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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.279 OF 2012

Shrikant @ Deepak Mahadeo Waghmode

.... Appellant
(Org. Accused No.3)

V/s

The State of Maharashtra

....Respondent.

ALONGWITH

CRIMINAL APPEAL NO.296 OF 2013

State of Maharashtra

..... Appellant.

V/s

1] Shri Vaibhav Uttam Waghmode

2] Shri Shashikant Mahadeo Waghmode

3] Shri Mahadeo Appasaheb Waghmode

4] Shri Hemant Uttam Waghmode

5] Shri Jeetendra Gopichand Waghmode

..... Respondents

(Orig. Accused Nos.1, 2, 4, 5
and 6)

Mr. Kuldeep S. Patil i/b Mr. Prashant Hagare, Advocate for the Appellant in Appeal No.279 of 2012 and for Respondent Nos. 2 and 3 in Appeal No.296 of 2013.

Mr. J.P. Yagnik, APP for Respondent – State in Appeal No.279/2012 and for Appellant in Appeal No.296 of 2013.

Mr. P.G. Sarda, Advocate for the Respondent No.4 in Appeal No.296 of 2013.

Mr. M.B. Zanwar, Advocate for Respondent Nos. 1 and 5 in Appeal No.296 of 2013.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 16th July, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Criminal Appeal No.279 of 2012 is filed by the original accused No.3 being aggrieved by the Judgment and Order dated 15/02/2012 passed by the learned Sessions Judge, Baramati in Sessions Case No.84 of 2007, thereby convicting the Appellant for the offence punishable under section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and fine of Rs 2000/- and in default thereof to suffer simple imprisonment for three months.

2] Criminal Appeal No.296 of 2013 is filed by the State, challenging the said Judgment and Order vide which original accused Nos. 1, 2, 4, 5 and 6 have been acquitted of the charges, charged

with.

3] Mr. Patil, the learned Counsel appearing on behalf of the Appellant/original accused No.3 submitted that all the witnesses in the present case are interested witnesses, being relatives of the deceased. He therefore submitted that conviction based on the testimony of the said eye witnesses is not tenable. He submitted that, in any case, the evidence placed on record would reveal that it is the case of a single blow and as such, conviction at the most, will have to be under Part-I of Section 304 and not under Section 302 of the Indian Penal Code.

4] Mr. Yagnik, the learned APP appearing on behalf of the State, submitted that insofar as conviction of accused No.3 is concerned, the learned Trial Judge has rightly convicted him under Section 302 and no interference is warranted in the said judgment and order. So far as the appeal filed by the State is concerned, he submitted that on the same set of evidence, the learned Trial Judge has acquitted accused Nos. 1, 2, 4, 5 and 6, while convicting accused No.3. He therefore submitted that the Judgment and Order of acquittal needs

to be set aside and rest of the accused viz accused Nos. 1, 2, 4, 5 and 6 also be convicted for the said offence.

5] The investigation in the present case was set in motion on the basis of the oral report filed by P.W. 4 – Ganesh Sul. He states that, eight days before, he had come to the house of his sister Kavita Achhut Waghmode. He further states in the FIR that, brother-in-law of P.W. 4 viz Rambhau Narayan Waghmode and one Gopichand Waghmode had purchased 10 gunthas land jointly. Gopichand is no more. However, the son of Gopinchand has constructed shed by installing cement pillars and therefore Rambhau Waghmode has filed a civil suit against the heirs of Gopichand Waghmode. He states that on 16/01/2007, he was in the house of his sister Kavita alongwith his brother-in-law Achhut Waghmode and his two sisters viz. Kavita and Rameshwari. He states that, at that time, elder brother of Gopichand viz. Vasant Waghmode came in the house of deceased Achhut Waghmode and told that the Court has fixed the date on 19/01/2007 in the said suit and further stated to convince his sons to accept the decision which Court would give. He further advised both the parties not to quarrel with each other.

