

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

CRIMINAL APPEAL NO. 136 OF 1996

1. Bhagwan Narayan Gaikwad, aged 32 } years }	
2. Appa Maruti Patil @ Shivaji Namdeo } Patil, aged 21 years }	
3. Mahadeo Dhondiram Gaikwad, aged 24 } years }	
4. Popat Sitaram Gaikwad, aged 23 years }	
5. Haibat Mahadeo Gaikwad, aged 27 } years }	
6. Mahavir Murlidhar Gaikwad, aged 27 } years }	
7. Anna Murlidhar Gaikwad, aged 25 } years }	
8. Lahu Murlidhar Gaikwad, aged 19 years }	
9. Bapu Maruti Patil, aged 20 years }	
10. Ankush Apparao Gaikwad, aged 28 } years }	
11. Shankar Sitaram Gaikwad, aged 30 } years }	
12. Vijay Dhondiram Gaikwad, aged 30 } years. }	
All residing at Malegaon Taluka Madha } District Solapur }	Appellants (Orig. accused)

Versus

1. The State of Maharashtra }	
2. Shri Subhash Yadavrao Patil, Adult }	
3. Shri Pandhari Patlu Gaikwad, Adult }	
Nos. 2 and 3 both residng at Malegaon } Taluka Madha District Solapur }	Respondents (Orig. complainants)

CRIMINAL APPEAL NO. 674 OF 1996

The State of Maharashtra } Appellant

Versus

1. Bhagwan Narayan Gaikwad, aged 32 years	}	
2. Appa Maruti Patil @ Shivaji Namdeo Patil, aged 21 years	}	
3. Mahadeo Dhondiram Gaikwad, aged 24 years	}	
4. Popat Sitaram Gaikwad, aged 23 years	}	
5. Haibat Mahadeo Gaikwad, aged 27 years	}	
6. Mahavir Murlidhar Gaikwad, aged 27 years	}	
7. Anna Murlidhar Gaikwad, aged 25 years	}	
8. Lahu Murlidhar Gaikwad, aged 19 years	}	
9. Bapu Maruti Patil, aged 20 years	}	
10. Ankush Apparao Gaikwad, aged 28 years	}	
11. Shankar Sitaram Gaikwad, aged 30 years	}	
12. Vijay Dhondiram Gaikwad, aged 30 years.	}	
All residing at Malegaon Taluka Madha District Solapur	}	Respondents.

Mr. Chaitanya Pendse a/w. Mr. Akshay Gosavi a/w. Mr. Sagar Naik for the appellant nos. 1, 5 and 11 in Appeal/136/1996 and respondent nos. 1,5 and 11 in Appeal/674/1996.

Mr. Shekhar Ingawale a/w. Mr. Akshay Gosavi a/w. Mr. Sagar Naik for the appellant nos. 2 and 9 in Appeal/136/1996 and respondent nos. 2 and 9 in Appeal/674/1996

Mr. Ritesh Thobde a/w. Mr. Sagar Tambe for the appellant nos. 6 to 8 in Appeal/136/1996 and respondent nos. 6 to 8 in Appeal/674/1996.

Mr. S.R. Phanse for respondent nos. 2 and 3 in Appeal/136/1996.

Ms. P.P. Shinde-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : MARCH 18, 2021.

PRONOUNCED ON : JUNE 10, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The appellants in Criminal Appeal No. 136 of 1996 have been convicted by the learned IIIrd Additional Sessions Judge, Solapur in Sessions Case No. 122 of 1996 for the offences punishable under section 147, 148 and 326 read with 149 of Indian Penal Code and under section 135 of the Bombay Police Act and they are sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 1000 (each), in default, to suffer further rigorous imprisonment for 6 months, vide judgment and order dated 26th February 1996. The appellants preferred Criminal Appeal No. 136 of 1996. The substantive sentence of all the appellants was suspended by this Court vide order dated 18th March 1996. The appeal is abated against the respondent nos. 3, 4, 10 and 12.

