

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.665 OF 2012

SATISH CHANDRAKANT DIXIT)
An Adult, Indian Inhabitant of Pune,)
Aged about 46 years, Occupation Service)
Residing at H-18/2872 Maharashtra Hsg.)
Board, Yerwada, Pune.)
Present Address :)
C/o.Niteel Sarkar, House No.898,)
Sector 15, Hisar, Haryana - 125001)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)
Yerwada Police Station, Pune)...RESPONDENT

WITH

CRIMINAL APPEAL NO.828 OF 2012

SUYASH @ JOY SATISH DIXIT)
An Adult, Indian Inhabitant of Pune,)
Aged about 19 years, Occupation Student)
Residing at H-18/2872 Maharashtra Hsg.)
Board, Yerwada, Pune.)
At Present Yerwada Central Prison)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)
Yerwada Police Station, Pune)...RESPONDENT

Mr. Manoj S. Mohite, Senior Advocate a/w. Mr. Ashish Sawant,
Advocate for the Appellants.

Mr. H. J. Dedhia, APP for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

**RESERVED ON : 24th NOVEMBER 2020
PRONOUNCED ON : 19th JANUARY 2021**

JUDGMENT : (PER : V. G. BISHT, J.)

1 These two appeals arise out of a common judgment and order passed by learned Additional Sessions Judge, Pune, dated 23rd May 2012 in Sessions Case No. 682 of 2009. Criminal Appeal No. 665 of 2012 is preferred by accused Satish Dixit (A-1) and Criminal Appeal No. 828 of 2012 is preferred by accused Suyash Dixit (A-3).

2 Brief facts which led to the filing of these appeals are as under :

(a) Informant is resident of Sukhvastu and is Chairman of Rajmahal Sahakari Society. A-1 and Shashikant Vilas Kore (deceased for short) also reside along with their family

members in the said society. The above named society has a parking slot / place for parking the vehicles of the members of the society. As at the relevant time there was summer vacation of 2009, the children of the society used to play cricket in the parking area of the said society.

- (b) On 24th April 2009 at about 10.30 p.m., it is alleged that there was verbal altercation between the members of the society Shashikant M. Kanade and the deceased on the point of playing cricket by the boys in the parking slot of the society. It is further alleged that, meantime, A-1 and his wife namely Supriya (A-2) and sons Suyash @ Joy (A-3) and Kshitij (juvenile in conflict with law) came on the spot and A-2 asked the deceased as to why he had abused her sons and therefore a verbal altercation took place amongst them. The deceased thereafter abused A-2. Seeing this, A-1 intervened and the same was followed by verbal altercation between A-1 and the deceased. At the relevant time the members of the society viz. informant, Prasad Pagare, Bhimsen Pagare, Wadekar, Shende and Mehta intervened

and tried to pacify them but in vain.

- (c) The prosecution further alleges that all the accused then started assaulting the deceased with fist blows and in the scuffle they went up to the main road towards the gate of the society and it is at this point of time that A-3 allegedly took out a knife from his pocket and stabbed the deceased on the chest, neck, back and other parts of his body and caused bleeding injuries. As the deceased became unconscious, the accused left the spot and went away. The members of the society then immediately removed the deceased to hospital. However, the doctor declared him dead.
- (d) Informant accordingly lodged the report with Yerwada Police Station on the basis of which PW8 Ms.Runal Salahuddin Mulla, Police Inspector, registered the offence under Section 302, 323, 504 read with 34 of the Indian Penal Code (IPC) vide C.R.No.196 of 2009 and thereafter visited the place of occurrence and recorded Spot Panchnama. She also

collected blood samples found on the spot and seized other articles lying there. She also drew Inquest Panchanama and sent the body for postmortem.

