

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

CRIMINAL APPEAL NO. 959 OF 2014

Tulshiram @ Anil Laxman Paithankar.

Age : 35 years, Occ: Nil,

R/o. Dhanamali Vasti, Nagarsul Shivar,

Tal. Yeola, Dist. Nashik.

..Appellant.

V/s.

The State of Maharashtra.

At the instance of Yeola Taluka

Police Station, Dist. Nashik.

..Respondent.

WITH

CRIMINAL APPEAL NO. 958 OF 2014

1. Kailash Laxman Paithankar.

Age : 35 years, Occ: Nil.

2. Sharad Laxman Paithankar.

Age : 27 years, Occ. Nil.

All R/o Dhanamali Vasti, Nagarsul Shivar,

Tal Yeola, Dist. Nashik.

..Appellants.

V/s.

The State of Maharashtra.

At the instance of Yeola Taluka

Police Station, Dist. Nashik.

..Respondent.

Mr. Niteen Pradhan a/w. Ms. ShubhadaD. Khot a/w. Mr. Maheen Pradhan,
advocate for appellants.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 17, 2019.

Talwalkar

JUDGMENT :

1 The appellant in Criminal Appeal No. 959 of 2014 is convicted for the offence punishable under section 304(II) of the Indian Penal Code and sentenced to suffer R.I. for 7 years and fine of Rs. 3000/- I.d. R.I. for 3 months by the Additional Sessions Judge, Niphad in Session Case No. 34 of 2011 vide Judgment and Order dated 29/11/2014. The appellants in Criminal Appeal No. 958 of 2014 are also convicted in Sessions Case No. 34 of 2011 for an offence punishable under section 324 of the Indian Penal Code and sentenced each to suffer R.I. for 3 years and fine of Rs. 2000/- I.d. to suffer R.I. for 2 months by the Additional Sessions Judge, Niphad vide Judgment and Order dated 29/11/2014. .

2 Such of the facts necessary for the decision of these appeals are as follows :

(i) It is the case of the prosecution that on 10th April, 2011 Ashabai Paithankar lodged a report at the police station alleging therein that on the said date, at about 7.30 a.m., minor son of Tulshiram i.e. accused no. 1, original appellant in Criminal Appeal No. 959 of 2014 and his mother Sunita were defecating on the road in front of her house. Therefore, the complainant had warned them that they should discontinue the said practice from the next day.

Talwalkar

(ii) Sunita was enraged. She abused the complainant and then she had returned with her husband Tulshiram, brother-in-law Kailash and Sharad. They were abusing the complainant in front of her house.

(iii) In the mean while, her husband Balu Paithankar had returned home and had enquired about the cause of the said altercations. The complainant had informed him about the said incident.

(iv) That her husband had tried to pacify the accused and in the midst of the heated argument Tulshiram had assaulted her husband with iron rod due to which her husband Balu had sustained bleeding injuries to his head.

(v) Thereafter, her son had reached on the spot to rescue his parents and he was assaulted with sticks by Kailash and Sharad. Similarly, she and her daughter-in-law were also assaulted. That Tulshiram and others happened to be the relatives of the complainant.

(vi) Her husband and her son were taken to hospital at Nagarsul. The doctor had opined that the condition of Balu is serious and therefore, had advised them to take Balu to Nashik.

(vii) On the basis of the said report, Crime No. 68 of 2011 was registered at Yeola Police Station for the offence punishable under section 307, 324, 323, 504, 506 r/w 34 of the Indian Penal Code.

(viii) Balu Paithankar had succumbed to the injuries on the same day i.e. on 10/4/2011. The dead body was sent for autopsy. Post

mortem was conducted on the deceased. Column No. 17 of the post mortem notes has indicated that he had sustained single injury in the nature of fracture of skull bone at frontal area. The cause of death was death due to head injury. Hence, the offence was registered under section 302 of the Indian Penal Code.

3 At the trial, prosecution examined as many as 11 witnesses to bring home the guilt of the accused. This is a case of direct evidence.

