

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.445 OF 2013

1) Babi Sudam Sanap,
Age-25 years, Occu:Household,

2) Radhabai w/o Ramu Sanap,
Age-45 years, Occu:Household,

Both: R/o-Baktarpur, Tq-Kopargaon,
Dist-Ahmednagar.

...APPELLANTS

VERSUS

The State of Maharashtra,
Through Police Inspector,
Kopargaon Police Station,
Tq-Kopeargaon,
Dist-Ahmednagar.

...RESPONDENT

...

Mr. Shailesh S. Chapalgaonkar Advocate for
Appellants.

Mrs. Rashmi P. Gour, A.P.P. for Respondent
- State.

...

WITH

CRIMINAL APPEAL NO.471 OF 2013

- 1) Ravi s/o Ramu Sanap,
Age-25 years, Occu:Agril.,
- 2) Sudam s/o Ramu Sanap,
Age-31 years, Occu:Household,

Both: R/o-Baktarpur, Tq-Kopargaon,
Dist-Ahmednagar.

...APPELLANTS

VERSUS

The State of Maharashtra,
Through Police Inspector,
Kopargaon Police Station,
Tq-Kopeargaon, Dist-Ahmednagar.

...RESPONDENT

...

Mr. Shailesh S. Chapalgaonkar Advocate for
Appellants.

Mrs. Rashmi P. Gour, A.P.P. for Respondent
- State.

...

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

DATE : 16TH OCTOBER, 2015

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

1. Being aggrieved by the Judgment and
order dated 11th November 2013 passed by the
Additional Sessions Judge, Kopargaon in Sessions

Case No.63 of 2012, by which the original accused No.2 - Ravi Sudam Sanap, original accused No.3 - Sudam Ramu Sanap, original accused No.4 - Sau. Babi Sudam Sanap and original accused No.6 - Radhabai Ramu Sanap were convicted for the offences punishable under Sections 143, 147, 148, 302 read with Section 149 of the Indian Penal Code. The original accused No.3 - Sudam Ramu Sanap was also convicted for the offence under Section 324 of the Indian Penal Code. The original accused Nos. 2, 3, 4 and 6 were sentenced to pay fine of Rs.1,000/- each, for the offence u/s. 143 of the Indian Penal Code, in default to suffer Simple Imprisonment for one month each. They were sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs.500/-, in default to suffer Simple Imprisonment for one month each, for the offence under Section 147 of the Indian Penal Code. The original accused Nos.2, 3, 4 and 6 were sentenced to undergo Rigorous Imprisonment for three years each and to pay fine of Rs.1,000/-

each in default to suffer Simple Imprisonment for one month each, for the offence under Section 148 of the Indian Penal Code. The original accused Nos. 2, 3, 4 and 6 were sentenced to undergo imprisonment for life and to pay fine of Rs.1,500/- each in default to suffer Simple Imprisonment for six months each, for the offence under Section 302 read with 149 of the Indian Penal Code. The original accused No.3 - Sudam was sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.1,000/- in default to suffer Simple Imprisonment for two months for the offence under Section 324 of the Indian Penal Code. All the substantive sentences were directed to be run concurrently. Hence these two Appeals were preferred by the Appellants in this Court.

2. Criminal Appeal No.445 of 2013 was filed by original accused No.4 - Babi Sudam Sanap and original accused No.6 - Radhabai w/o Ramu Sanap,

while Criminal Appeal No. 471 of 2013 was filed by original accused No.2 - Ravi s/o Sudam Sanap and original accused No.3 - Sudam s/o Ramu Sanap, though the Judgment and order recorded by the trial Judge was common in respect of all of them.

FACTS:

3. Briefly stated, it is the case of prosecution that the injured informant Vijay Balu Sanap and his family members had undertaken the work of desilting of village percolation tank in village Baktarpur in June 2012. One J.C.B. machine and 4 to 5 tractors with trolley were engaged for the said work by them. The silt that was removed from the percolation tank was being deposited in the land of the informant which was adjacent to the land of the accused. Accused persons objected father and uncle of the informant, namely, Balu Santu Sanap and Ganpat Santu Sanap about deposit of silt near their land and threatened them with

dire consequences if the work was not stopped. But Balu and Ganpat paid no heed to their threat and continued work. On 10th June 2012 Balu, Ganpat and their sons, Vijay Balu Sanap and Rahul Ganpat Sanap had gone to the work site early in the morning at 7.00 a.m. After the work was started, it was stopped for lunch at 11 O'clock. Vijay and Rahul, both, went to their home for fetching tiffin and drinking water for their father and uncle, while Balu and Ganpat were at the work site. Vijay and Rahul returned to the site after about half an hour on motorcycle. They parked the motorcycle, when they saw Appellant/accused Ravi Ramu Sanap and Sudam Ramu Sanap had reached near Balu and Ganpat by their motorcycle. Ravi was possessing an axe, while Sudam was having hammer. After getting down from motorcycle, Ravi gave a blow of axe on the head of Balu and Ganpat, while Sudam assaulted Balu and Ganpat with blows of hammer on their legs. Both, Balu and Ganpat sustained bleeding injuries and the fell down.

