

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

CRIMINAL APPEAL NO. 56 OF 2001

The State of Maharashtra

...APPELLANT

Versus

1. Mahadev Ramu Takkekar
Age- 55 Years.

2. Shankar Ramu Takkekar
Age- 45 Years.
[Appeal stands abated against Respondent No. 1 and 2
vide Court's Order dated 08.01.2021]

3. Namdev Narsu Chavan
Age 28 Years,
R/o. Polgaon, Tal- Ajra,
District- Kolhapur.

...RESPONDENT

ALONG WITH
CRIMINAL SUO MOTO APPLICATION NO. 2 OF 2001

The Court On Its Own Motion

...APPLICANT

Versus

Mahadev Ramu Takkekar & Ors.

...RESPONDENTS

...

Mr. S.S. Hulke, APP for State.

Mr. Manish Mazgaonkar for Respondent No. 3.

...

**CORAM : S. S. SHINDE &
N. R. BORKAR, JJ.**

**RESERVED ON: 5th JANUARY, 2022.
PRONOUNCED ON: 9th FEBRUARY, 2022.**

JUDGMENT: [PER S.S. SHINDE, J.]

1. The present appeal is preferred by the State being aggrieved by the judgment and order dated 29.09.2000, passed by JMFC, Ajara, thereby acquitting original accused No. 1 to 3 for the offences punishable under Section 326, 504 read with 34 of Indian Penal Code, 1860 (for short 'IPC').

2. The prosecution case in nutshell can be summarized as under:-

At the relevant date and time of incident the complainant Vasant Janba Narvekar is residing at village Polgaon, Taluka- Ajara, along with his wife, son and daughter. He is possessing house and landed property in the said village. The complainant and his family members were cultivating the land known as 'Talicha Bambar' of Polgaon. The land of Mahadev Ramu Takkekar and Shankar Ramu Takkekar is adjacent to his land known as 'Talicha Bambar'. The complainant and his family members are having a way to go to their field for agricultural work from the land of Takkekar. However, said persons were not allowing them to go in their land from the land of Takkekar, and on that ground since last 4 to 5 years, there is a dispute in between the complainant and accused persons. So also, on the said ground there was exchange of words in between complainant and Mahadev Ramu Takkekar and his brother Shankar Ramu Takkekar for two to three times. However, said quarrel was settled at village level.

3. On 15th July, 1998, at about 7.00 a.m., the complainant was going towards his field known as 'Talicha Bambar' along with pair of buffalo and plough for plantation of paddy crop. He reached in the said field at about 7.30 am. While he was ploughing the field, at that time accused Mahadev Ramu Takkekar, Shankar Ramu Takkekar and Namdev Narsu Chavan came there and started abusing him loudly and at that time they were holding sticks and sickles. Accused Namdev Chavan said to the complainant that, don't run away, they will not leave him, at the same time all the three accused persons came near him and started beating him by means of sticks, and out of them one Mahadev Ramu Takkekar gave a blow of sickle on the left hand shoulder and caused injury. Thereafter, complainant made hue and cry. At that time his partner Shripati Gundu Tejam and Vithoba Narsu Chavan and his wife Anusaya came towards him, and by seeing them accused persons ran away. Accused persons beat the complainant on his right hand shoulder, wrist of both the hands, left hand shoulder and on the back by means of stick, and therefore, the complainant sustained muffled injuries.

Thereafter, the complainant was brought to the Government hospital at Ajara by one M-80 vehicle. The doctor of Government hospital of Ajara had informed to Ajara Police Station, that one injured Vasant Janba Narvekar he is brought admitted in Public Health Center of Ajara.

Thereafter, Police Station Officer of Ajara Shri. Mallappa Sankpal went to the Government hospital, and there he recorded the complaint. On the basis of said complaint C.R. No. 34/1998 came to be registered.

4. Investigating machinery was set in a motion. During the course of investigation, spot panchnama (Exhibit-40) was prepared on 15.07.1998. Arrest panchnama of the accused persons and seizure panchnama of alleged weapons (Exhibit-41) was prepared on 16.07.1998. The investigating officer has recorded statements of the witnesses. The complainant was referred to C.P.R. Kolhapur by Medical Officer, Ajara, for further treatment. At C.P.R., the complainant was admitted for nine days, and thereafter, he was taken for further treatment in the hospital of Dr. Kulkarni. After completion of investigation, chargesheet was submitted against the accused persons for offences punishable under Section 326, 325, 324, 323, 504 read with 34 of IPC. Charge (Exhibit-20) was framed against the accused persons. Said charge was read over and explained to the accused persons in Marathi and they have pleaded not guilty and claimed to be tried.

5. After full fledged trial, JMFC, Ajara, convicted the respondents/ accused for the offences punishable under Section 325, 323, 324 read with Section 34 of IPC and also imposed fine as enumerated in detail in the operative part of impugned judgment and order. It appears that the

appellant-State is aggrieved by the impugned judgment and order thereby acquitting respondents under Section 326, 504 read with Section 34 of IPC, so also the quantum of punishment awarded for the aforesaid offences.

6. This Court suo motu registered an application i.e. Criminal Suo Motu Application No. 2/2001 in Criminal Appeal No. 56 of 2001.

7. Mr. Hulke, the learned APP appearing for the appellant-State invited attention of this Court to the deposition of eye witnesses, the evidence of other prosecution witnesses and submits that the trial Court has utterly failed to appreciate the direct evidence of prosecution witnesses coupled with the medical evidence and acquitted the respondents for the offences punishable under Section 326, 504 read with 34 of IPC. It is submitted that though the trial Court has convicted the respondents for the offences punishable under Section 323, 324, 325 read with 34 of IPC, nevertheless inadequate sentence has been awarded. Therefore, learned APP submits that the appeal deserves consideration.

