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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.118 OF 1997

1. Vilas Govind Mulik,
Age: 25 yrs. Occ. Agri.
 2. Bhimrao Ganpat Mulik,
Age : 22 yrs. Occ. : Service,
 3. Vikas Ganpat Mulik,
Age: 21 yrs. Occ. Agri.
- All resident of Songaon, Tal. & Dist-Satara. ... Appellants.

Vs.

The State of Maharashtra ... Respondent

Mr. Shekhar Jagtap a/w Ms. Sairuchita Chowdhary a/w Mr. Ninad Naik i/b. Ms. Manisha Jagtap for Appellant Nos.2 and 3.

Mrs. Prajakta P. Shinde, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

Pallavi M.
Wargaonkar

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RESERVED ON : 3rd SEPTEMBER, 2020.
PRONOUNCED ON : 8th SEPTEMBER, 2020

JUDGEMENT:

1. The appellants in Criminal Appeal No.118 of 1997 impugn the judgment and order dated 12th February 1997 passed by the Additional Sessions Judge, Satara in Sessions Case No.186 of 1991 convicting them for the offences punishable under sections 307, 452 and 323 of Indian Penal Code. The appellants are sentenced to suffer R.I. for two years under section 307 of IPC and fine of Rs.1,000/- each. For the offences punishable under sections 452 and 323 of the Indian Penal Code, no separate sentence is awarded.
2. The case of the prosecution in nutshell is as follows :-

The appellant no.1 is the son of deceased Govind Mulik whereas the appellant nos.2 and 3 are the brothers. That Ganpat Dnyandeo, Govind, Krishna and Sakharam are the real brothers. There were several disputes between the brothers over the ancestral immovable property situated at village Songaon. In 1966, Dnyandeo (PW4) had instituted a civil suit seeking partition and possession of ancestral properties. The suit was decreed and 1/7th share of the immovable property was allotted to the plaintiff therein. However, he was denied share in the properties situated at Satara. Then Sakharam had instituted R.C.S. No.330 of 1977 which was dismissed. The appeal challenging dismissal was also dismissed. The execution proceedings were pending. All the brothers were residing separately. Sakharam had then filed tenancy proceedings in Tenancy Case No.4 of 1989 and he was supported by PW4 Dyandeo and his brothers Ganpat, Krishna and Govind. There were not only acrimonious disputes between the brothers but they were on inimical terms with each other.

3. The said tenancy proceedings were withdrawn. PW4 had objected to the withdrawal of tenancy proceedings and was annoyed with his brothers as he had borne the cost of litigation. He was insisting on settlement of accounts. The relations between the brothers were at loggerheads ever since the withdrawal of tenancy case.

4. It is the case of the prosecution that on 20th May 1991, there was an altercation between Dnyandeo, Govind and their family members. Dnyandeo and his family had sustained injuries whereas his brother Govind had died due to gunshot injury by Mahesh (PW6) - son

of the Dnyandeo (PW4). That Vilas Mulik - Accused No.1 lodged a report at the police station on the basis of which Crime No.95 of 1991 was registered at Satara Taluka Police Station against Dnyandeo, Shakuntala and their son Mahesh for the offences punishable under section 302 r/w 34 of IPC. The Police had visited the scene of offence for investigation of Crime No.95 of 1991 and had noticed that the accused therein were injured and had therefore, sent them for medical examination. On 21st May 1991, the statement of Dnyandeo (PW4) was recorded in the Hospital on the basis of which Crime No.96 of 1991 was registered against all the accused in Sessions Case No.186 of 1991 for the offences under section 307, 452 and 323 of IPC.

5. Dnyandeo had disclosed to the Police that on the day of incident i.e. 20th May 1991, they were watching television in their house and at that time, all the accused persons came to their house. They were all armed with weapons like sticks, iron bar and scythe. They had questioned Dnyandeo for registering an objection to withdrawal of the tenancy suit. They had mounted assault upon all the members of the family. According to the complainant, accused no.1 Vilas and Bhimrao had assaulted Dnyandeo with a stick on his head and legs. That Vikas had also assaulted Mahesh with a scythe and Govind had assaulted Mahesh with a stick whereas, the accused Nos.4, 5 and 6 had assaulted the female members of the family. It is pertinent to note that in the same incident Govind i.e. the father of the accused no.1 i.e. the husband of accused no.6 had succumbed to gunshot injury.

6. In Crime No.96 of 1991, it was specifically alleged that Mahesh (juvenile in conflict with law) was the perpetrator of an offence u/s.302 of IPC, as Govind had been shot by him at the behest of Dnyandeo. Govind had died instantaneous death in the same transaction. Both the cases were committed to the Court of Sessions. Sessions Case No.184 of 1991 is in respect of Crime No.95 of 1991 whereas Sessions Case No.186 of 1991 was in respect of Crime No.96 of 1991.

7. The prosecution has examined 9 witnesses to bring home the guilt of the accused. The case rests mainly upon the evidence of PW4 – Dnyandeo, PW5 – Shakuntala wife of Dnyandeo and PW6 – Mahesh son of PW4, PW1 – Dr. Avinash Ashtekar who has examined injured PW4, PW5 and PW6 after the incident. PW9 – Janardan Tivate has proved the omissions and contradictions of the witnesses. The scene of offence panchanama is at Exh.25.

8. PW4 – Dnyandeo has deposed in consonance with the FIR. That according to him, accused no.2 - Bhimrao had assaulted PW4 with iron bar, accused no.1 – Vikas had assaulted PW4 by scythe on his back and had also assaulted his son Mahesh on his hand, shoulder and head and accused nos.4, 5 and 6 had assaulted PW5 with a stick. It is alleged that the accused persons had dragged them outside the house and again assaulted them. That the accused no.1 had snatched gun from Mahesh and had assaulted Mahesh with the butt-end of the gun and thereafter, had left the village. The FIR is at Exh.38.

9. PW4 was confronted with the FIR and his attention was drawn to the omission that there is no averment in the FIR about accused no.1 snatching the gun from the hands of Mahesh and then assaulting him with the butt-end of the gun. In the cross-examination, he has denied that Mahesh caused gunshot injury to Govind due to which he had died. He was then confronted with his supplementary statement and he has denied to have stated that Mahesh had brought the gun from the house and caused gunshot to Govind as a result of which he has died. The said contradiction is marked as portion marked 'A'.

10. PW5 has reiterated the version of PW4. She was also confronted with her previous statement and she has denied to have stated that Mahesh had brought the gun and caused gunshot to Govind and the said contradiction is marked as portion marked 'A'.

11. PW6 – Mahesh has also attributed the same overt acts to all the accused persons however, he has stated that the accused persons were attempting to take his parents outside the house and at that juncture, he went into house and brought the gun. According to him, the accused no.1 tried to snatch away the gun from him and in that attempt there was a gunshot and that Govind had died at the hands of Vilas accidentally and thereafter, accused no.1 had assaulted him. He was also confronted with his supplementary statement in which he has categorically stated that he had fired a gun and that Govind has sustained the gunshot injury wound. The said contradiction is marked as portion marked 'A'.

12. PW1 – Dr. Ashtekar had examined PW4, PW5 and PW6 on 21st May 1991. Injury certificates of injured are at Exh.28, 27 and 29 respectively. The appellants are shown as the authors of these injuries by PW4 in the FIR as well as substantive evidence.

13. According to PW1, injuries caused were within 6 hours and were caused by hard and blunt object. In the cross-examination, witnesses admitted that injuries no.1 and 2 on Exh.27 are possible in a scuffle caused by butt-end of the gun.

14. Accused no.2 - Bhimrao had stepped into witness box and pleaded *alibi*, however, the same could not be proved beyond reasonable doubt. DW2 also could not substantiate the plea of alibi by Bhimrao.

15. The accused in their statements under section 313 of Cr.P.C, had in response to Question No.39, filed written statement under section 313 which is marked at Exh.50. All the other accused had adopted same defence. According to the accused his deceased father Govind and his uncle Ganpat had consented to withdrawal of the tenancy case filed by Sakharam. Dnyandeo was annoyed by the same. That decree was passed in the year 1972 and the execution proceedings were pending till 1991.

16. According to the accused persons, the expenses of litigation were borne by Dnyandeo. He wanted to settle the accounts and therefore, on 20th May 1991, he had called upon the accused persons and deceased Govind for settlement of accounts. That Govind was accompanied by Vilas and they had gone to the farm house of Dnyandeo. Their uncle Sakharam was old and therefore, he had sent his daughter Parvati (accused No.5) along with Govind and Vilas. Ganpat was bedridden and therefore, his wife Narmada (accused no.4) had been to the house of Dnyandeo. When they were proceeding to the house they saw Dnyandeo under the tamarind tree in front of his house. Upon seeing Govind and Vilas, Dnyandeo started abusing Govind for withdrawing tenancy case. That he had also slapped Govind and thereafter, pushed him on the ground. Vilas intervened and at that stage, Dnyandeo incited Mahesh to get the gun and shoot Govind. Mahesh had brought the gun and shot at Govind. At that juncture, Vilas had snatched the gun from his hand in order to avoid further fatalities and had assaulted him with the butt-end of the gun. The accused persons had realized that Govind had instantly succumbed to gunshot injury. By then, Ganpat reached the spot and asked Vilas to approach the Police Station and they had taken Govind to the Hospital. The accused has further stated that Dnyandeo has retired from Military services and therefore, he has a gun. That Dnyandeo was fully aware that his son is minor and therefore, he had incited and abetted Mahesh to cause homicidal death of Govind. That the Police had reached the spot immediately because one of the sons of Dnyandeo is serving in the Police Department. It is specifically stated that on 21st May 1991, at the time of funeral Bhimrao was arrested by Police, although he was not in

Songaon on 20th May 1991. The accused have also contended that the investigation was biased in order to favour the son of the complainant in Crime No.96 of 1991.

17. In the case of *State of M.P v. Ramesh reported in (2011) 4 SCC 786*, the Apex Court had held,

“that the statement of the accused made under section 313 can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case.”

18. In view of this observation of the Hon’ble Apex Court, it will become necessary to appreciate the scene of offence panchanama which is at Exh.25. In Exh.25, it is specifically stated that the scene of offence is under a tamarind tree in front of the house of PW4 as well as the platform abutting the house of PW4. Two sticks which are handles of the axe and another stick is seized from the house of PW4 and blood stained bedsheets were seen. It is true that PW4, PW5 and PW6 had sustained bleeding injuries. There is no material to show that the incident had ensued in the house.

19. It is specific defence of the accused that they were all called to the house of PW4 for settlement of accounts. PW4 had raised a quarrel, abused and slapped Govind and at that juncture, when accused no.1 intervened, Mahesh had fetched a gun from the house and shot at Govind. The contradictions marked as portion ‘A’ in the substantive evidence of all the three material witnesses would clearly establish as follows :

(i) that the gun belonged to PW4;

- (ii) PW4 had incited his son to fetch the gun;
- (iii) that after Mahesh had fired the gun accused no.1 snatched the gun and assaulted PW6 with the butt-end of the gun;
- (iv) that the accused no.1 had rushed to the Police Station and lodged a report in respect of the death of his father Govind, on the basis of which Crime No.95 of 1991 was registered;
- (v) that the Police had promptly reached the scene of offence and taken the injured to the Hospital and thereafter, Crime No.96 of 1991 was registered.

20. The scene of offence panchanama is shown below tamarind tree and therefore, there is substance in the defence of the accused raised under section 313 of Cr.P.C. It can, therefore, be held that the quarrel had ensued below tamarind tree as has been stated by the accused. The evidence brought on record by the prosecution probabalises the version of the accused persons. That the incident had rather occurred below tamarind tree and, moreover, Govind had also died on the spot on the road.

21. In view of the above circumstances, the learned counsel Mr. Jagtap submits that the incident had occurred on the spur of the moment due to grave and sudden provocation meted out by PW4 – Dnyandeo and therefore, it cannot be said that the appellants had assaulted the witnesses with an intention or knowledge to cause death and therefore, they deserve to be acquitted of the offence

punishable under section 307 of IPC. It is also submitted that the accused persons had not gone to the house of PW4 voluntarily but they had been called by PW4 for settlement of accounts.

22. To constitute an offence under section 307 of IPC what needs to be determined is whether the accused had an intention to cause injury-which would be fatal. It is not the nature of injury alone, which needs to be taken into consideration. It is clear that accused no.1 had assaulted PW6 with the butt-end of the gun although it was a loaded gun. Secondly, the accused persons had not assaulted witnesses with the axe or the scythe but by the butt-end of the handle of the axe. The witnesses and the accused persons are agriculturist and therefore, finding of such agricultural implements in the house cannot be an incriminating circumstance. It is not the case of the prosecution that axes and sticks were thrown by the accused in the house of the prosecution witnesses and therefore, it cannot be said that the agricultural implements and sticks seized while conducting the scene of offence panchanama were used in commission of offence by the accused.

23. Even according to the prosecution, PW6 was assaulted by the butt-end of the gun. The first informant has suppressed the fact that Govind had died in the said incident and the cause of death was gunshot injury.

24. In the case of *Moti Singh v. State of Maharashtra reported in (2002) 9 SCC 494*, the Hon'ble Apex Court has held that:

“if the evidence adduced by the prosecution would indicate that the accused were put under a situation where they could reasonably apprehend grievous hurt even to one of them, it would be inequitable to deny the right of private defence to the accused merely on the ground that he has adopted different plea during the trial.

25. The Hon’ble Apex Court in a catena of judgments has held that the right of defence of the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or even a threat to commit any offence though the offence may not have been committed and the right continues as long as such apprehension of danger to the body continues. Section 100 contemplates as under :

“Section 100 of the IPC confers right of private defence of the body to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions exercise of right be of any of the acts as may reasonably cause the apprehension that grievous hurt be the consequences of such assault.”

26. In the case of *Lakshmi Singh and Ors. vs. State of Bihar reported in AIR 1976 SC 2263*, the Hon’ble Apex Court has held as under :-

“Non-explanation of injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence.”

27. In the present case also the first informant has not stated in the FIR that his brother Govind had succumbed to the gunshot injury at the hands of his son Mahesh. He had stated it in the supplementary statement but has contradicted the same in his substantive evidence.

28. PW9 - Investigating Officer has stated that Sessions Case No.185 of 1991 is filed against PW4, PW5 and PW6. PW6 is charge-sheeted before the Juvenile Court for an offence under section 302 IPC. The contradictions marked at portion 'A' and 'B' of PW4, portion marked 'A' of PW5 and portion marked 'A' of PW6 are duly proved by PW9. It is clear from the evidence adduced by the prosecution that there is deliberate suppression of facts. The omissions and contradictions of the witnesses are duly proved by PW9.

29. This has to be read in consonance with the fact that the prosecution witnesses in the present case have been exonerated in Sessions Case No.184 of 1991. The probability that the defence version may be true cannot be ruled out. In fact, it is a settled principle that it is not necessary for the defence to prove its case beyond reasonable doubt, however, it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version.

30. In view of the above discussion, the appeal deserves to be allowed. Hence, we pass the following order:-

ORDER

- (i) The Appeal is allowed.
- (ii) Conviction and sentence passed by the Additional Sessions Judge, Satara in Sessions Case No.186 of 1991 is quashed and set aside;
- (iii) Accused are acquitted of the charges under sections 307, 452 and 323 of Indian Penal Code;
- (iv) Bail bonds stand cancelled;
- (v) Appeal is disposed of in above terms.

31. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J)

(SMT. SADHANA S. JADHAV, J)