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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 467 OF 1996

The State of Maharashtra ... Appellant.

V/s.

1. Mangeni Tamanna Bandgar,
age 22 yrs.
2. Shivgeni Tamanna Bandgar,
age 20 yrs.
3. Tamanna Mangeni Bangar,
age 48 yrs.

All R/o. Shivangi,

Tal. – Mangalwedha, Dist. – Solapur. ... Respondents.

with

CRIMINAL REVISION APPLICATION NO. 190 OF 1996

Birappa Mangeni Bandgar
r/o. Shivangi, Taluka – Mangalwedha,
District – Solapur.

... Applicant.
Complainant

V/s.

1. Mangeni Tamanna Bandgar,
age 22 yrs.
2. Shivgeni Tamanna Bandgar,
age 20 yrs.
3. Tamanna Mangeni Bangar,
age 48 yrs.

All R/o. Shivangi,

Tal. – Mangalwedha, Dist. – Solapur.

4. State of Maharashtra.

... Respondent
Nos. 1 to 3 Orig.Accused.

Mr. J.P. Yagnik, APP for the State in Appeal 467/96.

Mr. B.R. Patil for the Applicant in Revision Application No. 190/96.

***CORAM : S.S. Shinde and
A.S. Gadkari, JJ.***

DATE : 31st October 2018.

Oral Judgment (Per A.S. Gadkari, J.) :-

This is an appeal against acquittal preferred by State against the impugned Judgment and Order dated 23.04.1996, passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No. 9 of 1996, acquitting the Respondents for the offences punishable under Section 302, 307 r/w. 34 of Indian Penal Code.

2. Heard Mr. Yagnik, the learned APP for State and Mr. B.R. Patil, learned Counsel appearing for the First Informant/Revision Applicant at length and perused the entire record.

3. The prosecution case in brief is that, the Appellants were having enmity with deceased Somrayya M. Bandgar and his family members over landed property and therefore, on 28.06.1995, in furtherance of their common intention, the Appellants assaulted Somrayya M. Bandgar (deceased) and Mhalappa M. Bandgar (PW-14) with iron pipe, scythe, axe and other weapons wherein Somrayya succumbed to injuries. After completion of investigation, the Police submitted charge-sheet. The learned Trial Court, by the impugned Judgment and Order dated 23.04.1996 was pleased to acquit the Respondents from the offences charged against them.

4. At the outset it is to be noted here that the learned Counsel for the Revision Applicant Mr. B.R. Patil and the learned APP on instructions submitted that the Respondent No.1 Mangeni T. Bandgar and Respondent No.3 Tamanna M. Bandgar have expired during the pendency of the present Appeal. In view thereof, the present Appeal survived only against Respondent No.2 – Shivgeni T. Bandgar.

5. The evidence on record indicates that Mahadeo Shinde (PW-8) and Manohar Kulkarni (PW-12) have assigned the role of assault by Respondent No.2 with scythe on deceased Somrayya and injured Mhalappa (PW-14), whereas Sidhappa Hake (PW-9) and Mhalappa Bandgar (PW-14) have not assigned any specific role to the Respondent No.2 in the said assault. The evidence of PW-8, 9, 12 and 14 is full with material contradictions and omissions. The corroborative evidence propounded by the prosecution as against the Respondent No.2 – Shivgeni, suffers from vital infirmities due to which no overt-act can be attributed to the Respondent No.2 in the present crime.

6. After perusing the entire record, we are of the considered opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case, thereby acquitting the Respondent No.2 from the offences charged against him.

7. In view of the above, we find no merits in the Appeal and Revision Application and the same are accordingly dismissed.

(A.S. Gadkari, J.)

(S.S. Shinde, J.)