

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1306 OF 2007

The State of Maharashtra	]	...Appellant (Orig. Complainant)
Versus		
1. Vinod Pandurang Jadhav,	]	
Age 26, Occupation Business,	]	
R/o. 714/A Ward, Rajaram Chowk,	]	
Opposite Kolhapur Saw Mill,	]	
Kolhapaur.	]	
2. Vijay Balaso Godase,	]	
Age 21, Occupation Nil,	]	
R/o. 714/A Ward, Rajaram	]	
Chowk, Opposite Kolhapur	]	
Saw Mill, Kolhapur	]	...Respondents (Orig. Accused Nos. 1 and 2)

ALONG WITH
CRIMINAL APPEAL NO. 165 OF 2007

The State of Maharashtra	]	...Appellant (Orig. Complainant)
Versus		
Vinod Pandurang Jadhav,	]	
Age 26, Occupation Business,	]	
R/o. 714/A Ward, Rajaram Chowk,	]	
Opposite Kolhapur Saw Mill,	]	
Kolhapur.	]	...Respondent (Orig. Accused no. 1)

Mrs. M.M. Deshmukh, APP for the Appellant in both Appeals.
Mr. Prasanna Shahane appointed Advocate for Respondent Nos. 1 and 2 in
Criminal Appeal No. 1306 of 2007 and Respondent in Criminal Appeal No.
165 of 2007

**CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.**

DATED : 20th JANUARY, 2020

ORAL JUDGMENT (PER N. B. SURYAWANSHI, J.)

1. Criminal Appeal No. 1306 of 2007 is filed by State challenging the order of acquittal passed in favour of the original accused nos. 2 and 3 in Sessions Case No. 70 of 2005 by learned Ad-hoc Additional Sessions Judge, Kolhapur.

2. Criminal Appeal No. 165 of 2007 is filed by the State seeking enhancement of the sentence of the Respondent / Accused No. 1 in Sessions Case No. 70 of 2005. He was charged for offences punishable under Section 302 read with Section 34 of the Indian Penal Code (for short 'IPC') along with two co-accused. During trial he was convicted for offences punishable under Section 304-II of IPC and co-accused were acquitted. Hence, the present Criminal Appeal for enhancement of the punishment and sentence against the Respondent / Original Accused No. 1 by the State.

3. The prosecution case, in nutshell, is as under.

The complainant Santosh Anil Sakate was staying at Gavati Mandai Timber Market, Kolhapur. Deceased Nitin Malhar Raut and Sachin

Bondre were staying in his neighborhood. Sachin Bondre was selling fruits on the cart at Race Court Naka, Kolhapur. Vinod Pandurang Jadhav (A 1) was also doing the same business in the same area. As friends Rakesh Chougule (A 2) and Vijay Godase (A 3) always used to come to Sachin Bondre and Vinod Jadhav (A 1) thus, all were acquainted with each other. There was money transaction between Sachin Bondre and Vinod Jadhav (A 1). Eight days prior to the incident Sachin Bondre purchased bananas worth Rs. 100/- on credit from Vinod Jadhav (A 1). Vinod Jadhav (A 1) was always insisting for the said payment to Sachin Bondre and on that count there used to be minor quarrel between them. On 28th December, 2004 at about 09.00 to 09.15 p.m. the complainant was chitchatting with his friends Sachin Bondre and Nitin Raut. At that time Ajit Ingale and Amit Sawant were standing nearby and chitchatting. At about 09.10 p.m. all the accused went near them and Vinod Jadhav (A 1) caught hold of collar of Sachin Bondre and dragged him to the side and asked him to pay money immediately otherwise he will kill him. At that time, Vijay Godse (A 3) and Rakesh Chougule (A 2) started beating Sachin Bondre by hands. Sachin Bondre started shouting, the complainant and Nitin Raut went there to rescue the quarrel. They also tried to pacify and rescue Sachin Bondre. At that time, Vijay Godse (A 3) abused him in filthy language. Nitin Raut was trying to pacify Rakesh Chougule (A 2). At that time Vinod Jadhav (A 1) rushed towards Nitin Raut and scuffle started

