



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 373 OF 2006

1. Balu s/o Nehaji Garde,
Age 26 years, Occ. Agril.,
R/o. Kathoda, Tal. Georai,
District Beed.
2. Anirudh alias Anil Nehaji Garde,
Age 30 years, Occ. Nil,
R/o. as above.
3. Rakhmaji s/o Nehaji Garde,
Age 35 years, Occ. Agril.,
R/o. as above.

... **APPELLANTS**

VERSUS

The State of Maharashtra,
Through P.S.I. Police Station,
Talwada, Tal, Georai, Dist. Beed.
Copy to be served on the Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad.

... **RESPONDENT**

Mr. R.M. Deshmukh, Advocate for the Appellants.
Mr. D.R.Kale, AGP for Respondent / State.

CORAM : **T.V.NALAWADE, J.**

DATE : **12th August, 2013.**

ORAL JUDGMENT:

1 The appeal is filed against the judgment and order of Sessions Case No.113 of 2005, which was pending in Sessions Court, Beed. 7th Ad-hoc Additional Sessions Judge, Beed has convicted and sentence the Appellants for the offence punishable under Sections 307 read with 34 of the Indian Penal Code. They are also convicted and sentenced for the offence punishable under Sections 323 read with 34 of the Indian Penal Code and also for the offence punishable under Section 504 read with 34 of the Indian Penal Code and the provisions of the Bombay Police Act.

2 Both the sides are heard.

3 In short, the facts leading to the institution of the appeal can be stated as follows:

The Complainant Pralhad Tishtak was working as Police Patil of his village Kathoda. The Appellants are real brothers, interse. Accused No.4 was their father. The incident took place on 30th March, 2004 after 05:30 pm. The Complainant was in the company of his two labours and he was intercepted at Golegaon Phata by the accused. The Appellants picked up quarrel with the Complainant by saying that he was unnecessarily giving support to Ex-Sarpanch Raghunath Kirkit. Then

Accused Nos.2 and 3 held two hands of the Complainant and Accused No. 1 gave blow of knife on the chest of the Complainant. Accused No.4 allegedly instructed the other accused to finish the Complainant. One Raghunath Kirkit reached to the spot after the incident and then the Complainant was shifted to Government Hospital. The Complainant sustained bleeding injury on his chest during the incident and he gave the report on the same day.

4 During the course of investigation, all the accused came to be arrested. On the basis of statement given by Accused No.1 under Section 27 of the Evidence Act, the knife came to be recovered. The clothes of the Complainant and the accused were taken over. The charge-sheet came to be filed for the aforesaid offence. The charge came to be framed for the aforesaid offences. The accused took the defence of total denial.

5 In the trial Court, the Complainant and two eye witnesses were examined. Some witnesses are examined to prove the recovery of knife at the instance of Accused No.1. Record like CA report is produced. Doctor is examined to prove the injury certificate in respect of the Complainant.

6 The Complainant has given evidence against Accused No.1 that he used knife in the incident. He has made allegation that Accused Nos.2 and 3 were holding his hands when Accused No.1 gave blow of knife on his chest.

7 It appears that two eye witnesses mentioned in the FIR dated 30th March, 2004, are not examined by the prosecution. Two other witnesses, who are not named in FIR are examined. They have given similar version against Accused Nos.1 to 3. The evidence is given as against Accused No.4 also, but he is acquitted by the trial Court.

8 The evidence of Complainant shows that after giving of FIR by him, so many statements were given by him. His statement was also recorded through the Executive Magistrate, which is at Exhibit – 59. In the so called dying declaration, he disclosed that out of four accused, two accused were holding him and other two had given blow of knife on his chest. This circumstance is brought on record by the defence, but the trial Court has not discussed this circumstance.

9 The evidence collected and which is considered by the trial Court shows that out of some political dispute, the incident took place. The evidence in cross-examination shows that one accused reached there subsequently and he had given the blow of knife. If the Complainant is believed then it can be said that four persons were involved in the incident. In spite of this circumstance, only one injury was found on the chest of the Complainant. The doctor has described this injury as simple injury. The learned APP submitted that the intention can be gathered from the circumstances that Accused No.1 was carrying knife and he had given the blow on the chest. This Court holds that in view of the aforesaid circumstances and the variation made in the disclosures by the

Complainant, it is difficult to believe that any of the accused had intention to kill the Complainant. If there was really such intention, there was nobody to prevent the Appellants to inflict more blows. This Court holds that the trial Court has committed error in holding that the offence punishable under Section 307 of the Indian Penal Code is proved. Even when only one person was injured, the trial Court has given conviction for the offence punishable under Section 323 read with 34 of the Indian Penal Code also. When the evidence does not disclose that the present Appellants had given threats or abuses, the conviction is given for the offence punishable under Section 504 read with Section 34 of the Indian Penal Code also. These circumstances show that the trial Court did not apply the mind and the material on record was not correctly appreciated. This Court holds that at the most the offence punishable under Section 324 is made out and that too against Accused No.1. Even if it is presumed that Accused Nos.2 and 3 being real brothers of Accused No.1, were present in the company of Accused No.1, as against them also the material would be for the offence punishable under Sections 324 read with Section 34 of the Indian Penal Code. This Court holds that conviction and sentence given for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code cannot sustain in law.

10 The learned counsel for the Appellants submitted that the parties have settled the dispute out of the Court. Affidavit of the original Complainant is filed on record to that effect. Permission is sought for compounding the offence as they want to live with peace in the village.

The offence punishable under Section 324 of the Indian Penal Code also is not compoundable. However, in view of the compromise, a lenient view can be taken.

11 The learned counsel for the Appellants placed reliance on the cases reported as **[AIR 1999 Supreme Court 895], (Ram Lal and another Vs. State of J. and K.)**, and **[AIR 1999 Supreme Court 2181], (Surendra Nath Mohanty and another Vs. State of Orissa)**. In the first case, in similar circumstances and when there was material for the proof of offence punishable under Section 326 of the Indian Penal Code, the Apex Court took a lenient view due to the compromise and held that imprisonment for six months, the period undergone was sufficient and the sentence was reduced accordingly. In the second case, in similar circumstances, the undergone period, of three months was held to be sufficient and the sentence was reduced to that extent.

12 In view of the facts and circumstances of the present case and the observations made in the aforesaid cases by the Apex Court, this Court holds that a lenient view needs to be taken and the sentence needs to be reduced.

13 In the result, the appeal is allowed. The judgment and order of the Sessions Court of convicting and sentencing the Appellants for the offence punishable under Section 307 read with 34 and Section 323 read with 34 and Section 504 read with 34 of the Indian Penal Code is hereby set aside. The Appellants stand convicted for the offence punishable

under Section 324 read with 34 of the Indian Penal Code and also for the offence punishable under Section 135 of the Bombay Police Act. The Appellants are behind bars for about three months and so the Appellants are sentenced to suffer imprisonment of the period already undergone. The other part of the operative over of the trial Court with regard to fine is maintained and that fine is to be treated as fine imposed for the offence punishable under Section 324 read with 34 of the Indian Penal Code.

[T.V.NALAWADE, J.]

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