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

CRIMINAL APPEAL No. 99 OF 1997

- | | | |
|----|---|----------------|
| 1. | Deoram Mahadu Pawar |) |
| | Aged 23 years |) |
| 2. | Jayram Mahadu Pawar |) |
| | Aged 28 years |) |
| 3. | Arjun Maharu Pawar, |) |
| | Age 34 years |) |
| 4. | Pramalabai Deoram Pawar |) |
| | Aged 21 years |) |
| 5. | Manjulabai Jayram Pawar |) |
| | Aged 25 years |) |
| 6. | Mahadu Maharu Pawar |) |
| | Age 44 years |) |
| 7. | Savalaram Maharu Pawar |) |
| | Aged 33 years |) |
| | All residents of Bahudane, Tal. Surgara |) |
| | Dist. Nashik |) |
| | (At present in Nashik Central Prison) |)...Appellants |

Versus

State of Maharashtra)
 for Govinda Maharu Pawar)
 Aged 41 years, Occupation Agriculture)
 r/o. Bahudane, Taluka Suragana,)
 District Nashik)...Respondent.

 Mr. Ritesh Thobade, appointed Advocate for Appellants

Mr. Y. M. Nakhwa-APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 29, 2019

JUDGMENT:

1. Heard. The Appellants herein are convicted vide judgment and order dated 16.1.1997 passed by the Learned Additional Sessions Judge, Nashik in Sessions Case No. 65 of 1996 for the offence punishable under Sections 148, 324 r/w. Section 149 of the Indian Penal Code. The Appellants herein are convicted for the offence punishable under section 148 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs.500/- each, in default, to suffer S.I. for one month. The Appellants are convicted for the offence punishable under section 324 r/w. Section 149 of the IPC and suffer R.I. for one year and to pay fine of Rs.500/- each, in default, to suffer S.I. for one month.

The substantive sentence of imprisonment are run concurrently.

2. Such of the facts necessary for the decision of the appeal are as follows.

3. The accused Mahadu, Arjun, Savliram, happen to be brothers, *inter se*, the fourth brother is Govinda Pawar. They are all agriculturists. There was no partition of their agricultural lands, but , they resided separately. The agricultural lands are ancestral properties and Mahadu happens to be the eldest of the four brothers and, therefore, there was mutation in his name. Govinda was asking for partition and separate possession. However, the other three brothers had denied the same. Accused Deoram happens to be the son of Mahadu. There were trivial quarrels between the brothers intermittently.

4. It is alleged that on 1st July, 1995, Govinda, son of Mahadu (PW3) lodged a report at the police station alleging therein that on that day, he was busy in their agricultural lands, he was engaged in sowing operation. His son Ananda had accompanied him. Similarly, both his daughters viz. Sharmila and Shakuntala had accompanied him to the agricultural land. At about 9.00 a.m. his nephews Deoram and Jayram had been to the agricultural land and had raised quarrels with Govinda over cultivation of the

ancestral land. There were verbal altercations. Ananda was armed with an axe, Govinda had mounted assault upon the head of Ananda and Deoram had assaulted Govinda. Thereafter, as they were injured, they were taken to the hospital. The statement of Govinda was recorded, on the basis of which, Crime No. 63 of 1995 was registered against the accused persons. The accused were arrested on 17th of August, 1995 and were enlarged on bail on 29th August, 1995. Upon completion of investigation, the charge-sheet was filed on 29.8.1995. The case was committed to the Court of Sessions being Sessions Case No. 65 of 1996. The case rests upon the evidence of the injured witnesses i.e. PW-3 Govinda. PW10 Ananda, PW6 Shakuntala, PW7 Ramesh and PW8 Sharmila. It is to be noted that the witnesses and the accused are all members of the extended family. They were cultivating the ancestral lands jointly.

5. PW3 Govinda Maharu Pawar, the first informant has deposed before the Court that on the day of the incident, all the accused had come to the agricultural land and raised quarrels with the witnesses. It was only Arjun and Deoram, who were armed with axes. They had mounted assault upon the first informant and his son Ananda.

