



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.623 OF 2003

The State of Maharashtra  
Through Police Station  
Tq. Gangapur, Dist. Aurangabad.

...Appellant  
(Ori. Complainant)

-Versus-

1. Barku s/o Devchand Shinde,  
age 22 yrs., occu. Agri.,  
R/o Bhindala, Tq. Gangapur,  
Dist. Aurangabad.
2. Deochand Raghunath Shinde,  
age 55 yrs., occu. Labour,  
R/o as above.
3. Ramdas Deochand Shinde,  
age 23 yrs., occu. Agri.,  
R/o as above.

...Respondents  
(Ori. Accused)

...  
Shri S.J. Salgare, APP for the appellant/ State.  
Mrs. Pooja V. Langhe, advocate for respondent Nos.1 to 3.  
...

CORAM : KISHORE C. SANT  
&  
SUSHIL M. GHODESWAR, JJ.

Reserved on : 27 March 2026

Pronounced on : 10 April 2026

**JUDGMENT (Per Sushil M. Ghodeswar, J.) :-**

1. By this appeal filed under Section 378(1)(3) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellant/ State challenges the judgment and order dated 13.06.2003 passed by the learned III Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.257/2001 by which, the respondents/ accused have been acquitted for offences punishable under Sections 302, 323, 324 r/w 34 of the Indian Penal Code.

2. The brief facts leading to filing of the present appeal are as under:

(a) The prosecution case is that on 10.7.2001 at about 8 p.m., Rukhmanibai wife of accused No.2/Deochand Shinde, had thrown dirty water on the road in front of house of Ramesh Damodar Shinde (deceased). The deceased Ramesh asked Rukhmanibai as to why the water was thrown whereupon all the accused i.e. accused No.1 Barku Deochand Shinde, accused No.2 Deochand Raghunath Shinde and accused No.3 Ramdas Deochand Shinde, came there. Initially, the accused persons had abused Ramesh and they had given fists and kick blows. Accused

no.1 Barku went inside his house and brought knife and gave knife blow on the right ribs of Ramesh, as a result of which, Ramesh fell down. Eye witnesses Kakasaheb Shinde (PW-1 complainant), Balkrishna Shinde (PW-2), Badrinath Shinde (PW-9) had come there. Accused no.3 Ramdas gave axe blow to Balkrishna Shinde (PW-2) on his right hand palm and left forearm of Kakasaheb Shinde (PW-1) whereas, accused no.1-Barku gave knife blow on the wrist and thumb of Kakasaheb Shinde (PW-1) and accused no.2 Deochand gave knife blow to Badrinath Shinde (PW-9) on his chest and left hand thumb and fingers.

(b) It is the case of the prosecution that injured Ramesh Damodhar Shinde was brought by his wife Ranjana to Ghati Hospital where, on examination he was declared dead. Accordingly, A.D. No.27/2001 was entered. PSI Kalyan Superkar (PW-14) started investigation, drew inquest on the dead body of Ramesh, attached his clothes, he then recorded statement of injured Kakasaheb Shinde (PW-1) on the basis of which, Crime No.77/2001 was registered for the offences punishable under Sections 302, 323, 324 r/w 34 of the Indian Penal Code and

Section 135 of the Bombay Police Act.

(c) During the investigation, PW-14 Supekar PSI drew spot panchanama and from spot attached one axe, took blood stained earth sample, clothes of complainant and accused were attached. He had also registered the crime at serial No.88/2001 on the complaint of accused. On 30/7/2001, he had handed over investigation to PW-15 Chatrabhuj Rode, Investigating Officer, who carried out further investigation. PW-15 Rode at the instance of accused Badri and Deochand recovered two knives-one from each, he recorded the statements of witnesses. He had sent the muddemal to the Chemical Analyser.

(d) After completion of investigation, PW-15 I.O. filed the chargesheet on 09/10/2001 and R.C.C. no.284/2001 was registered. The learned Judicial Magistrate First Glass, Gangapur, by his order dated 11/10/2001 committed the case for trial to the Court of sessions.

(e) All the accused pleaded not guilty to the charge. Their version is that the complainant Kakasaheb Shinde (PW-1) had given axe blows to the accused Barku and the accused had gone to the police Station but their complaint was not registered,

and subsequently this false case came to be filed on the complaint of Kakasaheb Shinde (PW-1).

(f) Accused no.1 Barku Deochand Shinde was singly charged of the offence of murder of Ramesh Damodhar Shinde whereas all the accused were charged for causing hurt to deceased Ramesh, so also for causing hurt to the witnesses Kakasaheb, Balkrishna and Badrinath Shinde.

