



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 263 OF 2024

Vishnu Thakaji Talekar
Age : 39 Years, Occu : Agril.,
R/o. Pithori Sirasgaon,
Tq. Ambad, Dist. Jalna

...APPELLANT

VERSUS

1. The State of Maharashtra
2. Pradip Shivaji Avhare
Age : 25 Years, Occu : Education,
R/o. Shobhanagar, Pithori Sirasgaon,
Tq. Ambad, Dist. Jalna

...RESPONDENTS

Mr. Sudarshan J. Salunke , Advocate for the Appellant.
Ms. U. S. Bhosale, APP for Respondent – State.
Mr. Thombre Chandrakant V, Advocate for Respondent No.2.

CORAM : RAJNISH R. VYAS, J.
DATE : JANUARY 07, 2026

JUDGMENT :

1. Heard respective counsels.
2. This is an appeal challenging judgment and order passed in Sessions Case No.274 of 2021 on 02nd March 2024 by the Additional Sessions Judge, Ambad sofar as convicting the present appellant who is the original accused No.5, for the commission of offence punishable under Section 307 of Indian Penal Code (hereinafter referred to as the “IPC” for the sake of brevity). The appellant was directed to undergo rigorous imprisonment for ten (10) years and pay fine of ₹ 3,00,000/- and in default

to suffer simple imprisonment of six (06) months. Sofar as offences punishable under Sections 341, 327, 324, 323, 143, 147, 148 read with Section 149 of IPC are concerned the appellant was acquitted. All other accused persons who were tried were acquitted from the offences.

3. The criminal law was set in a motion on the basis of the report lodged by one Pradip Shivaji Avhare with respondent Gondi Police Station on 23rd August 2019, on the basis of which First Information Report No. 340 of 2019 for the commission of offences punishable under Sections 341, 326, 324, 323, 143, 147, 148 of IPC was registered in all against 8 accused persons. After completion of investigation, a final report was submitted. The charges were framed by the learned Additional Sessions Judge, Ambad, below Exhibit 7 against the 8 accused persons on 25th January 2022. The accused persons were charged for commission of offences punishable under Sections 307 read with Section 149 of IPC, so also Section 341 read with Section 149 of IPC and Section 326 read with Section 149 of IPC. They were further charged for commission of offences punishable under Sections 354, 323, 143, 147, 149 and 148 along with Section 149 of IPC.

4. In order to bring home the charge, the prosecution has examined 13 witnesses. It is pertinent to mention here that the case of prosecution is based on two incidents. The first incidence took place at a stone quarry (*Khadan*), and the second incidence took place near *Ganpati*

Temple. PW-1 (page No.40 of paper book) is one Pradip Shivaji Avhare, who is the injured as well as the son of PW-2, who is also injured. According to the case of prosecution, on the day of incident i.e. on 21st August 2019, at about 17:00 hours, at village Pithori Sirasgaon, Taluka Ambad, District Jalna, all the accused persons formed an unlawful assembly and, with an intention to cause injuries by carrying various weapons assaulted the PW-1 and PW-2. The motive of the crime, according to the prosecution, was a dispute regarding the allotment of a piece of land i.e. gat No.25 and 304 situated at Pithori Sirasgaon for rehabilitation.

5. **FIRST INCIDENT** : On 21st August 2019, PW-2 – Shivaji, along with his wife Vijaymala and daughter, was passing from stone mine at Shobhanagar. At that time, juvenile accused / original accused Nos.1 and 2 and the accused who were convicted came there. Accused Prakash and Eknath (acquitted accused) caught hold of the injured Shivaji / PW-2, and accused Vishnu (present appellant / convicted accused) gave an axe blow on the head of injured Shivaji. The prosecution further contended that the accused Thakaji, Somnath and Bhagwan (all acquitted accused) assaulted Shivaji by means of sticks. Accused Sopan and Pavan (acquitted accused) assaulted him by fist, blows and tore his cloths. Thereafter, PW-2 / Shivaji called the informant, i.e. PW-1, and witness Datta, who were his sons, and narrated incident to them. This was the first incident in which PW-2 was assaulted.

6. There is one more incident of which notice was taken and criminal law was earlier set in a motion, which resulted into culmination of filing of charge-sheet and the present Sessions Case.

7. **SECOND INCIDENT** : after the assault made on PW-2 Shivaji, the children of Shivaji, i.e., PW-1 and PW-5, rushed to the spot, who took Shivaji in a hired auto rickshaw, driven by Tanhaji, and when they were on the way to the hospital, near the Ganpati Temple, again accused persons rushed. The prosecution has come with a case that at that place also PW-2 and PW-1 were assaulted. It is the case of the prosecution that thereafter they went to their home and informed to Sambhaji Dhumak, who disclosed the incident to the police authorities.

