

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

CRIMINAL APPEAL NO.1104 OF 2022

1. Sachin Tanaji Jadhav, &

2. Tanaji Somaji Jadhav

....Appellants

Versus

1. The State of Maharashtra,

2. Ankush Punaji Salgude, &

3. Harshal Ankush Salgude.

....Respondents

Mr. M.A. Choudhari, Advocate a/w. Trisha Choudhari,
Ranveer Choudhari for the Appellants.

Mr. Arfan Sait, APP for the Respondent No.1-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th JUNE, 2024

ORAL JUDGMENT :

1. The Appellants have challenged the judgment and order dated 20.10.2022 passed by the Additional Sessions Judge, Solapur in Sessions Case No.178/2015. The Appellants were the original accused Nos.1 & 2. Though, they were charged under Section 329 of IPC, they were acquitted from that charge. Instead, the Appellant No.1 Sachin was convicted for the offence punishable under Section 326 of IPC and was sentenced to suffer RI for five

years and to pay fine of Rs.1,000/- and in default to suffer further imprisonment for one month. The Appellant No.2 Tanaji was convicted for commission of the offence punishable under Section 324 of IPC and was sentenced to suffer RI for one year and to pay fine of Rs.500/- and in default to suffer further imprisonment of 15 days. The Appellant No.1 was directed to pay Rs.50,000/- by way of compensation to the injured victim Harshal under Section 357(3) of Cr.PC. and in default to undergo SI for six months. The Appellant No.2 was directed to pay Rs.25,000/- by way of compensation to the other victim Ankush under Section 357(3) of Cr.PC. and in default to under SI for two months. The Appellants were given set off under Section 428 of Cr.PC.. Both learned counsel submit that during investigation the Appellants were in custody for fifteen days. After their conviction, the Appellant No.2 was granted bail but the Appellant no.1 was taken in custody on 20.10.2022 and since then he is in custody.

2. Heard Mr. M.A. Choudhari, learned counsel for

the Appellants and Mr. Arfan Sait, learned APP for the Respondent No.1-State.

3. The prosecution case is that the Appellant Tanaji was the co-brother of PW-4 Ankush. Their wives were sisters. There was some dispute about the land belonging to the mother of those two ladies. The prosecution case is that Balaji Salgude was son of PW-4 Ankush. On 2.2.2014 at about 10.00 a.m. both the Appellants approached Balaji and questioned him as to why he was not carrying out the digging work for Kisan Gund. There was a quarrel on that count. Both the Appellants went away but they returned at around 12.00 p.m. and again started quarreling with Balaji. Balaji's brother Harshal and father Ankush intervened. It is alleged that the Appellant No.1 was carrying an axe and he gave a blow on PW-2 Harshal's head. The Appellant No.2 hit PW-4 Ankush with a stone. Harshal and Ankush suffered injuries. They were taken to the hospital. Balaji lodged his FIR about the incident. The investigation was carried out. Various panchnamas, including the spot panchnama etc.,

were carried. The clothes of the injured were seized. The statements of the witnesses were recorded. The investigation was carried out and the charge-sheet was filed. The case was committed to the Court of Session.

4. During trial, the prosecution examined ten witnesses including the injured witnesses, the first informant, the police officer who had lodged the FIR, pancha witnesses and the Medical Officer who had treated the injured. Significantly the investigating officer was not examined. The defence of the Appellants was of total denial. According to them, they were falsely implicated because of the land dispute.

5. The important witnesses in this case are PW-1 Balaji - the first informant; PW-2 Harshal - the injured eye witness, and PW-4 Ankush - who was another injured eye witness. PW-1 Balaji Salgude was the first informant. He has stated about the relationship between his family and the Appellants. All of them were residing at Kuranwadi. PW-1