amongst all of them. Rakesh Chougule (A 2) caught hold collar of complainant Santosh Sakate and Vijay Godse (A 3) started beating Sachin Bondre by hands. At that time Vinod Jadhav (A 1) drew dagger (Khanjir) concealed near his waist and he moved T-shirt of the deceased upwards by his left hand and by his right hand inflicted blow on the left side chest of the Nitin Raut. On receipt of the said blow Nitin Raut shouted loudly and fell on the ground. All the accused persons fled from the spot. Then Rikshaw was called by Ajit Ingale, complainant and Anil Sawant. Nitin was taken to C.P.R. Hospital, Kolhapur. On examination by the doctor Nitin was declared dead. Thereafter, Santosh eye witness to the incident approached to Juna Rajwada Police Station and lodged the report which was registered at CR No. 183 of 2004 under Sections 302, 323 read with Section 34 of the IPC. On completion of the investigation charge-sheet came to be filed and the matter was committed to the court of Sessions.

4. All the three accused were charged for offences punishable under Sections 302, 323 read with Section 34 of the IPC. They denied the charges and claimed to be tired. Their defence was of total denial. The learned Ad-hoc Additional Sessions Judge, Kolhapur after appreciating the evidence on record convicted the Vinod Jadhav (A 1) under Section 304-II of the IPC and sentenced him to suffer rigorous imprisonment for 5 years and to pay a fine of

Rs. 1,000/-. The learned Trial Court was pleased to acquit Accused Nos. 2 and 3 having found no evidence against them to warrant conviction. Hence the present Appeals.

5. We have heard the learned APP appearing for the Appellant – State in support of both the appeals who has taken us through evidence led by the prosecution and the original record. It is vehemently submitted that though this is a case of single blow, the blow was inflicted by a deadly weapon on vital part i.e. on left side of the chest and hence the Vinod Jadhav (A 1) had intention to kill the deceased Nitin Raut and therefore, learned Trial Court was not justified in convicting him for lesser offence i.e. under Section 304-II of the IPC. She states that, taking into consideration the medical evidence as well as the manner of occurrence of incidence disclosed by the injured eye witnesses as well as other eye witnesses it is established by the prosecution that the Vinod Jadhav (A 1) has inflicted the said blow with knowledge and intention to cause death of deceased Nitin Raut, hence, he ought to have been convicted under Section 302 of the IPC and not under Section 304-II of IPC.

6. To the extent of appeal wherein the acquittal of two accused is challenged the learned APP argues that, the learned Trial Court has failed to consider the evidence of injured eye witnesses in the proper perspective. The eye witnesses have attributed assault by fists blows to these two accused

persons. They have actively participated in the incident and hence they shared common intention with Vinod Jadhav (A 1) therefore, learned Trial Court ought to have convicted them under Section 302 read with Section 34 of IPC as they had shared common intention with the Vinod Jadhav (A 1).

7. On the contrary, learned Advocate representing accused persons would support the judgment rendered by the learned Trial Court contending that Vinod Jadhav (A 1) had no enmity with deceased Nitin Raut. There was scuffle going on between the witnesses, accused and the deceased and in that scuffle at the spur of moment single blow was inflicted on the deceased which unfortunately proved fatal. There is nothing on record to attribute intention to Vinod Jadhav (A 1) to commit murder of deceased, in that view the learned Trial Court was justified in convicting the Vinod Jadhav (A 1) under Section 304-II of the IPC. He further submitted that, there is no material on record to warrant conviction of accused nos. 2 and 3 and the learned Trial Court was perfectly justified in acquitting them of all the charges. He therefore, prays that the appeals filed by the State may be dismissed.

8. After considering the evidence of injured eye witnesses i.e. PW 1 and PW 2 and other eye witnesses i.e. PW 3, PW 5, and PW 6 it is clear that there was a scuffle between the witnesses, deceased and the accused persons. Money transaction in between Sachin Bondre (PW 2) and Vinod Jadhav (A 1)

was that Sachin Bondre owed Rs. 100/- to Vinod Jadhav (A 1) and Vinod Jadhav (A 1) was always demanding the said amount. Even on the date of incident, the incident started as Accused No. 1 to 3 went to PW 3 and Accused No. 1 started demanding amount of Rs. 100/- from Sachin Bondre (PW 2). At that time allegedly accused nos. 2 and 3 started beating Sachin Bondre (PW 2) and on hearing his shouts, Santosh (PW 1) and deceased Nitin Raut went on the spot and tried to intervene and rescue Sachin Bondre (PW 2) from the accused persons. As is stated herein above a scuffle ensued amongst all and during scuffle suddenly Vinod Jadhav (A 1) drew a dagger concealed at his waist and inflicted one blow on the left side of the chest of Nitin Raut, due to which he collapsed on the spot and the said injury proved to be fatal. After carefully assessing the evidence of the eye witnesses this is the consist version of the prosecution witnesses, which is also accepted by the Trial Court while convicting the accused no. 1.

