

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

CRIMINAL APPEAL NO. 341 OF 2021

Bhimrao Babruvan Yadav	..Appellant
Versus	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO. 1215 OF 2021
IN
CRIMINAL APPEAL NO. 341 OF 2021**

Ms. Vilasini B., for Appellant.
Smt. J. S. Lohokare, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 7th SEPTEMBER 2022**

JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 10/02/2021 passed by learned Additional Sessions Judge, Solapur, in Sessions Case No.341 of 2016. The Appellant was the original accused No.2. His father, original accused No.1 Babruvan was acquitted from all the Charges. The Appellant/original accused No.2 was convicted and sentenced as follows:

- i) The Appellant was convicted for commission of offence punishable U/s.307 of IPC. He was

sentenced to suffer R.I. for 5 years and to pay a fine of Rs.1000/- and in default of payment of fine to suffer S.I. for 2 months.

ii) He was convicted for commission of offence punishable U/s.323 of IPC and he was sentenced to suffer R.I. for 6 months and to pay a fine of Rs.300/- and in default of payment of fine to suffer S.I. for 2 weeks.

iii) He was further convicted for commission of offence punishable U/s.506 of IPC and he was sentenced to suffer R.I. for 2 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer S.I. for 1 month.

All the substantive sentences were directed to run concurrently. The Appellant was granted set off U/s.428 of Cr.p.c. The Appellant was acquitted from the Charges of commission of offence punishable U/s.504 of IPC. and also U/s.135 of the Maharashtra Police Act.

2. Heard Ms. Vilasini B., learned counsel for the Appellant, Smt. Lohokare, learned APP for the State/Respondent.

3. The prosecution case is that, the Appellant and his father Babruvan were having long standing dispute with one Bhimrao Pawar regarding common boundary of their respective agricultural lands. On 29/05/2016, the Tanta Mukti Samity of their village had called both the parties to settle the issue. At about 10.00a.m. when the Appellant, his father, as well as, Bhimrao Pawar and his son were present at the spot along with members of the Tanta Mukti Samiti, suddenly, the accused No.1 Babruvan started abusing Bhimrao Pawar. He held his collar. The allegations are that the Appellant stabbed Bhimrao Pawar in the chest and on the stomach. The knife remained embedded in the chest. Bhimrao pawar was taken to Hospital, where knife was removed and he was treated. Bhimrao Pawar's son lodged this F.I.R. vide C.R.No.175 of 2016 at Akkalkot police station. The Appellant and his father were arrested. The investigation was carried out. During investigation, the spot panchanama was conducted. The knife, and clothes of the Appellant, as well as, injured were seized and were sent for

chemical analysis. At the conclusion of the investigation, the Charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined 7 witnesses including the injured Bhimrao Pawar, his son Vinod Pawar, an eye witness Chidanand Kavade, panchas for spot panchanama and recovery panchanama, the Medical Officer and the Investigating Officer. The defence of the Appellant was of denial, however, in the written statement given by him he took a specific defence that, at the time of incident, Bhimrao Pawar and Vinod started quarreling and assaulting the appellant with kicks and fist blows. Bhimrao Pawar tried to throttle him and in his self defence the appellant was left with no other option.

5. After considering the evidence on record and defence of the Appellant, learned Trial Judge convicted and sentenced the Appellant, as mentioned earlier. However, he gave benefit of doubt to the Appellant's father Babruvan, considering his lesser role and acquitted him.

6. The prosecution case obviously relies on the evidence of the injured himself. The injured Bhimrao was examined as PW-4. He has deposed that, he has five acres of agricultural land at village Shirval. He knew both the accused. Their agricultural land was adjoining to PW-4's land. There is common *Bandh* in between their lands. There was dispute between the PW-4 and the accused on account of common *Bandh*. The PW-4 had lodged complaint with the President of Tanta Mukti Samiti in the village against the accused. The President of that Committee had tried to discuss it with the accused No.1 Babruvan, however, the accused were abusing and threatening to kill PW-4. He has further deposed that, 8 days prior to the incident in question, the accused No.1 had abused and threatened his family. He had given information about that incident to the President of Tanta Mukti Samiti. He intervened and told the accused No.1 not to repeat it.

