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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 73 OF 1999

State of Maharashtra

.. Appellant

Versus

1. Vasim Ahmed Mohamed Raza Siddiqui
2. Kamar Ahmed Mohamed Raza Siddiqui  
Both R/o Chawl No.1, Room No.4,  
Latif Shah Compound, Tapowan Garden  
Pathanwadi, Malad (East)  
Mumbai – 97.

.. Respondents  
(Org.Accd.Nos.1 & 3)

WITH  
CRIMINAL APPEAL NO. 873 OF 1998

1. Vasim Ahmed Mohamed Raza Siddiqui  
Age 25 Yrs. Occ: Service.
2. Kamar Ahmed Mohamed Raza Siddiqui  
Age 32 yrs., Occ: Service.  
Both resident of Sayyed Baba Chawl,  
Pathanwadi, Malad (E),  
Mumbai – 400 097.

.. Appellants  
(Org.Accd.Nos.1 & 3)

Versus

State of Maharashtra

.. Respondent

Mr. H. J. Dedhia, APP for Appellant-State in Criminal Appeal No.73 of 1999 and for Respondent-State in Criminal Appeal No. 873 of 1998.

Ms. Misbaah Solkar a/w Rahila Memon I/by Mr. Amin H. Solkar for Respondents-Accused in Criminal Appeal No. 73 of 1999 and for Appellants-Accused in Criminal Appeal No. 873 of 1998.

CORAM: PRADEEP NANDRAJOG, CJ. &  
SMT. BHARATI DANGRE, J.

AUGUST 19, 2019.

**ORAL JUDGMENT [Per Pradeep Nandrajog, CJ.] :**

1. Accused No.1 and Accused No.3 have been convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and sentenced to under to R.I. for three years and pay fine in sum of ₹ 1000/- each, in default to undergo R.I. for three months. Accused No.2 and Accused No. 4 have been acquitted.

2. Vide Criminal Appeal No. 73 of 1999, the State seeks enhancement of the sentence of the two accused who have been convicted. Vide Criminal Appeal No. 873 of 1998, two convicted accused seek acquittal.

3. Process of criminal law was set into motion when Mustafijur Rehman Siddiqui (P.W. 1) went to Dindoshi Police Station at 2.30 a.m. on 28.10.1994 (meaning thereby the intervening night of 27<sup>th</sup> & 28<sup>th</sup> October 1994) and made a statement, based whereon FIR Exh. 12 was registered. In the statement he stated that on 27.10.1994 at 20.20 hours he heard a verbal altercation in the Chawl where he resided and after returning from Namaz learnt that Vasim Ahmed Mohamed Raza Siddiqui (A-1) had a verbal altercation with Rizwan (P.W. 2). At 22.30 hours the same day while he was taking a stroll with his grandson, he saw A-1 in front of the room where Munajir Rehman (the deceased) resided with his sons Rizwan (PW 2) and Nihal (PW 3). A-1 hurled abuses and challenged the occupants of the room to come out. He intervened and requested Vasim not to vitiate the atmosphere. But Vasim persisted. Vasim returned to his room. At that point of time, the deceased came out of his room and said that Vasim and Rizwan should better keep quiet. He said so as an elder. Vasim came out with a stick in his hand accompanied by his brother Kamar Ahmed Mohamed Raza Riddiqui (A-3) who was armed with iron rod. Both hit the deceased on his head giving a blow each. Resultantly, the deceased fell down. The incident took place in front of the residence of one Mr. Kamble. He i.e. PW 1 assisted by one Abdul Salman and

Meena A. Rehman (not examined as witnesses), extended the help to the deceased to get up. In the meanwhile, Rizwan (PW 2) and Nihal (PW 3) sons of the deceased came out. Vasim and Kamar threatened the two. A scuffle ensued between Rizwan and Vasim. Laik Ahmed Ibrahim Khan (A-2) and his son Mohamed Ibrahim Janual Khan (A-4) came to the rescue of Vasim (A-1). Nihal (PW 3) ran towards A-2, who assaulted him with the stick inflicting two blows. He brought the injured deceased inside the room with the help of other people in the Chawl. Vasim, Kamar and Mohamed absconded.

4. The injured (deceased) was taken to Asha Hospital, where he died. The cause of death as per the Post-mortem Report is haematoma and hairline fracture of the occipital bone.

5. The testimony of PW 1, PW 2 and PW 3 is in sync with the statement of PW 1 pursuant whereto F.I.R. Exh. 12 was registered.

6. From the said statements it is apparent that something was brewing in the Chawl. At 20:20 hours PW 1 had heard a verbal altercation. He did not see who were the actors. On return, he learnt that the altercation was between A-1 and PW 2. After

two hours, he heard and saw A-1 hurling abuses. He requested A-1 not to vitiate the atmosphere. A-1 returned to his room. The deceased came out of his room and said that A-1 and PW 2 should better keep quiet. He said so as an elder. At that A-1 accompanied by his brother A-3, one armed with the stick and other with the iron rod, came out and gave a blow each on the head of the deceased, who fell down.

7. It is not a case of a premeditated assault.

8. The doctor who conducted the Post-mortem opined that the injury on the head was not caused by the iron rod and the reason for the opinion is that if iron rod was used there would have been a depression. It appears that the blow directed towards the head by A-3, who was armed with the iron rod, did not strike the head. It is Vasim (A-1) who was armed with the stick who caused the injury on the head. The Post-mortem report and the testimony of Dr. Vanmore (PW 6) bring out two clear lacerated wounds over the parietal region of the skull as also a bruise over the left frontal skull region and this shows that the blow with the iron rod brushed passed the left frontal region of the skull. Internal injury corresponded to injury no.1.

9. It thus cannot be said that the accused intended to kill the deceased. But, directing blows towards the skull with an iron rod and a stick, being one blow each, can be said to be with knowledge that death would ensue and thus the conviction of A-1 and A-3 for the offence punishable under Section 304 Part II IPC is correct.

10. Both of them have undergone a sentence of over nine months. The incident relates back to the year 1994 and today we are in the year 2019. There is no evidence of A-1 and A-3 having any brush with criminal law other than the incident in question. We grant both benefit of probation. Judgments reported as (1999) 5 SCC 732 State of Karnataka vs. Muddappa and (2010) 12 SCC 26 Mohd. Monir Alam vs. State of Bihar be referred to.

11. The appeal filed by the State is dismissed and as regards the appeal filed by the A-1 and A-3, while dismissing the same, maintaining their conviction and sentence, we grant them probation requiring both to submit good conduct bonds in sum of ₹ 10,000/- each in the court of Sessions. The bonds would be furnished within two months and would be for two years.

SMT. BHARATI DANGRE,J.

CHIEF JUSTICE