8. On the other hand, learned counsel appearing for the respondents submits that the evidence of prosecution witnesses suffers from serious contradictions, omissions and improvements, and therefore, respondents ought to have been acquitted by the trial Court even from

offences punishable under Section 323, 324, 325 read with 34 of IPC. It is submitted that the impugned judgment and order is passed by the concerned Court in the year 2000 and this appeal is being heard by this Court in the year 2022, therefore, considerable period has been lapsed in between passing of impugned judgment and order and hearing of this appeal, by this Court. It is submitted that on the basis of evidence available on record, the trial Court has taken a plausible view, and therefore, there is no reason to interfere in the findings recorded by the trial Court.

9. With the able assistance of learned APP and learned counsel appearing for the respondents, we have carefully perused the impugned judgment and order, so also the entire evidence on record. Shri. Vasant Janba Narvekar (PW1) in his deposition before the Court in detail stated about the manner in which the incident had taken place. He stated that he is possessing landed property at village Polgaon, which is known as 'Talicha Bambar'. He know all the accused. The lands of accused Mahadev and Shankar are situate towards north side of his land. The incident had taken place on 15th July, 1998, at about 7.30 am, in his field. At the relevant time, he was farming, all three accused came there in the field, they were abusing PW1. Thereafter, accused Mahadev beat him on left hand by sickle. Accused Shankar and Namdev beat him by stick on his back, stomach, both hands and both legs. At that time, he shouted and by hearing him, his wife,

Shripati Gundu Tejam and Vithoba Chavan came running on the spot. Thereafter, accused ran away. He was brought to the Government hospital at Ajara by M-80 vehicle. There doctor examined him. His complaint was recorded in the hospital. After taking treatment in CPR hospital in Kolhapur, he was taken to the hospital of Dr. Kulkarni at Kolhapur, and he was operated in some other hospital in Kohapur. He stated that there is dispute in between accused and himself regarding a road which is going through his field.

10. During his cross examination he stated that, dispute between himself and accused Takkekar about said road was going on for about five to six years prior to the incident, however, he states that no case is filed about the said dispute in the Court. One year prior to the incident accused Takkekar has lodged criminal case against accused himself and he was not arrested on said complaint. He further deposed that all the accused came on the spot from northern side, armed with sticks and sickle. He did not try to run away from spot because accused did not give him chance to run away. He sustained blood injuries on his arm where the accused Mahadev beat him by sickle. He stated that except Mahadev, other accused were not holding sickle. According to him, said sickle is called as 'Khurpi'. He did not fall down on the ground for about ten minutes. He stated that accused Mahadev gave only one blow of sickle on his left hand. Except said assault

by sickle, he did not give any other blow to him by sickle.

11. From reading the evidence of star witness of prosecution i.e. PW1, it is crystal clear that though he has mentioned sickle during his cross examination, he called the said sickle as 'Khurpi'. Khurpi is commonly used in the agricultural field for removing grass. Therefore, it is not something that Mahadev came specially prepared to assault PW1. He has also mentioned that other accused persons were not holding sickle and they were having sticks.

12. The other prosecution witnesses namely Shripati Tejam and Anusaya Narvekar deposed in tune with PW1 and supported the version of PW1.

13. The prosecution did examine Dr. Smita Kamble (PW4), who at the relevant time was attached to Public Health Center of Ajara as a Medical Officer. On examination of Shri. Vasant Narvekar (PW1), she noticed multiple injuries. She stated that injury no. 6 i.e. C.L.W. on the extensor aspect of left forearm L/3 measuring 2 c.m. X 0.5 c.m. with blood stains (dried) R/o. Fracgture Humerus left L/3, can be caused by sharp weapon like sickle.

14. During her cross examination she stated that tenderness and swelling cannot be called as 'grievous injury'. She further stated that injury at serial no. 11, 12 are not grievous injuries. Injury no. 9 and 10 may or may not be grievous injuries. She has given vital admissions in the cross examination which would favour the defence version.

15. It is clear from the evidence of medical officer that injury at serial no. 6 is caused by sickle. The prosecution has also examined one more medical officer.

16. The trial Court after perusal of entire evidence on record and in particular medical evidence reached to the conclusion that ingredients of Section 326 of IPC are not attracted rather ingredients of Section 325 gets attracted in the facts of the case, and accordingly convicted the accused for the offences punishable under Section 325, 324, 323 read with 34 of IPC.

17. Upon scrutiny of entire evidence brought on record and in particular evidence of Shri. Vasant Narvekar (PW1), wherein in his cross examination he admitted that Mahadev who is the main accused has given one blow by sickle on his left arm. He has also stated that sickle is same as 'Khurpi', which is commonly used for removing/cutting grass in the

agricultural field. The other witnesses i.e. PW2 and PW3 have also deposed in tune with PW1. PW1 stated that Mahadev had given only one blow of sickle and not multiple blows. Other accused persons were not holding sickle but sticks. In that view of the matter, we are of the considered view that the trial Court has taken a plausible view and there is no perversity as such in the findings recorded by the trial Court. It is true that the trial Court passed the impugned judgment and order in the year 2000 and this appeal is taken up for hearing in the year 2022. We find that the view taken by the trial Court is plausible, reasonable and in consonance with the evidence brought on record, and therefore, there is no occasion to interfere in the impugned judgment and order. Hence, we pass the following order.

ORDER

1. The appeal filed by the appellant-State stands dismissed.
2. In view of disposal of appeal, Criminal Suo Moto Application No. 2 of 2001, stands disposed of.

(N. R. BORKAR, J.)

(S. S. SHINDE, J.)