- (e) It further appears from the record that thereafter she handed over the investigation to PW6 Subhash Shantaram Neve, Police Inspector. PW6 during the course of investigation recorded statement of prosecution witnesses. He also seized a knife pursuant to the disclosure statement given by A-3. All the seized articles were sent by him to Forensic Science Laboratory and then he handed over the further investigation to Police Inspector Deshmukh. On completion of investigation, the concerned Investigating Officer forwarded the charge-sheet against the accused and in usual course the case was committed to the Court of Sessions.
- (f) Appellants-accused pleaded not guilty to the charge levelled against them and contended that they have been falsely implicated. According to A-1, infact deceased himself assaulted him and had fallen him on the ground in the

parking slot and that time his younger son Kshitij tried to save him but deceased also assaulted Kshitij. It is his further defence that as he was Chairman of the Housing Society, deceased wanted him to give name of some caste related person to the society which he refused and therefore the deceased was annoyed with him. Whereas according to A-3 the witnesses have deposed falsely on the say of relatives of the deceased. Even he expressed his desire to examine Dr.Shivaji Mareenna, Sassoon Hospital, Pune as defence witness (DW1).

3 Mr.Mohite, learned counsel for appellants made a fervent effort to persuade this court that in any case, the fact situation established by the prosecution, even if taken as it is, does not warrant a finding of offence of murder of the deceased (Shashikant Vilas Kore). At best, it is a case of culpable homicide not amounting to murder covered by Exception under Section 300 of the IPC and thus punishable under second part of Section 304 of the IPC. The learned counsel also placed reliance on following

judgments :

- a) **Atul Thakur vs. State of Himachal Pradesh¹**
- b) **Surain Singh vs. State of Punjab²**
- c) **Arjun and Another vs. State of Chhattisgarh³**
- d) **Prabhakar Vithal Gholve vs. State of Maharashtra⁴**
- e) **Aliullah @ Alikhan Einullah Khan vs. The State of Maharashtra⁵**

4 Per contra, Mr.Dedhia, learned APP, has opposed these appeals. According to the learned APP the finding of guilt under Section 302 of the IPC is unexceptionable in as much as the learned trial Court justly noted that it was a case of murder of Shashikant Vilas Kore which is punishable under Section 302 of the IPC and not under Section 304 Part II of the IPC. The learned APP submitted that the appeals are devoid of merits and ought to be dismissed.

1 (2018) 2 SCC 496
 2 (2017) 5 SCC 796
 3 (2017) 3 SCC 247
 4 (2016) 12 SCC 490
 5 2014 ALL MR (Cri) 1384

5 At the very outset, we would like to make it clear that as far as the appeal preferred by A-3 is concerned, the learned counsel for the said appellant-accused has argued only on the point of sentence. The conviction is not disputed in any manner. The learned counsel for the appellant-accused no.3 submitted that if the accusations of the prosecution are accepted in toto, the case under Section 302 of the IPC is not made out. The conviction should not have been done in terms of Section 302 of the IPC. According to him, Exception 4 to Section 300 of the IPC is applicable.

6 The only point for consideration before this court is whether the appellant-accused no.3 has made out a case for conviction under Section 304 Part II instead of Section 302 of the IPC.

7 Since the point for consideration is very limited in the instant case, there is no need to traverse all the factual details rather those having a bearing on the present appeal.

8 Section 299 of the IPC explains culpable homicide as causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death.

9 Section 300 of the IPC declares that except in those cases which are specifically excepted culpable homicide is murder in situations which have been specifically laid down. These are commonly referred to as firstly, secondly, thirdly and fourthly under Section 300 of the IPC. The Hon'ble Apex Court in the judgment in State of Andhra Pradesh v. Rayavarapu Punnayya and Another⁶ inter alia held as follows :

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide

6 1976 (4) SCC 382 : (AIR 1977 SC 45)

not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder",

punishable under the first part of Section 304, of the Penal Code”.

10 Further, in Arumugam v. State⁷, in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9..... “18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight ; (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible

⁷ (2008) 15 SCC 590

to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.”

11 Further in Surain Singh supra the Hon'ble Apex Court held as under :

“Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon

the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct

it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel

and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

12 Further, the Hon'ble Apex Court on the basis of evidence on record held as under :

“Thus, in entirety, considering the factual scenario of the case on hand, the legal evidence on record and in the background of legal principles laid down by this Court in the cases referred to supra, the inevitable conclusion is that the act of the appellant-accused was not a cruel act and the accused did not take undue advantage of the deceased. The scuffle took place in the heat of passion and all the requirements under Section 300 Exception 4 of the IPC have been satisfied. Therefore, the benefit of Exception 4 under Section 300 IPC is attracted to the fact situations and the appellant-accused is entitled to this benefit. Thus, considering the factual background and the legal position set out above, the inevitable conclusion is that the appropriate conviction of the appellant-accused would be under

Section 304 Part II IPC instead of Section 302 IPC. Hence, the sentence of imprisonment for 10 years would meet the ends of justice.”