2. Such of the facts necessary for the decision of both the appeals are as follows:-

a) On 13th December 1996 Subhash Yadavrao Patil, (PW.1) was taken to primary health centre in an injured condition. There was a brutal assault upon his right leg below the knee and he could not stand. He was admitted in the hospital by his nephew-Ramesh Gaikwad. Since he was seriously injured his statement was purportedly recorded under section 32 of the Indian Evidence Act. He had stated before the police that on 13th December 1993, Bhagwan Gaikwad, Appa Maruti Patil, Mahadeo Gaikwad and Popat Sitaram Gaikwad had mounted assault on him. After the assault Haibat Gaikwad, Mahavir Gaikwad, his brother Anna Gaikwad, Lahu Gaikwad, Bapu Patil and others had also assaulted him. There was previous enmity between them. He was unconscious for sometime. When he regained consciousness, he managed to reach upto the road and raised his voice. Upon hearing his cry, his nephew had reached the spot and had taken him to the police station and then to the hospital. The said statement is at 'Exhibit-

54'. On the basis of the said statement, Crime No. 23 of 1993 was registered at Tembhurni Police Station for offences punishable under section 147, 148, 149, 307 and 326 of Indian Penal Code. During the course of the treatment, his right forearm and right leg had to be amputated.

3. At the trial PW.7, Subhash Patil has deposed before the Court that he was acquainted with the accused since childhood, as they happen to be his kinsmen. That, there are two political groups in the village. One led by Baban Kirte and another by Bhagwan Gaikwad. In the previous Grampanchyat Election, PW.7 had contested election from Kirte's Group, which was declared victorious, after defeating the group of the accused no.1 and ever since then the accused were annoyed with him. Even prior to the election, there was a quarrel between Chandrakant Londhe and accused no.1. Criminal Cases were filed against each other and in the said case, PW.7 had stood surety for Chandrakant Londhe. That, prior to the incident dated 13th December 1993, the elections to the Co-operative Society were held. Rival Groups were Kokate's Group and the Group of the accused no.1. PW.7 had contested the election from Kokate's Group, which got majority.

Whereas, the group of the accused no.1 was defeated. The accused had nurtured grudge against the informant ever since then.

4. PW. 7 has further deposed before the Court that on 13th December 1993 he had been to Tembhurni for personal work. At about 5.30 p.m, he had left Tembhurni for Malegaon on a bicycle. On the way just near the village the accused no.4 i.e. Popat Gaikwad had followed him and had overtaken him. At that juncture, he saw a tractor on the same road coming towards him. He saw accused no. 4 in the light of the tractor and could see that he was holding a stone in his hand, whereas, accused nos. 1 to 3 were on the tractor. Since, PW.7 had threat perception from the accused persons. He left bicycle on the spot and started running, at that time the accused no.4 pelted a stone at him. The stone hit at his back. He then saw that the accused no.3 came from backside and gave blow of satur on his leg below left knee. However, since he was running, the blow had missed. He then saw the accused nos. 1, 3, 2, 4, 11, 10, 5, 6,7 and 8 pelting since in his direction. One of the stone hit his head. The pain was traumatic but he fell down. Accused no. 3 mounted upon his chest, whereas, accused no. 12 held him by his hands and accused no. 6 held his legs. Accused No. 3 was having the satur with which he gave a blow on his right leg

below knee. Accused no.12 gave a blow of sword on the same place. Thereafter, accused no.1, armed with sword gave another blow on his right leg. Hence, he could feel that his leg was almost mutilated. He had avoided the blow of sickle by accused no. 10 and had sustained the injury on the upper part of his right arm below the elbow.

5. At that juncture, the accused no.1 again gave a blow of sword on the right hand at the same place. At the time of incident the light of tractor were switched on. The grocery articles which he was carrying with him had scattered on the road. The accused heard the horn of another vehicle and fled from the spot. The injured had held his almost mutilated leg and moved towards the road by crawling and the same caused profuse bleeding. A driver of the tempo who was proceeding towards Malegaon from Bembale side noticed the injured on the road and stopped the Tempo. The Tempo was being driven by Ramesh Gaikwad (PW.15), a relative of PW.7. PW.7 narrated the incident to him. Ramesh had left the spot only to return with Sanjay Kokate in his truck, they had placed him in a truck and taken him to the police station Tembhurni.

