

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

**CRIMINAL APPEAL NO. 362 OF 2000
WITH
INTERIM APPLICATION NO. 2247 OF 2022**

1. Ajay Atmaram Patil
2. Atmaram Gangaram Patil
3. Aniruddha Ram Thakur
4. Chandrakant Ram Thakur
5. Kishor Janardhan Patil
6. Manohar Janardhan Patil
7. Chandrakant Bhaskar Patil
8. Harishchandra Rambhau Patil
9. Rajendra @ Rajesh Bapurao Patil
10. Sanjay Atmaram Patil
11. Nandkumar Baburao Patil
12. Shantaram Damodar Patil
13. Nitin Gangaram Patil

..Appellants

Versus

1. The State of Maharashtra
2. Shashikant Rambhau Patil
3. Manjula Mangal Gharat

..Respondents

Mr. Niteen Pradhan a/w. S.D.Khot a/w. Dhruv Balan for Appellant.

Smt. J. S. Lohokare, APP for State/Respondent No.1.

Dr. Prakash K. Deshmukh for Respondent Nos.2 and 3.

**CORAM : SARANG V. KOTWAL, J.
DATE : 27th SEPTEMBER 2022**

JUDGMENT :

1. This is an old Appeal in respect of even an older incident. The incident which is the subject matter of this Appeal had taken place on 25/05/1994. Learned counsel for the Appellants and Respondent Nos.2 and 3 tendered affidavits of Shashikant Rambhau Patil and Manjula Mangal Gharat who were the injured in the incident stating that they have settled the matter with the accused and they want to live peacefully henceforth and they want to settle the matter. They have sought permission of the Court for compounding of the offences. There were two more injured i.e. Mangal Ramdas Gharat and Dattatray Raghunath Patil. They have expired on 29/11/2014 and 17/08/1995 respectively. Their death certificates are also produced on record.

2. Considering this compromise between the parties and clear intention of the parties to live peacefully henceforth, I have taken this matter for hearing. In view of the compromise arrived at between the injured and the accused, I considered whether at the appellant stage I can permit compounding of non compoundable offences by invoking Section 482 of Cr.P.C.

3. The appellants were the original accused Nos.1 to 13 in Sessions Case No.48 of 1995 on the file of 2nd Additional Sessions Judge, Raigad. The Appellants have challenged the Judgment and order dated 09/05/2000 whereby they are convicted and sentenced as follows:

- i) The Appellants were convicted for commission of offence punishable U/s.148 of I.P.C. and were sentenced to suffer R.I. for one year each and to pay a fine of Rs.1000/- each and in default to undergo R.I. for two months each.
- ii) All of them were convicted for commission of offence punishable U/s.324 r/w. 149 of I.P.C. and were sentenced to suffer R.I. for one year each and to pay a fine of Rs.1000/- each and in default to undergo R.I. for two months each.
- iii) All of them were convicted for commission of offence punishable U/s.427 r/w. 149 of I.P.C. and were sentenced to suffer R.I. for one year each

and to pay a fine of Rs.1000/- each and in default to undergo R.I. for two months each.

iv) All of them were convicted for commission of offence punishable U/s.452 r/w. 149 of I.P.C. and were sentenced to suffer R.I. for three year each and to pay a fine of Rs.2000/- each and in default to undergo R.I. for four months each.

v) All of them were charged for commission of offence punishable U/s.395 and 506 r/w. 149 of I.P.C., but they were acquitted of those Charges.

All the substantive sentences were directed to run concurrently. The fine amount of Rs.2000/- was directed to be paid to the complainant PW-1 Shashikant and Rs.3000/- were directed to be paid to PW-3 Manjula. All the accused were given set off for the period they had undergone in custody as under trial prisoners.

4. Learned counsel for the Appellants stated that, during pendency of the appeal, Accused No.4 i.e. Appellant No.4 Chandrakant Thakur had expired. A copy of death certificate of the

Appellant No.4 is kept on record of this case. He expired on 20/12/2018. The Appeal against him, therefore, abates.