Balaji used to take contracts for digging pits for electric poles. On 2.2.2014 at about 10 a.m. both the Appellants met him and questioned him as to why he was not digging pits in the field of Kisan Gund. PW-1 told them that he would charge money for that. There was some quarrel. The Appellants abused him. PW-1 returned home. He was sitting with his mother. At that time, both the Appellants came to his house. The Appellant No.1 Sachin was having a axe. The Appellant No.2 Tanaji was having a stone. They started quarreling with him. At that time, his father Ankush and his brother Harshal intervened. It is stated by him that the Appellant Sachin gave a blow with an axe on Harshal's head and the Appellant Tanaji assaulted his father Ankush with a stone. It is mentioned by him that the Appellants took away Rs.3000/- from his shirt-pocket. Thereafter the injured were taken to Gujare Hospital and after some primary treatment they were taken to Katikar Hospital, Solapur. PW-1 then lodged his FIR at Mohol Police Station. It is produced on record at Exhibit-39. He identified the clothes of the injured

produced in the court. He also identified the axe and the stone produced in the Court.

In the cross-examination he was asked about the civil dispute in respect of his mother's ancestral land; but, he denied any knowledge about such civil dispute. He denied the suggestion that since the Appellants had developed an irrigated land, the informant's family was jealous of them and the Appellants were falsely implicated. He admitted that in the FIR he had not mentioned that the Appellant No.1 had accompanied the Appellant No.2 during the incident which had taken place in the morning. He denied the suggestion that the injured witnesses had fallen from the motorcycle and taking advantage of that fact, this false case was lodged.

6. PW-2 Harshal Salgude is an important witness. He has stated that on 2.2.2014, in the morning, PW-1 Balaji told him about the quarrel between Balaji and the Appellants. At about 12.30 p.m., PW-2 and other family

members were sitting together. At that time, both the Appellants came there. The Appellant No.1 Sachin was having an axe and the Appellant No.2 Tanaji was having a stone. They started fighting with Balaji. PW-2 Harshal and his father Ankush PW-4 tried to intervene. At that time, the Appellant No.1 Sachin gave a blow with an axe on his head. The Appellant No.2 Tanaji hit Harshal's father on his head. PW-2 and his father were taken to a hospital. According to him, he regained consciousness on 4.2.2024. In the meantime, Balaji had already lodged his FIR. He identified his clothes and the weapon produced in the Court. In the cross-examination, he was mainly asked about the dispute between their families regarding the land. There was hardly any effective cross-examination in respect of the actual incident of assault.

7. PW-4 Ankush Salgude deposed exactly in the same manner as the PW-2. He also deposed that the Appellant No.1 took away Rs.3,000/- from Balaji's pocket. In the cross-examination he admitted that he had taken the

loan from Dena Bank for which the Appellant No.2 was a guarantor, but, he added that he had repaid the entire loan amount. Again there was hardly any effective cross-examination in respect of the actual assault.

8. PW-3 Baban Salgude was a pancha witness in whose presence the blood stained clothes of the injured were produced. He admitted in the cross-examination that he was on good terms with the informant's family. However, his deposition is not of much importance because the CA report in respect of those clothes is not produced on record.

9. PW-5 ASI Dilip Kadam had recorded the FIR.

10. PW-6 Police Naik Vijay Deshpande had carried the seized articles to the C.A. at Pune. However, as mentioned earlier, the C.A. reports are not on record. Therefore, his evidence is of no significance.

11. PW-7 Ganesh Salgude was examined as an independent eye witness. He has supported the prosecution case and had narrated the incident in the same manner as

deposed by the injured witnesses PW-2 & PW-4. In the cross-examination, he admitted that when his statement was recorded by the police, the informant Balaji was present and his statement was told by the informant Balaji before the police. Therefore, his evidence does not inspire confidence and it can be ignored.

12. PW-8 Dr. Dattaprassanna Katikar is an important witness. He has deposed that on 2.2.2014 Harshal was brought to his hospital with history of assault with a sharp weapon. He was unconscious for half an hour. PW-8 examined him at about 1 p.m. before that, he was given some primary treatment at a different dispensary. Harshal had suffered one CLW over occipital region of the size 5 x 5 cm. The CT Scan of the brain was carried out. There was depressed fracture of the right parietal bone with over lying soft tissue scalp swelling and underlying small contusion over right parietal lobe. He was discharged on 12.2.2014. This witness had also examined the other injured Ankush. According to PW-8, Ankush had suffered one CLW on the

fronto parietal region of the size 4 x 1 cm and abrasion on the left thigh. There was no fracture and the injuries were simple in nature. He was discharged on 7.2.2014. In the cross-examination he admitted that the medical certificate of Harshal did not mention that the injury was grievous.