6. Perused the injury certificates. It appears that Govinda had sustained elliptical lacerated cut wound on mid of the scalp by sharp instrument which was about 5 cms x 1 cm x 1 cm.

7. PW10 Ananda had also sustained a similar nature of wound i.e. elliptical cut incised wound 3 cms. X 1 cm x ½ cm. The other witnesses had sustained contusion and traumatic injury with hard and sharp object. The role attributed to each of the accused by the witnesses is at variance. They were consistent only about presence of all the accused in the agricultural land at the time of incident. The allegations as far as the assault by axe are concerned, are corroborated by the medical certificate.

8. The question remains as to whether the accused formed an unlawful assembly at the time of incident and whether all the accused had shared the common object of assaulting Govinda and the members of his family.

9. All the accused are the members of the same family. They have not trespassed the agricultural lands. They are co-owners of the agricultural land.

10. Section 141 of the Indian Penal Code contemplates as under:

***“141. Unlawful assembly.-** An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is -*

First – To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second – To resist the execution of any law, or of any legal process, or

Third – To commit any mischief or criminal trespass, or other offence; or

Fourth – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

11. It is not the case of the prosecution witnesses that the accused persons had attempted to take possession of the property or had deprived the witnesses of the enjoyment of right of way or use of water or any other right. Neither they had compelled any of the witnesses to do any acts, which they are not legally bound to do. It is noted that Arjun and Deoram were armed with axes. One cannot be oblivious of the fact that the accused persons are farmers and it is natural to carry the axes to the agricultural land.

12. The learned counsel for the Appellants submits that there is a suppression of genesis of the fact inasmuch as the prelude to the incident has not been disclosed by all the witnesses and omnibus statement has been made that the accused persons had raised the quarrels over the agricultural lands and in the said altercation, Arjun and Deoram had assaulted the witnesses. The fact that the allegations of assault by axes were corroborated by the evidence of the eye witnesses' narration that the two persons came with axes and assaulted the witnesses is sufficient to convict Arjun and Deoram for the offences punishable under section 324 r.w. 34 of the Indian Penal Code. The other accused would be entitled to be acquitted by extending the benefit of doubt since they had not formed an unlawful assembly and neither shared the common object. The relation between the parties also needs to be taken into consideration. Section 324 of the Indian Penal Code contemplates punishment as follows:

“324. Voluntarily causing hurt by dangerous weapons or means- Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by

means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a terms which may extend to three years, or with fine, or with both.”

13. In view of the above mentioned discussion, it would not be appropriate to send the Appellants to jail after a lapse of 22 years and hence, enhancing the fine amount to accused Arjun and Deoram. Accused Nos. 1 and 3 respectfully would meet the ends of justice.

14. Hence, the following order:

ORDER

- (i) The appeal is partly allowed.
- (ii) The conviction of all the accused passed by the Learned Additional Sessions Judge, Nashik vide judgment and order dated 16.1.1997 in Sessions Case No. 65 of 1996 for the offence punishable under Sections 148 and 149 of the Indian Penal Code is hereby quashed and set aside.
- (iii) The Original Accused Nos. 1 and 3 are convicted for the offence punishable under Section 324 r/w Section 34 of the Indian Penal Code.
- (iv) The fine amount is enhanced to Rs.1,000/- each.

- (v) Since the Accused Nos. 4,5, 6 and 7 are acquitted, fine amount be refunded.
 - (vi) The Original Accused Nos. 1 and 3 shall appear before the Sessions Judge, Nashik by 15th May, 2019.
 - (vii) The fine deposited on the account of conviction under Section 148 of IPC by each of the accused i.e. Accused Nos. 1 and 3 shall be taken as fine amount for the offence punishable under Section 324 of IPC.
 - (viii) Their bail bonds stand cancelled, if not required in any other case.
 - (ix) The professional fees of Advocate Mr. Ritesh Thobade is quantified as per Rules and shall be paid by High Court Legal Services Committee within three months.
- Criminal Appeal stands disposed of.

[SMT.SADHANA S. JADHAV, J.]