

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.118 OF 2013

1) BHANIA SURTYA SALAT)
2) KHAMANIA SAGAN SALAT)
3) JASARAT SAGAN SALAT)
4) SARES SAGAN SALAT).....APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri P.G.Sarda, Advocate for the Appellants.

Smt.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 19th OCTOBER 2015.

ORAL JUDGMENT :

1 The appellants were prosecuted on the allegation of their having committed the offences punishable under Section 143 of the IPC, Section 147 of the IPC, Section 148 of the IPC, Section 302 of the IPC, Section 323 of the IPC, Section 324 of the IPC read with Section 149 of the IPC and Section 135 of the Bombay Police

Act. The Ad-hoc Additional Sessions Judge, Pune, after holding a trial, found them guilty of the offences punishable under Section 143 of the IPC , 147 of the IPC, 148 of the IPC, and Section 304 (Part II) of the IPC read with Section 149 of the IPC. The learned Judge sentenced them as follows :

<u>OFFENCE</u>	<u>SENTENCE</u>
Section 143 of the IPC	Rigorous Imprisonment for 6 months and to pay a fine of Rs.500/-
Section 147 of the IPC	Rigorous Imprisonment for 2 years and to pay a fine of Rs.500/-
Section 148 of the IPC	Rigorous Imprisonment for 3 years and to pay a fine of Rs.500/-
Section 304 (Part II) read with Section 149 of the IPC	Rigorous Imprisonment for 10 years and to pay a fine of Rs.1000/-

Being aggrieved by their conviction and the sentences imposed upon them, the appellants have approached this court by filing the present appeal.

2 The prosecution case, as put forth before the trial court, may, in brief, be stated thus :

The First Informant Ramesh Salat (PW3) is a hawker. He and his brothers Jalji Salat and Kusal Salat had come to Pune to do the business of selling bedsheets. The appellants are also hawkers and they had also come to Pune for doing the same business viz., selling bedsheets. Ramesh Salat (PW3) and his brothers, as also the appellants, were staying in tents prepared by them. On 3rd March 2011, a quarrel took place between Ramesh Salat (PW3) and his brothers on one hand, and the appellants on the other hand. In that quarrel, one of the appellants assaulted Kusal, brother of Ramesh Salat (PW3), and Ramesh himself. Kusal sustained serious injuries as a result of the assault, and was taken to hospital. He succumbed to injuries on 6th March 2011. On 7th March 2011, Ramesh Salat (PW3) lodged a report with the police, which was treated as First Information Report (FIR). It is on the basis of this report, that a case in respect of the aforesaid offences was registered, and investigation commenced. After investigation, charge-sheet came to be filed against the appellants, who, as aforesaid, were prosecuted and convicted.

3 I have heard Shri P.G.Sarda, the learned counsel for the appellants. I have heard Smt.M.R.Tidke, the learned APP for the State. I have gone through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment and order.

4 The learned counsel for the appellants submits that there is no evidence against any of the appellants. He submits that as per the case of the prosecution, the assault on Kusal was witnessed not only by Ramesh Salat (PW3), but by three other persons i.e. Dharala Salat (PW4), Ujalji Salat (PW5) and Merkha Salat (PW6). He further submits that all these persons, who were supposed to be the eye witnesses, actually did not support the prosecution case. He submits that though Ramesh Salat (PW3) initially supported the case of the prosecution, he gave vital admissions in the cross-examination, rendering his testimony worthless. It was submitted that there was no other evidence against the appellants, and as such, the appellants were entitled to be acquitted.

5 Ashish Khutwad (PW1) is a panch in respect of the spot panchnama. He does say about the spot of incident being shown to him by Ramesh Salat (PW3). The second witness Dr.Milind Sonawane (PW2) is the one, who had performed postmortem examination on the dead body of Kusal. His evidence shows that a number of injuries had been sustained by Kusal. The probable cause of death according to this witness was 'Shock following fracture base of skull with injury to brain and extra-dural haemorrhage (homicidal death).' The evidence of this witness shows that Kusal indeed died a homicidal death.

6 PW4 Dharala Salat , PW5 Ujalji Salat and PW6 Merkha Salat, who, according to the prosecution case, had witnessed the assault, did not support the prosecution case at all. They stated before the court that they had not seen anything and they were not present when the incident took place. These three witnesses were declared hostile and the learned APP was permitted to put questions in the nature of cross-examination to them, but nothing favourable to the prosecution could be elicited from the questioning done in that manner.

7 The only person who stated about the appellants being the assailants is Ramesh Salat (PW3). I have carefully examined his evidence.

