

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 902 OF 2011
(Arising out of SLP (Criminal) No. 3068 of 2010)

Rajendra Harakchand Bhandari & Ors. Appellants

Versus

State of Maharashtra & Anr. Respondents

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. Six persons – the appellants and two others – were sent up for trial, inter alia, for various offences punishable

under the Indian Penal Code, 1860 ('IPC') initially to the Court of IInd Additional Sessions Judge, Ahmednagar; later on trial was transferred to the Court of IInd Additional Sessions Judge, Shrirampur. The trial court acquitted two of them but convicted the appellants vide judgment dated December 10, 1997 for the offences punishable under Section 307 read with Section 149 IPC; Section 332 read with Section 149 IPC; Section 353 read with Section 149 IPC; Section 147 IPC and Section 148 IPC. As regards the offence punishable under Section 307 read with Section 149 IPC, the trial court sentenced them to suffer rigorous imprisonment for five years and to pay fine of Rs. 5000/- each with a default stipulation. For the other offences, lesser punishment was awarded. The trial court ordered the substantive sentences to run concurrently.

3. The convicts (appellants) filed criminal appeal before the High Court of Judicature at Bombay, Appellate Side, Bench at Aurangabad. The High Court vide its judgment dated February 3, 2010 set aside the conviction of the appellants for the offences punishable under Sections 147 and 148 IPC and altered their conviction to Section 307 read with

Section 34, Section 332 read with Section 34 and Section 353 read with Section 34 IPC and sentenced them to suffer rigorous imprisonment for five years and to pay a fine of Rs. 5,000/- for the offence under Section 307 read with Section 34 IPC and lesser punishment for the other offences. The High Court also ordered that the substantive sentences shall run concurrently.

4. It is from the above judgment of the High Court that the appellants have come up in appeal, by special leave.

5. Keshav Baurao Darandale (PW-8) was posted as a clerk in the Block Office of Bhenda Co-operative Sugar Factory Limited, Bhenda (Bk.) (for short, 'the Sugar Factory'). On May 17, 1991 at about 11.00 a.m., Pradip Harakchand Bhandari (A-2) went to the office of the Sugar Factory and asked PW-8 to take entry of the sugarcane grown by him. PW-8 informed A-2 that he could not do that as the revenue entry relating to the land where sugarcane has been grown bears an endorsement of injunction. PW-8 told A-2 that he should take permission in this regard from the Overseer — Lahanu Garje

(PW-7). On hearing this, A-2 became infuriated and abused PW-8 and beat him. Balasaheb Bhagwant Wabale (PW-5), PW-7 and few others arrived there and intervened. A-2 then went away.

6. PW-8 then went to the head office of the Sugar Factory along with PW-7 and gave report of the incident. At that time, two brothers of A-2 came there and started abusing. However, the two agricultural officers present there persuaded them to go away and they left the place. PW-8 then went to Kukana Police Outpost along with security officer Tanaji Datir (PW-10) for lodging the complaint. At that time, Rajendra Harakchand Bhandari (A-1), Sunil Deshmukh (A-3), Bandu Deshmukh (A-4), Sunil Sheshrao Garje (A-5), Sopan Pandurang Kharade (A-6) came there along with A-2. It was about 1.00 to 1.30 p.m. A-1 was armed with sword while the others were armed with sticks. A-1 asked PW-8 to come out but he refused; A-1 then entered the police outpost and gave blow with sword on the head of PW-8. The other accused — A-2, A-3, A-4, A-5 and A-6 — also started beating PW-8.

A-2 and A-5 gave beating to Yadav Bhagwanta Satpute (PW-4) and PW-10 as well.

7. PW-4 informed the incident to the Police Station, Nawasa. Suryakant Pansare (PW-14) — Assistant Police Inspector — immediately reached the scene of incident along with the staff. The complaint of PW-8 was registered. PW-14 then recorded the statement of PW-4 and also statements of few persons who were present there. The panchnama of the spot was also drawn.

8. A-1 to A-3 ran away; went into hiding and obtained anticipatory bail. They surrendered on May 29, 1991 and produced the sword and sticks. PW-14 thereafter completed the investigation and submitted charge sheet in the concerned court. The accused were committed to the Court of Sessions.

9. The prosecution examined 14 witnesses (of them PW-8, PW-4 and PW-10 were injured). In defence, A-1, who set up the plea of alibi, examined three witnesses.

