

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.827 OF 2015
WITH
CRIMINAL APPLICATION NO.354 OF 2018
IN
CRIMINAL APPEAL NO.827 OF 2015**

1) RAKHMA GOVIND SHINDE)
2) SANJAY RAKHMA SHINDE)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Hrishikesh Mundargi a/w. Mr.Madan Gupta, Advocate for the Appellants.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 27th NOVEMBER 2018

ORAL JUDGMENT :

1 By this appeal, the appellants – father and son duo are challenging the judgment and order dated 12th August 2015 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.310 of 2010, thereby convicting them of offences

punishable under Sections 307, 324, 341 read with 34 of the Indian Penal Code as well as sentencing them accordingly for the proved offences. For the offence punishable under Section 307 read with 34 of the Indian Penal Code, they were sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 1 year. For the offence punishable under Section 324 read with 34 of the Indian Penal Code, the appellants/accused nos.1 and 2 were sentenced to suffer rigorous imprisonment for 1 year apart from imposition of fine of Rs.1,000/- and default sentence of rigorous imprisonment for 1 month. For the offence punishable under Section 341 read with 34 of the Indian Penal Code, they both were sentenced to suffer rigorous imprisonment for 1 month apart from direction to pay fine of Rs.500/- and in default, to undergo rigorous imprisonment for 7 days by both of them. Substantive sentences are directed to run concurrently and on depositing the fine amount of Rs.13,000/-, the learned trial court had directed that the same be paid to PW2 Bhanudas Shinde. Three co-accused who were put up for trial along with the

appellants/accused came to be acquitted by the learned trial court vide the impugned judgment and order.

2 Facts, in brief, leading to the prosecution of the appellants/accused nos.1 and 2 along with three co-accused, can be summarized thus :

- (a) Both appellants namely Rakhma Shinde and Sanjay Shinde are residents of Shindewadi, Malthan in Shirur Taluka of Pune District. They are agriculturists by occupation. PW1 Dyanoba Shinde is real brother of appellant/accused no.1 Rakhma Shinde and real uncle of appellant/accused no.2 Sanjay Shinde. PW2 Bhanudas Shinde is son of PW1 Dyanoba Shinde, and thus, nephew of appellant/accused no.1 Rakhma Shinde and cousin of appellant/accused no.2 Sanjay Shinde. Some civil litigation was pending between the prosecuting party and the accused persons. The incident in question is a fall out of that civil dispute between the parties and refusal on the part of the prosecuting party to withdraw that civil dispute.

- (b) The incident, as alleged, took place in two parts, on 28th January 2010. In the morning hours of that day, First Informant/PW1 Dyanoba Shinde had been to the agricultural field for grazing his goats. At that time, the appellants/accused and the co-accused came there armed with weapons. Appellant/accused no.1 Rakhma Shinde was holding a long iron blade called as *katti* in vernacular whereas appellant/accused no.2 Sanjay Shinde was armed with an axe. The co-accused were armed with iron rods and wooden sticks. They assaulted First Informant/PW1 Dyanoba Shinde by blunt side of the weapon held by them. After returning home, PW1 Dyanoba Shinde telephonically informed this fact to his son PW2 Bhanudas Shinde, who at the relevant time, was grazing his goats near Village Takalehaji. When he was returning home, the appellants/accused along with the co-accused wrongfully restrained him. Appellant/accused no.1 Rakhma Shinde assaulted PW2 Bhanudas Shinde by a long iron blade (*katti*) and appellant/accused no.2 Sanjay Shinde assaulted him by

means of an axe. He suffered several blows of the weapons on neck and chest.

- (c) On 28th January 2010 itself, PW1 Dyanoba Shinde lodged report of the incident to Police Station Shirur and accordingly Crime No.37 of 2010 came to be registered against the accused persons for offences punishable under Sections 142, 143, 147, 148, 149, 307, 337, 324, 341, 323, 504 and 506 of the Indian Penal Code. Routine investigation followed. Injured PW2 Bhanudas Shinde was admitted at Poona Hospital where he took treatment after availing the first aid at Vignaharta Hospital of Shirur. During course of investigation, accused persons were arrested on the basis of voluntary disclosure statement Exhibit 55 made by appellant/accused no.1 Rakhma Shinde in presence of panch witnesses PW3 Ramesh Chaudhary and PW4 Babamiya Shaikh. Weapons of assault namely long iron blade (*katti*), axe as well as sticks came to be seized vide Panchnama Exhibit 56. Statement of witnesses came to

be recorded. Spot Panchnama was prepared. Clothes of the accused persons as well as that of the injured were seized. Seized articles were sent for chemical analysis and on completion of routine investigation, the appellants/accused so also the co-accused were charge-sheeted.