13. PW-9 Kalyan Pasle was a pancha witness to the spot panchnama, but, he turned hostile.

14. PW-10 Shivaji was examined as an eye witness. But he also did not support the prosecution case. He was cross-examined by the prosecution and the contradictory statements made in his police statement were brought on record. However, the investigating officer was not examined and, therefore, these contradictions were not proved.

. This, in short, was the prosecution evidence.

15. As mentioned earlier the defence of the Appellants was of total denial. It was contended that they were falsely implicated because of the land dispute.

16. Learned Additional Sessions Judge considered the evidence and the defence. He was of the opinion that the offence under Section 329 of IPC was not made out. Instead, the Appellant No.1 had committed the offence punishable under Section 326 of IPC and the Appellant No.2 had committed the offence punishable under Section 324 of IPC. The injured eye witnesses were believed. The fact that the Investigating Officer was not examined was also considered. Learned Judge relied on the evidence of the injured eye witnesses and also the evidence of the first informant.

17. Learned counsel appearing for the Appellants submitted that there was major discrepancy in the prosecution evidence. The first informant in his deposition had stated that both the Appellants had quarreled with him in the morning. However, the FIR produced on record clearly mentions that it was only the Appellant No.2 who had quarreled with the first informant in the morning. He submitted that thus the genesis of the incident which took

place at 12 p.m. is not without doubt. The independent witnesses were not examined and in particular the prosecution was required to examine Kisan Gund because the quarrel had started in the morning on the ground that the informant had refused to do work in Kisan's field.

18. Shri Choudhari further submitted that the quarrel was with Balaji and both the Appellants had allegedly gone to Balaji's house who was present in the house and yet no serious injury was caused to Balaji. Therefore, the motive is not established.

19. Learned counsel further submitted that the prosecution evidence is exaggerated and, therefore, not believable. The incident had allegedly taken place between 12 p.m. to 12.30 p.m. and the Medical Officer has deposed that he had examined the injured Harshal at 1 p.m. The hospital of PW-8 was in Solapur which was at least 80 km away from the spot of incident.

20. Learned counsel further submitted that the

Investigating Officer is not examined. The C.A. reports are not produced on record. The spot pancha has turned hostile. All the infirmities show that the prosecution has failed to prove the case against the Appellants beyond reasonable doubt.

21. Learned APP Mr. Sait opposed these submissions. He heavily relied on the evidence of the injured eye witnesses as well as that of the first informant. He also referred to the evidence of the Medical Officer and submitted that there was no reason to doubt the evidentiary value of the Medical Officer. There was no reason to implicate the Appellants falsely if they had not committed this assault on the injured eye witnesses. He submitted that non-examination of the Investigating Officer in this case will not affect the prosecution case because the evidence of the eye witnesses is consistent and trustworthy.

22. I have considered these submissions. The evidence of the eye witnesses is discussed hereinabove. I

find that the evidence of PWs-1, 2 & 4 is absolutely consistent. As far as the main incident of assault on PW-2 Harshal and PW-4 Ankush is concerned, there is some small discrepancy in respect of the earlier incident which had taken place at about 10.00 a.m. In the FIR, the presence of the Appellant No.1 at that point is not mentioned. But that is not the main incident. The significant part of the prosecution story is in respect of the incident which had taken place at around 12 p.m. near the house of the first informant. In that behalf there is no discrepancy or inconsistency between the evidence of these three important witnesses, namely, PWs- 1, 2 & 4. All of them have consistently deposed that the Appellant No.1 had come on the spot with an axe and the Appellant No.2 had reached there with a stone in his hand. They had started quarreling with PW-1 and thereafter PWs-2 & 4 were assaulted. There is hardly any delay in lodging the FIR. The injured were taken to hospital immediately.