3. The prosecution has examined in all 15 witnesses as under:-

| PW No. | Name of witness                    | Significance/ role                      |
|--------|------------------------------------|-----------------------------------------|
| PW-1   | Kakasaheb Shinde                   | Complainant- Eyewitness                 |
| PW-2   | Balkrishna Shinde                  | Hostile Eyewitness                      |
| PW-3   | Dr. Sitalal Rathod                 | Postmortem of dead body of Ramesh       |
| PW-4   | Shivaji Shinde                     | Eyewitness                              |
| PW-5   | Sadashiv More                      | Panch to spot panchnama                 |
| PW-6   | Rameshwar Tejinkar                 | Panch to inquest panchnama (eyewitness) |
| PW-7   | Anna Shinde                        | Recovery (memorandum panch)             |
| PW-8   | Ranjanabai wife of deceased Ramesh | Eyewitness                              |
| PW-9   | Badrinath Shinde                   | Injured eyewitness                      |
| PW-10  | Khandu More                        | Recovery panch to knife                 |
| PW-11  | Sudam More                         | Eyewitness                              |
| PW-12  | Babasaheb Shinde                   | Panch to seizure of cloth               |
| PW-13  | Dr. Varsha Kalyankar               |                                         |

|       |                 |                                   |
|-------|-----------------|-----------------------------------|
| PW-14 | Kalyan Supekar  | Police Office who registered A.D. |
| PW-15 | Chaturbhuj Rode | Investigating Officer             |

4. After recording evidence and hearing the accused and prosecution side, the learned III Adhoc Additional Sessions Judge, Aurangabad, was pleased to pass the impugned judgment and order dated 13.06.2003 thereby, acquitting all three accused for the offence punishable under Sections 302, 323, 324 r/w 34 of the Indian Penal Code and Section 135 of the Bombay Police Act.

5. Hence, the State has filed this appeal against acquittal.

6. The learned AGP Shri Salgare appearing on behalf of the appellant/ State vehemently submitted that the learned Sessions Judge committed grave error by acquitting the accused persons although there is cogent evidence of seven eyewitnesses corroborating each other. The learned Sessions Judge has not properly appreciated evidence brought by the prosecution. According to the learned AGP, seven eyewitnesses and their testimonies inspire confidence and as such, their evidence is not

shaken and, therefore, same was required to be considered by the Trial Court in proper perspective.

7. The learned AGP has taken us through testimonies of all eyewitnesses regarding assault given by accused No.1 on the chest of deceased Ramesh and submitted that accused No.1 has been clearly witnessed by eyewitnesses while committing murder of deceased Ramesh. Evidence brought on record clearly indicates that other two accused persons also shared common intention of committing murder of the deceased Ramesh. The prosecution has established guilt of all accused persons beyond all reasonable doubts, however, the learned Sessions Judge has failed to appreciate evidence brought on record and has erroneously acquitted the accused persons. The learned AGP, therefore, prayed for allowing this appeal and convicting the accused for the offences for which they were charged.

8. *Per contra*, the learned advocate Mrs.Langhe appearing for the respondents/ accused vehemently supported the impugned judgment and order of acquittal. According to her, the prosecution suppressed injuries caused to the accused persons during scuffle. Initially, the accused Barku approached to the

Police Station for lodging the complaint against the deceased and his company, however, he was referred to medical examination and due to injury sustained by Barku, he was also hospitalized. Since he was hospitalized, his complaint came to be registered subsequently though he had approached to the Police Station in first point of time. According to the learned advocate, such suppression raises serious doubt as regards investigation and therefore, the learned Sessions Judge has rightly appreciated evidence on record and passed the impugned judgment, which needs to be maintained by this Court.

9. The learned advocate for the respondents/ accused further submitted that PW-11 Sudam More, who is eyewitness, has specifically admitted that accused Barku had sustained head injury and it was due to blow given by the deceased Ramesh. Even the Investigating Officer PW-15 also admitted that all accused persons also sustained injuries and according to I.O., accused persons were sent for medical examination. According to the learned advocate, the record in respect of injuries sustained by the accused persons was not produced during the trial.

10. The learned advocate for the respondents/ accused

further submitted that there are several omissions and contradictions in testimonies of eyewitnesses and as such, eyewitnesses cannot be wholly reliable. According to the learned advocate, the deceased alleged to have died due to severe blow on his chest. There are no other injuries on the person of the deceased.

11. Lastly, the learned advocate for the accused submitted that accused No.1/ Barku is alleged to have gone inside his house and brought axe and inflicted injury on chest of the deceased Ramesh, however, there is no motive or intention to commit murder. Even if it is presumed that the accused persons have assaulted deceased Ramesh, however, at the most, same can be considered under Section 304 Part II of the Indian Penal Code. The learned advocate, therefore, prayed for dismissal of the appeal and for confirming the impugned judgment.

12. After hearing the learned advocates at length and with their assistance, after going through evidence on record minutely, it is found that there was long standing dispute between the accused side and the deceased side on different counts as they are cousins and are residing adjacent to each other. On

10.07.2001, wife of accused No.2 threw dirty water in front of the house of the deceased Ramesh, which gave rise to quarrel between the parties. In the said quarrel, accused No.1 Barku is alleged to have brought knife/ axe from his home and in heat of moment, inflicted injury by single blow on chest of the deceased Ramesh.