6] It is the prosecution case that, at around 12.15 P.M., accused No.3 – Deepak armed with sword, accused No.4 – Mahadev armed with stick, accused No.2 – Shashikant armed with stick, accused No.5 – Hemant armed with stick and accused No.1 – Vaibhav armed with stick, came in front of the house of Achhut Waghmode. He states that, all the accused started abusing and assaulting them. He further states that, when they tried to separate the quarrel, accused No.3 inflicted blow of sword on the head of Achhut Waghmode. Thereafter Achhut Waghmode fell on the ground. He further states that, thereafter P.W. 5 - Rambhau Waghmode, P.W. 2 – Kavita Waghmode, P.W. 1 – Narayan Waghmode, P.W. 3 – Rameshwari Waghmode were assaulted by accused No.1 and 4 to 6 by sticks. The deceased Achhut was initially taken to the hospital of P.W. 15 – Dr. Avinash Dhole and thereafter to Silver Jubilee Hospital, Baramati. Doctors, upon examination of Achhut, declared him dead. Police came to Silver Jubilee Hospital and he gave oral report to the police in the said hospital about the incident.

7] Upon completion of investigation, charge-sheet came to be

filed in the Court of learned J.M.F.C., Baramati. Since the case was exclusively triable by the learned Sessions Judge, the same came to the committed to the Sessions Court. The learned Sessions Judge framed charges for the offence punishable under Section 302, 143, 147, 148, 149, 324, 504, 120-B of the Indian Penal Code. Accused pleaded not guilty and claimed to be tried. At the conclusion of trial, the learned Trial Judge convicted accused No.3 for the offence punishable under Section 302 of the Indian Penal Code and sentenced him as aforesaid. However, accused No.3 was acquitted of the offence punishable under Sections 143, 147, 148, 149, 324, 504 and 120-B of the Indian Penal Code. Rest of the accused came to be acquitted of all the charges. Being aggrieved thereby, the present appeals.

8] With the assistance of the learned Counsel for the Appellant/accused No.3 appearing in Criminal Appeal No.279/2012, and learned APP for the State and the learned Counsel for Respondent Nos. 1 to 5 appearing in Criminal Appeal No.296 of 2013, we have scrutinized the entire evidence. No doubt that, most of the eye witnesses are interested witnesses. However, merely because the

witnesses are interested witnesses, cannot be a ground to discard their testimony. The only requirement would be that, their evidence will have to be scrutinized with greater caution and circumspection.

9] P.W. 4 – Ganesh is brother-in-law of the deceased. It is sought to be urged on behalf of the defence that, there was no reason as to why he should have been there when the incident had taken place inasmuch as he is the resident of Satara. However, taking into consideration that he is the first informant and the FIR is lodged immediately after the incident, we do not find much substance in the said submission. Perusal of his evidence would reveal that, accused were assaulting P.W. 4 and others. The witness says that when he tried to separate the quarrel, accused No.3 – Deepak inflicted a blow by sword on the head of the deceased Achhut.

10] P.W. 1 – Narayan is the father of the deceased. This witness states that, the accused were abusing him and his family members since morning and in the afternoon accused No.3 inflicted a blow of sword on the head of his son Achhut due to which his son fell down. In his cross-examination also, enmity between accused No.3 and his

family members, has been brought on record. He has also stated that even after Achhut fell down, accused No.3 was assaulting him.

11] P.W. 2 – Kavita is a wife of deceased Achhut. Her evidence is also similar to that of her brother Ganesh (P.W.4). However, she states in her examination-in-chief about Vasant Waghmode coming to their house and giving suggestion for settling the issues. She further states that, thereafter, accused came there. There was a quarrel with regard to suit and piece of land. No doubt, there are certain omissions and contradictions in her evidence. However, insofar as the main attack on the deceased is concerned, her evidence is found to be unchallenged. P.W. 3 – Rameshwari, who is the sister of P.W. 2 – Kavita and P.W. 4 – Ganesh, has also deposed on the similar lines.