23. The medical evidence clearly supports the

prosecution case. Thus, there is consistency between the ocular and the medical evidence. There is no reason to raise any doubt about PW-8 Dr. Katikar's evidence. He has described the injuries suffered by the injured witnesses PWs- 2 & 4. Therefore, even leaving aside the evidence of PW-7 Ganesh Salgude and PW-10 Shivaji Salgude, the prosecution has been successful in proving its case based on the evidence of PWs-1, 2, 4 & 8. In this view of the matter, non-examination of the I.O. will not make any difference in this case. PW-5 ASI Dilip Kadam has deposed about lodging of the FIR which was filed without any delay.

24. The learned Additional Sessions Judge has correctly appreciated this evidence and I do not find any infirmity in his reasoning. He has rightly acquitted the Appellants from the charges of Section 329 of IPC and instead convicted them under Sections 326 & 324 respectively. There is no consistent evidence of PWs- 1, 2 and 4 as to who exactly took away Rs.3,000/-. Therefore, as far as the order of conviction recorded against the Appellants

is concerned, I am satisfied that the conviction is required to be upheld.

25. I have heard both learned counsel on the quantum of sentence. Learned APP submitted that considering the nature of injuries even the sentence imposed on the Appellants be maintained. On the other hand, learned counsel for the Appellants submitted that the incident is old. Almost ten years have passed. The Appellants were on bail during trial and there are no allegations of misuse of that liberty. Both the parties were related with each other and were residing in the same vicinity. In spite of that, there is no further escalation of enmity between the two groups. He submitted that this fact may be taken into consideration.

26. I have considered these submissions. The incident is dated 2.2.2014. More than ten years have passed. As far as the Appellant No.2 Tanaji Jadhav is concerned, the allegations against him are that he had

assaulted PW-4 Ankush on the head causing simple injury. According to the prosecution case both the Appellants had gone to that place to pick up quarrel with PW-1. Therefore, the object of assault was neither to cause grievous injury to Ankush nor to Harshal. In this view of the matter, learned Judge has rightly held that the Appellant No.2 was guilty under Section 324 of IPC and convicted him only under Section 324 of IPC. Section 34 of IPC was not invoked. Both the Appellants had not shared the common intention of causing grievous injury.

27. Considering the nature of injuries attributed to the Appellant No.2 and since more than ten years have passed, it would be proper if the substantive sentence imposed on the Appellant No.2 is reduced from one year to the period which he has already undergone.

28. It is also important to note that the Appellant No.2 has already deposited the compensation amount which he was directed to pay to the injured victim PW-4 Ankush.

29. As far as the Appellant No.1 is concerned, the substantive sentence imposed on him is for the period of five years. However, again some leniency can be shown to him because the incident is more than ten years old. Both the parties are related with each other. The Appellant No.1 has not misused his liberty when he was on bail for a long period during trial. Sufficient compensation amount was directed to be paid. Shri Choudhari states that the compensation amount is already deposited by the Appellants. In this view of the matter even his sentence can be reduced to the period of four years instead of five years.

30. Hence, the following order :

:: O R D E R ::

- i. The Appeal is partly allowed.
- ii. The conviction of the Appellant No.1 Sachin Jadhav for commission of the offence punishable under Section 326 of IPC is maintained. However, instead of sentence of five years, the Appellant No.1 is sentenced to suffer RI for four years. The fine imposed and the compensation amount directed to be paid by him remains unchanged.

- iii. The conviction of the Appellant No.2 Tanaji Jadhav under Section 324 of IPC is maintained. However, instead of the substantive sentence of one year, the Appellant No.2 Tanaji Jadhav is sentenced to suffer imprisonment for the period which he had already undergone. He has already paid the fine amount and the compensation amount, as submitted by his counsel Shri Choudhari. That part of the sentence shall remain unchanged. He need not surrender in connection with this case.
- iv. The compensation amount deposited by both the Appellants shall be paid to the respective injured witnesses as directed by the trial Court.
- v. The Appellant No.1 Sachin Jadhav is entitled to get set-off for the period which he has already undergone as undertrial prisoner under Section 428 of Cr.PC.
- vi. Criminal Appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane(PS)

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