4 P.W.1 Ashabai Paithankar is the complainant. She has deposed before the Court in consonance with the first information report which is marked as Exh. 32/C. She has categorically stated that it was Tulsiram @ Anil Paithankar, who had assaulted her son Anil and Sharad had assaulted on her thighs with wooden Chatto whereas accused Sunitabai had assaulted her daughter-in-law by pulling her hair. She has named persons who had rescued them and taken them in hospital and they are Kailash Shinde and Radhakisan Shinde. It is admitted in the cross-examination that Kailash and Radhakisan Shinde are her brothers and she has a lot of relatives residing in the same area. She was not able to answer in the cross-examination as to whether she was admitted in Government hospital at Nagarsule or Yeola after the incident and her daughter-in-law was admitted in Government Hospital

at Nagarsule. She has also admitted that in the course of the incident, the clothes on the person of the injured were torn. There are certain inherent omissions and contradictions in the evidence of P.W.1. It is elicited in the cross-examination that Anil i.e. her son had regained consciousness at hospital at Nagarsule and upon enquiry made by her, he had narrated the incident as had occurred.

5 The learned Counsel for the appellants at this stage submits that the fact that P.W.1 had enquired with her son about the incident, it cannot be said that she was an eye witness to the incident. However, the argument holds no ground as P.W.1 happened to be an injured witness and there is no doubt that she had sustained said injury in the same incident. Her medico legal certificate is at Exh. 44C, which indicated that she was examined on 10/4/2011 at Rural Hospital, Nagarsul and she had sustained contusion with abrasions on right elbow. Contusions with redness on the left thigh and contusion at the right thigh.

6 P.W.2 Radhakisan Punjaba Shinde happens to be cousin of P.W.1. He was called to act a panch for collection of soil and scene of offence panchanama.

7 P.W.3 Bhaskar Darwante is another panch for seizure of

wooden stick.

8 P.W.4 Anil Paithankar is the injured who is the son of the deceased. He has also reiterated the narration of his mother. According to P.W.4, about 50 to 60 people had gathered on the scene of offence and were witnesses to the incident. P.W.4 was unconscious. When he regained consciousness he saw police there. He was then shifted to the Civil Hospital at Nashik. He had also seen the minor son of the accused was defecating in front of his house. But he himself has not raised any objection. He has deposed that he would not be in a position to ascertain as to why his statement was not recorded by the police as per his say since he told the police while recording statement under section 161 of the Code of Criminal Procedure, 1973 about the incident as it occurred. However, he could not have explained the omissions.

9 The case rests upon the evidence of the injured witness and the medical officers who had examined the injured and had conducted post mortem. P.W.5 Ramakant Ganpat Sonwane was officiating at Rural Hospital as medical officer. He has examined the witnesses on 10/4/2011. He had proved the contents of medico legal certificates which are at Exh. 42(C), 43(C) and 44(C). The injured were examined at about 10.20 a.m. and the same is recorded in the medico legal

Talwalkar

certificate. He has categorically stated that the injured were brought to the Rural Hospital by Popat Shinde of Andersul. Anil Paithankar had sustained 3 simple injuries. Ashabai had sustained 3 simple injuries and Tanuja had also sustained one abrasion which was simple in nature.

10 P.W.6 Popat Shinde had taken the injured to the hospital. He also happens to be the brother of Ashabai. He has also admitted that Tanuja had informed him about the quarrel between Ashabai and accused persons, which had taken place at about 7.30 a.m. on that day. He has admitted that in his statement under section 161 of the Code of Criminal Procedure, 1973, he has stated to the police that Bala was lying below platform i.e. ota and Anil was lying on the Ota. However, he could not assign any reasons for his omissions.

11 P.W. 7 Tanuja Paithankar, who happens to be injured witness and the daughter-in-law of the complainant has improvised the story and had stated that father-in-law was assaulted by knife by Anil Paithankar which, is falsified by injured Ashabai as well as post mortem notes. She has attributed different weapons to the accused. In fact, she had reiterated the incident to Popat Shinde and called him on the spot of incident. She had also called upon the neighbours and informed them about the incident and then it is disclosed to the police that the said

neighbour was eye witness to the incident. There are omissions in the evidence of P.W.7.