Thereafter other accused persons, namely Ramu and his wife Radhabai came with iron rod and stick, so also accused Babi Sudam Sanap came there. They started assaulting Balu and Ganpat. Vijay and Rahul tried to save Balu and Ganpat but accused Ravi and Sudam rushed to them and Sudam gave blows with iron rod on the head of Vijay and Rahul and they both suffered head injuries. The tractor drivers and the operator of J.C.B. fled away from the spot. Balu and Ganpat were lying in the pool of blood and were unconscious. When Vijay and Rahul were assaulted, both rushed towards the village for calling the villagers, while all accused persons ran away from the spot. Thereafter injured were taken to the hospital at Kopargaon. Doctor examined all of them and declared Balu and Ganpat dead. Vijay and Rahul were treated. Vijay reached the police station and lodged the report.

4. The Investigating Officer prepared spot panchnama, collected samples of blood stained soil

and arranged for postmortem after drawing inquest panchnama, seized the clothes of the deceased. Statements of witnesses were recorded by the Investigating Officer and accused were arrested, who made discovery statements for producing weapons. Discovery statements were recorded. Chemical Analyzer's report was received, charge-sheet was filed. The learned trial Judge framed charge against the accused persons, who pleaded not guilty. Thereafter prosecution tendered evidence. Learned trial Judge, after hearing the evidence, convicted the Appellants as above, and acquitted other accused persons. Hence this Appeal.

ARGUMENTS:

5. In support of the Appeals, Mr. Chapalgaonkar, the learned counsel for the Appellants submitted that there is no evidence whatsoever against the accused persons/ Appellants

in both these Appeals for holding that there was any unlawful assembly and therefore finding recorded by the trial Judge to that effect is illegal. He then submitted that no offence of murder could be said to have been proved since prosecution did not examine independent witnesses but chose to examine interested and closely related witnesses. The evidence of interested and closely related witnesses should not have been believed by the trial Judge. He then submitted that at any rate original accused No.4 - Babi Sudam Sanap and original accused No.6 - Radhabai Ramu Sanap could not have been convicted by the trial Judge and should have been acquitted them since they are not said to have caused any vital injuries to the deceased persons or the witnesses. Insofar as original accused No.2 - Ravi Sudam Sanap and original accused No.3 - Sudam Ramu Sanap are concerned, the counsel submitted that, in the alternative the incident could be described as one of the fight on the spur of the moment and

therefore the offence of murder was not proved by the prosecution. He accordingly prayed for reliefs in these Appeals.

6. Per contra, the learned A.P.P. supported the impugned Judgment and order passed by the trial Judge and submitted that the evidence of two injured witnesses, namely, Vijay and Rahul is consistent, without any infirmity and there is no law that the evidence of the interested or related witnesses should be discarded by the Court. On the contrary their evidence inspires confidence and in fact they are the injured persons in the assault made by the accused persons/ Appellants. The accused persons clearly had formed an unlawful assembly and therefore all were guilty of the offence of murder with the aid of Sections 147, 148, 149 of the Indian Penal Code. He therefore, prayed for dismissal of the Appeals.

CONSIDERATION:

7. We have carefully considered the submissions made by the learned counsel for the rival parties. We have seen the entire evidence that was tendered by the prosecution before the trial Court. We have examined the reasons recorded by the trial Judge for making the impugned Judgment and order.

8. At the out-set, insofar as the finding of unlawful assembly is concerned, the learned trial Judge recorded the same in Para 22 of the Judgment. We quote Para 22 of the Judgment, which reads thus:

"22. From above evidence, it is clear that the evidence of both the eye-witnesses, Vijay and Rahul is corroborated by medical evidence, which is of independent nature and is further corroborated by circumstantial evidence of attributing knowledge of concealment of weapons to the accused, Sudam. Therefore, I rely upon

their evidence and hold that the accused Ravi, Sudam, Ramu, Radhabai and Bebi formed unlawful assembly and in prosecution of common object of such assembly assaulted Balu and Ganpat with axe, hammer, rods and sticks and caused their death, while Sudam also caused grievous hurt to Vijay and Rahul. Therefore, the offence u/s 143, 147, 148, 302 of I.P.C. are proved against accused Ravi, Sudam, Ramu, Radhabai and Babibai."

