

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.571 OF 1998

The State of Maharashtra

... Appellants
(Orig. Complainants)

Versus

1. Yashwant Govind Shinde
2. Sanjay Anandrao Shinde
All r/o. Shinde Galli,
Shirala, Tal. Shirala,
District Sangli

... Respondents
(Orig. Accused Nos.2 & 3)

...

Mr. H.J. Dhedia, A.P.P. for the Appellants.

None for the Respondents.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI H. DANGRE, J.**

DATED : 13th AUGUST, 2019.

JUDGMENT:- [Per: Shri Pradeep Nandrajog, C.J.]

1. Criminal law was set into motion when Sambhaji Yashwant Gaikwad (PW-8); the Informant made Statement (Ex-34) at 00.45 hours on 1st August, 1992 at P.S. Shirala to the effect that when he was at his house at 9.00 p.m. on 31/07/1992, he heard a quarrel outside the house of Ananda Dhondi Shinde (A-1). He walked out. He saw Yashwant Govind Shinde (A-2) and Sanjay Anandrao Shinde (A-3) having a verbal

altercation with Dilip (PW-2) and Jayawant Laxman Gaikwad (PW-6). During the verbal altercation, A-2 hit Dilip (PW-2) on his head with an axe. Sanjay Anandrao Shinde (A-3) hit Dilip (PW-2) on his hand. He also hit Jayawant Laxman Gaikwad (PW-6) with a stick.

2. Dilip (PW-2) was examined by Dr. Vilas Vishnu Rawal (PW-7) at 9.30 p.m. on 1st August, 1992 and he authored the Medical Report (Ex-32) of Dilip (PW-2) in which an incised wound over the parietal region of 8 cm x 1 cm extended backward; a clear lacerated wound over left upper forearm were noted with further noting that X-ray revealed fracture of the left ulna bone.

3. Statements under Section 161 of the Code of Criminal Procedure, 1973 ("Cr.P.C") of Dilip (PW-2), Tanaji Maruti Patil (PW-3), Bhiva Dadu Kotwal (PW-4), Ramchandra Laxman Gaikwad (PW-5), Jayawant Laxman Gaikwad (PW-6) and Sambhaji Yashwant Gaikwad (PW-8) were recorded and we note that the said statements under Section 161 Cr.P.C. state the same facts as are disclosed in the statement (Ex-34).

4. The axe statedly used by A-2 was not recovered. Stick ostensibly got recovered by A-3 pursuant to his disclosure statement but could not be linked to A-3 on account of the fact that witness to the recovery of the stick Vasant Dnyanu Gurav turned hostile.

5. At the trial, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 deposed facts in sync with the statement (Ex-34) made by PW-8 on basis whereof,

the FIR was registered.

6. For the reasons no witness assigned any role to A-1 and all of them stated that a quarrel took place outside the house of A-1, by the judgment dated 03/04/1998, acquitting A-1, reasoning further that there was no common intention shared by A-2 and A-3, holding that the evidence establish a verbal quarrel before the assault took place, A-2 and A-3 have been held liable for their individual acts.

7. A-2 has been convicted for the offences punishable under Sections 324 and 326 IPC. A-3 has been convicted for the offence punishable under Section 324 IPC. A-2 has been sentenced to pay fine in sum of Rs.500/- for the offence punishable under Section 326 IPC, in default, to undergo simple imprisonment for three months. A-3 has been sentenced to pay fine in sum of Rs.200/- for the offence punishable under Section 324 IPC and to undergo simple imprisonment for a period of two months, in default. A-2 has not been sentenced for the offence punishable under Section 324 IPC.

8. The State is aggrieved by the inadequacy of the sentence and seeks enhancement thereof.

9. The impugned judgment shows that learned Judicial Magistrate, who conducted the trial has been influenced by the fact that the injury on the person of Dilip (PW-2) as opined in Ex-32 was a grievous injury but has overlooked the fact that the grievous hurt i.e. fracture of the bone

suffered by PW-2 was in the left forearm. The ulna bone was fractured. This injury was caused by A-3 and not A-2. A-2 had inflicted an axe blow directed towards parietal region of PW-2 and the resultant injury was an incised wound extending backward having dimension of 8 cm x 1 cm. Thus, A-2 was liable to be convicted for the offence punishable under Section 324 IPC and A-3 was liable to be punished for the offence punishable under Section 326 IPC.

10. Be that as it may, we are concerned in the appeal on the issue whether the sentence imposed by the two accused, who have been convicted, is a mild sentence warranting enhancement thereof.

11. The reasons given by the learned Magistrate to inflict the soft sentence is that the evidence establishes previous hostility between the two accused and the two injured witnesses proved from the fact that the assault was preceded by a verbal altercation. The second reason is the young age of A-2 and A-3 in respect whereof we note that the age of A-2 which emerges from the record is 21 years and that of A-3, unfortunately, is not emerging because neither when he was put to the charge at the arraignment, his age is recorded nor it was mentioned when his statement under Section 313 of the Cr.P.C. was recorded.

12. Whilst it may be true that A-2 used an axe which is a dangerous weapon, but as noted above, the injury caused by him was not a grievous injury. His age being 21 years on the date of the arraignment, he would be entitled to the benefit of Section 360 of the Cr.P.C. warranting reasons

to be recorded to sentence him to undergo imprisonment. Probation would be the benefit to be granted to him. As regards A-3 we opine that though his age is not coming on record but he was in his youth and thus even he would be entitled to the benefit of probation.

13. Neither A-2 nor A-3 has any previous record of brush with criminals.

14. Today, even if we were to sentence A-3 to undergo simple or rigorous imprisonment for the offence punishable under Section 324 IPC, we would be constrained to release him on probation. Similarly, this would be the case even regarding A-2.

15. Under the circumstances, we maintain the sentence imposed by the learned Judicial Magistrate, First Class and dismiss the appeal filed by the State.

(SMT. BHARATI H. DANGRE, J.)

(CHIEF JUSTICE)