10. PW-8 was medically examined immediately after the incident by Dr. A.M. Firodiya (PW-2). On the person of PW-8, the following injuries were found :

- “(1) Incised wound 5-1/2 c.m. x 2 c.m. x muscle deep on the right parietal region, on the head near the occipital region oblique in direction, bleeding present.
- (2) C.L.W. 4 c.m. x 1 c.m. x skin deep on the right parietal region mid point, transverse in direction.
- (3) C.L.W. 3 c.m. x 1 c.m. x skin deep, on the left occipital region on the head.
- (4) C.L.W. 3 c.m. x 1 c.m. x skin deep on the left parietal region posteriorly.
- (5) C.L.W. 1-1/2 c.m. x 1 c.m. x skin deep on the left side of head on the parietal region, above No. 4 injury.
- (6) C.L.W. 1-1/2 c.m. x 1 c.m. x skin deep on the left parietal region near No. 5 injury.
- (7) C.L.W. 2-1/2 c.m. x 1 c.m. x skin deep on the parietal region on the head near injury No. 6.
- (8) Contusion 4 c.m. x 1-1/4 c.m. on the right thigh lower part.”

According to PW-2, injury no. 1 was caused by a sharp object which was possible with the sword. In his opinion, the injuries

on the person of PW-8 were sufficient in the ordinary course of nature to cause death.

11. PW-10 was also medically examined by PW-2.

PW-2 found the following injuries on the person of PW-10:

- “(1) Scratch 3 c.m. x 1/2 c.m. on the right leg popliteal region.
- (2) Contusion 4 c.m. x 1 1/2 c.m. on the left leg popliteal region.
- (3) Contusion 2 c.m. area on the left side of back near below scapula.
- (4) Contusion 2 c.m. area on the right side of back below scapular region.
- (5) Pain in left hand little finger.”

12. On medical examination of PW-4, PW-2 found the following injuries:

- “(1) Contusion 14 c.ms. x 1 c.m. x on the left side of back. Scapular region above downwards.
- (2) Swelling and tenderness on the left hand near the little finger.
- (3) Contusion 21 c.m. x 2 c.m. on the chest oblique in direction passing sternum.”

13. That A-1 was armed with a sword and A-2, A-5 and A-6 were armed with sticks and that they caused injuries to

PW-4, PW-8 and PW-10 is clearly established from the prosecution evidence. Although PW-10 was injured in the incident and he did not fully support the prosecution case – he was declared hostile as he was not honest in telling to the court the whole truth – but the testimony of PW-4 and PW-8 is, however, trustworthy. Their evidence, besides medical evidence, is corroborated by Suresh Nikam (PW-12), who was working in his bicycle repairing shop and on hearing shouts, came out and saw that PW-8 was injured, his clothes were torn and there was crowd of people.

14. The trial court and the High Court on appreciation of the entire evidence on record have accepted the prosecution case that on May 17, 1991 at about 1.00 p.m., A-1, A-2, A-5 and A-6 armed with sword and sticks attacked PW-8 and as a result thereof he sustained eight injuries; six of these injuries were on head; injury no. 1 was caused by the sharp object and the injuries caused by them to PW-8 were sufficient in the ordinary course of nature to cause his death. Insofar as High Court is concerned, it overturned the finding of the trial court as regards formation of unlawful assembly and

acquitted the appellants for the offences punishable under Sections 147 and 148 but maintained their conviction by altering it to Section 307 read with Section 34; Section 332 read with Section 34 and Section 353 read with Section 34. In our opinion, the consideration of the matter by the High Court does not suffer from any error of fact or law. The plea of alibi set up by A-1 has not been accepted by the trial court as well as the High Court and we have no justifiable reason to take a different view on that count.

15. As a matter of fact, Mr. Shekhar Naphade, learned senior counsel for the appellants did not seriously contest the conviction of the appellants for the above-mentioned offences. He mainly argued for reduction of sentence. Learned senior counsel would submit that the appellants were sugarcane growers and the incident occurred because PW-8 refused to make entry of sugarcane planted by A-2. He submitted that the incident is almost two-decade old and during this time, relations between the parties have become cordial and, as a matter of fact, they have compromised their dispute. He also submitted that the appellants do not have any criminal

background and they have not been involved in any crime earlier.

16. We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to

the period already undergone while maintaining the amount of fine.

17. Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.

18. The appeal is allowed in part to the extent above.



.....J.
(Aftab Alam)

JUDGMENT

..... J.
(R. M. Lodha)

NEW DELHI,
APRIL 8, 2011.