

(2016) 02 GUJ CK 0116

In the Gujarat High Court

Case No : Criminal Appeal (For Enhancement) No. 1749 of 2013 and Criminal Appeal Nos. 1576 of 2013 and 883 of 2014

State of Gujarat

APPELLANT

Vs

Raval Ranchhodbhai Kantibhai

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 377
Penal Code, 1860 (IPC) — Section 114, Section 307, Section 323, Section 324, Section 326, Section 504

Citation : (2016) 02 GUJ CK 0116

Hon'ble Judges : M.R. Shah and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : K.P. Raval, APP, for the Appellant; Yogendra Thakore, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J.—1. As all these Appeals are with respect to one incident but arising out of the cross complaint and between the same parties, all these Appeals are decided and disposed of by this common judgment and order.

1.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Sessions Judge, Mehsana (hereinafter referred to as "the trial Court") dated 11/10/2013 in Sessions Case No. 55/2011 by which the learned trial Court has convicted the original accused-Raval Ranchhodbhai Kantibhai for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act and has sentenced to undergo 1 year R.I. with fine of Rs. 500/- and in default 10 days S.I. for the offence punishable under Section 326 of the IPC and to undergo 7 days S.I. with fine of Rs. 100/- and in default to undergo 2 days S.I. for the offence punishable under Section 135 of the Bombay Police Act, original accused of Sessions Case No. 55/2011 has preferred Criminal Appeal No. 1576/2013.

1.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial Court in Sessions Case No. 55/2011, State has preferred Criminal Appeal No. 1749/2013 under Section 377 of the Code of Criminal Procedure to enhance the sentence imposed by the learned trial Court while convicting the original accused-Raval Ranchhodbhai Kantibhai for the offence punishable under Section 326 of the Indian Penal Code.

1.3 Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the learned trial Court dated 11/10/2013 in Sessions Case No. 54/2011 (Cross Case) by which the learned trial Court has acquitted respondents-original accused for the offences punishable under Sections 307, 324, 504 and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act, the original complainant of Sessions Case No. 54/2011-Raval Seetaben Ranchhodbhai, wife of the accused in Sessions Case No. 55/2011, has preferred Criminal Appeal No. 883/2014.

2. As observed hereinabove, as such, there were cross cases/complaints filed on behalf of both the sides. In the incident which occurred on 22/02/2011 at 20:30 hours at Ravalwas, village Bechraji, one Raval Ranchhodbhai Kantibhai, original accused in Sessions Case No. 55/2011 on one side and Raval Kadvabhai Lalubhai of the other side sustained injuries, and therefore, Raval Kadvabhai Lalubhai filed the complaint against Raval Ranchhodbhai Kantibhai with Bechraji Police Station for the offences punishable under Sections 326, 323 and 504 of the Indian Penal Code and Section 135 of the Bombay Police Act and wife of the Raval Ranchhodbhai Kantibhai, Seetaben Ranchhodbhai Raval also lodged the cross complaint against Raval Kadvabhai Lalubhai, original complainant of Sessions Case No. 55/2015, Raval Gokabhai Ambarambhai and Raval Bhavnaben Kadvabhai Lalubhai for the offences punishable under Sections 307, 324, 504 and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. Both the aforesaid complaints were investigated by one Jamtaji Hinduji Waghela, Police Officer of Bechraji Police Station. After conclusion of the investigation and having found prima facie case the Investigating Officer filed the chargesheet against the concerned accused with respect to both the complaints. As both the cases were exclusively triable by the Court of Sessions, the learned Magistrate committed both the cases to the Sessions Court, Mehsana. The case against Raval Ranchhodbhai Kantibhai was registered as Sessions Case No. 55/2015 and the case against Raval Kadvabhai Lalubhai and others was registered as Sessions Case No. 54/2011. All the accused in both the cases pleaded not guilty, and therefore, they came to be tried by the learned trial Court for the aforesaid offences respectively. The learned trial Court framed the charge against the concerned respective accused in respective cases. All the accused in the respective cases pleaded not guilty, and therefore, they came to be tried by the learned trial Court for the aforesaid offences. In Sessions Case No. 55/2011 original accused-Raval Ranchhodbhai Kantibhai was charged for the offences punishable under Sections 326, 323, 504 of the Indian Penal Code and Section 135 of the Bombay Police Act. However, on the other side and in the cross case

in Sessions Case No. 54/2011 original accused-Raval Kadvabhai Lalubhai, Raval Gokabhai Ambarambhai and Raval Bhavnaben Kadvabhai Lalubhai were charged for the offences punishable under Sections 324, 323 and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2.1 To prove the case against the sole accused in Sessions Case No. 55/2011 the prosecution examined the following witnesses;