5. Heard Shri. Niteen Pradhan learned counsel for the Appellants, Smt. Lohokare, learned APP for State/Respondent No.1 and Dr. Prakash Deshmukh, learned counsel for the Respondent Nos.2 and 3.

6. Since the surviving injured have filed affidavits, I had directed the Police Inspector (Crime) attached to the Uran police station, District Raigad to file his affidavit. In paragraph 6 of his affidavit he has admitted that the Appellant No.4 Chandrakant Thakur had expired on 20/12/2018. He has also mentioned in paragraph 9 that the injured witnesses Manjula Gharat, Sharda Patil and Dnyaneshwar Patil have given their statements on 09/09/2022 and they have supported their affidavits and the stand taken by them that the matter is settled. That affidavit is also taken on record, apart from affidavits of these injured witnesses. Therefore, I examined whether at the Appellate stage compounding of the offences which are not compoundable

U/s.320 of Cr.p.c. could be compounded by invoking powers U/s.482 of Cr.p.c.

7. Learned counsel for the Appellants very fairly pointed out the Judgment of Full Bench of this Court in the case of *Maya Sanjay Khandare and another Vs. State of Maharashtra*¹ dealing with this very issue. It was held by the full bench that, if any compromise is entered into between the convict and the victim/complainant post-conviction for a non compoundable offence, such compromise by itself cannot be the reason to set aside the order of conviction. Such order of conviction would have to be tested by the Appellate Court/Revisional Court on merits. If Court finds it necessary to maintain conviction, compromise entered into would be only a factor to be considered while imposing appropriate sentence. It would be a mitigating factor to be taken into consideration while awarding appropriate sentence.

8. Learned counsel also relied on the case of *Gian Singh Versus State of Punjab and another*² to contend that under Section 482 of Cr.p.c. compromise can be acted upon even at the appellate

1 2021(1) Mh.L.J. 613

2 (2012) 10 Supreme Court Cases 303

stage. However, since this very issue is settled by the Full Bench Judgment, I am bound by the ratio of Full Bench Judgment.

9. The ratio of Full Bench judgment means that, at the appellate stage this compromise between the parties cannot be used to acquit the accused or quash the Judgment and order of conviction and sentence. In view of the clear ratio of this Judgment, I have considered the merits of the matter and I have heard the parties in that behalf. With the assistance of learned counsel I have perused the entire evidence.

10. The prosecution case is in respect of an incident which had taken place on 25/05/1994 in village Bokadvira, District Raigad. The accused and the complainant's group were belonging to two rival political parties. Because of this political rivalry this incident had taken place wherein all the 13 appellants-accused entered the house of Shashikant Patil, Mangal Gharat and others with weapons like iron rods, sticks and *gupti*. Some of the prosecution witnesses and other members of their group were assaulted with those weapons. Stones were pelted on their houses

causing damage. C.R.No.55 of 1994 was registered at Uran Police station. The injured were given medical treatment. Their medical certificates were obtained, spot panchanama of all the houses was conducted, statements of the witnesses were recorded, weapons were recovered at the instance of Appellant No.1 Ajay Patil. They were sticks and rods. But *gupti* was not recovered. There were allegations that the ornaments and *sarees* were stolen from the house of Mangal Gharat during the incident. Marriage of his daughter was to take place within two days from the incident and, there was allegation of commission of offence punishable U/s.395 of I.P.C.; though all the accused-appellants were acquitted from that Charge. After completion of the investigation the charge-sheet was filed and the case was committed to the Court of Sessions.

11. During trial, the prosecution examined 10 witnesses. Out of them, PW-1 Shashikant Patil, PW-3 Manjula Gharat, PW-4 Dnyaneshwar Patil and PW-5 Mangal Gharat were injured eye witnesses. The panchas for recovery of weapons were PW-6 Sanjay Patil and PW-7 Hasuram Patil. They had turned hostile. PW-2 Gajanan Patil was a pancha for spot panchanama, PW-8 Sanjay

Gayakwad was a pancha for house search of accused No.2-Appellant No.2, PW-9 Dr. Ganesh Narayankar had examined the witnesses and had produced the medical certificates in respect of injuries suffered by all the injured. PW-10 Bajarang Kamble, P.S.I. was the Investigating Officer.

