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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.424 OF 2010

1] Hareshwar @ Hemant Janu Sogale	)	
Age 40 years, Occ: Agirculture	)	
	)	
2] Santosh Sakharam Jadhav	)	
Age 31 years, Occ: Agriculture	)	
	)	
3] Mahesh Anant Bhoir	)	
Age 27 years, Occ: Agriculture	)	
	)	
4] Vivek Madhukar Sogale	)	
Age 29 years, Occ: Agriculture	)	
	)	
All residents of Village Narze,	)	
Tal: Palghar, Dist. Thane	)	
(All in custody at Thane Central Prison)	)	 Appellants.
		(Orig. Accused Nos. 1 to 4)

Versus

The State of Maharashtra	)	
(Inspector of Police, Saphale Police	)	
Station, Taluka Palghar, Dist. Thane	)	 Respondent.

Mr. S.V. Marwadi, Advocate for the Appellants.

Mr. J.H. Dedhia, APP for the Respondents.

CORAM: B. R. GAVAI &
BHARATI H. DANGRE, JJ.

DATE: 13th JANUARY, 2018

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

1] Present appeal takes exception to the Judgment and Order passed by the learned Sessions Judge, Palghar in Sessions Case No.181 of 2007, thereby convicting the Appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them for life each and to pay fine of Rs 2,000/- each, and in default, to suffer R.I. for six months each.

2] Prosecution case, as could be gathered from the material placed on record, is thus :

3] Both, deceased Umakant Naresh Sogale and Accused No.1 were engaged in the business of excavation of sand and supplying the same. Both of them were in the said business at the Port, on the bank of the creek of Vaitarna river at Village Navze. It is also not in dispute that there is civil dispute pending between Appellant No.1 and deceased with regard to property.

4] It is the prosecution case that, on the date of incident i.e. on

17/04/2007, P.W. 2 – Ramchandra Pawar heard sound of quarrel. When he went there, he saw accused persons assaulting deceased with iron rod and sticks. P.W. 2 – Ramchandra gave call to others and, thereafter, P.W. 4 – Yogesh Patil, P.W. 5 - Praful Patil, P.W. 6 – Jitendra Patil came there. After these persons came there, accused ran away in vehicle. Deceased was taken in a truck to Manor Hospital at Village Manor and thereafter when he was being taken to Civil Hospital Thane, on the way to Thane near Vasai, he became serious and therefore he was brought to Sanjivani Hospital at Virar. However, when he was brought there, he was declared to be dead.

5] On receipt of information regarding incident, P.W.7 – Anil Patil, PSI, recorded the statement of deceased and took a station diary entry and on the basis of the same, FIR came to be registered in the Police Station.

6] On the basis of the FIR, investigation was carried out. Postmortem was conducted. The deceased sustained around 15 injuries on his person. Statement of witnesses under Section 164 also came to be recorded. Certain incriminating material was seized at the

instance of accused persons under the memorandum under Section 27 of the Indian Evidence Act. At the conclusion of investigation, charge-sheet came to be filed in the Court of Metropolitan Magistrate. Since the case was exclusively triable by the Sessions Court, the same was committed to learned Sessions Judge, Palghar.

7] Learned Sessions Judge framed charges for the offence punishable under Sections 302, 504, 406 read with section 34 of the Indian Penal Code. At the conclusion of the trial, learned Trial Judge acquitted the accused of the offence punishable under Sections 504 and 506 read with Section 34 of the Indian Penal Code. However, the learned Sessions Judge passed an order of conviction and sentence, as aforesaid. Being aggrieved thereby, the present appeal.

8] Mr. Marwadi, learned Counsel appearing on behalf of the Appellants, submits that the learned Trial Judge has grossly erred in passing the order of conviction. He submits that, perusal of the evidence of most of the witnesses would reveal that, they are interested witnesses inasmuch as they are either relative of the deceased or employees working with the deceased. He further submits

that, from the testimony of these witnesses, it would reveal that the spot of incident was not visible to them from the place where they were working. He therefore submits that, conviction based on the basis of such evidence is not sustainable.

9] In the alternative, learned Counsel for the Appellants submits that, the material placed on record would reveal that there was no intention to commit murder of the deceased. He therefore submits that the case would not fall under Section 302 of IPC but under some smaller offence. He submits that, the appeal deserves to be allowed and the order of conviction needs to be set aside.

