

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

CRIMINAL APPEAL NO. 388 OF 1995
WITH
REVISION APPLCITION NO. 98 OF 1995

The State of Maharashtra

... Appellant

V/s.

1. Shri. Mahendra Babab Adhav,
Adult, Occupation Nil,
R/at 1090, Raviwar Peth, Pune.

2. Kailas Dnyanoba Chavan,
Adult, R/at 1090,
Raviwar Peth, Pune.

...Respondents.

Mr. J.P. Yagnik, APP. for the State.

**CORAM : S.S. SHINDE AND
A.S.GADKARI, J.**

DATE : 30th October, 2018

JUDGMENT.: (Per A. S. Gadkari, J.)

1. This is an appeal preferred by the State under Section 378(1) of the Code of Criminal Procedure impugning the Judgment and Order dated 10.3.1995 in Sessions Case No. 213 of 1993 passed by the learned Additional Sessions Judge, Pune, acquitting the respondents from the offence

punishable under Sections 302, 341, 504 read with 34 of the Indian Penal Code.

2. It is to be noted here that, by the same Judgment and Order, the respondents have been convicted under Section 324 and 323 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.7000/- each, in default of payment of fine to further under go prescribed sentence by the same Judgment and Order.

3. Heard Shri. Yagnik, learned APP. appearing for the State and perused the entire record.

4. It is the prosecution case that, Khangarmal B. Sundesha (P.W.6) was running a hotel in the name and style as "Deepak Special Tea House" at Pune. His brother and son used to work in the same hotel. The respondents used to visit the said hotel to have tea and snacks. One of the sons of Khangarmal namely Paras used to sleep in the said hotel. On an earlier occasion the respondents had been to the said hotel and demanded Rs.500/- from Paras for release of their friend who was in Jail and to stand surety, for which, Paras had refused and turned down their proposal. It is alleged that, on 28.11.1992 Deepak Sundesha (P.W.5), his father Khangarmal (P.W.6),

his uncle Hansraj Mali and cousin brother Shantilal were proceeding to their house after closing their hotel. That, at about 9.30p.m. on 28.11.1992 when they were proceeding from Adinath Chowk, the respondents accosted them. There the respondents asked whereabouts of Paras and thereafter respondent No.1 abused the said two persons. A quarrel ensued and during the said quarrel it is alleged that the appellants assaulted Shantilal with a sharp edged knife (rambo knife) on his right side of head. That, when Deepak (P.W.5) tried to intervene, he also sustained injuries with the said knife on his finger. Shantilal was then taken to hospital and while undergoing treatment Shantilal succumbed to injuries.

5. A minute perusal of the evidence on record would clearly indicates that, the respondents did not have intention to commit murder of Shantilal. It appears from the record that Dr. Laxmikant K. Bade (P.W.3) in his testimony stated that Shantilal suffered one stab injury on left lateral side of head and other minor injuries such as contusion and lineal abrasion. There are corresponding internal injuries to the main injury.

6. The Trial Court after scrutinizing the entire evidence on record has reached to the conclusion that, the respondents did not have intention to

commit murder of Shantilal and with a view to extract money the respondents assaulted the deceased which would attract conviction under Section 324 of the Indian Penal Code.

7. After minutely perusing the entire record, we found that, the finding recorded by the Trial Court is a reasonable probable view in the facts and circumstances of the present case. The record indicates that, the Trial Court has assessed the entire evidence on record in detailed and we find that, the Trial Court has not committed any irregularity, illegality or error in passing the impugned Judgment and Order.

The appeal is accordingly dismissed.

9. In view of dismissal of appeal, the Revision Application No.98/1995 also stands dismissed.

(A.S.GADKARI, J.)

(S.S. SHINDE, J.)