8. As PW-1 and PW-2 had sustained injuries, they were rushed to the hospital for primary treatment at Ambad Hospital. Considering the nature of injuries, these two injured persons were referred to Civil Hospital, Jalna. The Civil Hospital, Jalna, thereafter referred the injured persons to the Apex Hospital, Aurangabad. In the aforesaid background, the prosecution examined total 13 witnesses.

9. PW-1 and PW-2 can be termed as star witnesses. Both the witnesses are injured witnesses, and therefore their testimony will have to be tested in the background of other material. PW-1 (page No.40 of the

paper book), in his statement, has stated that when, he along with his brother Datta / PW-5, was at the field, he received a telephonic call from PW-2 / Shivaji, who informed him about the assault that had taken place. When PW-1, along with PW-5, reached the spot, i.e. stone quarry (*Khadan*), they found PW-2 sitting, and blood was oozing from his head. Upon enquiry, PW-2 informed, PW-1 and PW-5 that accused Prakash and Eknath had caught hold of him and that the present appellant Vishnu had assaulted him by means of an Axe. The other accused persons assaulted him by means of sticks. At this juncture, it is necessary to mention here that neither PW-1 nor PW-5 are eyewitnesses to the first incident. What they have stated about the first incident cannot be said to be a primary evidence. However, their evidence is more relevant with regard to the second incident, which took place near the Ganpati Temple.

10. When PW-2 informed PW-1, PW-1, along with PW-5, rushed to the spot of the incident and found Shivaji in an injured condition. Consequently, in order to take injured to the hospital, PW-1 stopped the rickshaw of one Tanhaji Shirke, and proceeded towards the hospital along with the mother, sister and brother of PW-1. When the said vehicle reached near the Ganpati Temple, all the accused persons came on motorcycle and assaulted PW-2 and PW-1. This time, PW-1 suffered an injury on his hand due to sticks blows, and according to him, he sustained fracture. He thereafter proceeded on foot along with others towards his house and also

called one Sambhaji regarding the incident.

11. The said Sambhaji informed Gondi Police Station, and thereafter police rushed to the PW-1. The Police authorities then took the injured to the Ambad Hospital. This witness was subjected to cross-examination. In cross-examination, nothing has been brought on record to disbelieve the story advanced by the prosecution. If the line of cross-examination is seen, it would be crystal clear that relevant questions to disbelieve the story advanced by the prosecution were not put to the said witness. PW-2 is the star witness, who is injured Shivaji. He has specifically stated that on 21st August 2019, when he was working in the field along with his wife and daughter, the accused persons assaulted him. He has categorically stated that it was the present appellant who assaulted the PW-2 on his head by means of an Axe. He has deposed on the same lines as PW-1 so far as second incident is concerned. The medical treatment was also on the same lines as that given to PW-1. He stated that his clothes were seized as well as the blood samples were collected.

12. This witness was cross-examined at the instance of concerned lawyer. In cross-examination, he has given a suggestion that at the spot of incident, people had not gathered. It was admitted by PW-2 in a cross-examination that his wife and daughter were not assaulted. It is pertinent to mention here that from cross-examination it is clear that PW-2 admitted

that the axe blow was made on his head from the sharp side. Except for giving suggestions, nothing has been brought on record to disbelieve the story of the prosecution.

13. PW-3 is the wife of PW-2. She has also narrated the incidence as narrated by PW-1 and PW-2. If her testimony is perused, it would be crystal clear that she has not exaggerated the story. She has given candid answers not only in her examination-in-chief but also in cross-examination. She has categorically stated that it was the present appellant who assaulted PW-2 (her husband) by means of an Axe. The accused was identified in the Court. Needless to mention, the identify of the accused was not even disputed.

14. The spot of the incident, which is at Exhibit 34, was tried to be proved through PW-4. He has stated that the spot was shown by one Vijaymala and it was drawn according to the actual position. The witness was cross-examined and a suggestion was given that the spot panchnama was prepared at one place only.

15. PW-5 is Datta Avhare, who is son of PW-2 and PW-3. This witness has also deposed about the second incident in the same manner as PW-1 and PW-2. He has categorically stated that when they were proceeding towards the hospital, all accused persons came near the Ganpati Temple and assaulted them by means of sticks. He stated that his brother,

PW-1 had sustained injury. In his cross-examination, nothing has been brought on record to disbelieve his version. If the cross-examination is perused, it would reveal that it is very brief, and one omission was tried to be brought on record, namely, that PW-5 did not state to the police that Prakash had assaulted his brother by means of stick.

