

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

CRIMINAL APPEAL NO.732 OF 1997

Mahadu Dhavalya Govind

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Ms Savita Yadav for the Appellant appointed from Legal Aid Panel.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th DECEMBER, 2021.

ORAL JUDGMENT:-

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated 30/09/1997 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.209 of 1993.

2. By the impugned judgment, the learned Judge held the Appellant (accused No.2) guilty of the offences punishable under Section 326 of the IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.500/-

i/d. to suffer further rigorous imprisonment for a period of two months.

3. Brief facts necessary to decide the appeal are as under:-

PW1-Dhavlya Govind had lodged the FIR on 03/09/1992 (Exhibit-11) alleging that the Appellant (hereinafter referred to as 'accused') and the other co-accused had assaulted his brother Dhakal Govind and Vasand Govind (PW2). Pursuant to the said FIR, ASI-Vinayak Waghchoure (PW8) attached to Jawhar Police Station registered crime No.38 of 1992 initially for offences punishable under Sections 324, 323, 504 and 506 r/w. 34 of the IPC. Said Dhakal expired on the next day while undergoing treatment at Government Dispensary, Nashik. Hence, section 302 of the IPC came to be added. PW11- PSI Raghav Bhoir referred the body for post mortem, recorded statement of witnesses, conducted the scene of offence panchanama, seized the weapon of offence and upon completion of investigation filed the charge-sheet against the accused and other co-accused for offences punishable under Sections 302 and 324 r/w 34 of the IPC.

4. Charge was framed and explained to the accused. They pleaded not guilty and claimed to be tried. Prosecution in support of its case examined 11 witnesses. Statements of the accused and other co-accused were recorded under Section 313 of the Cr.P.C. The defence of the accused was that of denial and false implication.

5. The learned Judge upon appreciating and analysing the evidence on record held that the prosecution has failed to prove that the death of Dhakal was homicidal. The learned Judge discarded the evidence of PW2-Vasant, who was allegedly injured in the said incident. Relying upon the evidence of PW1, learned Sessions Judge held the accused guilty of offence punishable under Section 326 of the IPC and acquitted the other accused of all the offences. This judgment is under challenge in the present appeal.

6. The Appellant is not represented by any Advocate despite opportunity given. Since the appeal is of the year 1997, Ms Savita Yadav, who is on the Legal Aid Panel is appointed to represent the Appellant.

7. Heard Ms Savita Yadav, learned counsel for the Appellant and Mr. S.V. Gavand, learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The case of the prosecution was that on 03/09/1992 the deceased Dhakal had gone to his paddy field to graze the cattle. The accused and his family members alleged that his cattle had destroyed their paddy. This led to an altercation and incident of assault, wherein the accused gave a blow of stick on the deceased while the other accused held and assaulted him by kicks and blows.

9. The prosecution in support of its case had examined four eye witnesses. PW5, one of the eye witnesses did not support the case of the prosecution. The trial Court has discarded the ocular evidence of PW2 and PW4 and has based the conviction solely on the testimony of PW1, the brother of the deceased.

10. PW1 claims that he was in the field at the time of the incident and had seen the accused assaulting Dhakal. PW2 does not mention about his presence at the scene of offence but claims that he and his father Dhakal were the only persons present in the field at the time of the incident. PW2 had denied that his paternal uncle Shankar had informed him of the incident. He had denied having stated in his statement under Section 161 of Cr.P.C. that he and PW1 had been to the place of the incident on hearing shouts of his uncle Shankar and that Shankar had informed them about the incident. This material contradiction, which has been proved through the investigating Officer, clearly suggests that PW1 and PW2 had reached the place of the incident only after hearing shouts of Shankar and that Shankar had informed them about the incident. The inconsistency in the evidence makes the presence of PW1 in the field doubtful. The evidence of PW1 also indicates that the deceased was also assaulted by accused No.1 Valya. The stick allegedly used by Valya in assaulting Dhakal, was recovered from his house. Said Valya has been acquitted. There is also discrepancy in the evidence of the witnesses as regards the role attributed to each of the accused. In

such circumstances no implicit reliance can be placed on the evidence of PW1.

11. Evidence of PW1 indicates that several farmers were present at the place of the incident and that they had witnessed the incident. The prosecution has not examined any independent witness. Since the presence of PW1 at the place of the incident appears to be doubtful, it would not be safe to base the conviction on testimony of PW1, who is otherwise also an interested witness. Hence, the accused is entitled for benefit of doubt.

12. Under the circumstances, the impugned judgment and order is quashed and set aside. The accused is acquitted of the offence punishable under Section 326 of the IPC. Bail bonds stand discharged.

13. Ms Savita Yadav, learned counsel, appointed through Legal Aid Panel for the Appellant be paid the fees as per rules.

(SMT. ANUJA PRABHUDESSAI, J.)