12. PW-1 Shashikant Patil was the first informant. He himself was an injured. He has deposed that, he was residing at village Bokadvira with his family members consisting of his parents, brothers and sister. He has described that his family and his group belonged to one political party and accused belonged to the rival political party. Hence, there were two factions in their village divided on political basis. He has deposed that the incident occurred on 25/05/1994 at 2.00p.m. He was present in his house. All the accused/Appellants who are named by him came in their house. They were armed with weapons like iron bars, sticks and stones. The Appellant No.1 was having a *gupti*. After that the accused No.1 raised shouts instigating other accused to assault him for having allegiance to the opposite party. The Appellant No.1 then gave a blow with *gupti* over his low lip. PW-1's sister Sharda

intervened to save him. The Appellant No.1 then gave a blow with *gupti* on Sharda's nose. PW-1 has deposed that, after that all the accused/Appellants entered their house. They assaulted PW-1, his parents, brother and sister Sitabai. His parents and brother Dnyaneshwar received injuries. PW-1 himself was injured in the attack. All the appellants/accused then pelted stones, hurled abuses and went away. They went towards the house of Mangal Gharat and Dattatraya Patil. All the injured then went to Hospital at Uran. They were medically treated. The police came to his house and his statement was recorded; which was treated as an F.I.R. The F.I.R. is produced on record at Exhibit 52. When they were in the hospital, injured Mangal and Dattatraya also arrived in the hospital in injured condition. They had received bleeding injuries. PW-1 then identified the appellants/accused before the Court.

In the cross-examination, he stated that, he was on a casual leave on the date of incident. He was working with M.S.E.B. He denied the suggestion that the accused's party members were lesser in number in the village. He admitted that, in the year 1991

one Madhukar Patil was murdered. He was belonging to the rival political party of PW-1. In that case, members of PW-1's party were the accused. However, he denied the suggestion that he was close to the accused in that murder trial. The house of other injured Dattatrya Patil was beyond about 6 to 7 houses from his house and Mangal's house was beyond 10 to 12 houses. The incident in his house occurred within 2 to 3 minutes. He could not tell whether his clothes were seized during investigation. The F.I.R. produced at Exhibit 52 substantially corroborates his version. All the appellants/accused are mentioned in the F.I.R.

13. PW-4 Dnyaneshwar patil was the brother of PW-1. He has deposed in the similar manner as is deposed by the PW-1. He has described the incident in the same manner. He has also attributed *gupti* to the accused No.1. While leaving, the accused pelted stones breaking tiles on the roof of their house. His cross-examination was also on the similar lines as that of PW-1.

14. PW-5 Mangal Gharat was another witness in whose house the appellants entered illegally and assaulted him. He has

deposed that, he was residing with his wife, two sons and a daughter in the same village. On 27/05/1994 his daughter's marriage was to take place. The incident occurred at 2.15p.m. on 25/05/1994. He named all the appellants/accused as the assailants who entered his house with iron bars, sticks and stones. They started abusing him. The Appellant No.1 Ajay then gave a blow with *barchi* upon the left eye and little finger of PW-5. The other accused/appellants caused damages to the photographs, cupboard, radio, ceiling fan, table fan etc. in the house. They took away the ornaments viz. Necklace, ear rings, Mangalsutra and sarees. They caused damage to the bicycle. The ornaments were purchased just 15 days before the incident because there was marriage in the family.

In the cross-examination, he admitted that he was convicted in the murder case of Madhukar. He denied the suggestion that, being on inimical terms with the Appellant No.2, he was involved falsely. Though he had deposed in his examination in chief about the shop from where he had bought the ornaments, he was pointed out that omission from his police statement and he

could not assign any reasons for that. He described the *barchi* which was seized from the Appellant No.1. According to him, it was 15 inches in length with blade of 12 inches.