6. Upon seeing his condition, the police referred PW.7 to

Primary Health Centre, Tembhurni where the statement of the injured was recorded by Dr. Pawale. He had narrated the whole incident to the medical officer. The medical officer at Primary Health Centre, Tembhurni referred the patient to Sassoon Hospital, Pune where he took the treatment. His right leg below the knee was amputated. He was at Sassoon Hospital for one and half month. He was then shifted to the hospital of Dr. Sancheti. His wife visited him on 15th December 1993 and informed him that Pandhari and Shankar were beaten by the accused soon after the incident. The statement of the injured was again recorded at Sassoon Hospital. He has also stated before the Court that the articles which were scattered on the road due to assault on him were vouchers of sugar factory, 8-A extract, light bill, coins, his cap, two currency notes of Rs. 2, his footwear, his bicycle and his bag. He has identified all the articles before the Court. The injured PW.7 was cross-examined at length.

7. In the cross-examination, it is admitted that Sanjay Kokate, who had reached him to the hospital is the grandson of his maternal uncle and that his brother Vikas is practising advocate at Pune. It is admitted that accused no. 1 was sarpanch of the village for 5 years and on one occasion he had filed a report at the police station, on the basis

of which PW.7 was arrested. It is also admitted that in the Grampanchyat elections which were held two months prior to the incident Sanjay Kokate had lost the election and the full panel of accused no. 1 was elected.

8. It is pertinent to note that he had admitted the suggestion in the cross-examination that after the incident, he had prosthetic arm and leg and therefore his ability to work has increased to such an extent that he can even drive a vehicle. The said suggestion was given to him when he had come to the Court without his prosthetic arm and leg only to gain sympathy from the Court. It is also admitted that he resides on the farmhouse and therefore visits Malegaon and that he owns 10 acres of agricultural land. It is also admitted that he had also assaulted his brother and therefore was in custody for 10 days and his father had refused to make any arrangements to get him released on bail. That he was prosecuting for assaulting accused no.1 in the year 1984 and he was arrested, whereas the accused no.3 has filed a private complaint against him for having been assaulted. Similarly, Ramkrishana Gaikwad had also lodged a report against him. According to him, the accused no. 1 was also assaulted. That in an incident of assault between Chandrakant Londhe party and accused no.1 party, he

had stood surety to two persons from Londhe's Group and that after elections he had filed a complaint against some of the accused persons. He has reiterated the whole of the incident in the cross-examination and has admitted that he was not aware as to how many people had pelted stone at him. But after he was assaulted he had become unconscious. He was lying at the spot for 5 to 7 minutes and he had not raised the shouts after the assailants had left. He had to crawl for about 20 to 25 feet for reaching the road. He had not called Ramesh or Aginath to take him on the road. He has denied the suggestion that he had informed the police in Sassoon Hospital that he was attacked in dark and could not identify the assailants. According to him, he had only disclosed the name of the assailants and weapons to Dr. Pawale but had not given any details. Despite a lengthy cross-examination the evidence of PW.7 has stood the test of truthfulness and genuineness.

9. The evidence of PW.7 is corroborated by the medical certificate issued by Primary Health Centre, Tembhurni, which shows the injuries as follows:-

- i. Sharp amputated cut over right lower leg 1/3rd. It was completely cut.
- ii. Incised wound over 1/2 above injury no. 1 front part, size 4 1/2" x 1/2".

- iii. Incised wound $\frac{1}{2}$ % above injury No.1 outer side, 1"x $\frac{1}{4}$ ".
- iv. Sharp amputated cut over 1" below right fore arm, middle part, arm completely cut.
- v. Incised abrasion left side back of ear $\frac{1}{4}$ " x $\frac{1}{4}$ ".

The said certificate is at 'Exhibit-59' and the same is proved by PW.8 -Dr. Vijay Upase, who was a medical officer at Primary Health Centre, Tembhurni in 1993.