13 Now we have to consider the facts of this case on the touchstone of Section 300 Exception 4 in order to find out whether the case falls under the same or not.

14 PW1 Shankar Baburao Padwad states in his evidence (Exh. 87) that he knows accused. He also knew deceased who was residing with his family in their housing society of which he was the Chairman.

15 It is his further evidence that the incident took place on 25th April 2009 at about 10.45 p.m. He heard noise of quarrel from the parking slot of the building and therefore went downstairs and found a verbal altercation was going on between Shashikant Kanade and the deceased on account of playing cricket by the boys in the parking area. By that time, A-1 to A-3 along with Kshitij (juvenile in conflict with law) also came in the

parking area. He tried to pacify them but they were not in a mood to listen and therefore he went back to his flat.

16 It is his further evidence that after thirteen minutes he again heard noise of quarrel and therefore again went downstairs in the parking area and saw the deceased lying injured adjoining to compound on road. Therefore, he and other society members carried the deceased firstly to Dhende Hospital, Yerwada and thereafter to Jahangir Hospital. After half an hour of the admission of the deceased in the hospital, the doctor declared him dead.

17 Since the informant was found wanting on the material aspects of the prosecution case which is alleged in the First Information Report (FIR) and which is in respect of accused assaulting the deceased by means of knife, this witness, with the permission of the court, came to be treated hostile by the prosecution.

18 Even though the informant is declared hostile by the prosecution, two important aspects of his evidence are, firstly, the presence of accused at the scene of occurrence and, secondly the deceased was lying injured adjoining to compound of road. We also would like to note here that the whole case of prosecution rests on the testimony of informant and an eye witness – PW2 Ulhas Narayan Mehta. So now we are left with the testimony of PW2 only in order to come to a definite conclusion whether it was a case of murder or culpable homicide not amounting to murder falling within Exception 4 to Section 300 IPC.

19 PW2 states in his evidence (Exh. 90) that the incident took place on 24th April 2009. In the evening at about 10.45 p.m. he heard the noise of quarrel of deceased and Shashikant Kanade. Therefore, he went to the ground floor at parking slot. The deceased and Shashikant Kanade were quarreling over playing of cricket by the boys in the parking slot. When he went there A-1 Satish Dixit (present appellant-accused) was asking the deceased as to why he was abusing his son. On that count verbal

altercation took place in between accused Satish Dixit and the deceased. Shashikant Kanade and others members of the society tried to intervene. By that time accused Supriya Dixit (A-2) also came there and started quarreling with the deceased.

20 It is his further evidence that at that point of time accused Suyash i.e. another appellant in the instant appeal and one more accused Kshitij @ Teju (juvenile in conflict with law) also came there and also started assaulting the deceased. Therefore the deceased got frightened and started running out of the compound of the society. However, all the accused caught him near the gate of the society and again assaulted him. It is his further evidence that when he went near them, he saw Shashikant Kore (deceased) had several bleeding injuries and accused Suyesh (A-3) had one weapon in his hand and he assaulted deceased with the said weapon.

21 Lastly, he states that seeing the bleeding injuries of the deceased he and others took the deceased to the hospital where

the deceased after examination was declared dead.

22 Before we embark on the appreciation of evidence of this material witness, we shall deal with the factual background of the case narrated in the FIR. There is no dispute on the count that in the said society where the accused and this witness are residing and deceased resided, there used to be quarrel amongst the society members over playing of cricket by the boys in the area meant for parking slot. This fact is also admitted by the PW2 in his cross-examination that the boys used to play cricket in the parking slot of the society and therefore on that count there were disputes between the members of the society. This witness further admits that the deceased and other members were not in favour of the boys playing cricket in the parking slot. Precisely on this trivial issue and as the case is unfolded right through the filing of the FIR till the adducing of evidence by PW2, a sudden quarrel erupted on the fateful night.

23 What should engage the attention of our mind is the

chronology of events narrated by PW2, who is a crucial and star witness of the prosecution. It is only when he went near the deceased he noticed several bleeding injuries. Prior to this statement, his evidence shows that all the accused had run after the deceased when the latter being frightened ran helter-skelter and went out of the compound of the society only to be caught and assaulted by the accused. However, surprisingly, it is nowhere made clear by this witness as to by what means and in what manner accused assaulted the deceased.

