

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.515 OF 2012

Sajeed Mohd. Abbas Ansari,
Age-22 years, Occu:Business,
R/o-Millatnagar, Vadjai Road,
Dhule, Tq. & Dist-Dhule.

...APPELLANT
(Orig. Accused No.3)

VERSUS

The State of Maharashtra,
Through Investigation Officer,
Azad Nagar Police Station,
Dhule, Dist-Dhule.

...RESPONDENT

WITH

CRIMINAL APPEAL NO.517 OF 2012

- 1) Mohammad Gaffar @ Lallu Mohd. Usman Ansari,
Age-41 years, Occu:Labourer,
- 2) Mohammad Gufaran Mohd. Usman Ansari,
Age-53 years, Occu:Business,

Both: R/o-Millat Nagar, Vadajai Road,
Dhule, Dist-Dhule.

...APPELLANT
(Orig. Accused Nos.4 & 13)

VERSUS

The State of Maharashtra,

...RESPONDENT

WITH

CRIMINAL APPEAL NO.518 OF 2012

- 1) Mohammad Asif Mohammad Abbas Ansari,
Age-21 years, Occu:Business,
R/o-Millat Nagar, Wadjai Road,
Dhule, Dist-Dhule,
(Original Accused No.1)
- 2) Abid Mohammad Sultan Ansari,
Age-29 years, Occu:Business,
R/o-Ambika Nagar.
Near Raheman Masjid,
Dhule, Dist-Dhule.
(Original Accused No.6)

...APPELLANTS

VERSUS

The State of Maharashtra,

...RESPONDENT

...

Mr. R.N. Dhorde Senior Advocate with Mr. N.B.
Suryawanshi Advocate for Appellants in all
the Appeals.

Mrs. R.P. Gour, A.P.P. for Respondent in all
the Appeals.

...

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

DATE : 19TH OCTOBER, 2015

JUDGMENT [PER A.B. CHAUDHARI, J.] :

1. These three Appeals were filed by the convicted accused persons pursuant to the Judgment and order dated 31st July 2012 passed by the Additional Sessions Judge, Dhule in Sessions Case No.59 of 2011 by which the Appellants in these three Appeals i.e. original accused No.1 - Mohammad Asif, original accused No.3 - Sajid Mohammad, original accused No.4 - Mohammad Gaffar, original accused No.6 - Abid Mohammad and original accused No.13 - Mohammad Gufaran, were convicted for the offences punishable under Sections 147, 302, 323 read with 149 of the Indian Penal Code and they were sentenced to suffer R.I. for two years and to pay fine of Rs.1,000/- in default of fine, to suffer further R.I. for six months for the offence punishable under Section 147 of the Indian Penal Code. They were sentenced to suffer imprisonment for life and to pay fine of Rs.2000/-, in default of fine to suffer further

R.I. for two years for the offence punishable under Section 302 read with 149 of the Indian Penal Code. They were sentenced to suffer R.I. for one year and to pay a fine of Rs.500/-, in default of fine to suffer further R.I. for three months for the offence punishable under Section 323 read with 149 of the Indian Penal Code.

ARGUMENTS:

2. In support of the Appeals, learned senior counsel for Appellants in these Appeals submitted that the order of conviction recorded by the learned trial Judge is clearly illegal, as despite availability of the independent witnesses the prosecution chose to examine only the related and interested witnesses. The learned senior counsel for the Appellants then submitted that the trial Judge made a mistake in the matter of appreciation of evidence and failed to consider that there was a counter case against the rival group which

though resulted in acquittal but the fact remains that there was free fight between the two parties and therefore it was wrong to convict the Appellants for the offences in question. The learned senior counsel for the Appellants then contended that the evidence of the alleged eye witnesses, namely PW-8 Mukhtar Ahemad Ansari, PW-3 Kalim Ahemad Ansari and PW-1 Sagir Ahmed Ansari was clearly untrustworthy, since they were not in fact eye witnesses but they pretended to be eye witnesses and accordingly deposed before the Court. The contention is that though in the cross-examination it was brought out that the clothes of witnesses were stained with blood, the seizure of the alleged blood stained clothes was never made by the police during the investigation. Absence of blood stains on clothes when deceased Isaq was carried to the hospital in auto rickshaw etc. by the witnesses and non seizure thereof clearly indicates that these eye witnesses were not on the spot and were falsely claiming themselves to be

eye witnesses. The counsel for the Appellants in these Appeals, therefore, prayed for acquittal of the Appellants by setting aside the Judgment and Order in question. In the alternative, learned senior counsel for the Appellants submitted that the Accused No.13 Mohd. Gufaran Mohd. Usman Ansari is said to have given only blow of sword on the head of Isaq and Isaq died after several days, in the hospital while taking treatment. It is the case of the prosecution itself that there was a quarrel over a petty issue and both sides indulged in fighting without any intention to commit murder of Isaq, for which the Appellants were convicted with the aid of Section 149 of the Indian Penal Code. It is contended that the record shows that there was no unlawful assembly as such and therefore the Appellants could not have been held guilty for the offence of murder. In the absence of any evidence against other Appellants other than accused No.13 Mohd. Gufaran Mohd. Usman Ansari, the order of acquittal was required to be

recorded. The learned counsel for the Appellant/ original accused No.13 Mohd. Gufaran contended that instead of holding him guilty of murder he could be, at the most, held guilty for the offence punishable under Section 304 Part II of the Indian Penal Code. The Appellants are in jail for the last five years and have undergone sufficient imprisonment.