16. PW-6 is a panch to the seizure of the Axe, who has turned hostile. PW-7 is a panch, to the seizure of cloths of PW-2 (page No.68). He has stated that on 10th September 2019 (10th September 2021, a date which is mentioned in deposition, seems to be typographical error), he was called to the police station where PW-2 was present. According to this witness, the clothes of PW-2 were seized and a panchnama was prepared. In his cross-examination, he has stated that he runs a tea stall and that the police frequently visit his tea stall. A suggestion was given that nothing was seized in his presence. The seizure of the clothes is at Exhibit 43.

17. PW-8 is Musakha Pathan, who was the driver of Tavera vehicle. He stated that on 21st August 2019, he received a phone call from Pradip, who requested him to take his father to the hospital. According to the said witness, he immediately went to informant's house, where PW-2 was in an injured condition. PW-8 then took PW-2 to the hospital along with PW-1. This witness was not cross-examined.

18. From the testimony of the aforesaid witnesses, it is crystal clear

that PW-1, PW-2, PW-5 and PW-3 are natural witnesses. Their testimony shows that there is a ring of truth in a case advanced by the prosecution. All the four witnesses have categorically stated about the assault on PW-2 and PW-1. There is nothing brought on record to show that their testimony is required to be ignored or the facts stated are exaggerated. At this stage, the learned counsel for the appellant submitted that the testimony of all these witnesses is full of doubt and cannot be relied upon. The learned counsel for the appellant submitted that there was a delay in lodging the First Information Report. He further submitted that the spot panchanama clearly shows that there was rain at the spot of the incident and, therefore, the question of blood having found on the clothes of the PW-2 becomes suspicious. He further submitted that PW-1, PW-2, PW-3 and PW-5 are all members of one family and highly interested witnesses. The learned counsel for the appellant vehemently submitted that the weapon of offence i.e. the Axe was not recovered at the instance of the accused. He submitted that the recovery was under Section 165 of the Code of Criminal Procedure.

19. According to the learned counsel for the appellant, the best evidence ought to have been produced by the prosecution, but several witnesses and the material evidence were not brought on record. He further submitted that the mobile phone from which PW-2 made a call to PW-1 was not seized. He also submitted that the prosecution could have very well brought on record the call details of PW-2 and PW-1, but the same was

done. He lastly submitted that the offence under Section 307 of IPC is not made out against them.

20. I have already discussed in the earlier part of the judgment that PW-1, PW-2, PW-3 and PW-5 are all natural witnesses. Their testimony corroborates the facts stated by all these witnesses. Merely because there is a delay in lodging the FIR, it cannot be said to be fatal, for the simple reason that PW-2 and PW-1 had sustained the injuries. The incident in question took place at 17: 15 on 21st August 2019, whereas information was received by the police station on 23rd August 2019 at 01:10. Prior to that, PW-1 and PW-2 were referred to Hospital at Ambad, then referred at Jalna, and finally at Aurangabad. It is not expected from the injured witnesses to rush police station immediately; rather, their priority would be to obtain medical treatment.

21. Sofar as medical evidence is concerned, the prosecution has relied upon the testimony of PW-10, Dr. Bhavna Santosh Takalkar. The said witness is attached to Apex Super Specialty Hospital, Aurangabad as a Neurosurgeon. She stated that as per MLC No.1351 of 2019 dated 23rd August 2019, patient Shivaji Avhare (PW-2) was admitted in her hospital. She further stated that initially PW-2 was admitted to the Government Hospital Ambad, where primary aid was given to him, and therefore, he was shifted to Civil Hospital, Jalna, and later to a Hospital at Aurangabad.

If the sequence of incident is seen, firstly, Shivaji was taken to the Sub District Hospital at Ambad. The certificate dated 23rd October 2023, issued by the Medical Officer, which is at Exhibit 60, shows that the following injuries were suffered by Shivaji. It bears MLC No.2156 of 2019.