24 Reverting back to his latter part of the evidence to the effect that it is only when he went near the deceased, he noticed several bleeding injuries and saw accused Suyesh (A-3) assaulting the deceased by means of a weapon which was in his hand. Thus, it amply demonstrates that this witness had no occasion to see how the earlier bleeding injuries which were noticed by him on the person of the deceased were inflicted on the person of the deceased. His evidence simply states that he only saw accused Suyash (A-3) assaulting the deceased by means of a weapon

which he was having in his hand. This means and it should mean that he only saw a single assault without specifying the particular part of the body whereupon that assault was launched by accused Suyash A-3). Even he does not say as to the nature of the weapon.

25 In view of above, it is relevant to quote the statement of Dr.Vishal Rajgopal Survase (PW5) who conducted the autopsy on the body of the deceased, which is as under :

“There were several external injuries i.e. incised wounds, abrasions and stab wound on the dead body. There were in all 24 external injuries on dead body. I described the injuries in detail on separate sheet attached to column no.17 of PM report. There were also internal injuries corresponding to external injury no.7, 8 and 11. I have noted the description of internal injuries on separate sheet. We observed 400 ml blood in left hemithorax and 550 ml blood in abdominal cavity. We preserved the blood in separate bottle. All the injuries were antemortem and recent. I opined that death was caused due to traumatic and haemorrhagic shock as a result of stab injuries. Accordingly we prepared

PM report. The PM report now shown to me is same and bears my signature and signature of Wable. The separate sheet attached to the PM report describing the external and internal injuries also bear our signatures. The contents of PM report are correct. It is at Exh. 101. The abrasions noted as external injuries are possible in scuffle. The stabbed wounds mentioned at sr. no.7 and 11 are possible by the knife art. no.26 now shown to me. Incised wounds noted in PM report are also possible by knife art. 26. Injury no.7 and 11 along with corresponding internal injuries are sufficient to cause death in ordinary course.”

26 If the examination-in-chief of this Medical Officer is anything to go by then it definitely suggests that injury nos.7 and 11 along with corresponding internal injuries were sufficient to cause death in ordinary course. However, the cross-examination presents quite a different picture. In the cross-examination this witness states that most of the injuries were individually not grievous in nature. He further states that injury nos.7 and 11 with corresponding internal injuries were of such a nature likely to

cause death. This means that according to him injury nos.7 and 11 along with corresponding internal injuries were sufficient to cause death in ordinary course. That is a definitive opinion. Per contra, the cross-examination shows the probability of the death being caused in the light of injury nos.7 and 11 corresponding to internal injuries found in the body of the deceased. There is no compatibility in the above versions.

27 Additionally, there is one more reason, in the light of evidence of PW8 who not only recorded the FIR in the present case but also carried out preliminary investigation, to question the various injuries found on the person of the deceased at the time of incident.

28 PW8 Ms.Runal Mulla states in her evidence (Exh.108) that on 25th April 2009 he arrested all the accused. There were abrasions on the little finger of A-1 Satish. There were blood stains on his shirt, baniyan and one handkerchief. However, in the cross-examination she admits that apart from abrasion on the little

finger of A-1, there was one more injury on his person but she does not remember whether it was incised wound or otherwise. She further admits that Kshitij @ Teju (juvenile in conflict with law) was also having bleeding injuries. Interestingly, it is nowhere explained by the prosecution as to how the A-1 and accused Kshitij sustained those injuries.

29 This witness further admits in her cross-examination that in the intervening night of 24th April 2009 and 25th April 2009 she recorded the report given by A-1 Satish and thereupon offence under Section 324, 323 vide C.R.No.197 of 2009 was registered against the deceased. This clearly suggests that out of the same transaction two FIRs came to be filed, one at the instance of the PW1 against the present appellant-accused and another at the instance of appellant-accused Satish against the deceased.