3. Per contra, the learned A.P.P. supported the impugned Judgment and order of conviction and sentence and submitted that there is evidence on record that the Appellants were the aggressive party who assaulted the rival party with deadly weapons like sword, iron rod etc. and therefore, the Judgment in question cannot be interfered with.

CONSIDERATION:

4. We have heard learned counsel for the

rival parties as length. We have perused the entire evidence including the evidence of the eye witnesses. We have seen the reasons recorded by the trial Judge for recording order of conviction. Upon perusal of the evidence of PW-1 Sagir Ahmed Ansari and the evidence of eye witnesses, we find that in his evidence PW-1 Sagir Ahmed Ansari clearly stated about only accused No.13 – Gufaran Pahelwan giving blow of sword on the head of his brother Isaq, who died. This witness does not say that any other blow was given to Isaq by other Appellants/accused or any other person. Thus, his evidence implicates only original accused No.13 Gufaran Pahelwan but he does not say about others attacking Isaq by means of deadly weapons. We are fully convinced that it is only accused No.13 Gufaran who had given single blow on the head of Isaq, brother of PW-1. Insofar as the evidence about unlawful assembly is concerned, we find that same is totally infirm. On the contrary, what we find from the record is that first there was a

quarrel between Accused No.13 Gufaran Pahelwan and this witness informant Sagir Ansari, who was slapped and thereafter the ladies and other persons arrived on the spot. But then that is to separate the quarrel and not to form the unlawful assembly with a view to commit any crime. We are, therefore, convinced that there is hardly any evidence of unlawful assembly and as such we reverse the findings of the trial Court that there was unlawful assembly.

5. We then find from the evidence of these three eye witnesses, namely, PW-1 Sagir Ahmed Ansari, PW-3 Kalim Ahemad Ansari and PW-8 Mukhtar Ahemad Ansari that all other accused persons who were convicted were said to have given the blows of iron rod or fist blows not to Isaq but to this witness PW-1 Sagir Ansari and therefore we find that all the other convicted persons could not have been convicted for the offence under Section 302 with the aid of Section 149 of the Indian

Penal Code, we having held that there is no unlawful assembly. The weapons from other accused persons, other than accused No.13 Mohd. Gufaran, were not seized and therefore we think that the conviction recorded by the trial Judge for offence under Section 323 of the Indian Penal Code only can be sustained. But their conviction under Section 302 , 147, 149 of the Indian Penal Code cannot be sustained and as such they are liable to be acquitted.

6. Insofar as accused No.13 Mohd. Gufaran is concerned, we find that he is guilty of assault on the head of Isaq by means of sword. But then the fact remains that Isaq survived for several days and died in the hospital while taking treatment. It is further admitted position that accused No.13 Mohd. Gufaran has given single blow on the head of Isaq and thereafter no blow was given to Isaq during the course of fight which took place between the rival groups. It is clear from the

evidence that there was sudden fight between two groups which resulted into the assault. We are therefore considered opinion that accused No.13 Mohd. Gufaran cannot be held guilty of the offence of murder of Isaq but he would certainly be held guilty of the offence punishable under Section 304 Part I of the Indian Penal Code. We reject the contention that he should be held guilty for the offence punishable under Section 304 Part II of the Indian Penal Code. We find requisite knowledge of giving blow on the head of Isaq he may die..... We therefore hold that accused No.13 Mohd. Gurfaran guilty of offence punishable under Section 304 Part I of the Indian Penal Code.

7. Next question is about the sentence to be awarded for the offence under Section 304 Part I of the Indian Penal Code. We find that accused No.13 Mohd. Gufaran is in jail since the day of incident, namely, 12th July 2010 and has undergone sufficient sentence. In our opinion, the sentence

undergone by him in the jail is sufficient and therefore the sentence which he had already undergone should be imposed.

8. Insofar as other accused persons are concerned, their conviction under Section 323 of the Indian Penal Code is maintained and therefore they also should be imposed the sentence they have already undergone, for the said offence.

9. In the result, we make the following order:-

O R D E R

1] Criminal Appeal No. 515 of 2012, Criminal Appeal No. 517 of 2012 and Criminal Appeal No. 518 of 2012 are partly allowed.

2] The Judgment and order dated 31st July 2012 in Sessions Case No.59 of 2011, convicting the Appellants in all

these Appeals for the offences punishable under Sections 302, 147, 149 of the Indian Penal Code is set aside and modified as under:-

(a) Appellants in these Appeals are held not guilty of the offences punishable under Sections 302, 147, 149 of the Indian Penal Code and are acquitted of the said charge for murder and formation of unlawful assembly.

(b) Accused No.13 – Mohd. Gufaran Mohd. Usman Ansari is held guilty of the offence punishable under Section 304 Part I of the Indian Penal Code and is sentenced to undergo the imprisonment/sentence he has already undergone. Consequently, he be released forthwith, if not required in any other crime.

(c) The conviction of the Appellants/ Accused Nos. 1 – Mohammad Asif Mohd. Abbas Ansari, accused No.3 – Sajeed Mohd. Abbas Ansari, accused No.4- Mohammad Gaffar @ Lallu Mohd. Usman Ansari and accused No.6 – Abid Mohd.

Sultan Ansari, for the offence under Section 323 of the Indian Penal Code is maintained and they are sentenced to undergo the imprisonment/sentence already undergone by them. Consequently, they be released forthwith, if not required in any other crime.

[INDIRA K. JAIN, J.]

[A.B CHAUDHARI, J.]

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