

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPEAL NO.163 OF 1997
WITH
CRIMINAL APPLICATION NO.3108/2015**

The State of Maharashtra.

....Appellant.
(Ori. Complainant)

Versus

1. Sk. Majid Sk.Masum, Age:36 yers.,
2. Shivaji Pandhari Deshmukh, Age 32 yers.,
3. Shrikrushna Baburao Pandhare, Age: 22 yers.,
4. Rama Shankar Wankhede, Age: 27 yers.,
5. Tukaram Namdeo Kale, Age:30 yers.,
6. Ashok Ramdas Deshmukh.Age:30 yers.,
Nos. 1 to 5 R/o Wakod, Taluka Jamner,
No.6 R/o Pahur Peth, Jamner,
Dist: Jalgaon.

....Respondents.
(Ori. Accused)

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Shri M.M. Nerlikar, APP for appellant.
Shri V.T. Choudhari, Advocate for respondent nos.1 to 6.

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

DATE: 08.10.2015

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

1] Learned counsel for the respondents – accused has filed Criminal Application No.3108/2015 for declaring the appeal as abated as against the respondent nos.1 and 5 as the respondent nos.1 and 5 are stated to be dead. Heard learned counsel for the parties. The appeal is dismissed as abated as against the respondent nos.1 and 5 namely Sk.Majid Sk.Masum and Tukaram Namdeo Kale. Criminal Application No.3108/2015 is disposed of accordingly. We, therefore, proceed with the hearing of the appeal qua the remaining accused.

2] Being aggrieved by the judgment and order dated 3.2.1997 passed by the learned Additional Sessions Judge, Jalgaon, in Sessions Case No.211/1994 by which he recorded the order of acquittal against the respondents – accused for the offence u/s 147, 148, 307 r/w 149, 504 and 506 of the Indian Penal Code, the present appeal was filed by the State of Maharashtra.

3] Learned APP vehemently argued assailing the impugned judgment and order submitting that the learned trial Judge committed an error in acquitting the accused in a serious offence of attempt to commit murder. The

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trial Court should not have discarded the testimony of injured witness namely PW3 Shivaji and PW9 Suresh. He submitted that the trial Judge could not have acquitted atleast the main accused – respondent no.1 Sk.Majid. Even otherwise all the accused had come together in a Jeep, stopped the Jeep, came out from the Jeep and thereafter the accused no.1 had stabbed in the stomach of the complainant. He, therefore, submits that the blanket order of acquittal of all the accused persons is bad and illegal.

4] Per contra, the learned counsel for the respondents – accused opposed the appeal and submitted that even assuming that the respondent no.1 – Sk.Majid had given blow of the knife on the stomach of the complainant, the fact remains that he is no more. He submitted that so far as other accused are concerned, no specific role is attributed to them except they alighted from the Jeep, that by itself does not constitute either the common intention or unlawful assembly. He, therefore, prayed for dismissal of the appeal.

5] We have seen the evidence of PW3 Shivaji and PW9 Suresh. We have also seen the evidence of PW4 Dr.Ramdas.

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From the evidence of eye-witnesses, we are convinced that offence u/s 324 of the Indian Penal Code was clearly proved by the prosecution against the respondent no.1 – accused – Sk.Majid and that evidence is consistent. Therefore, the accused no.1 – Sk.Majid should have been convicted for the offence punishable u/s 324 of the Indian Penal Code, but then the accused no.1 – Sk.Majid has died and, therefore, the appeal against him is abated and, therefore, we do not say anything further. Insofar as other accused persons are concerned, the only evidence is that they had alighted from the Jeep with the accused no.1 – Sk.Majid, but there is no specific evidence about any overt-act on the part of other accused persons. The injury as deposed by PW4 Dr.Ramdas shows incised wound over abdomen below left costal margin 1" x 1/2" upward direction, which is a stab injury. The description of the above injury to our mind shows that it was only 1/2" deep and 1" in length. We do not think that this could constitute the offence of attempt to commit murder, as alleged by the prosecution. At any rate, we do not find any merit in the instant appeal though we have held that the accused no.1 – Sk.Majid could have been held guilty

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u/s 324 of the Indian Penal Code and at any rate the appeal against him is already dismissed as abated because of his death, as stated earlier.

6] The off-shot of the above discussion is that the appeal must fail. Hence, the following order.

ORDER

Criminal Appeal No.163/1997 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)