

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

CRIMINAL APPEAL NO.129 OF 1999

Shivaji Narayan Ingawale

...Appellant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Tejpal S. Ingale for the Appellant

Mr. S.V. Gavand, APP for Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th DECEMBER, 2021.

ORAL JUDGMENT :-

1. This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 filed by the aforesaid Appellant challenging the judgment and order dated 26/2/1999 in Sessions Case No.114 of 1995, Sangli.

2. By the impugned judgment, learned Additional Sessions Judge, Sangli, held the Appellant (hereinafter referred to as 'accused') guilty of offences punishable under Sections 307 and 324 of the IPC and sentenced him to undergo rigorous imprisonment for 7 years with fine of Rs.3,000/- i/d. rigorous imprisonment for 9

months for offences punishable under Section 307 r/w. 34 of the IPC and rigorous imprisonment for 3 years with fine of Rs.2,000/- i/d. rigorous imprisonment for 6 months in respect of offence punishable under Section 324 of the IPC. The accused is also convicted for offence punishable under Section 447 of IPC but no separate sentence has been imposed.

3. The charge against the accused was that on 05/01/1995 the accused alongwith other co-accused Nagesh criminally trespassed into the house of Bhagwan Ingavale. It is alleged that accused gave a blow of sickle on the neck of Bhagwan and caused grievous injury to Bhagwan. The accused is also alleged to have inflicted injuries on PW5-Saraswati @ Sarubai and PW2-complainant-Hanmant Ingawale by means of a sickle. Pursuant to the FIR lodged by Hanmant, crime was registered against the accused and the other co-accused-Nagesh Ingawale for the offences punishable under Sections 307, 324, 452 r/w. 34 of IPC. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined 13 witnesses. The statements of the accused and co-accused were

recorded under Section 313 of Cr.P.C. The learned Judge upon evaluating the evidence adduced by the prosecution acquitted the co-accused-Nagesh Ingawale and convicted and sentenced the accused as stated above. Being aggrieved by the judgment, the accused has filed this appeal.

4. Heard Mr. Tejpal S. Ingale, learned counsel for the accused and Mr. S.V. Gavand, learned APP for Respondent-State. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

5. The evidence on record indicates that there was an open space between the house of the Complainant and the house of the accused. There was a dispute amongst them over the said open space. On 05/01/1995 the accused was raising construction in the said disputed portion of the land. He had fixed iron bar and a door frame, which were opening towards the house of the Complainant. PW9- Mahadev Ingwale lodged a complaint against the accused for trespassing into their property. The police called the accused and

warned him not to interfere in the property. Infuriated by this the accused has committed the alleged offence.

6. In this regard, PW2-Hanmant Ingwale, Complainant has deposed that on 5/1/1995 at about 6.00 p.m. the accused came to their house armed with a sickle. He gave a blow of sickle on the neck of his father PW3-Bhagwan. As a result, his father sustained bleeding injury and fell down. PW2 has deposed that the accused also gave sickle blows on his mother- PW5- Sarasawati and thereafter rushed towards the wife of his brother-Pandurang. PW2 has deposed that he also sustained injury on his right hand fingers. When he shouted for help, his cousin PW8-Babasaheb came to the place of incident. The accused also gave a blow of sickle on the right lower arm of PW8.

7. PW3 -Bhagwan Ingawale has also deposed that on the relevant date while he was standing near the door of his house, accused came to his house armed with a sickle and had given a blow of sickle on his neck and as a result he sustained injury.

8. PW9-Mahadev Ingawale, deposed that on the relevant

date at about 8 p.m. to 8.30 p.m. he heard some shouts towards the house of PW3-Bhagwan Ingawale. He went to their house and saw that PW3 and his wife PW5-Saraswati were lying in injured condition. He has deposed that accused was present at the place of the incident with a sickle in his hand. He has deposed that on seeing him, accused rushed towards him and gave a blow of sickle on his head. He tried to avoid the second blow, but it hit his finger. As a result of which tip of his ring finger was cut. Accused No.1 gave third blow on his left shoulder.

9. PW5-Saraswati @ Sarubai is the mother of Complainant. She has deposed that on the relevant date at about 8.00 p.m. the accused came to their house armed with a sickle and gave a blow of sickle on the neck of her husband-Bhagwan. She has deposed that she and her son PW2-Hanmant pushed the accused, at which time the accused gave blow of sickle over her waist. She held that sickle by right hand but the accused snatched away the sickle from her hand and gave another blow on her waist. She has deposed that she had sustained bleeding injury as a result of the said incident.

10. PW8 -Babasaheb Mahadev Ingawale has also deposed that on 05/01/1995 at about 8.15 p.m. while he was outside his house, he saw the accused proceeding towards the house of PW3- Bhagwan. He heard someone shouting in the house of Bhagwan. He went to the place of incident and saw the accused with a sickle in his hand. He has deposed that PW3 had fallen on the ground. When PW8 tried to snatch the sickle from the hands of accused, he gave a blow of sickle on his left arm. He has deposed that on hearing the commotion, his father PW9-Mahadev Ingawale had come to the place of the incident. The accused gave a blow of sickle on the head and left shoulder of his father.