13. Postmortem report at Exhibit 16 discloses that death was due to stab injury on right side of chest. The chest injury was caused due to the assault given by accused No.1 Barku. When the incident of alleged assault took place, accused No.1 Barku was of 22 years young. The alleged incident took place in 2001. The accused and deceased sides are closely related to each other. There are no other serious injuries suffered by the deceased Ramesh. The accused persons also sustained injuries and they were hospitalized. From evidence brought on record, it is clear that the place of incident is near the house of accused persons and there is also dispute between the parties regarding agricultural land. The incident took place in heat of moment and thus, the accused assaulted the deceased in sudden fight. Evidence of eyewitnesses shows that during the said quarrel,

accused No.1 Barku went inside his house and brought knife/ axe and gave blow on chest of the deceased Ramesh. This itself shows that there was no any premeditation or intention to kill the deceased Ramesh. It is also brought on record that there are no other injuries on the person of the deceased. Had there been any intention to kill, there would have been multiple injuries on vital part of body of the deceased Ramesh. Medical evidence shows that the death was caused due to single blow on his chest.

14. We have also gone through testimonies of eyewitness which cannot be brushed aside as they have clearly in unequivocal terms stated that it was accused No.1/ Barku, who went inside his home and brought knife/ axe and assaulted the deceased Ramesh on his chest.

15. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Trial Court has erred in completely discarding the reliable portion of the prosecution evidence insofar as the role of accused No.1 – Barku Deochand Shinde is concerned. The evidence of the eyewitnesses, duly corroborated by medical evidence, clearly establishes that accused No.1 inflicted a blow on the chest of deceased Ramesh,

which proved to be fatal. However, considering the circumstances in which the incident occurred, namely, a sudden quarrel between closely related parties, absence of premeditation, a single blow inflicted in the heat of passion, and the fact that the accused himself had sustained injuries, the act of accused No.1 would not fall within the ambit of murder punishable under Section 302 of the Indian Penal Code.

16. In the considered view of this Court, the case would squarely fall under Section 304 Part II of the Indian Penal Code, as the accused can be attributed with the knowledge that his act was likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death.

17. Upon careful re-appreciation of the entire evidence on record, this Court finds that the testimonies of the eyewitnesses, to the extent they attribute a specific overt act to accused No.1 – Barku Deochand Shinde, are consistent, cogent and duly corroborated by the medical evidence. The presence of accused No.1 at the spot, the nature of assault, and the resultant fatal injury to the deceased stand proved beyond reasonable doubt. The defence has failed to prove any circumstance which

would discredit this material part of the prosecution case. In such circumstances, no other view, except the one pointing towards the culpability of accused No.1, is possible. The finding of complete acquittal recorded by the Trial Court, insofar as accused No.1 is concerned, is therefore unsustainable and calls for interference.

18. While determining the quantum of sentence, this Court has taken into consideration the mitigating circumstances emerging on record. The incident in question is of the year 2001 and more than two decades have lapsed since then. At the time of the incident, accused No.1 – Barku Deochand Shinde was a young man aged about 22 years. There is nothing on record to indicate that he has any criminal antecedents. It is also pertinent to note that the accused has undergone the full-fledged trial and appeal for a considerable length of time, which itself operates as a mitigating factor. Having regard to the nature of the offence, the manner in which it was committed, and the aforesaid circumstances, this Court is of the considered opinion that sentencing the accused to the period already undergone would meet the ends of justice.

19. Insofar as accused Nos.2 and 3 are concerned, the evidence on record is not sufficient to establish their common intention to commit the murder of the deceased. The role attributed to them does not inspire confidence to the extent of recording their conviction for the offence alleged. The view taken by the Trial Court, insofar as acquittal of accused Nos.2 and 3 is concerned, is a possible and reasonable view and, therefore, does not warrant interference.

20. Hence, the following order:

**ORDER**

- (i) The Criminal Appeal is partly allowed.
- (ii) The judgment and order dated 13.06.2003 passed by the learned III Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.257 of 2001, is quashed and set aside to the extent of acquittal of accused No.1 – Barku Deochand Shinde.
- (iii) Accused No.1 – Barku Deochand Shinde is convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and is sentenced to suffer imprisonment for the period already undergone by him.
- (iv) The acquittal of accused Nos.2 – Deochand Raghunath Shinde and 3 – Ramdas Deochand Shinde is maintained.
- (v) Accused No.1 – Barku Deochand Shinde be set at liberty forthwith, if not required in any other case. His bail bonds, if any,

shall stand cancelled.

(vi) Set-off under Section 428 of the Code of Criminal Procedure be given to accused No.1.

*kps* (SUSHIL M. GHODESWAR, J.)

(KISHORE C. SANT, J.)