10. He had deposed before the Court that on 13th December 1993, the police constable Khadatare of Tembhurni Police Station had brought PW.7 with covering letter. The original of the said letter is produced in the Court and marked at Exhibit-57. He had noticed the injury. According to him, the patient was serious and therefore, he had to refer the patient to the higher centre having better facilities. According to him, lower right leg was completely detached and severed and lower right arm was hanging by the skin. He had bandaged the injuries only to stop bleeding and cover the wounds. He is the scribe of that certificate. That, all the vessels of the veins were open and arteries of injury no. 1 and 4 were cut. There was profuse bleeding. That without immediate medical intervention the cumulative effect of all the five injuries would have resulted in the death. Injury no. 1 and 4 were dangerous to life.

11. It is admitted that Dr. Pawale, who is the Special Executive Magistrate had recorded the statement of the patient in his presence, as he was conscious and oriented to give the statement and the said statement is at 'Exhibit-54'. That, he had given endorsement on the said statement about the consciousness and orientation of the patient. He had identified the complainant in the Court.

12. PW.8- Vijay Upase had also examined Pandhari Patlu Gaikwad on the same day at about 8.00 p.m. He had found the following injuries:

- i. Amputation of left thumb and adjacent two fingers completely. Complete vessels, nerves were cut, size 5" x 2".
- ii. Sliced wound over left forearm, back and outer side of left form 6. 30 x 3" muscle, vessels and nerves cut.
- iii. Abrasion over left side of chest 6" x 1/4".
- iv. Abrasion over upper part of right arm.

13. All the injuries were fresh and bleeding. The said injuries were also fatal and in all probability could have been dangerous to the life of the patient. He had also identified the said person in the hospital and the said certificates are at Exhibit 62/1, 62/2. He had also examined Shankar Gaikwad on the same day at 9.50 pm. He had sustained the following injuries:-

- i. Incised wound over right side of scalp occipital region, middle 1 ½ " x 1 ½" x 1/4".
- ii. Incised wound extended from left base from middle finger and finger across full from front of palm. Size 4½" x 1½" x skin muscle deep.

They were also grievous injuries. The said certificates are at 64/1, 64/2. On 15th December 1993, he had examined 5 persons with history of injuries. Their certificates are from Exhibit 65/1, 65/5. It is denied that patient was unconscious and therefore his statement could not be recorded. The defence has failed to create any dent in the evidence of PW.8.

14. PW.9, Pandhari Gaikwad has deposed before the Court that there is political rivalry in the village and that when there was a quarrel between two groups, he along with PW.7 had stood surety for the accused who belonged to Kirte's Groups, which is the rival group of the accused in the present case. The entire family had supported Sanjay Kirte and therefore the accused persons had a grudge against them. That, on the day of incident he had been to the flour mill. While he was near the house of Narayan Lokare, he saw his son Shankar chatting with his nephew Maruti near the electricity pole. He saw Maruti returning to his house. There was a cart in front of the house of

Abba Lokare. All of sudden the accused nos. 3 and 4 who were waiting in an ambush, armed with weapons, mounted assault with a sickle which hit his left palm near thumb. All the three fingers were almost detached. Accused no. 4 mounted assault which hit his right thumb. 3rd blow by accused no.4 was on his chest and at that time the accused no.1 exhorted the others to give PW.9 the same treatment as was given to PW.7. He had barely reached the house when he heard that Shankar was also beaten and was taken to Tembhurni in a bullock cart by Narayan, Maruti and Parmeshwaran. He had reached the hospital in a Jeep driven by Bhau Koli. They had first approached the police station narrated the incident to the police. They were then referred to Civil Hospital, Solapur. Political rivalry is spelt out in the cross-examination also. According to him, the brother of PW.7 is the Police Patil of the village. That, post Grampanchyat Elections, there was no untoward incident or quarrel between his group and the group of the accused.

15. PW.10- Shankar Gaikwad is the son of PW.9. He has also spelt out the political rivalry and the entire episode in which he was assaulted with a sickle by accused nos. 5, 10, 11 and 9. According to him he had seen accused nos. 3 and 4 assaulting his father.