- “1. Contused lacerated wound – Head left side parietal area*
- 2. Abrasion – Left leg Anteriorly*
- 3. Contusion – Left knee Anteriorly*
- 4. Abrasion – Chest right side.”*

22. Same is the case with the injured Pradip, and his injury certificate issued by the Sub-District Hospital at Ambad is at Exhibit 61, which refers to MLC No.2157 of 2019. The injuries are as under :

- “1. Contusion – left forearm*
- 2. Abrasion – Back upper half*
- 3. Abrasion – Left Leg.”*

23. It appears that from Ambad they were directly treated at Apex Super Specialty Hospital, Aurangabad, where the CT scan of PW-2 was conducted, in which it was noticed that there was a left parietal depressed fracture with contusion of the brain. PW-2 was operated on 27th August 2019. PW-10 stated that the depressed fracture was elevated and that the patient had a sutured wound on the left parietal region. Even Neuroplasty was also performed. According to the PW-10, the injury was grievous. The age of the injury was two days. The patient was discharged on 07th

September 2019. PW-10 further stated that injury No.1 could be possible by means of an Axe. She stated that medical expenses of ₹ 1,70,000/- were paid by the patient.

24. If the cross-examination of the said witness is perused, it would reveal that nothing has been brought on record. The cross-examination is re-produced hereinbelow.

“04] The injury No.1 can be possible, if sharp side of axe is used as weapon. If axe used in commission of offence mostly it can not give the effect to the injury in zig-zag mode. The injury mentioned in certificate can be possible, if person met in accident and stuck on stone.”

25. The medical certificate dated 13th November 2019 issued by Apex Super Specialty Hospital, Aurangabad, bearing MLC No.272/1351/19 dated 23rd August 2019, has been proved by the prosecution below Exhibit 20, which speaks about the injuries.

26. The medical evidence is further proved by the testimony of PW-11, who is the Medical Officer attached to the Sub-District Hospital, Ambad. He has given details of the injuries sustained by PW-2 and PW-1. So far as the injury of PW-2 is concerned, as noticed by PW-11, is re-produced below :

“A] Contused lacerated wound on head left side parietal area, size 3cm x 1/2c.m. x 1/2c.m. It was irregular size injury. The age of injury was within 24 hours. It was

caused by hard and blunt object. Nature of injury was grievous.

B] Abrasion on left leg, size 2cm x 1 c. m. It was irregular size injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was simple.

C] Contusion on left knee, size 4cm. It was irregular size injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was simple.

D] Abrasion on chest right side, size 1cm x 1 c. m. It was irregular size injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was simple.”

27. Sofar as the injury sustained by PW-1 is concerned, which is brought on record by PW-1, is re-produced below :

“A] Contusion on left forearm, size 2cm x 2 c.m. It was diffuse injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was simple.

B] Abrasion back upper half, size 6cm x 2 c. m. It was horizontal injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was simple.

C] Abrasion left leg, size 3cm x 1 c.m. It was horizontal injury. The age of injury was within 24 hours. It was caused by hard and blunt object. Nature of injury was

simple.”

28. This witness has stated that the injury sustained by PW-1 is possible by means of a stick. The injuries sustained by PW-2 clearly shows that those were serious injuries, as the CT Scan revealed a left parietal depressed fracture with the contusion of brain. The weapon used was an Axe. Merely because the weapon was not seized from the accused by taking re-course to Section 27 of Evidence Act, it does not mean that the case advanced by the prosecution is required to be disbelieved.

29. Sofar as PW-12 is concerned, he was the police personnel who registered the first information report, prepared the spot panchnama, and seized the Axe in question. He also carried out part of the investigation in which the clothes were seized. Sofar as PW-13 is concerned, at the relevant time he was working as an Assistant Police Inspector with Gondi Police Station. He carried out further investigation by requesting the medical officers to collect the blood samples of PW-2. After completion of the investigation, he filed final report. Both these witnesses have stated about the investigation carried out by them. In cross-examination, nothing has been brought on record to show that the investigation carried out was tainted.

30. The prosecution has thus proved the ingredients of offences for which the appellant has been convicted. I, therefore, come to conclusion

that there is absolutely no reason to interfere with the judgment delivered by the learned Trial Court, sofar as convicting the appellant for the commission for offence punishable under Section 307 of IPC is concerned. In view of the testimony of the eye witnesses and the medical officers, I am of the view that the prosecution has proved the case beyond reasonable doubt, and the learned Trial Court has rightly convicted the appellant for the commission of offences punishable under Section 307 of IPC.

31. Coming to the quantum of sentence and the quantum of fine, it is pertinent to mention here that the Trial Court has imposed a sentence of 10 years on the appellant, whereas compensation of ₹ 3,00,000/- has been awarded to the victim of crime. I have gone through the record of the case, before imposing fine of ₹ 3,00,000/-, relevant evidence was not considered by the Court to arrive at the conclusion that the appellant or his family was in a position to pay the said compensation. In fact, nothing has been brought on record by the prosecution to show that the appellant or his family was in a position to pay amount of ₹ 3,00,000/-, or that the accused had the capacity to pay the fine amount.

