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J Cri Appeal 238 & 240-2000

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 238 OF 2000

1. Mohammad Inamdar s/o. Gulab Inamdar,
Age : 32 years, Occ. : Nil,
R/o. : Nilegaon, Tq. Tuljaur,
Dist. Osmanabad ... Appellant

VERSUS

1. The State of Maharashtra ... Respondent

...

Mr. Joydeep Chatterji h/f. Mr. Prashant R. Nangare – Advocate for
Appellant No.1

Mr. R.D. Sanap – APP for Respondent No.1, State

....

WITH

CRIMINAL APPEAL NO. 240 OF 2000

1. Gulab Inamdar s/o. Bagad Inamdar,
Age : 65 years, Occ. : Nil,
2. Vaziroddin Inamdar s/o. Bagad Inamdar,
Age : 35 years, Occ. : Nil,
3. Patala alias Ladale Mashak s/o. Gulam Inamdar,
Age : 55 years, Occ. : Nil,
4. Syed Badshah Inamdar s/o. Bagad Inamdar,
Age : 55 years, Occ. : Nil,
5. Gulab Khader Mehboob alias Bagad Inamdar,
Age : 62 years, Occ. : Nil,
6. Ismail Inamdar s/o. Gulab Khader,
Age : 18 years, Occ. : Nil,

7. Mustaq Inamdar s/o. Gulab Inamdar,
Age : 30 years, Occ. : Nil,

All R/o. : Nilegaon, Tq. Tuljapur, Dist. Osmanabad ... **Appellants**

VERSUS

1. The State of Maharashtra ... **Respondent**

...

Mr. Joydeep Chatterji h/f. Mr. Prashant R. Nangare – Advocate for Appellants

Mr. R.D. Sanap – APP for Respondent No.1, State

....

WITH

**CRIMINAL APPLICATION NO. 7014 OF 2016
IN CRIMINAL APPEAL NO. 238 OF 2000**

1. Baswaraj s/o. Lingappa Jamadar,
Age : 48 years, Occ. : Agriculture,
R/o. : Nilegaon, Tq. Tuljapur,
Dist. Osmanabad ... **Applicant**

VERSUS

1. The State of Maharashtra
2. Mohammad Gulab Inamdar,
Age : 50 years, Occ. : Business,
R/o. : Nilegaon, Tq. Tuljaur,
Dist. Osmanabad ... **Respondents**

...

Mr. Vivek V. Tarde – Advocate for Applicant

Mr. R.D. Sanap – APP for Respondent No.1, State

Mr. Joydeep Chatterji h/f. Mr. Prashant R. Nangare – Advocate for Respondent No.2

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**CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 26th OCTOBER, 2023
PRONOUNCED ON : 5th JANUARY, 2024**

JUDGMENT :

1. The appellants in both these appeals have challenged the impugned judgment and order dated 09.05.2000 passed by the learned Additional Sessions Judge, Osmanabad (hereinafter referred to as "*the learned Trial Court*") in Sessions Case No.63 of 2000. The appellant in Criminal Appeal No.238 of 2000 is original accused No.1 in aforesaid case who has been convicted for the offence under Sections 304 Part-I, 323 and 337 of the Indian Penal Code ("*I.P.C.*" for short) and sentenced to suffer imprisonment as mentioned in the operative part. The appellants in Criminal Appeal No.240 of 2000 are in fact original accused Nos.2 to 8 who have been convicted only for the offence under Section 337 of the I.P.C. and fine of Rs.300/- each is imposed upon them.

2. The prosecution story in brief is as under :

The appellants – accused and the complainant along-with the witnesses are resident of village Nilegaon, Tq. Tuljapur, Dist. Osmanabad. On 07.05.1999 at about 10:30 a.m. one Sidappa Jamadar had gone to Hidayat Shahawali Darga for presenting a food offering. When he returned the appellant – accused No.1, Mohammad Inamdar asked him as to why he presented food

offering to God of his religion. Appellant – accused No.1 also abused him on that count. Sidappa then told that incident to Dilip Jamadar as well as Baswaraj and Hanumant. Thereafter, all of them went to the members of panch committee of the said Darga and narrated the incident to them. When they were discussing about the incident, the appellant – accused No.1, Mohammad Inamdar came there and started abusing Dilip as well as members of panch committee. He suddenly then took out knife and inflicted into the chest of Dilip. The other appellants – accused assaulted Dilip by means of stones. They also assaulted Baswaraj as well as Sidappa by means of fists and kicks. When the appellant – accused No.1, Mohammad inflicted knife in the chest of the Dilip, Baswaraj had tried to intervened and in that attempt sustained injury to his left palm. Dilip was immediately taken to the hospital at Solapur but he died on the way to that hospital.

3. After getting information about the incident, head-constable Mr. Surwase reported it to A.P.I. Mr. Reddi of Naldurg Police Station. Accordingly, head-constable Mr. Surwase went to Solapur Hospital for recording statements of injured – Baswaraj Jamadar and on the basis of said statement crime was registered in Naldurg

Police Station vide C.R. No.69 of 1999 under Sections 147, 148, 149, 302, 307, 323, 324 and 337 of I.P.C. The A.P.I. – Mr. Reddi conducted the investigation and after completion of the same filed charge-sheet against the accused – appellants under the aforesaid sections. The learned Trial Court conducted trial and convicted the appellants – accused as mentioned above.