9. In order to find out the correctness of this finding, we have seen the evidence of Vijay and Rahul, the two eye witnesses. The evidence of both these witnesses consistently show that on the motorcycle only Ravi and Sudam had come with weapons, namely, axe and hammer. Only two of them alighted from the motorcycle and had attacked Balu and Ganpat. They did not involve any other accused persons except accused Ravi and Sudam. Thereafter they described that Ramu and his wife Radhabai had come to the spot. Ramu was possessing iron rod while Radhabai was possessing stick and they attacked Balu and Ganpat. Insofar as accused Babi

is concerned, they stated that thereafter Babi, Yogita, Nana and Daulat had come to the spot and beaten Balu and Ganpat. It is thus, clear that the evidence regarding unlawful assembly is very very weak and it is difficult to hold that there was an unlawful assembly, for holding the accused persons guilty of the offences under Sections 143, 147, 148, 149 of the Indian Penal Code. We, therefore, reverse the findings of the trial Judge recorded in Para 22 of the Judgment that there was unlawful assembly.

10. Having thus disposed of the above point, we proceed to examine the evidence of eye witnesses Vijay and Rahul. Upon the examination of evidence of these two witnesses, we find that the same is consistent, without any infirmity and their evidence in the cross-examination was not at all shattered. Instead of repeating the discussion about their evidence, we would like to quote Para Nos.14 and 15 from the Judgment of the trial

Court:

"14. Vijay Balu Sanap and Rahul Ganpat Sanap were the eye-witnesses to the incident. Vijay has been examined at exh.38. He has also lodged report at the Police Station, Kopeargaon. According to him, on 10.06.2012, the work of desilting percolation tank was in progress. The work had started at about 7.00 am. Both deceased persons and Vijay and Rahul were present at site. J.C.B. Machine driver was operating it, while tractor drivers were engaged in transporting silt. At about 11 am, there was lunch break. Hence, Vijay and Rahul went to their home by motor cycle for having their lunch and also for bringing tiffin for their father and the uncle. At about 12 O'clock, they returned to the spot. But, they found that Ravi and Sudam arrived there. Ravi got down from the motor cycle. He was possessing an axe, while Sudam was possessing one hammer. Ravi gave a blow of axe on the head of Balu and another blow on the head of Ganpat, while Sudam gave blows with hammer on the legs of Balu and Ganpat. Simultaneoulsy, Ramu and his wife Radhabai rushed to the spot. Ramu was possessing iron rod, while Radhabai was possessing a stick. Ramu started assaulting Balu and Ganpat with the rod and

Radhabai with stick. It is further deposed by Vijay that Babi, Daulat and Nana also beat Balu and Ganpat. When Rahul and himself rushed towards Balu and Ganpat to save them, both Ravi and Sudam attacked them. Sudam assaulted Vijay with iron rod and the blow was on his head. Similar blow was inflicted by Sudam on the head of Rahul. Therefore, Vijay and Rahul ran away from the spot. Thereafter, all accused also left the spot. However, when the incident was going on, all tractor drivers and the J.C.B. drivers fled away from the spot. Vijay further deposed that, Sunil Sanap arrived there and he arranged Bolero Jeep and all injured persons were shifted to Kopargaon Hospital. The doctor at the hospital examined Balu and Ganpat and declared them dead. Vijay and Rahul were treated for the injury on their head. Vijay then lodged the report. the report is proved by him at exh. 39. He was cross-examined by Ld. Adv. Shri. J.A. Joshi for the accused, at length. The photograph of the spot was brought on record. However, as far as incident is concerned, except denial, there is no particular defence suggested to this witness so as to cause injuries to Balu, Ganpat, Vijay and Rahul. Vijay was further asked the time of the incident, the time when he reached the police station and the time when he reached the hospital. According to

him, the incident occurred at about 12 pm and round about 2 pm., he reached the Kopargaon Police Station and before that he had been to the hospital. The F.I.R. has been registered at 2.20 pm.

15. The second eye-witness, Rahul Ganpat Sanap has been examined at exh. 40. He also deposed same facts, as deposed by Vijay. He has fully corroborated Vijay as regards the assault with axe by Ravi on the head of Balu and Ganpat and with hammer by Sudam on the legs of both these persons. He further deposed that Ramu assaulted Balu and Ganpat with iron rod and Radhabai with sticks. Then Bebi, Yogita, Nana and Daulat also assaulted Balu and Ganpat. He also corroborated Vijay and deposed that Sudam assaulted him with iron rod and the blow was on his head. Vijay was also assaulted by Sudam in the same manner. Again, in searching cross-examination to this witness, only description of spot has been brought on record. But, it is admitted fact that the incident occurred at the percolation tank. There were ditches created due to desilting work in the area of percolation tank. But, as far as incident is concerned, again, there is only denial from the accused persons. Thus, both the eye-witnesses have given clear and untarnished account of the incident. No

circumstances are brought on record to disbelieve their version. On the contrary, as stated above, their presence on the spot up to 11 a.m. is an admitted fact. Even thereafter, the fact that they were injured, prove their presence on the spot."