16. PW.11- Dr. Sachin Tapaswe had examined Subhash Patil (PW.7) on 14th December 1993. He examined him and found that his right leg was completely amputated, 8” below the knee. His right lower arm, 4” below elbow was also amputated and tied with his skin and therefore he had to give immediate life saving treatment. There was profuse bleeding and the possibility of the patient going into a shock could not be ruled out. Hence, the patient was operated on 14th December 1993. The lower right arm was completely amputated. Both the injuries were grievous. He had issued certificate which is at Exhibit-74. According to him, his statement was not recorded by the police. He has denied the suggestion that in case of profused bleeding for half an hour the patient would go into a shock. His testimony remains un-shattered.

17. PW.12. Dr. Audumbar Pawale had recorded the statement of PW.7. According to him, on the day of incident he had reached primary health centre, Tembhurni. Dr. Upase was present. The patient was full conscious and oriented, he has scribed the statement of PW.7 in the presence of medical officer Upase and the said statement is at Exhibit-54. According to him, the patient was gasping while he was talking in a loud tone. The said testimony remains un-shattered.

18. PW.15, Ramesh Gaikwad is the witness who had taken PW.7 to the hospital. According to him, on 13th December 1993, he had been to the weekly Bazaar at Akluj. He had purchased a Jersey Cow. He had hired a Tempo. He had 3 to 4 Cows in his Tempo. He had left Akluj at about 6.00 p.m. He had dropped the Cows at Village Shevre along with their owners and one Cow was to be dropped at Vitkarwadi. Rama Devkar of Vitkarwadi was the owner of the said Cow which was with him. They had taken Bembale road to reach Malegaon. They saw the injured lying on the road near the land of Nawale. He was lying at the junction where cart road leading to Tembhurni joins Malegaon-Tembhurni road. He stopped the Tempo upon seeing the injured and was shocked to see that the said injured was none other than his relative Subhash Patil i.e. PW.7. His right leg was cut and it was folded hanging with his left leg. His right arm was amputated and was bleeding. Upon enquiry, PW.7 had disclosed the name of the assailant as Bhagwan and his party men, and had requested him to save him. There was Cow dung and cow in the back portion of the Tempo and therefore he could not help PW.7 and instead went straight way to Kokate Vasti nearby and disclosed the said fact to Sanjay Kokate. Then requested Sanjay Kokate to arrange for bed in the truck and then they

left together. An empty truck of Kokate was taken to the place of incident. The injured was taken to the police station. The P.S.I. went to the injured and inquired with him and at that time in his presence PW.7 had specifically named accused no. 1, 3, 10, 11, 12 and others as assailants. He was taken to the primary health centre, Tembhurni and on medical advice had taken him to Pune. The Tempo which he was driving belonged to one Ingale but he was not driving the Tempo on that day. His testimony remains un-shattered. The defence has made a frail attempt to falsify the witness.

19. PW.16, Narayan Narsale is the witness to the subsequent incident, which had taken place at about 8.30p.m. in the village Malegaon, in which PW.9, Pandhari and PW.10 Shankar were assaulted by the accused. He has assertively stated that he had seen the accused nos. 1 to 4, 9, 12 and 5 in the village at the relevant time and he had seen them near the electricity pole where second incident had occurred. He along with others had arranged for a Jeep and brought the injured Pandhari and Shankar at the relevant time. That PW. 9 happens to be his relative and that he has admitted that he had not seen the assailant and neither he had informed the Police Patil or the Sarpanch of the village in respect of the said incident. He has denied

that the injured had disclosed the names of the assailants at the first instance.

20. PW.19, Ajay Jadhavrao had recorded the statement of PW.7 at Sassoon Hospital and had seized his bloodstained clothes. He had also attached the bloodstain clothes of the injured. The investigating officer was P.S.I., Jadhav who had first seen the injured in the truck and referred him to the hospital. The said fact is corroborated by PW.21. The head constable Ramesh Kulkarni had sent a letter to the Special Executive Magistrate, Dr. Pawale to record the dying declaration of injured Subhash Patil.

