

CASE NO.:
Appeal (crl.) 173 of 2003

PETITIONER:
Kishanrao Narayanrao Ghuge & Ors.

RESPONDENT:
Vs.
State of Maharashtra

DATE OF JUDGMENT: 06/08/2003

BENCH:
K.G. Balakrishnan & B.N. Srikrishna.

JUDGMENT:
O R D E R

WITH

CRIMINAL APPEAL NO. 187 OF 2003

Five accused were tried by the Sessions Judge, Hingoli, for the offences punishable under Sections 302, 307, 147, 148 read with Section 149 of the Indian Penal Code. All the five accused were found guilty of offences punishable under Section 302 read with Section 149 IPC and also other allied offences by the Sessions Judge. The accused filed appeal and by the impugned judgment, the second accused Shivaji Kishanrao Ghuge alone was found guilty of offences under Section 302 IPC and A-1 and A-3 to A-5 were found guilty of offences under Section 326 read with Section 149 and offences under Section 147 and 148 IPC. These accused have filed Criminal Appeal No. 173 of 2003 and second accused Shivaji Kishanrao Ghuge has filed a separate appeal, viz. Criminal Appeal No. 187 of 2003.

The incident happened on 25.6.1995 at about 1.30 p.m. in the agricultural field belonging to PW-1 Tukaram. Tukaram and his deceased son, Gorakhnath Ghuge were in the agricultural field and the latter was engaged in sowing 'moong' seeds. These appellants came there and asked PW-1 as to why he had purchased that agricultural land from Balaji. The appellants claimed that they had a right over that property. The second accused Shivaji Kishanrao Ghuge started assaulting Tukaram. Tukaram pleaded with the accused that the matter could be settled amicably and that he was prepared to return the land, but the quarrel did not end and the second accused and accused 3 to 5 mounted an attack on PW-1 Tukaram and deceased Gorakhnath. The second accused Shivaji Kishanrao Ghuge picked up an axe which was lying in the field and inflicted three blows on the head of Gorakhnath. The other appellants (accused 3 to 5) also assaulted deceased Gorakhnath with 'lathis'. Gorakhnath died on the spot and PW-1 Tukaram fell down on the ground. PW-1's grand daughter, Baby, came rushing to the field and she was sent to fetch Tukaram's other son, Haribhau, from Hingoli. PW-13 Haribhau came in the evening and sprinkled water on the face of PW-1, who then got up. PW-13 took PW-1 and the dead body of Gorakhnath to his house. On the next day, PW-1 went to the Police Station and lodged the First Information Report and PW-14 took over the charge of investigation. PW-1 was examined by a Doctor, who found seven injuries on his body. Except injury No. 3, all other injuries were contusions. PW-7 conducted the post-mortem on the body of the deceased Gorakhnath, who was found to have suffered multiple head injuries with fracture of skull. He had many other incised injuries also on his body.

PW-1 Tukaram is the only eye witness to the incident. Though prosecution examined one Shantabai, who was allegedly working in the field, she turned hostile to the prosecution. PW-1 in his evidence stated that the accused came and attacked PW-1 and his deceased son, Gorakhnath. The evidence

of PW-1 was discussed in detail both by the Sessions Judge and the High Court. The High Court held that as the second accused Shivaji Kishanrao Ghuge found an axe lying in the field, he picked it up and suddenly attacked Gorakhnath and that it was difficult to assume that there was unlawful assembly consisting of all the accused with the common object of causing death of Gorakhnath. The High Court rightly came to that conclusion. We do not find any error with the finding.

The counsel for the appellants contended before us that the conviction of the appellants (accused 1 and accused 3 to 5) under Section 326 read with Section 149 is not sustainable as these accused did not cause any injuries either to PW-1 or deceased Gorakhnath. This contention is not correct. Accused 3 to 5 were armed with 'lathis'. The injuries found on the body of the deceased Gorakhnath and the injuries found on the body of the PW-1 were grievous in nature and must have been caused with a weapon like 'lathi'. However, we find from the evidence of PW-1 that the first accused Kishanrao Narayanrao Ghuge was not armed with any weapon. Though his presence there is not denied, but evidently he had not caused any injury either on PW-1 or to deceased Gorakhnath. Of course, all the accused came to the field, but as observed by the High Court, it seems that the incident must have happened all of a sudden because of the dispute regarding the land in question, between these accused on the one hand and the PW-1 and his son on the other. Having regard to the circumstances of the case, it is proved that accused 3 to 5 caused grievous hurt and they had common intention to commit such offence, but the first accused Kishanrao Narayanrao Ghuge did not participate in this venture. It is also pertinent to note that at the relevant time, he was 70 years of age and he must have accompanied the accused when the dispute regarding the property arose.

Therefore, we confirm the conviction and sentence of the second accused Shivaji Kishanrao Ghuge for the offence under Section 302. As regards accused 3 to 5, we uphold the punishment imposed on them for offences under Section 326 read with Section 34 IPC. Accused 3 to 5 are not guilty of offences under Section 147 and 148. They are acquitted of the charges under Section 147 and 148. We do not find any reason to interfere with the sentences imposed on any of these accused. Accused 3, 4 and 5 are directed to surrender to their bail bonds to undergo the remaining part of the sentence. The first accused Kishanrao Naarayanrao Ghuge is acquitted of all the charges and his bail bond shall stand cancelled.

The Criminal Appeals are disposed of accordingly.