- (d) The learned trial court had framed the Charge for offences alleged against the appellants/accused persons, so also the co-accused. They pleaded not guilty and claimed trial.
- (e) In order to bring home the guilt to the appellants/accused so also the co-accused, the prosecution has examined in all eight witnesses. First Informant Dyanoba Shinde is examined as PW1 and the report lodged by him is at Exhibit 38. His injured son Bhanudas Shinde is examined as PW2. Panch witnesses to the voluntary disclosure statement and resultant Recovery Panchnama namely Ramesh Chaudhary and Babamiya Shaikh are examined as PW3 and PW4 respectively. PW3 Ramesh Chaudhary failed to support the

case of prosecution. Voluntary disclosure statement of appellant/accused no.1 Rakhma Shinde is at Exhibit 55 whereas the Recovery Panchnama is at Exhibit 56. Dr.Nachiket Purandare, Vascular Surgeon from Poona Hospital is examined as PW5. Exhibit 67 are the medical case papers of PW2 Bhanudas Shinde. Investigating Officer Madhav Shinde, Police Inspector, is examined as PW6. Injured eye witness Baban Kolpe is examined as PW7. Dr.Bhausahab Pachundekar, owner of the Vignaharta Hospital at Shirur, is examined as PW8. Exhibits 92 to 94 are the Medico Legal Certificates of PW1 Dyanoba Shinde, PW2 Bhanudas Shinde and PW7 Baban Kolpe issued by this witness.

- (f) The defence of the appellants/accused persons was that of total denial. However, they did not enter in the defence.
- (g) After hearing the parties, the learned trial court by the impugned judgment and order came to the conclusion that

the appellants/accused persons attempted to commit murder of PW2 Bhanudas Shinde in furtherance of their common intention and that they had voluntarily caused hurt to PW1 Dyanoba Shinde and PW7 Baban Kolpe by means of an instrument used as a weapon of offence. The learned trial court further held that both the appellants/accused persons wrongfully restrained PW2 Bhanudas Shinde. Accordingly, they were sentenced as indicated in the opening paragraph of this judgment and rest all the accused persons were acquitted.

3 I have heard the learned counsel appearing for the appellants/accused persons. He argued that the appellants/accused persons are not disputing their conviction for offences alleged against them and they are aware of the fact that the offence punishable under Section 307 of the Indian Penal Code is non-compoundable. In submission of the learned counsel, the dispute between the prosecuting party and the appellants/accused

persons is amicably settled. Both parties are closely related to each other and are neighbours. The learned counsel further argued that the appellants/accused persons are not having any criminal antecedents and in order to maintain peace and harmony, there is settlement between the parties. The learned counsel for the appellants/accused persons drew my attention to the affidavits of PW1 Dyanoba Shinde, PW2 Bhanudas Shinde and PW7 Baban Kolpe wherein the affiants have stated about close blood relations between the appellants/accused persons and affiant Dyanoba Shinde and affiant Bhanudas Shinde. The learned counsel for the appellants/accused persons submitted that these witnesses have clearly stated in their affidavits filed before this court with Criminal Bail Application No.354 of 2018 that the prosecuting party and the accused persons, apart from being closely related to each other, are neighbours and they have settled the dispute between them, and therefore, they have no objection for closing the case. The learned counsel for the appellants/accused persons relied on the judgment of the Hon'ble Apex Court in the matter of Gulab Das and Others vs. State of Madhya

Pradesh¹ as well as the judgment of the Hon'ble Apex Court in the matter of Rajendra Harakchand Bhandari & Others vs. State of Maharashtra and Another² and argued that leniency is required to be shown so far as quantum of sentence is concerned.