21. PW.22.-Chandrakant Jadhav was officiating as P.S.I. at Tembhurni Police Station. On 13th December 1993 while he was taking his night round at about 8.30 to 8.40 p.m.he came in front of the police station and found the truck bearing No. MWC 4733 in front of the police station and he had seen that the injured was kept in the truck. He had inquired with the injured who disclosed that on that day while he was returning from Malegaon to Tembhurni he was attacked and assaulted by accused nos. 1, 3, 10 and 12. According to him, the injured was in a critical condition. He had asked PSI, Kulkarni to refer the injured to Primary Health Centre, Tembhurni and issued a letter to

the Special Executive Magistrate to record his dying declaration. In fact, now it will be *res gestae* to treat it as a dying declaration and therefore, it is only a statement which set the law into motion. At the relevant time PW.22 was doubtful as to whether PW.7 would survive with such a grievous injury and therefore immediate steps were taken to to record the statement of PW.7. All the entries were taken in the station diary. Entry no. 19 pertains to the said incident and the same is Exhibited at 'Exhibit-125'. He went to the place of the incident which was disclosed by PW.7. He had been to the Malegaon at about 8.30 to 8.40 p.m. He saw some of the stones were stained with blood. He learnt about the assault on Pandhari and Shankar and that they were taken to Tembhurni. He had registered Crime No. 223 of 1993 against the accused. According to him, the scene of offence in which PW.7 was assaulted is Malegaon, Tembhurni Road. He had seized 11 articles lying on the scene of offence. The said articles were scattered in the area of 80 to 45 feet. He had also noticed the marks of the tyre of the tractor at the scene of offence. He had prepared a rough map on the basis of his observations from where he had left to village Malegaon. The scene of offence was shown by Maruti Patil and the scene of offence was near the electricity poll and the water tank, in the open space of 39 x 60 feet. He had noticed bloodstain on the earth as well as

on the stones. He had collected injury certificates of the accused. There was a recovery of the sickle at the instance of the accused no. 3 from the mound of sand. Both the weapons were stained with blood. From the residential house opposite his own house the accused no.3 had produced a black colour sandal of right foot and a shirt having three buttons which were stained with blood. A bicycle was recovered at the instance of accused no. 3 from a field of Jawar crop by the sight of Malegaon, Tembhurni. A sword and a sickle were recovered at the instance of accused no.4 from heap of mud under the babool tree. A truck was seized at his instance from the vasti of Manik Lokare and he had prepared a common panchnama. The truck belonged to Shivaji Patil and was returned to him on Supurtnama. PW.22 has proved the omissions and contradictions in the evidence of the witnesses. The said omissions and contradictions are immaterial.

22. The respective counsel appearing for the accused in Criminal Appeal No. 136 of 1996 have vehemently submitted that there were political rivalry and that the accused persons are falsely implicated by PW.7 at the instance of the rival group and hence his evidence would not inspire the confidence of the Court and no implicit reliance could be placed on the same. According to the counsel, in the

month of December the sunset was early and therefore, at about 6.00 to 6.30 p.m. there is no visibility and that PW.7 was assaulted by unknown persons. However, PW.7 was arrested in the past, on the basis of his report filed by accused no.1, he had falsely implicated them. The recovery of weapons, vehicle and bloodstain clothes of the accused has been rightly criticized by the respective counsel. Hence, the accused prayed for acquittal.

23. Per contra, the learned APP submitted that the accused are rightly convicted on the basis of sterling testimony of PW.7. That PW.7 was brutally assaulted at an isolated place and left to die due to profuse bleeding. It is submitted that the victim was left disabled for life by accused persons and therefore the act of accused need to be punished. It is also submitted that Section 326 of Indian Penal Code contemplates punishment upto life imprisonment and therefore the State had filed the appeal challenging the disproportionate sentence awarded to the accused and hence criminal appeal no. 674 of 1996 is filed by the State for enhancement.

24. The learned counsel Mr. Phanse appeared for the injured complainant submitted that the victim has not only been left disabled

for life but ever since the incident his potential and ability to work sufficiently for himself or for the family is almost diminished. That the complainant is living a life as disabled, he cannot efficiently give service to his family or the society and hence prayed for justice.

