

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 562 OF 2022

**DATTA SUDAM EKHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Appellant : Mr. Nirmal Ramchandra J.
APP for Respondents/State : Mr. A.M. Phule

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.
DATE : 20th March, 2023**

ORDER :- (Per: Y.G. Khobragade, J.)

1. By the present appeal under Section 372 of the Cr.P.C., the appellant-victim under Section 2(wa) of the Cr.P.C. challenges the impugned judgment and order dated 23.03.2022 passed by the learned Additional Sessions Judge, Parbhani in Sessions Trial No.4/2017 acquitting the respondent nos.2 to 22-original accused nos.1 to 21 for the offence punishable under Section 302, 307, 326, 325, 324, 147, 148, 120-B read with Section 149 of the I.P.C. and Section 135 of Maharashtra Police Act.

2. With able assistance of the learned advocate for the appellant and the learned APP for the State, we have gone through the record.

3. Injured Prahladrao Bahirat was hospitalised in Govt. Hospital, Parbhani in an unconscious state. After he had regained consciousness after some time and then he lodged a report with Police Station Bori, Tq. Jintur. He alleged that sixteen acres land out of gut no.565 was possessed by his father Narayanrao since 1955. Thereafter he is possessing and cultivating the said land. One Samiyoddin and his sons Hafizuddin (accused no.1) and others had raised dispute with him on account of said field. Civil suit in respect of said land was subjudice before the Court. Accused persons-Rafiyoddin (accused no.17), Hafizuddin (accused no.1), Ghausoddin (accused no.18), Anisoddin (accused no.19), Najmoddin (accused no.21) and others started residing in the field with an intention to dispossess him from 21.04.2015. On 23.04.2015, at about 10.00 a.m. the injured-Prahladrao, his son Rajabhau along with other villagers viz., Vithobha Ekhe, Ganesh Avtare, Sadashiv Ekhe, Ganesh Raut, Pandurang Ekhe, Jagan Ambhure, Rambhau Lokhande, Sonaji Jivne, Yamunabai Lokhande, Gajshri Ekhe, Anita Avtare, Lata Bahirat visited said field and inquired with accused no.1-Hafizuddin and other accused persons as to why they have taken forcible possession of the field, when the civil suit is pending. Accused no.1 and his brothers told them that those persons that they should not cultivate the land and assaulted them with iron rod, sticks and scythe. Accused no.1-Hafizuddin, accused no.17-Rafiyoddin and accused no.18-Ghausoddin assaulted informant on his head, back and

chest with iron rod. The accused no.19-Anissodin, accused no.21-Najmoddin, accused no.20-Raisoddin assaulted with iron rod on both legs and left hand of Sudam (appellant's father). The other accused Mukhtar Gaffar, Shaikh Gaffar Shaikh Lal, Shaikh Noor, Mehbub Tayyab, Shaikh Rashid, Mehraj Akhtar, Siraj Akhtar, Hamid Bhai, Shaikh Hanif, Mohammed Hussain, Shaikh Afsar, Shaikh Khuddus, Shaikh Feroz, Shaikh Akhil and ten other associates assaulted with sticks, iron rod, scythe and fist blows with others who were present at the spot. Sudam Ekhe, the father of present appellant succumbed to injuries while undergoing treatment in the hospital.

4. On the basis of said First Information Report a Crime bearing No.47/2015 was registered against the accused persons for the offence punishable under Section 302, 307, 326, 325, 324, 147, 148, 120-B read with Section 149 of the I.P.C. and Section 135 of Maharashtra Police Act with Police Station Bori, Tq. Jintur, District Parbhani. The Investigating Officer-SDPO Shri Kishor Kale conducted investigation. He has drawn spot panchanama and seized 40 sticks, one thick wooden log, 2 axes, 4-5 motorcycles, tin sheets, iron cot, wooden cot. Further the Investigating Officer has seized clothes of accused, deceased-Sudam Ekhe as well as injured persons under separate seizure panchanama and arrested the accused. During course of interrogation, the Investigating Officer seized four iron rods and stick from the accused persons under Section 27 of Indian Evidence Act. He

recorded statement of witnesses under Section 161 of the Cr.P.C. All the seized articles were referred for chemical examination and collected injury certificates in respect of the injured and post mortem report in respect of deceased-Sudam Ekhe. The map of spot of incident was drawn through the Revenue Officer and on completion of investigation, charge-sheet came to be filed against the accused persons before the J.M.F.C. However, two accused were juveniles, therefore, charge-sheet against them filed before the Juvenile Justice Board.

5. After the committal of the case, the learned trial Court framed the charge against the accused persons (Exh.47) for the offence punishable under Section 302, 307, 326, 325, 324, 147, 148, 120-B read with Section 149 of the I.P.C. and Section 135 of Maharashtra Police Act. Accordingly, plea of the accused was recorded, however, all the accused pleaded not guilty and claimed for trial.

6. In order to bring home guilt to the accused for the said offences, the prosecution has examined in all 15 witnesses. All the accused persons admitted inquest panchanama in respect of deceased-Sudam Ekhe, his clothes seizure panchanama as well as clothes seizure panchanama of the injured. The statements of all the accused are recorded under Section 313 of the

Cr.P.C. The defence of the accused persons is of total denial and false implication.

7. At the conclusion of the trial, the learned trial Court passed the impugned judgment and order and acquitted all the respondents-accused on 23.03.2022, hence, this appeal.