10] Mr. Dedhia, learned APP appearing on behalf of the prosecution, vehemently opposes the appeal. He submits that, evidence of all the witnesses is cogent, trustworthy and reliable. He submits that, the version given by all the five eye witnesses would reveal that, they have attributed a specific role of assault to all the accused persons. He therefore submits that, no interference is warranted in the present appeal and the appeal deserves to be dismissed.

11] Since death of deceased being homicidal, is not disputed by the Appellants, it is not necessary for us to go into medical evidence. With the assistance of the learned Counsel for the Appellants and the learned APP, we have scrutinized the evidence on record. The main evidence would be that of P.W. 2 - Ramchandra Pawar. He states that, he and accused – Hemant were doing the sand business at the same place. He states that, deceased Umakant was also doing the sand business. He states that, when he had gone to the place of business at about 8 a.m. at the port, his fiber was in the river. At about 9 a.m., he heard sound of quarrel. When he went towards the place from where the sound was coming, he saw quarrel was going on and all the four accused were assaulting Umakant by iron rod and sticks. Accused Vivek was possessing iron rod, whereas other three accused were having sticks. He told the accused not to assault him, still they continued to do with the same. He states that thereafter other witnesses came there.

12] Though there are certain contradictions and omissions in the evidence of P.W. 2 – Ramchandra Pawar, we find that nothing damaging, insofar as main incident of assault is concerned, has come

on record. Apart from that, from the nature of injuries, as could be seen from the postmortem report, version given by this witness with regard to assault by iron rod and sticks, stands corroborated. So far as other witnesses are concerned, even according to this witness, they have come subsequently. In our view, they cannot be termed to be eye witnesses. Some of them are admitted to be the employees of deceased. In any case, when evidence of solitary witness is found to be sound, trustworthy, cogent and reliable, conviction on the basis of such evidence would always be permissible. We find that there is nothing to disbelieve P.W.2 – Ramchandra Pawar. P.W.2 alongwith the deceased and Accused No.1 – Hemant were engaged in the same business. Nothing about business rivalry has been brought on record. In that view of the matter, we find that evidence of P.W. 2 – Ramchandra Pawar, insofar as it attributes authorship of the assault to the present Appellants is concerned, the same can be very well relied upon. We have therefore no hesitation in holding that, it is the present Appellants who are responsible for causing injuries, which have resulted in the death of the deceased.

13] That leads us to the next question, as to whether conviction

under Section 302 needs to be maintained or altered to some lesser offence. It has come in the evidence of P.W. 3 – Rajkumar Sogale who was the cousin of the deceased as well as his partner in the business that, there was civil dispute going on between Appellant No.1 and the deceased. It will also be relevant to refer to the following part of the evidence of P.W.2 – Ramchandra Pawar in para 4 of his deposition :-

4..... “Such type of iron are available at Navze. Such. Suh type of muddemal sticks are also easily available. There is no special identification for me to identify the rod.”.....

It could thus be seen that, weapons which are said to have been used in the crime in question, were very much available on the spot. There is nothing on record to show that there was premeditation on the part of the Appellants to commit crime. On the contrary, evidence on record shows that, Accused No.1 was carrying on his business at the same spot. We find that the prosecution has failed to bring on record real genesis of the offence. Admittedly, present Appellants were not armed with arms. We find that possibility of quarrel taking place on

account of dispute pending between Appellant No.1 and the deceased and in the said quarrel, Appellants lifting the rod and sticks which were very much available on spot and assaulting the deceased with the same, cannot be ruled out. We find that, the Appellants are entitled to benefit of doubt, since the prosecution has failed to prove that, there was any intention on the part of the accused to cause death of the deceased. In our considered view the Order of conviction of the Appellants under Section 302 of IPC needs to be altered to one under Part-II of Section 304 of IPC.

14] In the result, following order is passed.

ORDER

(i) Appeal is partly allowed. The Order of conviction under Section 302 IPC is altered to one under Part-II of Section 304 IPC. Appellants/Accused are directed to suffer R.I. for 10 years for the said offence.

(ii) Rest of the Order including fine etc. is maintained.

(BHARATI H. DANGRE, J.)

(B. R. GAVAI, J.)