that the injuries found on the person of Shivaji were caused exclusively by the accused nos.2 and 3. He would, therefore, strenuously submits that, the trial Court has rightly extended the benefit of doubt to the accused and as such, no interference is called for.

20. Mr. Kocharekar is right in his submission that the Shivaji at the earliest in point of time had disclosed the names of the accused nos.1 and 2 and presence of two unknown persons. It is correct to say that, all the injuries found on the person of Shivaji were not possibly caused by sword or stick. This fact has been admitted by P.W.8-Dr. Sanjay. However, - circumstances and other evidence on record negates the arguments of Mr. Kocharekar. It is held by me hereinabove that there is cogent, reliable, consistent ocular evidence of the injured and his mother and of P.W.5 and I see no reason to disbelieve the such consistent evidence. Moreover, there is recovery of weapons, i.e., swords and sticks. This discovery of fact is another piece of evidence which is further corroborated by the Chemical Analyser's Report in as much as weapons were found stained with human Blood of Group 'B'. Earth soaked with the blood recovered from the spot of incident was also analysed and it was found with Blood Group 'B'. Clothes on the person of the

injured, Shivaji were stained with human blood on which blood group 'B' was found. All these circumstances upon taking together, leads to irresistible conclusion that the accused Nos.1 to 3 inflicted injuries on the person of Shivaji by swords and stick. May be some of the injuries were possibly caused by such weapons being found of different sizes but, in my view, that itself cannot be a ground to throw away the case of the prosecution or disbelieve the same.

21. Having gone through the ocular evidence of eye-witnesses, who have seen the incident which has been amply corroborated by the evidence of P.W.8-Dr. Sanjay, in my view, the conclusion drawn by the learned Trial Judge for recording the acquittal were neither probable nor reasonable and, therefore, inference is called for.

22. The Apex Court in the case of **Khekh Ram v. State of Himachal Pradesh (2018) 1 SCC 202** has summarised the principles about the scope of power of the

Appellate Court while dealing with the appeals against acquittal. It is held by the Apex Court that Appellate Court would be within its jurisdiction and authority to dislodge an acquittal on sound, cogent and persuasive reasons, based on the recorded facts and law applicable. If only when the view taken by the trial Court in ordering acquittal is an equally plausible and reasonable one, that appellate court would not readily substitute the same by another view available to it, on its independent appraisal of materials on record.

23. In the case in hand, the learned trial Judge has not taken into consideration the evidence of eye witnesses, i.e, of the injured and his mother, P.W.5. The learned trial Judge has not at all appreciated the evidence of P.W.8-Dr. Sanjay. The reasons on the basis of which the order of acquittal has been recorded are not sound reasons emanating from the appreciation of evidence brought on record by the Prosecution. In fact, it appears the learned Judge has ignored the reliable

evidence by subscribing unsustainable reasons and, therefore, it is necessary to dislodge the order of acquittal. It appears from the evidence that, though the accused were charged for being member of unlawful assembly, the prosecution has not proved the fact, it was an assembly of five or more persons. In view of this fact, I hold prosecution has failed to prove, charge under Section 143 of the IPC.

24. The accused were charged for having committed an offence punishable under Section 307 read with Section 149 and 326 read with Section 149 of the Indian Penal Code and Section 30 of the Indian Arms Act.

25. The evidence on record shows that Shivaji had suffered 25 injuries, however, no fracture was detected. Nature of injuries was grievous. He was admitted in the hospital on 8th July, 1995 and was discharged on 23rd July, 1995. His X-rays of skull, abdomen and chest did not reveal bony injury or fracture. It appears from the evidence of Dr. Sanjay that out of 25 injuries, one injury

was in length of 10 cm and possibly caused by sword, 5 injuries were cavity deep and others were superficial injuries. After going through the evidence of Dr. Sanjay and the relevant medical papers, it was not even suggested to Doctor that, injuries inflicted on Shivaji were likely or sufficient in ordinary course to cause his death. That even otherwise when Shivaji was brought into the hospital, he was well oriented and was discharged from the hospital within a short period. Admittedly, no fracture was detected though he suffered as many as 25 injuries on the different part of the body. In view of the evidence, I am of the view that the prosecution has not proved that injuries were inflicted on Shivaji by accused, either intentionally and/or with knowledge charge of Section 307 and, therefore, the accused are acquitted of the offences punishable under Section 307 read with Section 149 of the Indian Penal Code.

26. It may be noted that the prosecution has proved that Shivaji had suffered grievous injuries caused

by the dangerous weapons. Such weapons were recovered at the instance of one of the accused and there is reliable evidence on record to hold that such weapons were used for assaulting Shivaji which resulted into grievous hurt and, therefore, I hold them guilty for the offence punishable under Section 326 of the IPC.

27. It is held by me that, the accused were guilty of the offence punishable under Section 326 read with Section 149 of IPC and, therefore, sentence is to be awarded.

28. Heard Learned Advocate for the accused and Learned APP for the State. Punishment for having committed an offence punishable under Section 326 may be extended to 10 years and fine. The incident in the present case has taken place in the year 1995, i.e., about 22 years ago. At the relevant point of time, accused no.2 was 18 years old. It is informed across the bar that accused nos.2 and 3 do not have any criminal antecedents. The record shows that there were number of

cases registered against Shivaji. Be that as it may, fact also remains that the accused nos.2 and 3 were in custody from 21st July, 1995 to 30th April, 1996, i.e., nearly for nine months and nine days. It is informed across the bar that, conditions of bond taken in pursuance of action under Section 390 have not been breached by the appellants during the pendency of the appeal.

29. The learned Prosecutor has not placed on record any other adverse material against the appellants/accused-respondents no.2 and 3 to hold their indulgence in criminal activities during the pendency of the Appeal. It may also be stated that, from the evidence of Shivaji that accused no.1 inflicted blows on his head. That, from the Injury Certificate it appears that accused no.2 inflicted injury on the stomach. Though it may not be possible to segregate that which particular injury was caused by particular accused, but while weighing and appreciating the circumstances for awarding the sentence, it may be relevant to look into the role

attributed to the Accused and the injuries possibly inflicted by them on the injured. It appears from the medical evidence that majority of injuries were inflicted on forehead. Accused No.3 who was armed with stick, inflicted the blows on the person of Shivaji. Thus, taking into consideration overall facts and the evidence on record, though accused nos.2 and 3 are held guilty of the offence punishable under Section 326 of IPC, I am of the considered view that the period of sentence undergone by them during the pendency of the trial, i.e., 21st July, 1995 to 30th April, 1996 would be an appropriate sentence.

30. In the circumstances and for the reasons stated hereinabove, State's Appeal is partly allowed. Hence, the following order :-

(i) The order of acquittal dated 30th April, 1996 recorded in Sessions Case No.211 of 1995 by the Second Additional Sessions Judge, Sangli is hereby quashed and set aside.

(ii) Accused Nos.2 and 3 are convicted of

the offences punishable under Section 326 IPC and Section 30 of the Indian Arms Act.

(iii) The sentence undergone by them as undertrial prisoners during the pendency of the trial from 21st July, 1995 to 30th April, 1996 i.e. period of nine months and nine days is sentence imposed on them that since accused nos.2 and 3 have already undergone such sentence, they will not be taken in custody if not required in any other case.

(iv) Bail bond executed by the Accused Nos.2 and 3 (Original Accused Nos.2 and 3) are ordered to be cancelled.

(v) Accused Nos.2 and 3 are set at liberty if not required in any other case.

31. The Appeal is disposed of accordingly.

(SANDEEP K. SHINDE, J)