11. We agree with the findings of the trial Judge that these are the two eye-witnesses i.e. Vijay and Rahul, whose evidence is believable and there is no reason to discard their testimony because they are interested witnesses.

12. However, we find from their evidence that even from their evidence, the assault was made by only two Appellants, namely, accused No.2 - Ravi Sudam Sanap and accused No.3 - Sudam Ramu Sanap and therefore only these two accused should be held guilty of the offence of murder and causing assault by weapons.

13. Insofar as original accused No.4 Babi

Sudam Sanap is concerned, we find from the evidence of both these witnesses that both these witnesses i.e. Vijay and Rahul, that Babi, Yogita Daulat and Nana assaulted Balu and Ganpat. But then none of these witnesses described as to how Babi, Yogita, Daulat and Nana assaulted Balu and Ganpat and whether they had any weapons in their hands. Thus, these witnesses are silent about the role of accused No.4 / Appellant - Babi and trial Court acquitted Yogita, Daulat and Nana, but convicted Babi. We do not agree with the learned trial Judge that accused No.4 - Babi could have been convicted at all, but she should have acquitted by the trial Judge, which we do hereunder.

14. Insofar as role of accused No.6 - Radhabai is concerned, we find that both these witnesses i.e. Vijay and Rahul described that she had stick in her hand and assaulted Balu and Ganpat with stick along with Ramu, her husband.

Since she had assaulted by stick, she should be held guilty at the most for the offence punishable under Section 324 of the Indian Penal Code, since no intention has been shown about commission of murder by her. That is all the more so when we have recorded the finding that there was no proof of unlawful assembly. The finding of conviction of accused No.6 - Radhabai for offence for offences under Section 302 of the Indian Penal Code etc., therefore, will have to be set aside and we, therefore convict accused No.6 - Radhabai for the offence under Section 324 of the Indian Penal Code. In our opinion, since she has been in jail for over few years, it would be appropriate to order that she shall be sentenced for the sentence already undergone by her.

15. To sum up, the net result of the above discussion should result into the following order. Hence, we make the following order:

O R D E R

A] Criminal Appeal No.445/2013 is partly allowed as follows:

[a] The impugned Judgment and order dated 11.11.2013 passed by learned Additional Sessions Judge, Kopargaon, in Sessions Case No.63/2012 convicting the Appellant No.1 - Accused No.4 - Babi Sudam Sanap for the offences punishable u/ss. 143, 147, 148, 302 r/w. 149 of the Indian Penal Code and sentencing her under these Sections along-with fine, is set aside and the Appellant No.1 - Accused No.4 - Babi Sudam Sanap is acquitted of the said charges levelled against her. She be set at liberty forthwith if not required in any other crime. Fine amount, if paid by her, be refunded to her.

[b] The impugned Judgment and order dated 11.11.2013 passed by learned Additional Sessions Judge, Kopargaon, in Sessions Case No.63/2012 convicting the Appellant No.2 – Accused No.6 – Radhabai w/o Ramu Sanap for the offences punishable u/ss. 143, 147, 148, 302 r/w. 149 of the Indian Penal Code and sentencing her under these Sections along-with fine is set aside and the said Judgment and order is modified in relation to her as under:-

The Appellant no.2 – Accused No.6 – Radhabai w/o Ramu Sanap is convicted for the offence punishable u/s. 324 of the Indian Penal Code and is sentenced to undergo the sentence already undergone by her. She be set at liberty if not required in any other crime.

B] Criminal Appeal No.471/2013 is

dismissed. The impugned Judgment and order dated 11.11.2013 passed by learned Additional Sessions Judge, Kopargaon, in Sessions Case No.63/2012 convicting the Appellant No.1 - accused No.2 - Ravi s/o Ramu Sanap and the Appellant no.2 - accused No.3 - Sudam s/o Ramu Sanap for the offences punishable u/ss. 143, 147, 148, 302 r/w. 149 of the Indian Penal Code and sentencing them under these Sections is confirmed. The Appellant Nos.1 and 2 namely Ravi Ramu Sanap and Sudam Ramu Sanap be given set-off under Section 428 of the Code of Criminal Procedure, 1973.

[INDIRA K. JAIN, J.]

[A.B CHAUDHARI, J.]