15. PW-3 Manjula Gharat was PW-5 Mangal's wife. She has also described the incident in her house. According to her, the appellant No.1 was carrying *gupti* and others were armed with iron bars and sticks. The Appellant No.1 assaulted her husband Mangal on his left eye with *gupti*. Then damage was caused in the house. They removed gold ornaments, sarees etc. She had taken her husband to Uran hospital. After 2 to 3 months the police collected receipts of the ornaments.

In her cross-examination she admitted that her husband and son were convicted in the case involving murder of Madhukar.

16. PW-2 Gajanan Patil was a pancha for spot panchanama which is at Exhibit 54. The spot panchanama describes the situation in the house of Shashikant, Moreshwar, Nanuram, Janardan and Mangal. Those houses did show damage caused

inside those houses.

His cross-examination does not help the defence. He has admitted that nothing was seized at the time of spot panchanama.

17. PW-6 Sanjay Patil and PW-7 Hasuram Patil were panchas for recovery of weapons at the instance of the Appellant No.1. However, they turned hostile. According to the prosecution case, the weapons viz. Four sticks and three rods were recovered at the instance of Appellant No.1 from the bushes near the railway line. The discovery memo was produced through the investigating officer PW-10 at Exhibit 82.

18. PW-6 and 7 did not support the prosecution case, but recovery panchanama was brought on record through the evidence of PW-10 P.S.I. Bajarang Kamble. He has deposed about the investigation carried out by him. After completion of the investigation, the charge-sheet was filed by him.

He admitted that, till after about 2 months from lodging of the F.I.R. the receipts were not produced regarding

purchase of ornaments and sarees.

19. PW-8 Sanjay Gayakwad was a pancha in whose presence the house of the Appellant No.2 was searched; but nothing incriminating was seized. Therefore, his evidence is innocuous. He had also turned hostile.

20. PW-9 Dr. Ganesh Narayankar is an important witness. He has examined the injured persons in this case. The injured Sharda, Dnyaneshwar, Mangal, Shashikant, Dattatraya and Sitabai were examined. Their medical certificates are produced on record at Exhibit 74 to 79. Those injured had suffered following injuries:

Injured Sharda Rambhau Patil suffered following injuries:

- i) CLW at the base of nose, 1.5" x 1/4" x subcut deep blood oozing, on palpation crept over nasal bone. 'query' regarding fracture of nasal bone. age fresh.
- ii) CLW on eye brow right side 1" x 1/4" x subcut deep.
- iii) CLW on occipital region, 1cm x sub cut deep.

Age of all the injuries, fresh, Injury Nos. 2 and 3

simple in nature. Injury Nos.1 to 3 caused by hard and blunt.

Injured Dnyaneshwar Rambhau Patil suffered following injuries:

- i) Contusion on supra scapular region 3" x 1/4" Margin ill defined.
- ii) Abrasion contusion on back, below cervical spine just right lateral to spine 1/2" x 1/2".
- iii) Abrasion contusion on lower angle of scapula 1" x 1".
- iv) Abrasion on back infra scapular region right 1/2 cm x 1/2 cm.

Injured Mangal Ramdas Gharat suffered following injuries:

- i) Abrasion contusion on eye-brow right side near base of nose, 1" x 1/2".
- ii) CLW on right Index finger 1.5 cm x superficial of shape.

Injured Shashikant Rambhau Patil suffered following injuries:

- i) Abrasion contusion on lower lip 3 cm x 1.5 cm.
- ii) CLW on lower lip on mucosal surface. Size 1.5 cm X 1/2 cm.
- iii) Abrasion on right knee, 1.5" X 1.5".
- iv) Abrasion on left knee, 2.5" X 2".
- v) Contusion on shoulder, 2" X 2".

Injured Datta Raghunath Patil suffered following injuries:

- i) Contusion on left leg on lateral aspect. 4" X 2.5" simple in nature age within 6 hours.

Injured Sitabai Rambhau Patil suffered following injuries:

- i) Abrasion contusion on left forearm on medical aspect, 2" x 1" with minor abrasions $\frac{1}{2}$ c.m. x $\frac{1}{2}$ cm.