8. The learned advocate appearing for the appellant/victim canvassed that total 13 witnesses out of 14 have turned hostile, however, the prosecution has not taken care to re-examine the hostile witnesses and the learned trial Court failed to exercise powers conferred under Section 311 of the Cr.P.C. and the prosecution failed to examine the Investigating Officer and the Medical Officer to prove that death of Sudam Ekhe (appellant's father) was caused due to splenic rupture with Hemoperitoneum with compound fracture of upper end of left tibia and fibula. Therefore, the learned trial Court ought to have recorded to take additional evidence but without recording additional evidence the learned trial Court passed the impugned judgment and acquitted the accused. Therefore, the impugned judgment and order is perverse, illegal and bad in law and prayed for quashing and setting aside the same.

9. The Investigating Officer had executed inquest panchanama (Exh.111) of the dead body of Sudam Ekhe and had referred said dead body

for autopsy. The post mortem report (Exh.124) and inquest panchanama (Exh.111) are admitted by the accused persons. On perusal of post mortem report (Exh.124), it appears that death of deceased caused due to splenic rupture with Hemoperitoneum with compound fracture of upper end of left tibia and fibula.

10. Though the prosecution examined 14 witnesses who appear to be the eye witnesses to the incident but 13 witnesses have turned hostile and did not support the case of the prosecution.

11. The prosecution examined PW14-Gulabrao Ekhe, the injured at Exh.105. The PW14 deposed that on the day of the incident at about 10.00 a.m., he was proceeding towards his field and at that time ploughing work was going on in the field of one Samiyoddin Khatib and at that time he was called by Sadashiv and Raja Bahirat. Five sons of Samiyoddin Khatib and other villagers had also gathered to pacify. The PW14 deposed that Samiyoddin Khatib and others assaulted Sudam Ekhe by means of stick, iron rod and when he rushed to separate the assailants at that time sons of Samiyoddin Khatib were assaulted him by sword, stick, iron rod due to which he sustained injuries below his right eye as a result of the blow of sword. He had also sustained injury to his right hand by means of axe and both the knees. Thereafter, he was taken to Rural Hospital, Bori and subsequently he

was referred to Civil Hospital, Parbhani. Later on, he came to know about the death of injured-Sudam Ekhe.

12. In cross-examination PW-14 admitted about existence of several houses of Samiyoddin Khatib in village Kausadi. He had no knowledge about the nature of the dispute between Samiyoddin Khatib and Prahlad Bahirat. He further admits about gathering of 400 to 500 people at the time of incident and he was under coma when his statement was recorded. He claimed ignorance about the contents of statement was recorded by the police under his name. The police seized his shirt Article-D, after lapse of 40 days from the incident. Thus, when PW14 admitted about recording his statement when he was under coma in the hospital, it creates doubt over the said statement under Section 161 of the Cr.P.C. alleged to have been given by him. Therefore, the entire testimony of the PW14 loses its sanctity. He cannot be said to be a trustworthy witness. PW14, has alleged that Samiyoddin Khatib had assaulted the deceased Sudam Ekhe with stick; however, said Samiyoddin Khatib has not been impleaded as an accused. Investigating officer would have explained the same, but he has not been examined. The PW-14 has not specifically deposed that which particular accused assaulted the deceased. The PW14 though deposed about assault by sons of Samiyoddin Khatib with sword and iron rod but no sword has been seized by the Investigating Officer. The PW14 specifically deposed about sustaining injury due to assault with sword

and axe but the Medical Officer PW15- Dr. Seema Panad deposed about sustaining abrasion and contusion injuries to PW14-Gulabrao Ekhe with hard and blunt object. When sword is a sharp weapon, it cannot be said that those injuries which found on his person were possible by sword like weapon. Therefore, the evidence of PW14 itself not sufficient to prove that the accused are the authors of the said injuries. The prosecution has failed to bring substantial evidence on record to prove that, the accused persons are the authors of the injuries sustained to the deceased-Sudam Ekhe or injuries caused to those villagers.

13. The prosecution examined PW15-Dr. Seema Prahladrao Panad at Exh.109 to prove injuries sustained to PW14-Gulab Ekhe. The PW15 deposed that on 23.04.2015 at about 02.15 p.m. she examined the injured Gulab Ekhe and found following injuries:

1. Abrasion over right side of cheek size 5cm x 5cm caused by hard and blunt object. Simple injury. Caused within 6 hours.
2. contusion right side of eye orbit of size 5cm x 4 cm, caused by hard and blunt. Simple in nature. Caused within 6 hours.

Thus, it can be seen from the testimony of this witness would at the most would show the sustaining of simple injury to PW 14. However, further link is not established as his statement under Section 161 of CrPC is doubtful.

14. PW15 issued injury certificate Exh.110. However, the PW15 admitted in her cross-examination about not mentioning that the patient was medically treated either at indoor or outdoor facility at hospital. She admitted that those injuries described in injury certificate Exh.110 are possible if the injured would have fallen down from motorcycle on rough surface on his right side.

15. When 13 witnesses out of 14, who had allegedly sustained the injuries, have turned hostile. It was not case of compromise or settlement out of Court. Therefore the learned Trial Judge was justified in not relying on only one witness. When people in large number were present, they could have been examined by the prosecution. Now after the entire trial is over, the victim has got up and is rather blaming prosecution for not bringing quality evidence. It is not shown that with some ulterior motive, the prosecution has withheld best evidence. Question of sending matter for re-trial does not arise, when all the accused persons have faced the trial and got the acquittal on merits. The impugned judgment and order is legally sound. The findings so arrived at, do not require interference. In view of the above discussion, the appeal stands dismissed.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]