4. Learned Counsel for the appellants in both these appeals vehemently argued that, the prosecution has falsely implicated the appellants on the basis of concocted story. According to him, the persons who resolved the dispute are not examined by the prosecution. He pointed out that, P.W. 5 – Srimant who has given evidence of oral dying declaration made by the deceased Dilip is in fact relative of the deceased. He also pointed out that, why this witness kept mum and did not lodged any report of the incidence despite having knowledge. He pointed out that, the prosecution did not explain injuries sustained by the appellant – accused No.1 and, therefore, the learned Trial Court should have held that, there was free fight between the parties and the act of appellant – accused No.1 covered under the right of private defence. Besides the oral submissions the learned Counsel for the appellants – accused also

relied on the following judgment :

(a) Hon'ble Supreme Court in the case of **Lakshmi Singh and Ors. Vs. State of Bihar** in Criminal Appeal Nos.479 and 483 of 1968, reported in **AIR 1976 SUPREME COURT 2263**

5. On the contrary, learned A.P.P. have supported the impugned judgment and pointed out that, there is reliable and trustworthy evidence against all the appellants by the injured and eye-witnesses. Moreover, N.C. at Exhibit-41 allegedly lodged by the accused No.1 – appellant clearly indicates that, appellant No.1 had admitted the fact of causing knife injury to the deceased Dilip. Learned Counsel for respondent No.2 – complainant also supported the arguments of the learned A.P.P. and prayed for dismissal of the appeals.

6. Heard rival submissions and also perused the entire oral and documentary evidence on record. It is significant to note that, the appellants – accused have admitted spot panchanama at Exhibit-24 and inquest panchanama at Exhibit-25 and thereby admitted death of Dilip during the incidence. It is significant to note that, all the appellants were charged with the offence punishable under Sections 147, 148, 302, 307, 323 and 337 read with 149 of I.P.C. However, it has been transpired that, accused No.1 was guilty of

the offence under Section 304 Part-I along-with Sections 323 and 337 of I.P.C., whereas other accused Nos.2 to 8 are found guilty for the offence under Section 337 of I.P.C. only. After going through the judgment it appears that, the learned Trial Court has convicted appellant No.1 for the offence under Section 304 Part-I of I.P.C. since the incident has taken place at the spur of moment and there was only one knife blow given to the deceased.

7. So far as the evidence of prosecution is concerned P.W. 1 – Baswaraj who is the complainant has deposed about the incidence as per prosecution case. His testimony is supported by Sidappa, who had in fact offered food in Shahawali Darga. The evidence of A.P.I. - Mr. Reddi i.e. Investigating Officer also indicates that, as per his say P.W. 8 – head-constable Mr. Surwase had recorded the statements of injured witnesses at Solapur hospital. Further, P.W. 3 – Nisarlala who belongs to Muslim Community has also supported the versions of complainant – Baswaraj as well as Sidappa. It is significant to note that, in the cross-examination of all these three eye-witnesses nothing adverse to the prosecution case has been brought on record.

8. Further, the ocular evidence in this case is also supported by

the medical evidence. P.W. 10 – Dr. Ghorpade who had examined the Baswaraj i.e. complainant on 07.05.1999 has deposed about the injuries found on the person of Baswaraj which were incised would of left palm muscle deep and incised would of web between thumb and index finger of left hand. The nature of injuries found on the person of Baswaraj, therefore, supports his evidence being an eye-witness. Moreover, the evidence of P.W. 12 – Dr. Pakale who had conducted post-mortem over the dead body of Dilip also indicates stab injury on his chest. As such, it has been established beyond all reasonable doubt that the Dilip died due to said stab injury which according to eye-witnesses was inflicted by appellant – accused No.1, Mohammad. Further, though the prosecution claimed that, other accused Nos.2 to 8 also assaulted and beat deceased Dilip and other eye-witnesses with the help of stones, sticks and kicks but the reliable evidence to that effect is certainly missing.

9. Learned Counsel for appellant – accused No.1 vehemently argued that, the injuries sustained by accused No.1 are not explained by the prosecution and, therefore, the prosecution story has become doubtful. For that purpose he relied on the judgment

of Hon'ble Apex Court in the case of Lakshmi Singh (*supra*) wherein it is observed that, *"the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a versions which competes in probability with that of the procession one"*. However, in the same judgment it is also held that, *"there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries"*. In the instant case, the evidence about stabbing deceased Dilip by appellant – accused No.1 is very much clear and trustworthy. Further, the N.C. at Exhibit-41 lodged by appellant – accused No.1 about the incident clearly indicates that, he had admitted therein that he inflicted injury to the deceased with the help of knife. As such, there cannot be any significance given for non-explanation on the part of prosecution in respect of injuries sustained by

appellant – accused No.1. Thus, the judgment relied by the learned Counsel for the appellant – accused No.1 as aforesaid is not at all helpful to the appellant – accused No.1.

10. The learned Trial Court has also considered the concept of right of private defence and found that it was missing in this case. The learned Trial Court has convicted appellant – accused No.1 for the offence under Section 304 Part-I instead of charge under Section 302 of I.P.C. by properly appreciating the evidence on record. The observation of learned Trial Court that, there was no previous enmity between the accused No.1 and deceased Dilip before the incidence and there was no intention of committing murder of Dilip by appellant – accused No.1, since it was the case of single injury, appears appropriate. Therefore, considering all these aspects it appears that, the learned Trial Court had appreciated the evidence properly and rightly convicted the appellants of both these appeals as mentioned above. Thus, no interference is called in the impugned judgment and, therefore, both the appeals stand dismissed.

11. The appellant in Criminal Appeal No.238 of 2000 i.e. original accused No.1 is directed to surrender before the learned Trial

Court within a period of six weeks from today.

12. The appeals are accordingly disposed of.

13. In view of dismissal of appeals, pending Criminal Application No.7014 of 2016 stands disposed of accordingly.

[SANDIPKUMAR C. MORE]
JUDGE