8 In the examination-in-chief, Ramesh Salat (PW3) stated that appellant no.1 Bhanja Salat had assaulted Kusal by a lathi on the back side of his head, after which Kusal had fallen down. He also stated that, thereafter, the appellant nos.2 and 4 had also assaulted Kusal by sticks on his chest and head. In the cross-examination, it was brought on record that Kusal was accused of having caused the death of his wife by burning. It was also brought on record that the wife of Kusal was the sister of the appellants. It was also brought on record that after the death of the wife of Kusal, the appellants had lodged a report with the police and had also made a complaint against Kusal before the Panchayat. Ramesh Salat (PW3) also admitted that Kusal used to drink liquor and used to quarrel with people. Regarding the incident, Ramesh Salat (PW3) stated that the quarrel had taken place suddenly and started with pelting of stones from both the

sides. He also stated, when questioned about not lodging the FIR immediately on 3rd March 2011, that *he had a doubt that time as to who had assaulted Kusal, and therefore, he had not narrated the incident to the police.* He also admitted that though many relatives of Kusal had come to the hospital to see him, he did not disclose the names of the appellants to any of such relatives.

9 The learned APP, in-charge of the trial, had expressed before the court that he wanted to put questions in the nature of cross-examination to Ramesh Salat (PW3). An application was filed by him before the court for that purpose. Actually, however, no such examination was taken by the learned APP.

10 Apparently, the deceased and the appellants being from the same community, have settled the matter illegally through the intervention of their Panchayat. It is, therefore, perhaps, that the witness are not supporting the case of the prosecution.

11 The offence of culpable homicide cannot be permitted to be compounded in this manner. Evidently, Ramesh Salat (PW3) is not stating truth before the court.

12 However, concluding that Ramesh Salat (PW3) is not stating the truth before the court, would not be sufficient for holding the appellants guilty. That, the version of Ramesh Salat (PW3) does not appear to be true, though accepted, cannot throw any light on what was the truth. It is a fact that Ramesh Salat (PW3) initially had named the appellants and three others as the assailants, but later on, has indicated that there was pelting of stones by both the sides during the assault. The FIR was also lodged only after the death of Kusal. From the testimony of Ramesh Salat (PW3), the truth cannot be ascertained.

13 The trial court has taken into consideration the version of the witnesses, as reflected in their statements recorded by the police during investigation in coming to the conclusion of the appellants being guilty. Undoubtedly, this version was contrary to

their evidence brought in court, but it was not possible to treat those statements as 'evidence.' Bringing on record such version would only discredit the witnesses by showing that they had given a different version before the police, than what was stated by them before the court. The pre-trial statements, giving a different version do not become 'evidence.' The benefit of the fact that the witnesses made inconsistent statements on two different occasions, must go to the accused persons only. The prosecution cannot derive any benefit by bringing such evidence on record, except for the purpose of showing that the witnesses are not reliable and their version told before the court is not true.

14 As already observed, though it is easy to hold that the witnesses were not telling the truth before the court, when they were exonerating the appellants, it is not possible to find out what was the truth of the matter, in the absence of any evidence. The fact that the witnesses were not willing to depose against the appellants, cannot be held as sufficient to hold that the appellants must be guilty.

15 Though that the incident took place was well established by the evidence, there was no evidence to implicate any of the appellants. The prosecution relied only on the testimonies of the supposed eye witnesses, who, as aforesaid, did not support the prosecution case. There was no other evidence / circumstantial evidence against the appellants such as recovery of any other incriminating articles etc., at their instance.

16 It is unfortunate that a homicide, which was, perhaps, witnessed by a number of persons, should go unpunished. But, when the witnesses did not implicate the appellants as the assailants, and when the testimony of Ramesh Salat (PW3) is not sufficient to hold the appellants guilty, the appellants would, necessarily, be required to be acquitted of the offences. The learned APP has placed reliance on a decision of the Supreme Court of India in **Paramjeet Singh alias Pamma vs. State of Uttarakhand**¹. I have gone through the reported judgment in the said case. It appears that, in that case, though the witnesses

¹ (2010) 10 Supreme Court Cases 439

turned hostile, there were other circumstances, from which the inference of the guilt of the accused persons could be drawn. It appears that, in that case, among other things, the weapon of assault was recovered from the accused. Also, the FIR had been lodged promptly in that case.

17 In my opinion, this was a case where there was no satisfactory evidence to hold the appellants guilty. The impugned judgment and order is not in accordance with law.

18 The appeal is allowed.

The impugned judgment and order is set aside.

The appellants are acquitted. They be set at liberty forthwith, unless required to be detained in some other case.

Fine, if paid, be refunded to them, respectively.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**