4 The learned APP supported the impugned judgment and order of conviction as well as the resultant sentence by taking me through the evidence of injured witness and argued that as the offence is against the society, the conviction and resultant sentence is proper.

5 I have carefully considered the submissions so advanced and perused the record and proceedings including oral as well as documentary evidence adduced by the prosecution. Though the appellants/accused nos.1 and 2 are not disputing their conviction for offences punishable under Sections 307, 324 and 341 read with 34 of the Indian Penal Code, this being first appeal which is admitted for final hearing, this court will have to examine whether the conviction recorded against the appellants/accused

1 (2011) 10 Supreme Court Cases 765

2 Criminal Appeal No.902 of 2011 decided on 8th April 2011

persons is proper or not. As stated in foregoing paragraphs, relationship between injured PW1 Dyanoba Shinde and injured PW2 Bhanudas Shinde with the appellants/accused nos.1 and 2 is coming on record through evidence of the prosecution. Same is not disputed. Thus, the dispute, which ultimately resulted in the incident of assault, is amongst two brothers and their sons. On this backdrop, it is in evidence of PW1 Dyanoba Shinde that on 21st January 2010, when he was in his field, appellant/accused no.1 Rakhma Shinde assaulted him by blunt side of the long iron blade whereas appellant/accused no.2 Sanjay Shinde assaulted him by blunt side of an axe. As per version of this witness, his wife as well as villagers named Mohan Kolpe and Baban Kolpe (PW7) rescued him. This witness also claims to have seen the murderous assault on his son PW2 Bhanudas Shinde by the appellants/accused persons and others and has stated that his son PW2 Bhanudas Shinde was assaulted by means of a long iron blade (*katti*) by appellant/accused no.1 Rakhma Shinde and by means of an axe by appellant/accused no.2 Sanjay Shinde. Evidence of this injured witness is gaining due corroboration from

the First Information Report (FIR) Exhibit 38 lodged by him with Shirur Police Station on the day of the incident itself.

6 In tune with evidence of PW1 Dyanoba Shinde, injured PW2 Bhanudas Shinde has deposed that when he was returning home, appellant/accused no.2 Sanjay Shinde obstructed him and then appellant/accused no.1 Rakhma Shinde assaulted him by means of a long iron blade (*katti*) and appellant/accused no.2 Sanjay Shinde assaulted him by means of an axe. As per version of this witness, blows of those weapons landed on his neck and chest and he became unconscious to regain his conscious at Poona Hospital, Pune.

7 Evidence of PW7 Baban Kolpe shows that he has witnessed both the incidents of assault by the appellants/accused persons and has stated that initially they assaulted PW1 Dyanoba Shinde and subsequently they had assaulted PW2 Bhanudas Shinde. This witness has received injury on his head while trying to pacify the accused persons.

8 Evidence of PW8 Dr.Bhausahab Pachundekar shows that on 28th January 2010 itself all three injured viz., PW1 Dyanoba Shinde, PW2 Bhanudas Shinde and PW7 Baban Kolpe were brought to his hospital and upon noticing injuries on their persons, he issued Medico Legal Certificates at Exhibits 92 to 94. This witness has spoken about the injuries suffered by the prosecution witnesses including PW2 Bhanudas Shinde and proved the Medico Legal Certificates. Thereafter, PW2 Bhanudas Shinde was taken to the Poona Hospital where PW5 Dr.Nachiket Purandare had treated him. Evidence of this witness shows that upon arrival of PW2 Bhanudas Shinde, pulse in his left hand was missing and his Blood Pressure could not be measured. PW2 Bhanudas Shinde was having multiple stab wounds on occipital region, right lumbar region and left clavical region. Evidence of PW5 Dr.Nachiket Purandare is duly corroborated by contemporaneous medical case papers at Exhibit 67. Injured witnesses are stamp witnesses and their presence on the scene of offence cannot be doubted. Their version carries great weight. In the case in hand, evidence of the injured witnesses is indicating

the fact that the appellants/accused persons had assaulted them by means of dangerous weapons. Seat of injury and number of blows, so also the weapons used for assault, makes it clear that the appellants/accused persons had attempted to commit murder of PW2 Bhanudas Shinde. Similarly, version of PW2 Bhanudas Shinde shows that he was wrongfully restrained by the appellants/accused persons. Evidence of PW1 Dyanoba Shinde and PW7 Baban Kolpe which is duly corroborated by evidence of the Medical Officer and the Medico Legal Certificates makes out the offence punishable under Section 324 read with 34 of the Indian Penal Code. Thus, no infirmity can be found in the impugned judgment of conviction of the appellants/accused persons.

