

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.302 OF 2021

SHRAD S/O PARASRAM BORHADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE NO.34 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
SHIVAJI GANGADHAR BORHADE AND OTHERS

...

WITH
CRIMINAL APPEAL NO.136 OF 2021

SHIVAJI GANGADHAR BORHADE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. E. G. Irale, Advocate for appellant in APEAL/302/2021.
Mr. A. S. Barlota, Advocate for appellant in APEAL/136/2021.
Mr. R. V. Dasalkar, APP for Appellant - State in ALS/34/2021 and for
respondent - State in other cases.
Mr. R. V. Gore, Advocate for respondent No.3 in ALS/34/2021.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : January 31, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Criminal Appeal No.302 of 2021 is filed by the informant under
Section 372 of the Code of Criminal Procedure to challenge the

acquittal of accused No.1 from the offence punishable under Sections 143, 147, 148, 504 read with Section 149 of Indian Penal Code and accused Nos.2 to 5 from the same offences as aforesaid as well as under Section 302, 452 of Indian Penal Code by learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Sessions Case No.53 of 2015 on 21.01.2021. It will not be out of place to mention here that accused No.1, who has been held guilty of committing offence punishable under Section 302 and 452 of Indian Penal Code by the same judgment, has filed Criminal Appeal No.136 of 2021 before this Court and it is admitted.

2. We have heard the learned Advocate Mr. E. G. Irale for the appellant - informant and learned APP Mr. R. V. Dasalkar for State. We have also heard learned Advocate Mr. A. S. Barlota for original accused No.1 and learned Advocate Mr. R. V. Gore for original accused No.3 and perused the evidence on record.

3. We would like to take into consideration the prosecution story as stated in the FIR first. The FIR has been lodged by one Sharad Borhade, who is the brother of deceased Kishor. He states that there is dispute on account of boundary of the agricultural land between his family and the family of the accused. Such dispute had arose on 30.04.2015, but then it was decided that they would get the land

measured. Kishor was sitting in front of the house on 02.05.2015 around 4.30 to 5.00 p.m. The wife of Kishor and wife of Sharad were at home. Sharad was working in the field. All the accused came together and started arguing with Kishor, therefore, Sharad went near them. Accused Shivaji was asking as to why Kishor was defaming by saying that he had damaged the bandh in the agricultural land. Accused persons then started assaulting Kishor by fists and kicks, but they were saying that they should not leave Kishor alive. Sharad, his wife and Kishor's wife were trying to intervene and then Kishor ran inside the house. When the other family members were trying to convince the accused persons, accused Shivaji went to his house by running and brought Chimta (Plucker used for plucking cotton crop) and then went directly inside the house of the informant. He assaulted Kishor by means of said Chimta on head, as a result of which Kishor sustained bleeding injury and became unconscious. Thereafter, accused persons went away. Thereafter, Kishor was taken to hospital, however, he was declared dead. It will not be out of place to mention here that P.W.1 Sharad - informant, P.W.3 Archana - widow of Kishor have reiterated the same facts. Therefore, it emerges that all the accused had come together and then started assaulting Kishor. Therefore, it will have to be revisited as to why the learned Trial Judge has acquitted all the

accused from the offences punishable under Section 143, 147 of Indian Penal Code. Why it could not have been held that they are forming unlawful assembly as the presence of each of the accused has been told by these two eye witnesses, however, as regards the offence under Section 148 of Indian Penal Code, it has not come on record that said Chimta is a dangerous weapon. There was no intentional insult as none of them had uttered the abuses. It cannot be then stated also that there was common object. There was no charge for common intention. Further, it has not been stated by both the eye witnesses that accused Nos.2 to 5 entered the house of the informant and then actively participated in the commission of murder of Kishor. Therefore, it cannot be said that Section 302 and 452 of Indian Penal Code was made out against them. With the limited scope, we conclude that the acquittal of all the accused persons from the offence punishable under Sections 143 and 147 of Indian Penal Code deserves to be revisited. Therefore, we grant leave to the State to file appeal and also we **admit** the appeal of the informant to that extent only i.e. under Sections 143 and 147 of Indian Penal Code against all the accused. Accordingly, the Application for Leave to Appeal by State No.34 of 2021 stands partly allowed.

4. Registry to register the appeal.

5. In view of leave granted, compliance under Section 390 of the Code of Criminal Procedure be made as against respondent Nos.2 to 5 to the satisfaction of the Trial Court. Original accused No.1 is in jail and his application for suspension of sentence came to be rejected by this Court by order dated 10.01.2023. Therefore, there is no question of taking action under Section 390 of the Code of Criminal Procedure against him.

6. Issue notice to the respondents in respect Criminal Appeal filed by the informant as well as the Criminal Appeal filed by the State, to be made returnable on 14.03.2023. Learned APP waives notice for the respondent - State.

7. Call record and proceedings with paperbook.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm