

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

CRIMINAL APPEAL NO. 576 OF 1998

State of Maharashtra ... Appellant.

V/s.

1. Vilas Govind Mulik.

2. Bhimrao Ganpat Mulik.

3. Vikas Ganpat Mulik.

(All are residing at Sonagaon, ... Respondents.
Tal. & Dist. Satara.)

Mrs. Prajakta P. Shinde, APP for State.

Ms. Rachana Belda h.f. Ms. Sunanda Kumbhat, advocate for
respondent No. 1.

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

Pallavi M.
Wargaonkar

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

**RESERVED ON : SEPTEMBER 3, 2020.
PRONOUNCED ON : SEPTEMBER 8, 2020.**

JUDGMENT :

. Heard the learned APP for State and the learned Counsel
for the respondents.

2 The State of Maharashtra being aggrieved by the

inadequate sentence imposed upon the original Accused Nos. 1, 2 and 3 in Sessions Case No. 186 of 1991 by the Additional Sessions Judge, Satara vide Judgment and Order dated 12/2/1997 is seeking enhancement of sentence of the respondent Nos. 1, 2 and 3.

3 Learned APP has vehemently submitted that the sentence imposed upon the respondents herein is disproportionate to the offence committed by them and hence, the said sentence deserves to be enhanced.

4 The respondent Nos. 1, 2 and 3 are convicted for the offence punishable under section 307, 452 and 325 of the Indian Penal Code and are sentenced to suffer R.I. for two years and to pay fine of Rs. 1000/- each for offence punishable under section 307 of the Indian Penal Code. No separate sentence is imposed for the offence punishable under section 452 and 325 of the Indian Penal Code.

5 It is submitted that the learned Sessions Judge has not appreciated the evidence of P.W. 1 Dr. Avinash Ashtekar and the injury certificates at Exh. 27, 28 and 29 in its proper perspective. It is also

submitted that the learned Sessions Court has not taken into consideration two grievous injuries sustained by the complainant as well as by P.W. 6 Mahesh Mulik (Juvenile in Conflict with law).

6 The injuries sustained by Shakuntala Mulik (Exh. 27) are as follows :

1. C.L. W over right forearm middle 1/3 obliquely, size 2" x 1" x 2" by muscle deep, bleeding present.
2. C.L. W over right forearm, middle 1/3 obliquely, size 2" x 1" x 1". Both these injuries were separated by 2".
3. C.L.W. over the right dorsum of the hand obliquely, size 3" x 2" x 1".

The injuries sustained by Dnyandev Mahadeo Mulik (Exh.28) are as follows :

1. C.L.W over right parietal area, vertically size 4" x 1" x 1/2", bone deep.
2. C.L.W. over left parietal area vertically, size 3" x 2" x 1", bone deep.
3. Right eye blackened.
4. C.L. W over the right cheek of size 2" x 1" x 1/2" vertically.

5. C.L.W. over the right cheek obliquely of size 1" x 1/2" x 1/2".
6. C.L. W. over the gith knee, obliquely of size 2" x 1" x 1".
- 7 C.L.W. over the left knee obliquely of size 2" x 1" x 1".

The injuries sustained by Mahesh Dnyandev Mulik (Exh. 29) are as follows :

1. Incised wound over left nastroid, obliquely, vertically about 4" x 1" x 1/2" muscle deep, bleeding present.
2. C.L. W. over the right dorssal on the hand extended from index knucle to thumb base.
3. C.L. W over the right 5th finger meta corpal obliquely 1" x 1" x bone deep, bleeding present.

7 It is pertinent to note that the complainant had sustained contused lacerated wounds over right and left parietal region. In fact, the doctor has specifically stated that the injuries may have been caused by hard and blunt object like sticks, iron bar or blunt side of sickle.

8 In fact, it is to be appreciated that this is a case of cross-

complaint. There was an altercation between both the groups. The prosecution witness No. 4 i.e. complainant and his son were tried for an offence punishable under section 302 and 109 of the Indian Penal Code in Sessions Case No. 184 of 1991. The very fact that the blunt side of sickle was used, would clearly reflect that the accused had no intention of committing murder. What needs to be appreciated is the intention of the assailant and not the nature of injury. It was not a voluntary act on the part of Respondent No. 1. After the father of respondent No. 1 was shot dead by P.W. 6, he had snatched the gun and assaulted P.W. 6 with the butt end of the gun, although the gun was loaded. The act per se does not indicate that there was an intention to inflict that injury. The question of intention needs to be substantively determined, coupled with the circumstances in which the incident had occurred. That the act was not voluntary, but in private defence. This Court cannot be oblivious of the fact that the alleged accused Govind had succumbed to a gun shot injury at the hands of son of the complainant.

9 It further needs to be appreciated that the respondents herein had not exceeded their right to private defence. In view of the

acquittal of the respondents for offence punishable under section 307, 323 and 452 of the Indian Penal Code vide separate orders passed in Criminal Appeal No. 118 of 1997, the appeal seeking enhancement of sentence deserves to be dismissed.

10 The appeal is dismissed in limine and disposed of accordingly.

11 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)