

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.391/1996

The State of Maharashtra.

...Appellant..
(Org.complainant)

Versus

- 1] Limbaji s/o Punjaram Wagh,
age 36 yrs.,
- 2] Deorao s/o Punjaram Wagh,
age 27 yrs.,
- 3] Laxman s/o Punjaram Wagh,
age 30 yrs.,
- 4] Mamta s/o Baburao Wagh,
age 21 yrs.,
- 5] Narayan s/o Bhujangrao Wagh,
age 45 yrs.,
- 6] Waman s/o Bhujangrao Wagh,
age 40 yrs.,
- 7] Bhaskar s/o Baburao Wagh,
age 30 yrs.,
- 8] Bramha s/o Baburao Wagh,
age 23 yrs.,
- 9] Vishnu s/o Narayan Wagh,
age 21 yrs.,
- 10] Bhagwan s/o Limbaji Jaibhaye,
age 31 yrs.,
- 11] Keshavrao s/o Bapurao Wagh,
age 23 yrs.,

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12] Jayaji s/o Punjaram Wagh,
age 42 yrs.,

13] Fakira s/o Bapurao Wagh,
age 28 yrs.,

All occu.agri., r/o Vanjarumrad,
Tq. & Dist.Jalna.

...Respondents...
(Org.accused)

.....

Shri K.S. Patil, APP for appellant.

Shri Joydeep Chatterji, Advocate for respondent nos.1 to
4 and 6 to 13.

Respondent no.5 is reported to be dead.

.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 01.10.2015

JUDGMENT (Per A.B. Chaudhari, J.) :

1] Heard learned APP for the appellant - State.

2] Being aggrieved by the judgment and order dated
18.3.1996 passed by 2nd Additional Sessions Judge, Jalna,
in Sessions Case No.108/1990, present appeal was filed by
the State against the order of acquittal recorded by the
trial Judge.

3] Undoubtedly, the case of the prosecution itself is
that there were two rival groups and counter cases were
registered against each group. The respondents are the

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persons who are acquitted and the prosecution case was that they were responsible for causing the death of Babasaheb. In the counter case, the case against the prosecution witnesses in this case is that they had caused the death of Baburao from the rival group. The trial Judge found that longstanding enmity was existing between the parties, namely, the accused on one part and the prosecution witnesses on the other part. There was an order made by the Civil Court in favour of one party. In the wake of that order and the alleged breach of injunction, free fight took place in which Baburao and Babasaheb, one from each group died. Group of witnesses from one group were accused in the counter case and were tried and ultimately acquitted for the murder of Baburao. Present case is in respect of the group of the accused who are said to have killed Babasaheb.

4] Learned APP for the State submitted that the judgment of the trial Court is perverse, to say the least. Upon perusal of the judgment, we do not find so.

5] We have perused the impugned judgment and order of acquittal and the reasons recorded. The trial Judge recorded the findings in paragraph nos.20, 34, 39 and 40

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of the impugned judgment as under :-

20. The defence in turn produced the certified copy of the chargesheet under Exh.92 and the certified copies of the injury certificates found on the person of deceased accused Baburao and present accused 13 Fakira. The originals of the injury certificates are filed in S.C.No.14/92 by the State in which the present prosecution party alongwith their some other relatives are made accused for the offence punishable u/s 307 and other ancillary charges which arose out of the same incident. The prosecution in the present case has admitted all these documents thereby it has become clear that deceased Baburao suffered three incised injuries over his scalp, accused 13 Fakira suffered one abrasion and two incised injury over his index finger and left fore arm respectively.

34. In the back ground of these injuries P.W.1 Sampat deposed that deceased Baburao and accused 6 Vaman assaulted Babasaheb with the axes. During cross examination he clearly deposed at para 9 that deceased Babasaheb had received two head injuries out of the attack committed by deceased Baburao with his axe. As already pointed out only two incised injury were noted by the M.O. Over the skull of deceased Babasaheb. Under such circumstances it cannot be stated that any of the other accused had assaulted deceased Babasaheb

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with axe. The deposition of other injured prosecution witnesses in that regard cannot at all be believed. P.W.4 Ananda as already pointed deposed that the five of the accused namely; accused 5 Narayan, no.6 Vaman, no.10 Bhagwan, no.13 Fakira and deceased accused Baburao gave blows of axes over the head of Babasaheb. As already pointed out there are only two incised injuries over the skull of deceased Babasaheb and no other incised injury is found over his entire body. P.W.5 Deorao also narrated the three of the accused had given axe blows to deceased Babasaheb. P.W.6 Dadasaheb as already reproduced deposed that five of the accused gave axe blows to deceased Babasaheb. Thus it is clear that rest of the prosecution witnesses except P.W.1 Sampat are all making improvements so as to implicate as many accused in the charge of murder of deceased Babasaheb.

39. The relevant accused had taken the defence of self defence. In these back ground let us see as to what the prosecution witnesses have to say about the injuries found on the person of these two accused P.W.1 Sampat during cross examination pleaded ignorance to the existence of these injuries. He deposed that he does not know whether in the same incident deceased accused Baburao received three injuries on his head or that accused Fakira had suffered fracture to his hand. P.W.4 Ananda completely denied that during

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the incident deceased accused Baburao received injuries while pleaded ignorance regarding the injury on the person of accused 13 Fakira. P.W.5 Deorao also pleaded ignorance about the injuries on the person of these accused while P.W.6 Dadasaheb follow the suit.

40. Under such circumstances, it is clear that though admittedly these two accused suffered injuries and out of which deceased accused Baburao suffered three incised injuries over his head during the same incident yet none of the prosecution witnesses explained as to how those injuries were caused. Admittedly these prosecution witnesses are highly interested in the conviction of the accused persons. As deceased Babasaheb a young boy of 17 years of age has died during the incident the interest of the prosecution witnesses is understandable, yet at the same time we have to find out as to whether the prosecution has beyond reasonable doubt proved that all or any of the accused persons being the aggressors caused the death of Babasaheb or as a aggressor attacked the rest of the complainant party."

6] We find from the discussion made by the learned trial Judge above that despite injunction order issued by the Civil Court, free fight took place between the two

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groups and the witnesses as well as the accused persons suffered injuries on vital parts. The trial Court, therefore, extended the benefit of doubt in view of the fact that longstanding enmity between the accused and the prosecution witnesses was evident from record and it was risky to record conviction in view of the free fight in which one person each from the two groups died. The discussion made by the learned trial Judge, quoted by us above, is consistent with the evidence on record – oral as well as documentary. We do not find any perversity on the part of the learned trial Judge in recording the order of acquittal for the reasons recorded as above. Consequently, we concur with the finding of fact recorded by the learned trial Judge and finding of acquittal of the accused persons. We find no merit in the instant appeal against acquittal. Before parting with the judgment, we keep in mind the following limitations expressed in paragraph no.24 of the judgment of the Supreme Court in the case of *State of Rajasthan v. Darshan Singh alias Darshan Lal* (**AIR 2012 SC 1973**) :-

“24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling

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circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

7] We, therefore, make the following order.

ORDER

Criminal Appeal No.391/1996 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)