

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 549 OF 2002**

The State of Maharashtra ... Appellant
V/s.
1. Raghunath Dattatray Salokhe (Abated)
Age 55 yrs., Occ. Agri.
R/o. Shendur, Tal. Kagal,
Dist. Kolhapur.

2. Sanjay Raghunath Salokhe
Age 24 yrs.

3. Uday @ Anand Raghunath Salokhe
Age 26 yrs.
Both R/o. Shendur, Tal. Kagal,
Dist. Kolhapur. ... Respondents

Ms Geeta P. Mulekar, APP the Appellant/State.
Mr. Shekhar Ingawale for Respondent Nos.2 and 3.

**CORAM : PRASANNA B. VARALE &
N.R. BORKAR, JJ.
DATE : 11.8.2021**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State takes an exception to the judgment and order dated 1.6.2001 passed by the learned Special Judge, Kolhapur in Special Case No. 31 of 1998.

2] In the abovesaid special case, respondent Nos.1 to 3, who were accused Nos.1 to 3 respectively before the trial court, were tried for the offences punishable under sections

307 and 337 read with 34 of the Indian Penal Code, 1860 (for short "IPC"), section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC & ST Act"), section 7(1)(d) of the Protection of Civil Rights Act, 1955 (for short "PCR Act") and section 3 read with 25 of Arms Act, 1959 (for short "Arms Act"). By the impugned judgment and order, the trial court convicted the accused No.1 for the offence punishable under section 324 of the IPC and to accused Nos.2 and 3 for the offence punishable under section 337 read with 34 of the IPC. The trial court has, however, instead of sentencing the accused Nos.1 to 3, extended them benefit of provisions of the Probation of Offenders Act, 1958.

3] The present appeal is filed against the acquittal of the accused/respondent Nos.1 to 3 for the offence punishable under sections 307 of the IPC, section 3(1)(X) of the SC and ST Act, section 7(1)(d) of the PCR Act and section 3 read with 25 of Arms Act.

4] Respondent No.1/accused No.1 died during pendency of the appeal. Appeal, thus, stands abated *qua* respondent No.1/accused No.1 (Raghunath G. Salokhe).

5] PW-3 Vijay G. Mane was residing with his family at village Shendur, Tal. Kagal, Dist. Kolhapur. His brother PW-1 Shrikant Mane was residing separately in adjoining house. PW-1 and PW-3 belongs to caste Chambhar which is

recognised as scheduled caste. According to the prosecution, the accused do not belong to either scheduled caste or scheduled tribe.

6] The incident took place on 28.6.1998. On the day of incident, at about 8.30 a.m., son of PW-3 namely Dilip accidentally gave dash of motorcycle to accused No.2 while he was taking out the said motorcycle out of his house. It is alleged that at that time the accused No.2 threw stone at Dilip, which hit on his leg. It is alleged that on hearing commotion, PW-1 Shrikant came there and he tried to pacify the accused No.2. It is alleged that the accused No.2, however, instead of getting pacified started abusing PW-1 on his caste. With the intervention of the villagers, the quarrel was resolved.

7] It is the case of the prosecution that on the same day, at about 10.00 a.m., PW-1 was coming to the house of his brother PW-3 from Sai Hotel. The accused No.1 met him on the way while PW-1 was near the house of PW-3. It is alleged that accused No.1 started abusing PW-1 on his caste. It is alleged that accused No.1 then took out the pallet gun and fired at PW-1 due to which he sustained injuries. It is alleged that accused Nos.2 and 3 came there and at that time they were armed with sticks. It is alleged that accused Nos.2 and 3 threw stones at the house of PW-3, due to which PW-3 and his mother Yamunabai sustained injuries.

8] The report in relation to the incident was lodged by PW-3. On the basis of said report, crime was registered against the accused. On completion of investigation, the charge-sheet was filed against the accused Nos.1 to 3 for the offences punishable under sections 307 and 337 read with 34 of the IPC, section 3(1)(X) of the SC and ST Act, section 7(1)(d) of the PCR Act and section 3 read with 25 of Arms Act.

9] The accused were charged and tried for the above mentioned offences. As stated earlier, the trial court by the impugned judgement and order convicted accused No.1 for the offence punishable under section 324 of the IPC and accused Nos.2 and 3 for the offence punishable under section 337 read with 34 of the IPC and acquitted them of rest of the offences.

10] We have heard the learned APP for the appellant/ State and the learned counsel for respondent Nos.2 and 3/accused Nos.2 and 3.

11] According to PW-1 Shrikant Mane, on the day of incident at about 8.00 to 8.30 a.m., he heard the commotion in front of house of his brother Vijay (PW-3). He went there and saw that accused No.2 was quarreling with Dilip, the son of his brother Vijay. The reason for quarrel was dash of motorcycle given by Dilip to accused No.2. According to PW-1, he tried to pacify the accused No.2. The accused No.2 however, instead of getting pacified abused him on his caste. According to PW-1,

accused No.2 threw stone at Dilip, which caused injury to his left leg. Meanwhile, his mother came there. Accused No.2 rushed towards his mother and slapped on her face. The villagers namely Bapu Powar and Prakash Bapu Mane came at the place of incident and with their intervention, the quarrel was resolved.

12] According to PW-1, on the same day at about 10.00 a.m., the accused No.1 met him on the way while he was coming to the house of his brother Vijay (PW-3) from Sai Hotel. Accused No.1 abused him on his caste. According to PW-1, accused No.1 was having one countrymade pistol. Accused No.1 fired at him from the said pistol. He was hit by pellets fired from the said pistol. According to PW-1, accused Nos.2 and 3 came there and then they started pelting stones at the house of his brother Vijay (PW-3). His mother, who was residing with his brother Vijay, was hit by stones thrown by accused Nos.2 and 3.

13] In the cross-examination conducted on behalf of the accused, PW-1 has admitted that he has not stated to the police about the incident of pelting of stones by accused Nos.2 and 3 at the house of his brother Vijay. He has further admitted that he has not stated to the police that his mother sustained injury.

14] The evidence of PW-3 Vijay Mane, the brother of PW-1, is similar to the evidence of PW-1.

15] It is apparent from the evidence of PW-1 and PW-3 that accused Nos.2 and 3 were not with accused No.1 when the incident of alleged firing took place. Therefore, no common intention can be attributed to accused Nos.2 and 3 in relation to the said incident of alleged firing by accused No.1. The only allegation against accused Nos.2 and 3 is that they came to the place of incident and pelted stones at the house of PW-3. However, PW-1 has admitted that he has not stated the said fact in his statement to police. Apart from it, according to PW-1 and PW-3 their mother was hit by the stone. However, she has not been examined.

16] Apart from above, PW-8 Dr. Manishi Nagaonkar, the doctor who treated PW-1 has admitted that all the injuries on the person of PW-1 were superficial with no bleeding.

17] No charge is framed against accused No.2 in relation to first incident which took place at 8.30 a.m.

18] Considering overall facts and circumstances, we are not inclined to interfere with the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(PRASANNA B. VARALE, J.)