9 Affidavits of all the three injured persons have been placed on record in Bail Application No.354 of 2018. They have testified about settlement of dispute between them by stating that both the parties are closely related to each other. The witnesses are stating that the case be closed. The offence

punishable under Section 307 of the Indian Penal Code is a non-compoundable offence and composition thereof cannot be allowed, even if there is any settlement between the accused persons and the victim of such crime. However, such settlement has bearing on the quantum of sentence imposed on appellants/accused persons. In the case in hand, undisputedly, injured PW1 Dyanoba Shinde is real brother of appellant/accused no.1 Rakhma Shinde and real uncle of appellant/accused no.2 Sanjay Shinde. PW2 Bhanudas Shinde is real nephew of appellant/accused no.1 Rakhma Shinde and cousin of appellant/accused no.2 Sanjay Shinde. PW7 Baban Kolpe is resident of the same village. It is not in dispute that the appellants/accused persons are agriculturists by occupation and they are not having any criminal antecedents. Both parties are residents of Village Shindewadi in Shirur Taluka of Pune District and they are neighbours. The appellants/accused persons are undergoing jail sentence from 12th August 2015 and prior to that for some period they were under-trial prisoners. It is reported by the Senior Jailer, Yerwada Central Prison, that as on 31st October 2018, both the appellants/accused persons have

undergone sentence of 3 years, 3 months and 21 days. Upon being asked, the learned APP submits that the appellants/accused persons might have undergone sentence of 3 years, 6 months and 8 days as on today.

10 At this juncture, it is apposite to quote the observations of the Honourable Apex Court found in paragraphs 7 to 10 in the matter of **Gulab Das & Others (supra)** which read thus :

“7 In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived at between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Cr.P.C. cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in **Ram Lal and Anr. v. State of J & K (1999) 2 SCC 213** and **Ishwar Singh v. State of Madhya Pradesh**

(2008) 15 SCC 667. We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos. 2 and 3 stand convicted.”

“8 Having said that we are of the view that the settlement/ compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant nos. 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already

convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.”

“**9** In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalise the relationship between them.”

“**10** In the result, while upholding the order of conviction recorded by the Courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case.”

Similarly, in the matter of Rajendra and Others (supra) in paragraphs 15 to 17, the Honourable Supreme Court has held thus :

“15 As a matter of fact, Mr. Shekhar Naphade, learned senior counsel for the appellants did not seriously contest the conviction of the appellants for the above-mentioned offences. He mainly argued for reduction of sentence. Learned senior counsel would submit that the appellants were sugarcane growers and the incident occurred because PW-8 refused to make entry of sugarcane planted by A-2. He submitted that the incident is almost two-decade old and during this time, relations between the parties have become cordial and, as a matter of fact, they have compromised their dispute. He also submitted that the appellants do not have any criminal background and they have not been involved in any crime earlier.”

“16 We must immediately state that the offence under [Section 307](#) is not compoundable in terms of [Section 320\(9\)](#) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior

counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.”

“17 Consequently, while confirming the conviction of the appellants for the offences punishable under [Section 307](#) read with [Section 34](#), [Section 332](#) read with [Section 34](#) and [Section 353](#) read with [Section 34](#), the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.”

These observations are applicable with full force to the case in hand and as such, substantive sentences imposed on the appellants/accused persons need to be reduced to the period already undergone by them.

11 In the result, the following order :

ORDER

- i) The appeal is partly allowed.
- ii) Conviction of the appellants/accused persons for offence punishable under Sections 307, 324 and 341 read with 34 of the Indian Penal Code is confirmed.

However, the substantive sentences awarded to them by the learned trial court is reduced to the period already undergone.

- iii) The fine amount and the default stipulated remains as it is.

- iv) The appeal is disposed off accordingly.
- v) With disposal of the instant appeal, Criminal Application No.354 of 2018 also stands disposed off.

(A. M. BADAR, J.)