

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

CRIMINAL APPEAL NO. 598 OF 1997

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| 1. Eknath Dnyanu Patil | |
| 2. Krishna Bapu Patil | |
| 3. Balasaheb Nana Patil | Appellants |
| v/s. | |
| 1. The State of Maharashtra | |
| 2. Pandit Shankar Patil | |
| 3. Bhivaji Aakaram Patil | Respondents |

Mr. Ganesh Gole a/w. Mr. Viraj Shelatkar for the Appellants.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th DECEMBER, 2021.

ORAL JUDGMENT :-

. This is an Appeal under section 374 of Cr.P.C. challenging the judgment dated 04/10/1997 in Sessions Case No.15/1997.

2. By the impugned judgment, the learned 3rd Additional Sessions Judge, Kolhapur has held the Appellants - original accused nos.1 to 3 (hereinafter referred to as 'the accused') guilty of offence under section 307 r/w. 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years with fine of Rs.2,000/- in default rigorous imprisonment for six months.

3. PW1 – Raghunath Ramchandra Patil had lodged the complaint dated 04/08/1996 at CPR Police Chowki, Kolhapur. This complaint was forwarded to Juna Rajwada Police Station, Kolhapur by Lakshmipuri Police Station, Kolhapur after registration of the Crime No.00/96 for offence under section 307 r/w. 34 of IPC. Upon receipt of the FIR, Juna Rajwada Police Station registered the C.R.No.107/1996. It is the case of the complainant that on 04/08/1996, he had gone to the house of his maternal uncle. When he reached near Gram Panchayat office, he saw one Shankar Pandit threatening his cousin - Pandit Shankar Patil. Said Shankar Dhondi Patil went away on seeing the complainant. He has stated that he was informed that earlier there was quarrel between them but the same was later resolved. He has stated that he along with his uncle – Bhivaji Aakaram Patil and his cousin – Pandit Shankar Patil proceeded towards Karveer Police Station. When they reached near ST stand at Rankala, the accused no.1 hurled a stone and caused a head injury to Bhivaji Patil. The accused also to have assaulted Pandit Shankar Patil with a stick. Hence, he lodged the first information report against the accused and one Pandit Bapu Patil (accused no.4) for attempting to cause their murder.

4. Crime was investigated by PW9 – Bhimrao Aakaram

Chache, Police Inspector, Juna Rajwada Police Station. He referred the injured to the medical hospital, recorded their statements, conducted the scene of offence panchanama, seized the incriminating material and upon completion of investigation, filed the charge sheet against the accused nos.1 to 4 for offence under section 307 r/w. 34 of IPC.

5. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case, examined 09 witnesses. Statement of the accused were recorded under section 313 of Cr.P.C. The case of the accused was of total denial and of false implication. The learned Judge, upon considering the evidence adduced by the prosecution, acquitted the accused no.4 and held the accused nos.1 to 3 guilty and convicted and sentenced them as stated above. Being aggrieved by the conviction and sentence, the accused have preferred this Appeal.

6. Heard Mr. Ganesh Gole, learned counsel for the accused and Mr. S.V. Gavand, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. The evidence of PW1 – Raghunath Patil reveals that on 04/08/1996, he had visited his maternal uncle at village Khatangale. When he reached near Gram Panchayat office, he saw Shankar Dhondi Patil assaulting his cousin – Pandit Shankar Patil. Some persons present at the spot intervened and thereafter, Pandit Shankar Patil and Shankar Dhondur Patil went to their respective houses. He later saw the accused and Shankar Dhondi Patil proceeding towards the house of Pandit Shankar Patil with sticks and axe. He informed this to his maternal uncle. They were unable to report the incident to Karveer Police Station since the telephone lines were out of order. Hence, they proceeded to Karveer Police Station to lodge the complaint regarding the said incident. When they reached near ST bus stand at Rankala, the accused no.1 pelted a stone towards Bhivaji Aakaram Patil (PW4) as a result said Bhivaji sustained head injury. He has further deposed that accused nos.2 and 3 gave blows of sticks on the left ear of Pandit Shankar Patil (PW2) and accused no.4 gave a blow of stick on the back of Bhivaji Aakaram Patil. He has deposed that the injured were taken to CPR hospital for treatment. In his cross-examination, he has stated that the accused no.1 had pelted stone at Bhivaji from a distance of about 2 feet. He has admitted that the accused and the family of his uncle – Pandit Shankar Patil are in inimical terms. He has denied the

suggestion that the accused were not involved in causing injuries to Pandit Shankar Patil and Bhivaji Patil.

