

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.75 OF 1997

The State of Maharashtra.

....Appellant.
(Ori. Complainant)

Versus

1. Ramprasad Savlaram Deshmukh
Age:40 yers., Occu.Agri., R/o
Kannapur.Tq. Majlagaon, Dist. Beed.
2. Jaysing S/o Ramprasad Deshmukh
Age:23 yers., Occu. Agri., R/o as above.
Janak S/o Ramprasad Deshmukh
Age:19 yers., Occu. & R/o as above.
3. Janak s/o Ramprasad Deshmukh,
age 19 yrs., occu. & r/o as above.

....Respondents.
(Ori. Accused nos.1 to 3)

.....
Shri K.S. Patil, APP for appellant.
Shri S.P. Katneshwarkar, Advocate for respondent nos.1 to
3.

.....

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

DATE: 08.10.2015

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

1] Being aggrieved by the judgment and order dated

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23.12.1996 passed by the learned Additional Sessions Judge, Beed, in Sessions Case No.2/1994 by which the learned trial Judge recorded the order of conviction u/s 304-A of the Indian Penal Code instead of the offence u/s 302 of the Indian Penal Code and then released the convicted accused persons on probation, the present appeal was filed by the State, both against acquittal as well as for enhancement of sentence.

2] In support of the appeal and assailing the impugned judgment and order, the learned APP submitted that there are two eye witnesses in the instant case namely PW4 Janardhan and PW5 Sushilkumar. Reading of evidence of these witnesses would show the overt-act on the part of the respondents – accused in making intentional assault by means of stone and axe causing instantaneous death of the deceased Bajrang. He submitted that the evidence of these two witnesses was sufficiently corroborative to each other and was, therefore, required to be accepted by the learned trial Judge. The learned APP then submitted for making an order of conviction u/s 302 of the Indian Penal Code. It is submitted that the conviction recorded u/s 304-A of the Indian Penal Code is unsustainable so

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also the sentence recorded therefor and then release of the accused on probation. The finding recorded by the learned trial Judge that the stone was thrown rashly and negligently and, therefore, no offence of murder was proved, is perverse and, therefore, the order of acquittal deserves to be interfered with by this Court.

3] Per contra, the learned counsel for the respondents supported the impugned judgment and order and submitted that the evidence of both the alleged eye-witnesses PW4 Janardhan and PW5 Sushilkumar suffers from grave infirmities as can be found from the cross-examination of these two witnesses. The infirmities in the evidence of these two witnesses goes to the root of the matter and the evidence of both these witnesses obviously is untrustworthy. The trial Court did no wrong in rejecting their evidence and recording the order of acquittal. He, therefore, prayed for dismissal of the appeal.

4] We have heard the learned counsel for the parties and with the assistance of the learned counsel for the parties, we have perused the evidence of PW4 Janardhan and PW5 Sushilkumar. We have seen the reasons recorded by the learned trial Judge for recording the order of

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acquittal. Upon perusal of the cross-examination of PW4 Janardhan and PW5 Sushilkumar, which we have carefully seen, we find that each and every act described by these eye witnesses in the examination-in-chief on the incident proper and the overt-act of the accused described by them is clearly by way of omissions amounting to contradictions, which were duly proved within the meaning of Section 145 of the Indian Evidence Act. We have checked up the omissions amounting to contradictions and we find that they relate to the actual description of the incident of alleged murder either by stone or by axe. But then the trial Judge found that there was rash and negligent act on the part of one of the accused in throwing the stone, which caused injury to the deceased and, therefore, he recorded the conviction u/s 304-A of the Indian Penal Code. There is no other evidence than this.

5] In the light of above evidence discussed by us about ocular account of the incident, we are satisfied that the learned trial Judge did not commit any error in recording the order of conviction for the offence u/s 304-A r/w 34 of the Indian Penal Code. Insofar as the prayer for

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enhancement of sentence is concerned, we find that by rash and negligent act, stone was thrown and the target was not the deceased but the stone was nevertheless thrown rashly and negligently and, therefore, the trial Judge considered the same as a mitigating circumstance to release the respondents on probation. We do not think that we should interfere with the order to release the accused on probation in the light of the circumstances seen by the learned trial Judge. We do not want to substitute the judicial discretion exercised by the learned trial Judge in doing so. In the result, we find no merit in the instant appeal. Consequently, we pass the following order.

ORDER

Criminal Appeal No.75/1997 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)