32. At this juncture, learned counsel for the appellant has relied upon the judgment in the case of Dilip Dahanukar Vs. Kotak Mahindra Co. Ltd. And Another¹, more particularly paragraph 38, which re-produced as under :

1 (2007) 6 SCC 528

“38. *The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.*”

33. The aforesaid observations of the Hon’ble Apex Court clearly show that there has to be at least a summary enquiry before imposing the compensation. A perusal of the record shows that no such enquiry was made. Thus, I come to the conclusion that the compensation of ₹ 3,00,000/- imposed upon the appellant is without considering any material.

34. The learned APP has submitted that the compensation awarded is just and proper. Since PW-2 sustained injuries, he was subjected to

surgery and incurred expenses of ₹ 1,70,000/-. She submits that, in order to do complete justice, the compensation has been properly awarded.

35. The learned counsel appearing for respondent No.2, has contended that the judgment passed by the learned Trial Court is just and proper. He further submitted that his client was required to be admitted to the hospital for a long period. According to him, the attack made on his client was predetermined, and therefore the conviction be maintained and the appeal be dismissed.

36. I have already stated that before granting compensation or imposing a fine, at least brief reasons and a summary enquiry ought to have been conducted, but that has not been done. In that view of the matter, compensation / fine imposed upon the appellant to the tune of ₹ 3,00,000/- is reduced to an amount of ₹ 1,70,000/-. Since even according to PW-10, the expenses incurred were ₹ 1,70,000/-. There is absolutely no cross-examination by the appellant on the aforesaid aspect. Thus, in the peculiar facts and circumstances of the case, compensation of ₹ 1,70,000/- can be awarded.

37. Coming to the length of sentence awarded by the learned Trial Court, the Court has imposed 10 years' imprisonment on the appellant. The learned counsel for the appellant submits that a lenient view be taken, and in order to buttress his contention, he has relied upon the judgment in the

case of Illathhody Beeran V. State of Kerala and Anr.², more particularly paragraph No.8, which is re-produced as under :

“8. *Insofar as sentence awarded to the appellant is concerned, it was submitted by learned counsel for the appellant that he is now aged about 50 years’ and is the sole breadwinner of the family. It was also submitted that the occurrence was of the year 1989 and undergoing seven years’ rigorous imprisonment at this distant point of time would be too harsh. Having regard to the fact that the occurrence was of the year 1989 and considering the age of the appellant and in the facts and circumstances, we reduce the sentence of imprisonment of seven years to three years.*”

38. The learned counsel for the appellant submits that the present appellant is the sole breadwinner of the family and that there was no intention to cause death. He further submits that his client has no criminal antecedents. Per contra, learned APP has relied upon the judgment delivered by the Hon’ble Apex Court in Criminal Appeal No.1589 of 2018 in the case of State of Madhya Pradesh Vs. Kanha @ Omprakash. She stated that, in considering an offence under Section 307 of IPC, proof of grievous or life-threatening hurt is not a *sine qua non* for the offence under Section 307 of IPC. According to her, by relying upon the said judgment, it can be said that the intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other

2 2017 Cri L J 730

things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent. Relying upon the aforesaid judgment, she submits that the injury was on the vital part of the body i.e., the head and the weapon used was an Axe; therefore, no leniency should be shown.

39. I have gone through the judgments relied upon by the parties, as well as the contention regarding imposing of punishment. It is necessary to mention here that nothing has been brought on record to show that the appellant has any criminal antecedents. The question as to whether a reformatory approach or retributive approach is required to be adopted while sentencing a person is still not crystallized by way of codified law; therefore, in peculiar facts and circumstances of the case, middle path will have to be followed. Considering the facts that the nature of injury, weapon used and the age of the accused, I am of the opinion that the punishment can be modified. It is well settled that the punishment should be just and proportionate. Considering the material available on the record and the fact that the appellant has already undergone 1 year and 10 months, I am of the opinion that punishment of 7 years can be imposed upon the appellant. Thus, the punishment of 10 years is reduced from ten years to seven years. The appeal is thus partly allowed and following order is passed.

ORDER

- A) Conviction of appellant under Section 307 of IPC is maintained.

B) Sentence of 10 years is reduced to 7 years and the amount of fine awarded by the learned Trial Court to the tune of ₹ 3,00,000/- is reduced to ₹ 1,70,000/-.

40. In the aforesaid background, the appeal is partly allowed.

(RAJNISH R. VYAS, J.)