8. PW2 – Pandit Shankar Patil is one of the injured. He has deposed that there is a property dispute between the accused and his family. On the relevant date, at about 07:00 a.m., while he was returning home, one Shankar Dhondu Patil assaulted him. Later in the day, the complainant informed them that the accused were coming to their house armed with sticks. They proceeded towards Karveer Police Station to lodge the complaint. When they reached the ST stand at Rankala, they saw the accused armed with sticks. He has stated that the accused no.1 pelted a stone toward Bhivaji Patil as a result of which he sustained head injuries. He has stated that the accused no.3 gave a blow of stick on his left ear due to which he became unconscious.

9. PW4 – Bhivaji Aakaram Patil is also an injured witness. He has also referred to the quarrel between Pandit Shankar Patil and Shankar Patil on 04/08/1996. He has deposed that subsequently, they were told that the accused were coming towards their house armed with sticks. They decided to lodge a complaint and proceeded to Karveer Police Station. When they reached at Rankala ST stand, they

saw the accused no.1 with a stone and accused nos.2 to 4 armed with sticks. He has stated that the accused no.1 flung a stone at him which hit against his head and he sustained head injury. He has stated that the accused nos.3 and 4 also assaulted him with sticks. He fell on the ground and became unconscious.

10. The evidence of PW10 – Dr. Shrish Powar reveals that he had examined PW2 and PW4 on 04/08/1996. The evidence of this witness viz-a-viz hurt certificates at Exhibits – 51 and 52 proves that Bhivaji Patil had sustained CLW over the rt. frontoparital aspect of skull, measuring 7.5 cm x 0.5 cm x 0.5 cm and was muscle deep. X-ray showed fracture of skull. The age of the injury was stated to be within 12 hours. The Doctor had opined that the injury was caused by hard and blunt object and was of grievous nature.

11. The evidence of PW10 further indicates that PW2 – Pandit Shankar Patil had contusion with heamatoma 2 cm. in diameter over left mastoid with tenderness and bleeding through the left ear. The injury was caused by hard and blunt object and the age of the injury was within six hours. He has opined that there was no fracture to skull.

12. The evidence of the injured witnesses which is duly corroborated by medical evidence proves that the accused had gathered near the ST stand at Rankala and had caused head injury to PW2 by hurling a stone and also caused injuries to PW2 by assaulting him with sticks. 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***.

13. In the instant case, the evidence of the injured witnesses is reliable and trustworthy. Moreover, the evidence of these witnesses is also corroborated by medical evidence. Hence, there is no reason to disbelieve and discard the testimony of these witnesses, which amply proves that the accused herein had inflicted injuries on them.

14. The next question is whether the injuries inflicted by the accused fall within the ambit of section 307. It may be noted that to constitute an offence under section 307, it is essential to prove that the accused had intention to cause death or that he had knowledge that by his act, he may cause death of the injured. The intention and knowledge can be gathered from the surrounding circumstances such as the nature of the weapon used, severity of the blow, part of the body where injury is inflicted, etc. In the instant case, section 307 is invoked because of the head injury caused by the accused no.1 to Bhivaji Aakaram Patil. The evidence on record reveals that a stone hurled by the accused no.1 had hit against the head of PW4 and he had sustained grievous injury. The evidence on record does not indicate whether the accused had come armed with a stone or whether he had picked a stone which was lying at the spot. There is also no cogent proof as regards the size of the stone. The evidence on record also does not indicate that the accused no.1 had aimed the stone at the head and/or he had intention of causing head injury or injury on vital part of the body. It is also relevant to note that the accused no.1 had inflicted a single injury on PW4. The accused had not inflicted any other injury on PW4 or others even after he fell unconscious. These circumstances indicate that their intention was not to cause death but was probably to

cause a bodily injury because of the previous enmity. The prosecution has therefore failed to establish the essential ingredients of offence under section 307 of IPC. Consequently, the accused cannot be held guilty of offence under section 307 of IPC. The nature of the injuries and the surrounding circumstances indicate that the accused had voluntarily caused grievous hurt to PW4 – Bhivaji which constitutes offence under section 325 of IPC.

15. The records reveal that the alleged incident had occurred in the year 1997. The complainant and PW4 – Bhivaji Patil have filed their affidavits stating that the dispute between them is resolved and there is no enmity between them. Similar affidavit was filed before this Court by the other injured – PW2 – Pandit Shankar Patil. It is stated that the accused were in custody for 21 days. Considering that the incident had occurred more than two decades ago and during the interregnum period, the relations between the parties have become cordial, in my considered view, it would be just and proper to reduce the substantive sentence to the period already undergone.

16. Under the circumstances and in view of discussion supra, the Appeal is partly allowed. The conviction of the accused for offence

under section 307 r/w. Section 34 of IPC is quashed and set-aside. The accused are held guilty of offence under section 325 r/w. 34 of the Indian Penal Code. The substantive sentence imposed against the accused by the 3rd Additional Sessions Judge, Kolhapur in Sessions Case No.15/1997, is reduced to the period already undergone. The Appeal stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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