7. On 28/05/2016, the President of that committee Appasha Deokar called him at Shirval bus stand. He went to the bus stand. He was told by the Committee that, accused No.1 Babruvan had made a complaint against him. The Committee

called PW-4 to the field on the next day to settle the dispute.

8. On 29/05/2016, at about 10.00a.m. he along with his father, his sons and Bhimrao Survase went to his field. After some time, both the accused i.e. accused No.1 Babruvan and the present Appellant, the President of Tanta Mukti Samiti, the committee members and others came to his field. He was discussing the issue with Appasha Deokar. At that time, the accused No.1 started abusing him. The accused No.1 caught his collar. PW-4 has further deposed that, at that time, the Appellant took out a knife and assaulted him on his chest and stomach by saying that he would kill PW-4. Because of bleeding injury, PW-4 fell unconscious. The knife remained embedded in his stomach. When PW-4's father and son tried to intervene, the accused beat them. PW-4 was shifted to Primary Health Center, Shirval on the motorcycle of Tukaram Survase. After that he was taken to Solapur in an Ambulance. During treatment, the knife was taken out from his stomach. During the incident, he lost his mobile phone and one gold ring. His son Vinod lodged the report against the accused. He identified both the accused before the Court. His clothes were seized.

He was cross-examined initially regarding the history of dispute between both the parties. He admitted that, there was no civil dispute pending and he had not lodged any complaint against the accused for threatening him. The quarrel lasted for 5 to 7 minutes. When he was in Solapur hospital, the police met him, however, his statement was not recorded. He denied the suggestion that, at the time of incident, he himself, his father, his son and brother in law assaulted the accused, because of which, the accused No.1 Babruvan's life was in danger and to save himself from any complaint, he instigated his son to lodge this false F.I.R. against the accused.

9. PW-2 Vinod Pawar was PW-4's son. He had lodged the F.I.R. He has described the history of dispute and then he has described the occurrence of the incident on 29/05/2016. He himself, PW-4, his own maternal uncle and his grand-father had gone to their agricultural field. After that, members and President of Tanta Mukti Samiti came there. They were inspecting the agricultural field. At that time, the accused were present there. When the PW-4 was discussing the matter with Shri. Deokar, the

accused No.1 abused PW-4 and caught his collar. PW-2 has further deposed that the Appellant then said that he would kill PW-4 and inflicted knife blow on the left side of abdomen of his father-PW-4. The PW-4 fell down and both the accused assaulted him with fist and kicks blows. When PW-2 himself and others went to help PW-4, they were also assaulted with fist and kick blows. After that, Tanta Mukti Committee members intervened and stopped the quarrel. The accused left the spot. PW-2 then took his father-PW-4 to Shirval Primary Health Center on the motorcycle of Tukaram Survase. At that time, the knife remained pierced in the abdomen of his father. On the advise of Medical Officer he was taken to Civil Hospital, Solapur in an Ambulance. In that hospital, the knife was removed. His father had lost his mobile phone and gold ring in the incident. At about 8.00p.m. on that day, the police recorded PW-2's F.I.R. The F.I.R. is produced on record at Exhibit 39. He produced the blood stained clothes of his father before the police. He identified the knife produced in the Court. He also identified the accused in the Court.

In the cross-examination, he admitted that, prior to

29/05/2016 he had not filed any complaint before the police. He denied the suggestion that, he himself and his father started abusing and assaulting the accused and that Bhimrao Survase who was with them strangulated the Appellant and tried to kill him. He denied the suggestion that, PW-4 got injury because accused acted in his self defence. The F.I.R. sufficiently corroborates his deposition.

10. PW-5 Chidanand Kavade is examined as an eye witness. He has deposed that, he knew both the parties and about the dispute between them. On the date of incident, he had gone to the spot along with other members of Tanta Mukti Samiti. He has deposed that, he himself, President Appasha, Tukaram Survase, Ram Bagewadi and both the accused went to the field of Bhimrao Pawar. At that time, the PW-4 was accompanied by his son Vinod. The discussion was going on. At that time, the accused No.1 Babruvan started abusing Bhimrao Pawar. PW-5 has deposed that, the accused No.1 Babruvan caught the collar of Bhimrao Pawar. Some altercation took place between them. Then accused No.1 Babruvan took out a knife and gave blows on the stomach and

chest of Bhimrao Pawar. At that time, Bhimrao Survase and Vinod Pawar intervened. They were also beaten by the accused. After that, PW-5 and others intervened. Bhimrao Pawar was sent to P.H.C. Shirval. The accused went away from the spot. He has also deposed that, when Bhimrao Pawar was being taken to Civil Hospital, Solapur, the knife was still remained pierced in his stomach. The knife was removed in the hospital during treatment. PW-5's statement was recorded on 30/05/2016. He identified both the accused in the Court.