11. The evidence of Complainant and these injured witnesses clearly indicate that the accused was armed with a sickle and that he had inflicted injuries on them.

12. The injured persons were examined by PW4-Dr. Vinod Prabhu. His deposition reveals that on 05/01/1995 he was on duty

as M.O. at General Hospital, Sangli. The police had referred the injured PW3-Bhagwan Ingawale, PW8- Babasaheb Ingwale, PW9- Mahadev Ingawale, PW5-Saraswati Ingawale and PW2- Hanmant Ingawale for medical examination with history of assault. He examined the said injured persons. The evidence of this witness vis-a-vis the hurt certificates at Exhibits 15 to 19 prove that the injured had following injuries :-

- i) Bhagwan Ganpat Ingawale- incised wound in sub occipital region extending from just below ear lobules on either sides measuring 25 cms. X 4 cms. X spine deep. The age of the injury was within 6 hours and the same was caused by means of a sharp and cutting object. There was a fracture of spine and 'x' ray was taken and that the 'x' ray report reveals that there was fracture of spinous process cervical second vertebral body. The said injury was sufficient to cause death in the ordinary course of nature. The patient was operated immediately at about 11.p.m. and on 9/1/1995 he was once again operated for the same

wound. He has produced the hurt certificate at Exhibit 15.

- (ii) PW8- Babaso Mahadev Ingawale- incised wound over left ulna middle 1/3 ulna border 5x1 cm muscle deep. Age of the injury was within 6 hours and it was caused by a sharp object.
- (iii) PW9-Mahadev Ingawale- (a) Incised wound with skin flat left shoulder tip 10x2 cm muscle deep. (b) Incised wound left parietal region 10x 1 cm. into skull deep. Age of the injuries was within 6 hours, caused by sharp weapon.
- (iv) Saraswati Bhagwan Ingawale – (a) Incised wound left ilia 25 cm x 2 cm to bone. (b) Incised wound right hand half circle base of the thumb volar aspect 10 cm x 1 Cm Tangential skin flap present. (c) Incised wound on left buttock 2 cm x 1 cm. to muscle deep. Age of the injuries was within 6 hours. The injuries were caused by cutting object.

(v) PW2- Hanmant Bhagwan Ingawale- (a) Incised wound right index finger-pulp space chopped off obliquely. (b) Incised wound right little finger volar tip tangential skin flat 2 cm. Age of injuries was within 6 hours and were caused by sharp and cutting object.

13. The evidence of the injured witnesses proves that the accused had inflicted injuries by means of a sickle. The evidence of this injured witness is reliable and cannot be discarded for want of corroboration by independent witnesses. In *Abdul Sayeed v/s. State of M.P., (2010) 10 SCC 259*, the Apex Court has held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with inbuilt guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone else. It is held that convincing evidence is required to discredit an 'injured witness'. These principles are reiterated in the case of *State of U.P v/s. Naresh and ors., (2011) 14 SCC 324*.

14. In the instant case, the injured witnesses have emerged as

truthful and reliable witnesses. Nothing is brought on record to impeach their credibility. Moreover, the evidence of the injured witnesses is also corroborated by the medical evidence. As regards the nature of offence, the evidence on record reveals that the accused had inflicted injuries by a sickle which is a sharp weapon. The injury inflicted on PW3- Bhagwan Ingawale was on the vital part of the body. The fact that Bhagwan had sustained a fracture of spine also shows that the impact was severe. Doctor has also opined that the said injury was sufficient to cause death in ordinary course of nature. The nature of the weapon, the part of the body on which the injury was inflicted, the severity of the blow are the circumstances, which prove beyond reasonable doubt that the accused had inflicted injuries on Bhagwan, if not with an intention at least with knowledge that the said injury would cause his death and thus bring the offence within the ambit of Section 307 of IPC. Hence no case is made out to interfere with the conviction recorded by the Trial Court.

15. The accused is sentenced to undergo rigorous imprisonment for 7 years. Learned counsel for the accused states that the accused is presently 86 years of age and is partially

paralysed. Learned APP was earlier directed to verify the said statement. He has placed on record report submitted by Tasgaon Police. The report indicates that the accused is of advanced age and is bed ridden with paralysis. It is also stated that the injured- Bhagwan (PW3) and his wife- Saraswati (PW5) have also expired.

16. Considering the above facts and circumstances, in my considered view it would be just and proper to reduce the sentence to the sentence already undergone and to increase the fine amount to Rs.25,000/-, to be deposited before the Trial Court within a period of four weeks from the date on which this order is uploaded. The Trial Court to pay the fine amount as compensation to the injured - Hanmant Bhagwan Ingawale (PW2).

17. Under the circumstances, the conviction of the accused under Section 307 is maintained. The sentence of imprisonment imposed on the accused is reduced to the sentence already undergone. Fine amount is increased to Rs.25,000/- to be paid as compensation to PW2-Hanmant Bhagwan Ingawale, son of Bhagwan and Saraswati.

18. The appeal stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

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