25. The facts narrated hereinabove, would show that the incident which occurred at Malegaon on 13th December 1993 at about 8.30 to 8.40 p.m. is unconnected to the incident of assault on PW.7 at about 6.00p.m. The said two incidents had not taken place in the course of the same transaction. However, there was no separate offence registered as far as the incident dated 13th December 1993, which had taken place at 8.30 to 8.40p.m. It would be futile to discuss about the recovery of weapons and vehicle since the weapon used by different accused persons were seized and recovered at the instance of accused no.3. Whereas, the cycle and the truck are seized at the instance of accused no.4.

26. In the present case, there is no doubt that the testimony of the victim is genuine and trustworthy as he could identify the accused. He has also clarified that he could see the faces and the actions of the accused in the light of the truck. That the accused and the victim were

so acquainted with each other, that he could have identified them by their physical constitution and their voices and therefore the submission that it was not possible for the victim to identify the accused is futile.

27. The act of the accused appears to be premeditated, the accused had kept watch on the victim and had almost followed him. The accused no.4 had overtaken the victim only with an intention to be able to give signal to the people following on the tractor. The accused nos. 6 and 12 had held hands and legs of the victim in order to facilitate the accused nos. 1, 3 and 10 to chop off his right hand and right leg. Accused no. 12 had also assaulted the victim with a sword and cut off his hand after accused nos. 1,3 and 10 had caused grievous injuries. That it would not possible for him to stand due to chopping of his leg below the knee. The brutality is apparent on the face of the record.

28. The injuries were not only brutal but the injured was left in such a critical condition that upon seeing him, PW. 22 had immediately arranged for recording his dying declaration by a Special Executive Magistrate. However, it would be only the strong Will of the victim that

he could survive till he reached the hospital. The intention to kill the victim is apparent on the face of the record. They had taken undue advantage of the situation and soon after that had also caused terror in the village Malegaon by assaulting the close relatives of the victim. Pandhari (PW.9) had stood surety to a person from the rival group. Similarly, his son Shankar-PW.10 was also assaulted. The accused seem to be determined to take revenge.

29. We are informed that the appeal is abated against accused nos. 3, 4, 10 and 12. In fact, there is no material to substantiate allegations against the original accused nos. 2, 5, 6,7, 8, 9 and 11. The learned counsel has rightly submitted that 12 persons could not have occupied a tractor without the trailer and in any case no overt act is attributed to them by PW.7 and hence they deserve to be acquitted.

30. It was the specific submission by the respective counsel appearing for the appellants that the incidence is of the year 1993 and that the appellants are on bail since 1996 and that, to revert them back to suffer substantive sentence would be unjustified after 23 years. However, the court cannot be oblivious of the fact that the complainant has survived in the hope of justice with a prosthetic arm and leg for all

these years and his hand and leg had to be amputated.

31. In the present case the accused are acquitted of the charges under section 307 and instead convicted for the offence under section 326 read with 149 of Indian Penal Code.

32. It would be appropriate to refer to the judgment of the Supreme Court in the case of *State of Madhya Pradesh v/s. Kashiram and Others*¹. The Hon'ble Apex Court has set aside the said judgment and held as follows:-

“To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof”.

33. In that case the Sessions Judge had convicted the accused for the offence punishable under section 307 read with section 149 of

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Indian Penal Code. Whereas the High Court had recorded the conviction under section 326 read with section 149 of Indian Penal Code which was reduced to the period already undergone and fine amount was enhanced to Rs. Twenty Thousand. In that case, on account of previous enmity the accused had held the victim and the lower backside of the left leg was chopped off.

34. In the present case also the accused, in fact, deserve conviction under section 307 of Indian Penal Code as the doctors have stated that in the absence of immediate medical intervention the injuries were sufficient in the ordinary course of nature to cause death. Making a person to live a vegetative life would almost amount to taking away his life and leaving him to survive, just to breathe. The victim is an agriculturist, it would be impossible for him to execute agricultural operations without the help of a 3rd person and therefore the accused no.1 who claims to be a political rival of the victim deserves to be convicted and undergo a sentence which would be proportionate to the offence committed by him.

