

Tukaram Gundu Naik vs State Of Maharashtra on 5 October, 1993

Equivalent citations: 1994 SCC (1) 465 JT 1993 SUPL., 135, 1993 AIR SCW 3537, 1994 (1) SCC 465, 1994 CRI. L. J. 224, 1993 CRIAPPR(SC) 352, 1993 JT (SUPP) 135, 1993 (2) UJ (SC) 720, 1994 SCC(CRI) 432, 1993 UJ(SC) 2 720, (1993) 3 CRIMES 565, (1993) 3 ALLCRILR 409, (1993) 4 CURCRIR 369

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:
TUKARAM GUNDU NAIK

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT 05/10/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 SCC (1) 465 JT 1993 Supl. 135
1993 SCALE (4) 15

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- The appellant Tukaram Gundu Naik was tried along with two others for an offence punishable under Sections 307/34 IPC. The appellant was also charged under Section 307 simpliciter. The trial court acquitted all of them. The State preferred an appeal and it was admitted against the appellant and dismissed against the

other two by the High Court. A Division Bench of the High Court after having considered the evidence of the prosecution witnesses particularly that of the victim, convicted the appellant under Section 307 IPC and sentenced him to undergo five years' RI. Hence the present appeal.

2.The prosecution case is as follows: A-1 (the appellant herein) and A-2 are the real brothers and A-3 is the son of A-1 and they are residents of Pokhale, Taluka Panhala. The appellant was the Director of the Milk Dairy of Ward Factory and also the Chairman of the Market Committee at Kolhapur and a political worker. The victim Shivaji Aba, PW 8 is also a resident of the same village and used to take active part in the village activities. He was in charge of the library started by him and others in the village. He also canvassed for some candidates in the elections and in 1967 helped the present appellant but in 1972 worked against the appellant. As a result of this, the relations between the appellant and the family of Shivaji Aba were not good. Aba Dnyanu, PW 9, the father of PW 8, is the police patil of the village.

+From the Judgment and Order dated January 20, 1981 of the Bombay High Court in Criminal Appeal No. 775 of 1975

3.On April 13, 1973 at about 6 p.m. Ramajan, PW 1 met Shivaji Aba, PW 8 in the village. PW 8 asked PW 1 as to why he was frequently visiting the village and also scolded him for carrying an axe with him. There was a scuffle between the two and PW 1 received an injury. He went and reported the matter to A-1. The appellant sent him to the panchayat office and followed him there. Thereafter he sent for the police patil and the sarpanch. Both of them came there. In their presence the appellant asked PW 8 why he has assaulted PW 1. So saying he slapped Shivaji Aba, PW 8 twice. PW 9 also slapped PW 8 when he tried to abuse the appellant. Thereafter there was some scuffle between PW 8 and A-1 and both of them came in the verandah. PW 9 also came to the verandah. There the appellant inflicted injuries with a knife on PW 8. A-2 and A-3 are alleged to have hurled stones at PW 8. PW 8 rushed and took shelter in the house of his aunt. PW 9 who was informed about the condition of PW 8 also came there. He brought a rickshaw and took Shivaji Aba to the police station, gave a report there and then took him to the Civil Hospital, Kolhapur. PW 11 also came along with them from the village. Shivaji Aba, PW 8 was treated in the hospital as an in-patient till August 18, 1973 and thereafter he was discharged. Meanwhile an offence was registered under Section 326 IPC and investigation proceeded. The accused were arrested and the charge-sheet was laid. The accused denied the offence. The appellant in his statement under Section 313 CrPC stated that he was a political worker and that PW 8 canvassed against him in the elections. He also stated that he was present in Chavadi but he denied having slapped PW 8. According to him, he did not step out of the office of the panchayat and he stated that he has been falsely implicated.

4.Dr Khare, PW 16 examined PW 8 and found four incised injuries which were clean cut on the epigastric region. He admitted the injured into hospital and Dr Wagle, PW 17 attended on the injured PW 8 and treated him. The prosecution mainly relied on the evidence of PW 8 supported by the medical evidence and corroborated by PW 9 and other witnesses. The trial court disbelieved PW 8 for the simple reason that he did not state in the FIR about the presence of PW 9. As a matter of fact, the appellant himself did not dispute his presence in the village panchayat office at the time of the incident. The High Court has rightly held that the reasons given by the trial court for rejecting

the evidence of PW 8, the victim, were wholly unsatisfactory and also perverse. PW 8 immediately lodged the FIR in which all the details were given and it was clearly stated that it was the appellant who slapped him. We have gone through the evidence of PW 8 as well as PW 9 whose evidence is also corroborated by the evidence of PWs 10 and 11. The High Court has rightly relied on their evidence and convicted the appellant.

5. Shri Ram Jethmalani, learned counsel appearing for the appellant contended that the conviction under Section 307 IPC is not warranted. According to him, the intention to commit murder is not made out and the surrounding circumstances namely that it was dark and there was a scuffle and prior to that appellant was also abused by PW 8, the victim and under those circumstances, even if the appellant is said to have inflicted some blows, the offence committed by him would be one punishable under Section 324 IPC.

6. Dr Khare, PW 16, who examined the injured, found one clean-cut incised wound over epigastric region, another clean-cut incised wound on the left elbow joint, the third clean-cut incised wound on the left side of the side and the fourth clean-cut incised wound over left side of the back. He opined that these injuries were caused with a sharp-edged weapon like a knife. Learned counsel for the appellant from the record pointed out that it was only a folding knife and if these injuries were inflicted during scuffle, it cannot be said that either clause 1 or clause III is attracted so as to infer that the intention was to commit murder. Consequently Section 307 IPC is also not attracted.

7. In this context, the evidence of PW 12 also becomes relevant. He deposed that he was also present in the village panchayat office and that he heard the exchange of words and he also heard the sound of milk cans in the verandah and it was dark outside the verandah. No doubt this witness was treated hostile but his evidence would show that it was dark and there was a scuffle. Further, the doctor's evidence would show that none of the vital organs was injured. Under these circumstances, a doubt arises whether the accused intended to commit murder and thus made an attempt. In our view the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under Section 308 IPC. Section 308 lays down that such an offence is punishable with imprisonment which may extend to three years or with fine or with both and if hurt is caused, the assailant can be punished with imprisonment of either description which may extend to seven years or with fine or with both.

8. Having given our earnest consideration and having regard to the age of the appellant and the suddenness in which the whole occurrence took place during the scuffle, we are of the view that the offence is one punishable under Section 308 IPC. Accordingly, we set aside the conviction of the appellant under Section 307 IPC and sentence of five years' RI awarded thereunder. Instead we convict him under Section 308 IPC and sentence him to undergo 1 1/2 years' RI and to pay a fine of Rs 1000 in default of payment of which to undergo further RI for three months. Accordingly the appeal is partly allowed. The appellant, who is on bail, shall surrender and serve out the remaining period of sentence, if any.