9. The crucial aspect is whether Vinod Jadhav (A 1) had intention to kill deceased Nitin Raut.

Admittedly Vinod Jadhav (A 1) had quarrel with Sachin Bondre (PW 2) as Sachin Bondre (PW 2) not returning an amount of Rs. 100/- to him. Vinod Jadhav (A 1) caught hold Sachin Bondre (PW 2) and was insisting that immediately he should pay the dues, at that time assault was launched on

Sachin Bondre (PW 2) and he started shouting. Till this time the deceased Nitin Raut was not in picture. Admittedly deceased Nitin Raut and Santosh (PW 1) tried to intervene in the quarrel and tried to rescue Sachin Bondre (PW 2) from the accused persons. A scuffle ensued amongst accused, Sachin Bondre (PW 2), deceased Nitin Raut and Santosh (PW 1) at that time at the spur of moment Vinod Jadhav (A 1) took out dagger and inflicted a single blow on the chest of deceased Nitin Raut which proved fatal. In the peculiar facts of this case it is apparent that deceased Nitin Raut had no reason to intervene in the scuffle and there cannot be intention or predetermination on the part of the Vinod Jadhav (A 1) to cause death of deceased Nitin Raut. Thus, evidence on record does not indicate that Vinod Jadhav (A 1) intended to cause death of deceased Nitin Raut. If really he had intention to kill Nitin Raut then it was possible for him to inflict multiple blows and he also had opportunity to do so, which he has not done. In this view of the matter and taking into consideration the medical evidence on record, we are of the considered view that it is not possible to accept the submission of learned APP to convict the Vinod Jadhav (A 1) for offence punishable under Section 302 of IPC. The learned Trial Court was justified in convicting the Vinod Jadhav (A 1) under Section 304-II of IPC and said approach cannot be said perverse or contrary to the evidence on record. The reasoning adopted by the learned Trial Court is proper and plausible and we do not find any ground to interfere

in the same.

10. It is necessary to mention herein that, Vinod Jadhav (A 1) was an under trial prisoner and he has undergone the sentence imposed by the learned Trial Court. After completion of his sentence of five years, he was released from jail on 04th April, 2009.

11. So far as Criminal Appeal against acquittal against original accused nos. 2 and 3 is concerned, on going through the evidence there is hardly any material against them. Though the injured eye witnesses alleged that accused nos. 2 and 3 assaulted them with fists and they have suffered injuries there is no medical evidence to corroborate the same. Though the prosecution has relied upon the injury certificates of PW 2 and PW 3 i.e. Exhibit nos. 36 and 37 respectively they mention 'local injuries'. No size, length, time etc. i.e. mentioned on these certificates. So also there is no history given at the time of this medical examination. Medical officer who examined PW 2 and PW 3 and issued the said injury certificates is also not examined therefore, those certificates are of no help to the prosecution. Even if for the sake of argument we accept the version of the PW 2 and PW 3 that they suffered minor injuries they can be said to be an outcome of the scuffle. Except this there is no evidence against Vinod Jadhav (A 1). The participation of accused nos. 2 and 3 in the assault of eye witnesses is not proved by the prosecution by leading

reliable evidence and there is no corroboration of medical evidence to accept the version of eye witnesses. In that view of the matter and in view of the fact that, there is no iota of evidence to show that they shared common intention with Vinod Jadhav (A 1) to cause murder to deceased Nitin Raut. The acquittal recorded by the learned Trial Court cannot be faulted with. The reasoning adopted by the Trial Court is proper and we see no reason to interfere with the order of acquittal.

12. In the light of aforesaid observations we find no merit in the Criminal Appeals filed by the Appellant – State and hence we pass the following order:

ORDER

- A) Criminal Appeal No. 1306 of 2007 and Criminal Appeal No. 165 of 2007 are dismissed.
- B) We appreciate the assistance rendered by the learned appointed advocate who represented the accused persons. We quantify his fees at Rs. 10,000/- (Ten Thousand only) to be paid by the Legal Services Authority, Mumbai within a period of one month from the date of this order plus actual expenses incurred by him.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)