21. He has deposed that the injury No.2 listed on Shashikant's injury certificate was possible by a weapon like *gupti*. The injury No.1 suffered by Sharda is also possible by *gupti*.

In the cross-examination, he deposed that, only Mangal was admitted to hospital because of his high B.P. He admitted that, final report regarding injury on Sharda was not received and, therefore, he was not in a position to depose whether it was a fracture injury or not. Thus, it can be seen that all the injuries were simple in nature.

The defence of the appellants was of total denial.

22. Learned counsel for the appellants submitted that the evidence itself shows that the appellants and the prosecution

witnesses belonged to two rival parties and, therefore, there was strong reason to implicate the appellants falsely. The prosecution witnesses are not telling the truth and, therefore, the appellants were acquitted from the Charges of commission of offence punishable U/s.395 of I.P.C. The oral evidence regarding injuries do not match with the medical evidence and the injuries do not appear to be caused with sharp weapons. There is no independent corroboration to the prosecution evidence, though the incident had taken place in the village in different houses. No other independent witness from the village is examined to corroborate the prosecution version. Shri. Pradhan also submitted that, only PW-1, 4 and 6 were the injured witnesses. PW-3 Manjula was not the injured and other injured persons were not examined by the prosecution, therefore, adverse inference should be drawn.

23. On the other hand, learned APP supported the prosecution case relying on the evidence of injured witnesses.

24. I have considered these submissions. So far as, Charges for the offence punishable U/s.395 of I.P.C. are concerned, learned

Judge has rightly acquitted the appellants. It was observed that, receipts regarding those purchases were produced on 01/03/1995 much belatedly. No such ornaments, sarees or other articles were recovered at the instance of any of the appellants and, therefore, since the evidence in that behalf was lacking; benefit was given to the appellants.

25. Learned Judge, however, believed the prosecution witnesses in respect of other allegations and then convicted and sentenced the appellants as mentioned earlier. Analysis of the evidence of prosecution witnesses PW-1, 3, 4 and 5 shows that the evidence is brought on record in respect of two houses. PW-1 and 4 have deposed about the incident in the house of Shashikant PW-1, whereas, PW-3 and 5 have deposed about the incident in their house. All these witnesses have consistently named the appellants and have deposed that, all of them were carrying weapons like iron rods, sticks and stones. There is no inconsistency in the names and weapons mentioned by them. Though, particular weapon is not ascribed to a particular accused, their consistent version is that, all of them had come together carrying those weapons. Only

Appellant No.1 was having a *gupti*. PW-5 Mangal has deposed that, he was having a *barchi*. The Appellant No.1 caused injury with a sharp weapon to PW-1 and 5. The medical officer PW-9 has deposed that, those injuries to PW-1 Shashikant and Sharda were possible by *gupti*. Rest of the injuries could have been caused by hard and blunt weapons like sticks and iron rods. Therefore, the ocular evidence is supported by the medical evidence.

26. The spot panchanama shows there was damage caused to the articles inside the houses, which also supports the case of the prosecution that all the accused/appellants had entered into these houses and had caused damage inviting conviction and sentence U/s.452 r/w.149 of I.P.C. The injuries suffered by the witnesses and other persons also proved the offence U/s.324 r/w. 149 of I.P.C. The prosecution evidence falls short of proving that any grievous injury was caused. There is no evidence that Sharda had suffered fracture as is mentioned in the evidence of PW-9 Dr. Narayankar. Therefore, conviction is properly recorded U/s.324 r/w. 149 of I.P.C.

27. The evidence shows that, four sticks and three rods were recovered at the instance of Appellant No.1, however, panchas have not supported that case, but that would be only corroborative piece of evidence, if at all. Therefore, decision of this case will depend on the main evidence of injured eye witnesses and that of PW-3 Manjula who was a natural an eye witness. She was present in her house when the incident had taken place. Considering this discussion, I am of the opinion that the prosecution has proved beyond doubt the offence committed by the appellants U/s.148, Section 324 r/w. 149, Section 427 r/w.149, Section 452 r/w. 149 of I.P.C.

