

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
BANDU @ PRADIP PUNDALIK & ORS. ETC.

DATE OF JUDGMENT: 11/12/1997

BENCH:
G.T. NANAVALI, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:
THE 11TH DAY OF DECEMBER, 1997

Present:

Hon'ble Mr. Justice G.T. Nanavati
Hon'ble Mr. Justice G.B. Pattanaik

U.R. Lalit and S.B. Wad, Sr. Adv., Manoj Wad, Ashish Wad and
Mrs. J.S. Wad, Advs. with them for the appellant
I.G. Shah and D.M. Nargolkar, Advs. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

with CrI.A.No. 1271 /1997

@ SLP (CrI) No. 411/90

Nanavati, J.

SLP No. 411/90 : Leave granted. Heard with
CrI.A.No.656/89.

This appeals arise out of the judgment of the Bombay High Court in CrI.A.No. 16/87. The High Court partly allowed the appeal filed by the convicted Accused. Nos.8-10 from the under Section 302 read with 149 IPC to Section 304 Part II read with 149 IPC. Aggrieved by their acquittal, the State has filed Criminal Appeal No.656/86.

The prosecution case was that on 30.4.86, sometime between 7.30 and 7.45 a.m, while PW 1 - Kamal and his father PW 2 - Shrawan were proceeding on their motor cycle to their field and were passing by the house of Accused No.1 - Bandu @ Pradip, A. 1 threw acid on them. As a result, both of them received, burn injuries. Therefore, indeed of them proceeding to the field, they went to the police station and lodged a complaint against A.1 and other accused who were seen chasing them with weapons. It is also the prosecution case that soon thereafter A.1 along with A.2 to A.12 went to the house of PW 2 - Shrawan, entered his house, dragged his two sons - Anil and Arvind out and beat them mercilessly. Anil died and Arvind received serious injuries. PW 7- Surinder was also assaulted and he had also received one injury on his ear. Part of his ear was cut completely. PW 6 - Ambadas who had rushed to that place seeing the assault on Anil and Arvind, was also beaten by those accused, He was able to snatch away a sword from one of them and had wielded the same in his self defence. On these allegations, the 12 accused were tried for the offence punishable under Sections

147, 148, 302 read with 149, 120B of the Indian Penal Code and 25 of the Arms Act.

The trial court did not find sufficient evidence against A.7 and A.12 and therefore acquitted them. All other were convicted under Section 148 and Sections 302, 307, 324 and 326 all read with Section 149 IPC. They were, however, acquitted for the offence punishable under Section 25 of the Arms Act.

The High Court after reappreciating the evidence held that the evidence of PWS 4,5,6 and 7 was believable notwithstanding certain infirmities in their evidence and the finding recorded by the trial court that all the convicted accused except Accused No. 11 had formed an unlawful assembly and had assaulted deceased - Anil, Arvind, PW 6 and PW 7 in prosecution of their common object to beat them was proper. The High Court did not believe that the common object of the unlawful assemble was to cause death of Anil or any other person and, therefore, held that Accused Nos. 1-6 and Accused Nos. 8-10 should be convicted under Section 304 Part II IPC and not under Section 302 read with 146 IPC. The High Court did not believe the evidence regarding conspiracy and therefore acquitted all the accused of the offence. They were also acquitted of the charge of having committed the offence punishable under Section 307 read with 146 IPC.

Mr. Lalit - learned counsel, appearing for the accused - appellants submitted that it was not proud beyond reasonable doubt by the prosecution that the acid throwing incident was the first incident on that day and if that was not the first incident then the genesis of the whole incident becomes doubtful and this court should hold that the prosecution witnesses have not given a true version as regard the manner in which the incident started on that day. We do not find any substance in this contention. Apart from the evidence of PWs. 1 and 2, we have the evidence of PW 8 - Arun on this point. He is an independent witness as it was not even suggested that he was in any way related to the deceased to PW 2 - Shravan. He has fully supported the prosecution case that while PWs. 1 and 2 were passing on a motor cycle, A.1 had thrown acid on them and that thereafter they were chased by some persons who were armed with weapons. Moreover, the evidence of PWs.1 and 2 is also supported by the FIR which was lodged immediately by PW 1 at 8 O'clock. It is true that the formal FIR was registered at 9.30 a.m. but the evidence of the Investigation Officer shows that he had himself proceeded to hospital and recorded the complaint of Kamal there. Thereafter, he had sent it to the police station for registration where it was registered at about 9.30 a.m. PW 1 had lodged the complaint immediately after receiving the injury and therefore there was no possibility of any manipulation at the instance others. The panchnama with respect to the place in front of the house of A.1, also supports the version of PW 1 and 2 that acid was thrown from near the house of A.1.

If the incident of beating and not acid throwing had taken place first then PWs 1 and 2, instead of rushing to police station for lodging a complaint in that behalf, would not have thought it proper to go to their field. For these reasons, we hold that the High Court was right in holding that acid throwing was the first incident.

It appears to us that the accused finding that their attempt had failed, failed, rushed to the house of PWs 1 and 2 and attacked those who were found inside the house. The evidence of PWs 4,5,6, and 7 clearly establishes that the accused went there armed with weapons, entered the house,

dragged out Anil and Arvind, also tried to drag out Surinder and assaulted them thereafter. Surinder was successful in running away from that place after receiving one blow. He stands corroborated by the find of blood stain in his house. The defence of the accused was that While A.2, A.3, and A.4 were passing by the house of PW 2 - Shravan, the deceased - Anil, Arvind and Surinder and others came out of their house armed with swords and attacked them. As a result of the cries raised by them, A.8 came to their rescue and whatever injuries were caused to Anil and Arvind were caused by A.8 who had welded his sword in self defence. This version, in our opinion, was rightly rejected by both the courts below. As many as 28 injuries were caused to deceased - Anil, 10 to PW 4 - Arvind, 6 to PW 6 - Ambadas and 1 to PW 7 - Swaran. Thus, in all 45 injuries were caused to those persons. A.8 alone could not have caused so many injuries to them.

It was next contended that the finding recorded by the High Court that the accused had entered the house of PW 2 and dragged Anil and Arvind out depends upon the testimony of only interested witnesses and therefore without independent corroboration their evidence should not have been accepted.

The incident had happened in front of the house of PW 2. No other explanation was given by the accused as to why they were found near the house of PW 2 on that day at that time. The fact that 45 injuries were caused to Anil and others goes to show that many of them had gone with weapons. Moreover, in view of the earlier attempt, which had failed, it was quite likely or probable that they had rushed to that place with a view to attack the other family members of PW 2. The High Court has considered the evidence of PWs 4, 5, 6 and 7 very closely and all the infirmities which were pointed out to us have been considered by the High Court. On proper appreciation of their evidence, the High Court found it safe to hold that some of the accused had entered the house of PW 2 and had dragged out Anil, Arvind and Surinder and thereafter all had beaten them. We find that the view taken by the High Court is reasonable and therefore it does not call for any interference by this court. The appeal filed by them will have to be dismissed.

As regards the common object of the unlawful assembly, the view taken by the High Court also appears to be reasonable in view of the facts of their case. Many had attacked deceased Anil and Arvind and therefore many injuries were found on their person. The prosecution evidence discloses that the accused came there in different groups and from different directions. Who specifically attacked Anil is also not established. It was therefore not possible to say with reasonable certainty that the common object of unlawful assembly was to cause death of Anil or any other person.

In view of these facts and circumstances of the case, we hold that the view taken by the High Court is quite reasonable. We, therefore, dismiss the State's appeal.

Consequently, CrI.A.No. 411/90 is also dismissed.