

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1145 OF 2011**

TANAJI SHAMRAO KALE

...APPELLANT

VERSUS

STATE OF MAHARASHTRA

...RESPONDENT

with

CRIMINAL APPEAL NO.1160 OF 2025

(Arising out of Special Leave Petition (Crl.) No. 3385 of 2012)

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted in Special Leave Petition (Crl.) No. 3385 of 2012.

FACTUAL ASPECT

2. The appellant Tanaji in Criminal Appeal No. 1145 of 2011 is accused no.9. The appellants Ratu, Satu and Maruti in Criminal Appeal arising out of Special Leave Petition (Crl.) No. 3385 of 2012 are accused nos. 1, 2 and 5, respectively. There were a total of 9 accused. The trial court acquitted the accused no. 4. The rest of them were convicted. The trial court convicted the appellants for the

offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code (for short, 'the IPC'). The appellants were sentenced to undergo life imprisonment. The High Court confirmed their conviction vide judgment dated 24th September 2010.

3. As far as accused no.9 is concerned, this Court ordered him to be released on bail by order dated 10th May 2011. However, accused nos. 1, 2 and 5 were not granted the benefit of bail by this Court. Their prayer for bail was rejected by orders dated 19th March 2013 and 11th April 2014. We have been informed across the Bar that accused nos.1, 2 and 5 have undergone the entire sentence and have been released.

4. PW-1, Dadarao, is the complainant, the son of PW-5, Tarabai. The deceased, Murlidhar, was the uncle of PW-1. Accused no.8, Shamrao, had three sons, Ratu, Satu and Tanaji, and they are accused nos. 1, 2 and 9, respectively. Accused nos. 3 and 4 were real brothers. Accused no.7 is the grandson of accused no.8, and accused no. 6 is a kinsman of accused no. 8. Accused no.5 was working with accused no.8 at that time. PW-1's father owned five acres of land in a village where PW-1 and the appellants were residing. The deceased and PW-1 were residing separately. According to the prosecution's case, there was a partition effected between PW-1's father

and his brothers. According to the prosecution's case, when the land was jointly owned, it was irrigated land and water was drawn from a nearby river through a pipeline. Hanmant, step uncle of PW-1, was the joint family manager who had obtained a loan to install a motor pump and pipeline to draw water from the river. Hanmant was collecting amounts from PW-1's father and uncle and was paying instalments of loan to the bank. The prosecution's case is that as the accused restrained PW-1 from taking water through the pipeline, the dispute started and complaints were lodged at the police station. The relationship between the family of the PW-1 and the family of the accused was strained.

5. On 18th July 2001 at about 10.15 a.m. to 10.30 a.m., PW-5 was fetching water from a hand pump. After some time, she made a hue and cry and started proceeding towards the place of residence of PW-1. At that time, PW-1 came out and saw PW-5 proceeding towards the house of the deceased and started shouting that the accused were assaulting the deceased with swords. PW-5 proceeded towards the house of the deceased by the side of a hill. PW-1 went up to the hill and saw the accused assaulting the deceased with swords in their hands. Though he tried to intervene, the assailants even assaulted PW-1. According to the case of

the prosecution, one Bajrang (PW-2), who was grazing cattle on nearby land, had also seen the incident of the accused giving blows by swords on the knees, hands and legs of the deceased. Accused no.8, Shamrao, was standing near the spot of the incident with a stick in his hand and was instigating the other accused to assault the deceased. Bajrang tried to intervene. However, some of the accused ran towards him and threatened him. Therefore, he did not intervene. At that time, accused no.9-Tanaji (appellant), a police constable, came to the spot. Accused no.9-Tanaji took the sword from the hands of accused no. 1, Ratu, and started giving blows to the right knee of the deceased. Though PW-1 requested the accused not to assault the deceased, the accused did not pay any heed. During the investigation, at the instance of accused Maruti, one sword was seized. There are three eye witnesses namely PW-1, PW-2 and PW-5. Evidence of PW-10 is also material.

SUBMISSIONS

6. Learned senior counsel appearing for the appellants has taken us through the evidence of these witnesses. He submitted that even according to the prosecution witnesses, some other eye witnesses had seen the alleged incident. However, none of them were examined. He submitted that evidence of PW-1 (Dadarao) cannot be

believed. The witness claimed that he was a student of 11th standard and he used to have four to five lectures every day from 7.30 a.m. He submitted that, therefore, it is difficult to believe that he had seen the incident between 10.15 a.m. and 10.30 a.m. He submitted that he did not state in his police statement that after attending one class, he skipped the rest and returned home. He submitted that, therefore, his testimony deserved to be ignored. He submitted that the statement made by PW-2 to the effect that he saw accused no. 9 assaulting with a sword is an omission. He also submitted that PW-5, Tarabai, has not ascribed any role to the appellant, Tanaji. Inviting our attention to the evidence of PW-10, Vasant Zunjare, P.I., attached to Barshi Police Station, he submitted that his evidence discloses that at that time, the accused no.9 - Tanaji, was doing duty with the crime branch. Learned counsel pointed out that the witness admitted that, as per the record, from 18th July 2001 to 19th July 2001, an important duty was assigned to the accused no.9 Tanaji. Therefore, he was on duty at that time. He also submitted that though the prosecution witnesses had ascribed a clear role to the acquitted accused no. 4 and accused no. 8, their testimony has been disbelieved to that extent. Learned senior counsel, therefore, submitted that the appellants deserve to be acquitted.