28. The next crucial question is about sentencing the accused. Learned counsel for the appellants states that the fine amount is already deposited by the Appellants. Therefore, there is no reason to set aside that portion of the sentence. There are certain mitigating factors in this case which are as follows:

i) The incident had taken place on 25/05/1994.

More than 28 years have passed since then. There

are no allegations that the appellants have caused any harassment to the injured or their group in the village during this period.

ii) The surviving injured have given their affidavits mentioning that the matter was settled and they had no objection for compounding the offence.

iii) The injuries suffered are minor.

iv) Both the parties are living peacefully in the village and they want to live peacefully henceforth.

v) The police officer of the Uran police station has supported the appellants' and injured witnesses' claim that the parties have settled the issue.

29. Based on the Full Bench Judgment referred to herein above, these factors can be taken into account for considering the sentence.

30. The Appellant Nos.1, 3, 4, 8, 9, 11, 12 and 13 were in custody from 29/05/1994 to 08/06/1994. The Appellant Nos.5, 7

and 10 were in custody from 30/05/1994 to 08/06/1994 and appellant No.6 was in custody from 26/05/1994 to 08/06/1994. The Appellant No.2 was not arrested.

31. Considering these circumstances, in the background of the case, nature of injuries and the settlement arrived at between the parties, instead of sentencing these appellants, it would be sufficient if sentence of all the appellants except Appellant No.2 is reduced to the period which they have already undergone in custody. The payment of fine need not be disturbed.

32. So far as appellant No.2 is concerned, Shri. Pradhan submitted that, as of today he is 76 years of age. There are no specific allegations against him of causing any particular injury. At this stage, after so many years, if it is possible, his jail sentence can be avoided. He relied on Section 4 and S.11 of the Probation of Offenders Act, 1958. He submitted that, in stead of imposing any substantive sentence, in the background of the case and in view of the settlement the Appellant No.2 be released on probation of good conduct. This power can be exercised by this Court in the

Appeal as provided U/s.11 of this Act.

33. Learned APP did not oppose these submissions. She could not point out any factors as to why such approach cannot be adopted. In fact, there was no objection for adopting such approach. The police officer has emphasised on the settlement arrived at between the parties. In view of this, I am inclined to extend benefit of the Probation of Offenders Act U/s.4 r/w. S.11 of the said Act to the Appellant No.2. The appeal on behalf of Appellant No.4 Chandrakant Thakur has abated.

34. Hence, the following order:

O R D E R

- i) The Appeal is partly allowed.
- ii) The Appeal on behalf of the Appellant No.4 stands abated.
- iii) The conviction of all the Appellants except the Appellant No.4 is maintained.
- iv) The payment of fine as directed by the trial Court

in respect of all these offences is also maintained, except for the Appellant No.2. His sentence for payment of fine under different heads is set aside. However, so far as, substantive sentences are concerned, those sentences are reduced for each of the appellants except the Appellant No.2 for the period for which they have already undergone. They need not undergo any further imprisonment for the offences in connection with this case.

v) So far as the Appellant No.2 Atmaram Gangaram Patil is concerned, his substantive sentence of imprisonment and that of payment of fine are set aside. He shall execute a bond of good behaviour for a period of six months from 1st November 2022 in accordance with the provision of Section 4 of the Probation of Offenders Act, 1958.

vi) On his executing such bond he need not undergo

any substantive sentence and need not pay the fine amount.

vii) If there is any breach of bond then the Appellant No.2 shall suffer S.I. for 15 days.

viii) He shall also be entitled to benefit U/s.12 of the Probation of Offenders Act, 1958.

ix) It is made clear that, payment of fine imposed on the other appellants is not set aside. Therefore, PW-1 Shashikant Rambhau Patil and PW-3 Manjula Mangal Gharat are entitled to the compensation as mentioned in clause (7) of the operative part of the trial Court's Judgment and order.

x) With these directions, the Appeal is disposed of.

xi) With disposal of the main Appeal, nothing survives in the Interim Application No.2247 of 2022 and it is also disposed of.

(SARANG V. KOTWAL, J.)