

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 224 OF 1997

The State of Maharashtra.

... **APPELLANT**
(Original Complainant)

VERSUS

1. Mohammed Sallauddin Gulam
Mohiyuddin Kazi, age 55 years,
2. Nizammuddin Nasiruddin Kazi,
age 20 years,
3. Aref Majid Masayakh,
age 24 years,
4. Naser Sallauddin Kazi,
age 21 years,
5. Tajoddin Sallauddin Kazi,
age 20 years,
6. Amer Jahiruddin Sayyed,
age 24 years,
7. Nader Jafar Kazi,
age 20 years,
8. Taher Jafar Kazi,
age 20 years,
9. Irshad Abdul Halim Mashayakh,
age 27 years,
10. Asad Sajid Mashayakh,
age 25 years,

11. Mansoor Masud Kazi,
age 24 years,

All R/o. Lohargalli, Osmanabad,
Tq. and Dist. Osmanabad.

... **RESPONDENTS**
(Original Accused)

...
Mr. A. R. Borulkar, APP for Appellant / State

Mr. Joydeep Chatterji, Advocate a/w Mr. Md. Mustafa Ahmed Momin,
Advocate for all Respondents

...

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

DATE : 15th October, 2015.

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

. Being aggrieved by the judgment and order dated 6th May, 1997, passed in Sessions Case No.8 of 1994, by which the learned trial Judge made an order of acquittal of the Respondents / Accused for the offences punishable under Sections 148, 302, 324 read with 149 of the Indian Penal Code, present appeal is filed by the State of Maharashtra.

2 We have heard the learned counsel for the rival parties for quite sometime. We have perused the reasons recorded by the learned trial Judge for recording the order of acquittal of the Respondents / Accused, who are 11 in number.

3 What we find is that there was a free fight between two rival groups and as such counter cases were registered. We have been told by Mr. Chatterji, learned counsel the Respondents / Accused that the case against the witnesses party resulted into acquittal. We find from the judgment of the trial Judge that he found that medical evidence did not corroborate the evidence of witnesses. That apart, we also found that there was a scope for examination of independent witnesses instead of the prosecution asking the Court to rely on the interested witnesses only. The learned trial Court further found that Accused persons also received injuries about which no explanation was brought forth by the prosecution and therefore, adverse inference was required to be drawn against the prosecution.

4 The learned trial Judge gave benefit of doubt and acquitted all the Respondents / Accused. The incident had took place in the year 1993. We are reminded of the parameters laid down by the Apex Court and particularly Para 24 of the Judgment in the case of **State of Rajasthan Vs. Darshan Singh alias Darshan Lal**, reported in, **A.I.R. 2012 S.C. 1973**. We quote Para 24 of the Judgment cited supra, as under:

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

5 In view of the above discussion, we think the order of acquittal need not to interfere with. Hence, we make the following order:

ORDER

Criminal Appeal No.224 of 1997, is dismissed.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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