In the cross-examination, he was asked to produce the documents showing that he was a member of Tanta Mukti Samiti, but he had not brought any such documents. He had not made any correspondence regarding the dispute between both the parties. The altercation between the accused and Bhimrao Pawar was going on for 5 to 7 minutes. He had not lodged any complaint with Akkalkot Police station regarding this incident.

11. PW-1 Vitthal More was a pancha for spot panchanama. There is not much dispute about the spot of incident. The spot

panchanama is produced on record at Exhibit 34. Nothing was recovered from the spot.

12. PW-3 Faruk Nadaf was a pancha for different panchanamas. Vide panchanama at Exhibit 50 the knife brought from the Civil Hospital, Solapur was seized. Vide panchanama at Exhibit 51 the clothes of the injured produced by PW-2 were seized. The panchanama at Exhibit 52 was in respect of seizure of clothes of the Appellant which were seized on 02/06/2016 at his instance from his house. The Appellant had produced his own clothes, as well as, clothes of his father-accused No.1 from the cupboard in his house.

13. PW-6 Dr. Avinash Gaikwad has deposed about the nature of injuries. He was serving as Medical Officer at Solapur Hospital. On 29/05/2016, he examined Bhimrao Pawar. He was having stab injury and one knife was pierced into his chest. During medical examination, he found that Bhimrao Pawar was having three stab injuries on life side of his chest of the size 1 x 3 x 2cm., muscle deep, 2 x 2 x 1 cm. Skin deep and 1 x 1 x 0.5cm. skin deep. He

referred the patient to the surgery department where he was treated. Under general anesthesia, local exploration was done. C.T. Scan and other examinations were also conducted. There was breach in the skin and subcutaneous tissue with surgical Emphysema noted over left lateral lower chest wall and left Hypochondriac region. Hypoattenuating collection of maximum depth of 1.27cm. was noted in right pleural space and 5mm. in left pleural space suggestive of Hemothorax. The skin was closed with Ethylon 2-0. The knife was shown to him in the Court. He deposed that, it could be the same knife which was found in the chest of the patient at the time of medical examination. He deposed that the injuries mentioned in the medical certificate were possible by that knife.

In the cross-examination, only one suggestion was put to him and he denied that suggestion. He denied the suggestion that the injuries mentioned in the medical certificate were not possible by the knife shown to him. The medical certificate is produced on record at Exhibit 66.

14. PW-7 Pramod Surve, A.P.I. was the Investigating Officer. He had taken over the investigation after the F.I.R. was registered. He had conducted the spot panchanama. He has seized the clothes and the knife. He had recorded the supplementary statement of the informant and the statement of the injured and other witnesses. The articles were sent for chemical analysis.

This, in brief, was the prosecution evidence.

15. Learned counsel for the Appellant submitted that the prosecution has failed to prove its case against the Appellant. There is discrepancy between the evidence of PW-1 and PW-4 about the events which had taken place one day prior to the incident. There is also discrepancy between their evidence as regards the incident. PW-2 has deposed that the injured was also assaulted with kicks and fist blows, whereas, PW-4 himself has not deposed that the accused assaulted him with kicks and fist blows. The size of the knife was not mentioned and, therefore, it was not possible to conclude as to whether such weapon could have caused such injury. She submitted that, there was no preparation or

premeditation to commit assault on the injured which could have led to his death. The incident had occurred at the spur of moment. She relied heavily on the evidence of PW-5. She submitted that, PW-5 has specifically attributed the role of assault with knife to the accused No.1 Babruvan. He has not deposed that the Appellant had inflicted the knife injuries. She submitted that, learned trial Judge has committed a factual error in observing that PW-5 has deposed that the Appellant himself had inflicted injuries with knife. She submitted that, therefore, benefit of doubt must be given to the Appellant.