30 The above factual aspect goes to show prima facie that the deceased was also armed with some sort of weapon. Here the cross-examination of PW5 again assumes significance when he

says that if a person forcibly comes in contact with sharp object then also generally stab wound is possible. As, admittedly, there was quarrel between the deceased and the accused, in absence of clear and cogent evidence, the possibility of deceased coming into contact of his own sharp object and thereby sustaining various injuries cannot be ruled out. The only clear evidence, as we have already pointed out from the evidence of PW2, is to the effect that the informant had only seen giving a single blow of a weapon on the person of the deceased.

31 The evidence on record plainly establishes that a sudden fight took place between the appellants and the deceased in the heat of passion and A-3 assaulted the deceased and caused serious bleeding injuries. There is no shred of evidence which lends even a remote suggestion that A-3 had assaulted the deceased with an intention to cause his death. Even assuming for the sake of argument that the A-3 authored those injuries, but it is a well settled position of law that the number of wounds caused by itself cannot be a decisive factor. What is important is that the

occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. The offender must not have taken any undue advantage or acted in a cruel manner.

32 The evidence of PW8 rather shows that the deceased was not unarmed and also used some sort of weapon in the said transaction. It appears that the learned trial Court committed manifest error in being influenced by the number of injuries sustained by the deceased.

33 Taking into account the events as unfolded, it leaves no manner of doubt that accused Suyash (A-3) had no intention to cause death of the deceased. The incident happened without any premeditation, in a sudden fight between the appellant and the deceased and in heat of passion accused Suyash (A-3) inflicted knife blow(s) on the deceased.

34 Thus, if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of

knowledge and not intention to cause murder and bodily injury then the same would fall under Section 304 Part II. We are inclined to the view that in the facts and circumstances of the present case, it cannot be said that the appellant- accused had any intention of causing the death of the deceased when he committed the act in question. The incident took place out of grave and sudden provocation and hence the accused is entitled to the benefit of Section 300 Exception 4 of the IPC.

35 This brings us to the appeal filed by appellant-accused Satish (A-1) who has been convicted by the learned trial Court for the offence punishable under Section 323 of the IPC along with his wife accused Supriya for the offence punishable under Section 323 of the IPC.

36 While discussing the evidence of PW2 we have already pointed out how the evidence of this witness is vague on the point of assault. If we go through his evidence adduced in the examination-in-chief it shows that while accused Satish (A-1) was

asking the deceased as to why the latter was abusing his son, a verbal altercation ensued between them. Meantime, wife of accused Satish(A-1) viz. Supriya Dixit also came and she also started quarreling. It is at this point of time this witness clearly deposed that accused Suyash (A-3) and one more accused Kshitij @ Teju (juvenile in conflict with law) also came and started assaulting the deceased. Till this time, it is not the case of this witness that the accused Satish had already assaulted the deceased. There was only a verbal altercation.

37 The evidence of this witness further shows that when the deceased got frightened and started running out of the compound, he was chased by all the accused and after catching hold of him, they all assaulted the deceased. However, it is not made clear by what weapon and means all the accused assaulted the deceased. Suffice to say, there is no clear, cogent and clinching evidence to satisfy our conscience that the present appellant Satish (A-1) had assaulted by any weapon or means, the deceased. It appears to us that the learned trial Judge wrongly

convicted the appellant-accused Satish (A-1) for the offence punishable under Section 323 of the IPC. This becomes more aggravated when the learned trial Judge in his judgment clearly holds that the prosecution has failed to establish that the accused shared common intention.

38 In the result, we pass the following order :

ORDER

CRIMINAL APPEAL NO.665 OF 2012

- i) Appeal is allowed.
- ii) The judgment and order dated 23rd May 2012 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.682 of 2009 is hereby quashed and set aside and the appellant-accused Satish is acquitted of the offence charged against him.
- iii) Fine amount paid by him, if any, be refunded to him.
- iv) His bail bond stands cancelled.
- v) The appeal stands disposed off accordingly.

CRIMINAL APPEAL NO.828 OF 2012

- i) Appeal is partly allowed.
- ii) Appellant-accused Suyash @ Joy Satish Dixit is convicted for the offence punishable under Section 304 Part II of the IPC and is sentenced to suffer rigorous imprisonment for 10 years.
- iii) Appellant-accused Suyash (A-3) is in jail since 2009 and since he has already undergone the sentence imposed on him, he is ordered to be released forthwith, if his presence is not required in any other case.
- iv) The appeal stands disposed off accordingly.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)

Arti V.
Khatate

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