35. The victim has been crippled for life. It is true that he is pursuing his daily chores with a prosthetic arm and leg but he has lost

his vital organs of his body. The doctors who had examined PW.7 have clearly stated that in the absence of immediate treatment, the death was certain. There is no reason to doubt the testimony of the victim which is duly corroborated by the PW. 8.

36. The allegations of assault causing amputation is attributed only to accused nos. 1,3,4,10 and 12 hence the accused nos. 2,5,6,7,8,9 and 11 deserves to be acquitted under section 326 of Indian Penal Code.

CRIMINAL APPEAL NO. 674 OF 1996

37. The State of Maharashtra has filed Criminal Appeal No. 674 of 1996 challenging the inadequacy of sentence imposed upon the accused and has prayed for enhancement of sentence, by contending that the sentence imposed upon the accused is unjustifiable and that it deserves to be enhanced.

38. The learned Judge has acquitted the accused of the charge under section 307 of Indian Penal Code by holding that the accused had caused grievous injury by dangerous weapons. However, the

prosecution has not challenged the acquittal of the accused for the offence punishable under section 307 of Indian Penal Code but is seeking enhancement of the sentence imposed upon by the court under section 326 of Indian Penal Code.

39. According to the learned APP, the offence punishable under section 326 of Indian Penal Code in cases like the present one is imprisonment for life or with imprisonment of either description for a term which may extend to 10 years. The offence is of the year 1996.

40. That, according to learned APP the accused nos. 1,3,4,10 and 12 had assaulted PW.7 with dangerous weapons and had almost attempted to commit murder of PW.7. The act of the accused was premeditated and the cause for assault is only political rivalry.

41. It is the contention of the learned APP that the other accused also i.e. accused nos. 2,5,6,7,8,9 and 11 had also conspired and therefore they ought to have been convicted with the aid of section 120 (b) of Indian Penal Code.

42. In an appeal against conviction, this Court in Criminal Appeal No. 674 of 1996 has acquitted the accused nos. 2,5,6,7,8,9 and 11 upon analyzing meticulously the evidence of PW.7, the injured. As

far as the accused nos. 1,3,4,10 and 12 is concerned, this Court held that the accused no. 1 shall suffer rigorous imprisonment of 5 years and shall pay Rs. Two lakh to the victim, failing which he shall undergo further imprisonment for two years.

43. The Supreme Court in the case of **State of Madhya Pradesh v/s. Kashiram and Others** referred to in Criminal Appeal No. 674 of 1996 has set aside the judgment of the High Court and has recorded conviction under section 307 of Indian Penal Code. However, in the present case the prosecution has not challenged the acquittal under section 307 of Indian Penal Code and therefore the appellant No. 1 is convicted for the offence punishable under section 326 of Indian Penal Code in Criminal Appeal No. 136 of 1996. Hence, the present appeal is dismissed.

ORDER

- i) The Criminal Appeal No. 674 of 1996 is dismissed.
- ii) The appeal No. 136 of 1996 is partly allowed.
- iii) The appellant No. 1 is sentenced to suffer rigorous imprisonment for five years with a fine of Rs. 10,000/- and

compensation under section 357 of Code of Criminal Procedure of Rs. Two lakhs as a monetary compensation to the victim.

- iv) The appeal of appellants (Original accused) nos. 2, 5,6,7,8,9 and 11 stands allowed. They are acquitted of all the charges levelled against them. They be released forthwith if not required in any other case.
- v) Their Bail bonds stand cancelled.
- vi) The appellant No. 1 shall surrender within eight weeks to serve the rest of the sentence and fine amount to be paid within eight weeks.
- vii) In default to pay compensation amount within eight weeks, the accused shall undergo a sentence of two years further in addition to five years and he shall not be entitled to remissions.
- viii) The appellant (original accused) no. 1 is entitled to set off for the period already undergone.
- ix) Both the appeals are disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)