12 P.W.8 Vilas Randhe is examined to prove the scene of offence panchanama and the seizure of clothes, whereas P.W.9 Namdev Gundeka has been declared hostile. P.W.10 Nandkumar Sable was attached to Yeole Police Station. On the day when the FIR is received he had carried out initial investigation and had reiterated that he had conducted investigation as per rules. He has admitted that he has not recorded statement of the neighbours. That the house of the witness is Nagarsul Manmad Road. He has also admitted that in the course of investigation he had not noticed any blood stains on the clothes of the informant Ashabai. He has proved omissions and contradictions of the witnesses.

13 P.W.11 Gorakhnath Gode was officiating as a doctor at Civil Hospital at Nashik. He had performed autopsy on the dead body. According to him, deceased had sustained single injury. He has specifically denied the suggestion that police had asked for his opinion in respect of the weapons due to which the deceased had sustained injuries. That there were no injuries by knife or sharp cutting weapon on the person of the deceased. According to him, the injury sustained by the deceased were sustained by iron rod.

14 It is an admitted position that the incident has occurred. The witnesses have categorically stated that the cause of the incident was trifling in nature. However, the fact that the accused persons had been to the house of the deceased while they were armed with weapons is proved. It does not appear that the accused Tulshiram Paithankar had any intention of causing death of Balu Paithankar. It appears from the evidence recorded at the trial that the intention of the accused was to threaten the deceased and the complainant. The very fact that the clothes on the persons of the deceased as well as the injured were torn, would indicate that in fact, there were some altercations between both the groups which lasted for quite some time. In any case, Ashabai has also stated that the incident lasted for about one hour. It appears that verbal altercations had taken violent turn. The scene of offence panchanama would indicate that there were blood stains on the platform abutting the house of the complainant. There was a pit of about 3 to 6 ft. for filling water.

15 The scene of offence panchanama which is at Exh. 34 would indicate that the incident has occurred in the open space in front of the house of the complainant. There was constructed structure in which the basil tree was planted. There was batten for tying cattle which was of iron. The blood stains were found on the spot. Therefore, possibility

that the deceased had fallen on the batten cannot be ruled out. Moreover, the deceased was about 50 years old. The blood stains were seen at various spots on the scene of offence and the wife, son and daughter in law of the deceased had sustained injuries in the nature of contusions and abrasions whereas Anil had sustained only one contused lacerated wound on the head. There is failure on the part of prosecution to explain the injuries sustained by the accused.

16 The learned Counsel has submitted that there is no doubt that the incident has occurred but it had been blown out of proportion. The accused No.1 i.e. appellant Tulshiram was in custody from 10/4/2011 to 6/9/2011 and thereafter from 29/11/2014 till today. Taking into consideration that the appeal is being heard after almost 5 years, the appellant deserves to be sentenced to the period already undergone. Hence, following order would meet the ends of justice.

ORDER

- (i) The both the appeals are partly allowed.
- (ii) The conviction imposed upon the appellant Tulshiram @ Anil Laxman Paithankar for the offence punishable under section 304 II of the Indian Penal Code by the Additional Sessions Judge, Niphad vide Judgment and Order passed in Sessions Case No. 34 of 2011 is upheld.
- (iii) The appellant- Tulshiram @ Anil Laxman Paithankar has been

in custody during the period from 10/4/2011 to 6/9/2011 and from 29/11/2014 till today. He has undergone 4 years and 11 months of actual sentence. He has earned remission to the extent of 5 months. Hence, the appellant is sentenced to the period already undergone.

(iv) The fine amount is deposited. Sentence of fine is upheld. The appellant-Tulshiram @ Anil Laxman Paithankar be released forthwith if not required in any other case.

(v) The conviction imposed upon the appellants- Kailas Laxman Paithankar and Sharad Laxman Paithankar for the offence punishable under section 324 of the Indian Penal Code as per clause 2 and 3 of the Judgment and Order dated 29/11/2014 passed in Sessions Case No. 34 of 2011 by the Additional Sessions Judge, Niphad is upheld.

(vi) The appellants are sentenced to the period already undergone. However, the fine is enhanced to Rs. 5000/- each. The remainder fine shall be deposited before the Session Court, Nashik.

(vii) Both appeals are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]