12] P.W. 5 – Ramkrishna @ Rambhau is brother of the deceased. From his evidence, it would be seen that, with regard to the dispute between two groups over 10 gunthas land, he had lodged a complaint on 10/12/2006 with Malegaon Police Chowky. He further deposes about the complaint which he made with Grampanchayat with regard to the same issue. He also states about attack by accused No.3 on the

deceased.

13] Prosecution has also examined P.W. 12 – Baban Chavan who also claims to be the eye witness of the incident.

14] In view of the ocular testimony of these eye witnesses, we do not find that there is any reason to interfere with the finding of the learned Trial Judge that it is the original accused No.3/Appellant who has caused injury, which has resulted in death of the deceased. However, the question that we are required to consider is, as to whether conviction under Section 302 of IPC needs to be maintained or altered to lesser offence.

15] It will be relevant to refer to evidence of P.W. 10 - Dr. Sambhaji Kokane. The injury sustained by the deceased is thus:

“Incised wound about 6 cm x 1 cm x 1
½ cm in size over the middle part of
fronto parietal region of head.”

It could thus be seen that the deceased has sustained single injury. Perusal of the evidence of eye witnesses would reveal that they have

given highly exaggerated version. Witnesses except P.W.4 – Ganesh, have stated that, even after deceased fell down, he was being assaulted by the accused persons. However, medical evidence falsifies the said version. Medical evidence shows that there is only one injury. Apart from that, it will be relevant to refer to the evidence of P.W. 4 – Ganesh who is brother-in-law of the deceased. He has admitted in para 7 of his cross-examination that, he has not sustained any injury. He has further admitted that the accused did not assault him, nor Rameshwari and Narayan. He has further admitted that, none of the witnesses assaulted accused while they were running from the spot of incident. He has further admitted that the accused did not fall on the ground while fleeing away. He has further admitted that, the deceased Achhut received only one blow of sword in the incident and that he has not received any blows of stick on his head.

16] Perusal of evidence of witnesses would reveal that, it appears that one Vasant was trying to intervene in the matter so that the dispute is amicably settled. It further appears that, he was also

present on the spot. The evidence of eye witnesses would reveal that there was also quarrel going on between two groups. However, as already observed hereinabove, witnesses are interested witnesses and their evidence is highly exaggerated. In a quarrel between the two groups, on account of provocation, possibility of accused No.3 assaulting the deceased cannot be ruled out. As per the evidence of P.W. 4 – Ganesh who is the first informant, deceased had not fallen down when accused fled away. According to him, neither the Appellant/accused No.3 nor any other accused assaulted the deceased after he fell down. As such, it cannot be said that there is material to show that the accused acted in cruel and unusual manner. We therefore find that the Appellant/Accused No.3 would be entitled to benefit of doubt under exception 4 of Section 300 of IPC and conviction will have to be altered to one under Part-I of Section 304.

17] So far as the Appeal of the State is concerned, the learned Trial Judge has found that, no individual role is attributed to the accused who have been acquitted. There is nothing to show that there was premeditation of mind and therefore accused shared

common intention with accused No.3. There is no material to show that even accused No.3 had any intention to cause death of the deceased. In that view of the matter, we find that the order of acquittal of accused Nos. 1, 2, 4, 5 and 6 warrants no interference.

18] In the result we pass the following order :-

ORDER

- A) I)** Criminal Appeal No.279 of 2012 is partly allowed.
- II)** The order of conviction under Section 302 of IPC is altered to one under Part I of Section 304 of IPC. For the said offence, the Appellant is sentenced to suffer rigorous imprisonment for ten years.
- III)** The Appellant has already served sentence for more than ten years. The Appellant is directed to set at liberty forthwith, if not required in any other case.
- B) I)** Criminal Appeal No.296 of 2013 is dismissed.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)