16. Learned APP, on the other hand, submitted that the Appellant had come on the spot with a knife which itself shows his clear intention to commit the offence. The injured was assaulted on his chest and abdomen; those were vital parts and, therefore, the offence U/s.307 of I.P.C. would be proved. The intention is also clear from the act. She submitted that, the evidence of PW-5 pales in comparison with the main evidence of PW-2 and 4. Their evidence cannot be ignored and, therefore, the Appellant deserves to be convicted. She submitted that, the sentence awarded is on

lower side, therefore, even in that respect, no leniency can be shown to the Appellant.

17. I have considered these submissions. PW-4 Bhimrao Pawar is the injured witness. His evidence is the most important piece of evidence in this case. He has described the history of bad relations between the accused and himself. He has narrated the incident in sufficient details. He has ascribed specific role to the Appellant of stabbing PW-4 with knife on his stomach and chest. He has clearly differentiated the roles between the Accused No.1 and the present Appellant-accused No.2. He has deposed that the accused No.1 held his collar and abused him, but the Appellant actually stabbed him with a knife and also threatened to kill him. His version is supported by his son Vinod-PW-2. It is also reflected in the immediate F.I.R. which was registered on that day itself. This evidence will have to be compared with the deposition of PW-5 Chidanand. While it is true that PW-5 has attributed this particular role of assaulting the injured with a knife to the accused No.1 Babruvan; the PW-4 Bhimrao Pawar being an injured witness, his evidence prevails over the deposition of PW-5 in this case. The

matter does not rest here. A specific defence taken by the Appellant also assumes significance in this background. The Appellant has taken a specific defence that, PW-2 and PW-4 started quarreling and in that quarrel assaulted the Appellant with kicks and fist blows. The Appellant has specifically mentioned in his written statement that the injured PW-4 tried to throttle him and to save himself the Appellant was left with no other option. In other words, the Appellant has practically admitted the incident. His only defence was that he had acted in his exercise of right of private defence. Thus, from this evidence, the fact is established that the stab wounds were given by the Appellant. In this case, it is not possible to accept the defence that the Appellant had acted in exercise of right of his private defence. The injured PW-4 and his son or even any other member of the Committee were not armed with weapons. There was no real apprehension regarding life of the Appellant. There were other independent persons viz. Committee members of Tanta Mukti Samiti present there and, therefore, there was no apprehension of any grievous injury to the appellant. Therefore, in this case, there was no question of the

Appellant exercising his right of private defence. There was no reasonable apprehension present in this particular case. The defence of exercising right of private defence is not available to the appellant. The Appellant had brought a knife with him. There was no occasion for him to bring a knife with him unless he had intention to use it. This shows that there was premeditation, preparation and intention to commit the offence which he actually committed. The injured – PW-4 was assaulted on vital parts. The knife blows were quite forceful because the knife remained pierced in the chest till it was removed in the Civil hospital at Solapur. Thus, all the ingredients of offence punishable U/s.307 of IPC are clearly made out. Though, there are no other circumstances in the nature of C.A. certificate etc., the evidence discussed herein above sufficiently proved the guilt of the appellant. The C.A. certificates in this case are not incriminating, but the ocular evidence of PW-2 and 4 is supported by the medical evidence. Therefore, though, learned Judge has committed error in discussing the evidence of PW-5, it will have no bearing on the outcome of the conclusion which is ultimately recorded. The evidence of PW-2 and 4 is strong

enough. They corroborated each other on all material points. Their evidence is supported by the medical Officer-PW-6 Dr. Gaikwad. There is history of dispute and hence, there is motive and intention for the appellant to commit this offence. The direct evidence of the injured – PW-4 has strong bearing on the entire case. Considering the nature of injuries inflicted on the vital parts, there is no scope to reduce the sentence imposed on the Appellant. In this view of the matter, I do not find any reason to interfere with the ultimate conclusion, finding and order of sentence recorded by the trial Court.

18. With these reasoning the Appeal is dismissed.

19. Since the Appeal itself is disposed of, nothing survives in the application for bail, therefore, it is also disposed of.

(SARANG V. KOTWAL, J.)