7. Learned senior counsel appearing for the respondent supported the impugned judgment. He submitted that PW-5 did not refer to the presence of accused no. 9-Tanaji, as before he could appear on the scene, the witness left the scene of the offence. He submitted that the role ascribed by PW-1 and PW-2 to the accused, including the appellants, has been established in their testimony, and no material omissions and contradictions were brought on record. He submitted that evidence of PW-10 indicates that on the date of the offence, a certain important duty was assigned to the appellant, but he was not present at the police station on those two days. Therefore, the defence of an alibi is not established.

CONSIDERATION OF SUBMISSIONS

8. We have perused the evidence of the material prosecution witnesses. The version of PW-1 about the incident reads thus:

“The incident took place on 18.07.2001 at about 10.15 a.m. to 10.30 a.m. At that time, I was taking meals in my house. On the day of incident, I attended the school at about 7.30 a.m. I attended one lecture and returned to the house. At that time, my mother was fetching the water from the hand pump. She had carried two pitchers to bring the third

pitcher from the hand pump. The hand pump is installed at a distance of 300 ft. at the eastern side of my house. I heard big shout of my mother. I came running from my house by leaving the food. At that time my mother was shouting loudly and she was uttering the words that Ratu Kale, Satu Kale, Shankar Kale, Bhayaji Kale, Maruti Shinde, Sahadeo Kale, Dharma Hake were beating my uncle. I proceeded towards the spot where the said persons were beating my uncle. I was standing at a distance of 30 ft from the distance of the incident. I had seen that all the accused were giving blow of swords to my uncle. I again say that Ratu Kale, Satu Kale, Shankar Kale, Bhayaji Kale, Maruti Shinde Sahadeo Kale, Dharma Hake were beating my uncle by swords. On his shoulder, on both the wrists, on knees. I was using the went Aba to my uncle Murlidhar. My mother was also running towards the house of my uncle. I requested the said persons not to beat my uncle. But Ratu Kale, accused Dharma and Shankar came to my direction alongwith the swords in their hands in order to assault me. I started running towards the house of Bhayaji Vhanemane. Thereafter, I was standing near the open space adjacent to the house of Bhayaji Vhanmane. At that time, Bajrang Dhedgade was gazing his cattles. I told him to request the said persons not to beat my uncle. Bajrang

Dhaigade proceeded towards the spot and told the said persons not to beat my uncle. But Ratu Kale, Maruti and Bhayyaji come towards his direction alongwith the swords in their hand. Shamrao Kale was standing at some distance alongwith stick in his hand and he was instigating the accused to beat my uncle and not to rescue him. At the same time, accused Tanaji Kali came on his bullet motor cycle. He parked his vehicle behind the house of Murlidhar, on the road. He came running towards the spot of incident. He told to the assailants why they are beating him like a women. He took the sword from the hand of his brother Ratu kale and he started giving blows of sword hastily on the right knee of Murlidhar.”

9. After carefully perusing the cross-examination, we find no material omissions or contradictions have been brought on record regarding the role ascribed to the appellants. The only omission brought on record is that the statement of the witness recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, ‘CrPC’) does not mention that after attending one class, he came to the house on the date of the incident. We do not think that this omission is so relevant as to amount to contradiction as provided in the explanation to Section 162 of CrPC.

10. As far as PW-2 is concerned, his version in the examination-in-chief is same as what is stated by PW-1. He claimed that he stated before the police that the accused were assaulting the deceased by sword. However, the statement regarding the use of the sword is an omission. The statement that he saw the accused assaulting the deceased is not an omission. There are no material omissions or contradictions brought on record as far as this witness is concerned.

11. PW-5's version about the role played by the appellants is similar to the version of PWs-1 and 2. It is true that PW-5 has not ascribed any role to accused no.9-Tanaji. The explanation for that is in the examination-in-chief of PW-5 herself. She stated that after she saw accused nos. 1 to 7 beating the deceased, she started running towards her house. Therefore, even before accused no.9-Tanaji arrived on the scene, the present appellant had left the scene of the offence.

12. Regarding evidence of PW-10, Vasant Zunjare, P.I., his version is that from 18th July to 19th July 2001, some important duty was assigned to the accused no.9 Tanaji. The witness admitted that accused Tanaji was not in the police station on those two days. The accused no.9 has not adduced evidence to show that he was elsewhere

when the incident occurred. Therefore, the accused no.9 Tanaji's alibi plea cannot be accepted.

13. Hence, the testimony of PWs-1, 2 and 5 as regards the role ascribed to the accused nos.1 to 7, is trustworthy. The testimony of PWs-1 and 2 on the role ascribed to the accused no.9 is also reliable. The accused no.4 was acquitted by the trial court as he proved the defence of alibi. Hence, the acquittal of the accused no.4 is of no help to the other accused.

14. It is true that there may be other eye witnesses who were not examined. But PW-2 is not a witness who was related in any manner to the deceased. He had no enmity against the accused. As the evidence of the three eye witnesses is of sterling quality, the failure to examine the other alleged eye witnesses will not be fatal for the prosecution case.

15. Therefore, there is no merit in the appeals. The appeals are dismissed. We direct the accused no. 9-Tanaji Shamrao Kale, to surrender within one month from today to undergo the remaining sentence. If accused nos.1, 2 and 5, who have challenged the impugned judgment, have already undergone the sentence and have been released, the question of the said accused (appellants in Criminal Appeal arising out of Special Leave Petition

(Crl.) No. 3385 of 2012) being taken to custody will not arise. However, if they have not been released after undergoing the sentence, they must undergo the remaining sentence.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
March 05, 2025.