Through the aforesaid witnesses the prosecution brought on record the following documentary evidences;

After closing purshis submitted by the prosecution, further statement of the accused-Raval Ranchhodbhai Kantibhai was recorded under Section 313 of the Code of Criminal Procedure where he denied having committed any offence.

To prove the case against the accused in Sessions Case No. 54/2011 (Cross Case) prosecution examined the following witnesses;

Through the aforesaid witnesses the prosecution brought on record the following documentary evidences;

After closing purshis submitted by the prosecution further statements of the accused in Sessions Case No. 54/2011 were recorded wherein they also denied having committed any offence.

2.2 On conclusion of the trial in both the cases, by the impugned judgment and order the learned trial Court has convicted the original accused in Sessions Case No. 55/2011 for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act and has imposed the sentence as referred to hereinabove.

2.3 By the impugned judgment and order in cross case, being Sessions Case No. 54/2011 the learned trial Court has acquitted the original accused for the offences for which they were tried by giving benefit of doubt.

2.4 Hence, original accused of Sessions Case No. 55/2011 has preferred Criminal Appeal No. 1576/2013 challenging his conviction for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act and State has preferred Criminal Appeal No. 1749/2013 for enhancement of the sentence imposed by the learned trial Court while convicting the original accused in Sessions Case No. 55/2011.

Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed in Sessions Case No. 54/2011, original complainant has preferred Criminal Appeal No. 883/2014.

3. Shri Kotai, learned advocate appearing on behalf of the original accused in Criminal Appeal No. 1576/2013 has vehemently submitted that in the facts and circumstances of the case the learned trial Court has materially erred in convicting the original accused for the offences punishable under Section 326 of

the Indian Penal Code and Section 135 of the Bombay Police Act. It is vehemently submitted by Shri Kotai, learned advocate appearing on behalf of the original convicted accused that there are material contradictions with respect to the place of the incident. It is submitted that according to the complainant the incident occurred at their house. However, as per the panchnama of the place of the incident the incident had occurred/taken place 20 feet away from the house of the complainant.

3.1 It is further submitted by Shri Kotai, learned advocate appearing on behalf of the original convicted accused that while convicting the accused the learned trial Court has not properly appreciated the fact that as such the complainant and others went to the house of the in-laws of the accused and they attacked him with deadly weapons, and therefore, they can be said to be the aggressors, and therefore, in self defence the accused had used the weapon. It is submitted that as such the original accused himself sustained serious injuries on the head by other side, and therefore, the learned trial Court has materially erred in convicting the original accused for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act.

Making the above submissions, it is requested to allow Criminal Appeal No. 1576/2013 and consequently to dismiss Criminal Appeal No. 1749/2013.

3.2 Now in the alternative, it is submitted that in the facts and circumstances of the case it cannot be said that the sentence awarded by the learned trial Court while convicting the original accused is disproportionate to the offences committed by the original accused much less shockingly disproportionate, which requires interference of this Court. It is submitted that as such the original accused himself sustained serious injuries on the vital part of the body i.e. head, which were caused by the original complainant and others (original accused in cross case, being Sessions Case No. 54/2011).

Making the above submissions, it is requested to dismiss Criminal Appeal No. 1749/2013.

4. Criminal Appeal No. 1576/2013 is vehemently opposed by Shri K.P. Raval, learned APP appearing on behalf of the State. It is vehemently submitted that in the facts and circumstances of the case the learned trial Court has not committed any error in convicting the original accused in Sessions Case No. 55/2011 for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act. It is submitted that as such the findings recorded by the learned trial Court while convicting the original accused are on appreciation of evidence. It is vehemently submitted by Shri K.P. Raval, learned APP that as such the original accused is residing at another place and the incident had not taken place at the house of his father-in-law in Ravalwas as alleged. It is submitted that as per the panchnama of the place of the incident the incident had taken place 20 feet away from the house of the original complainant-Raval Kadvabhai Lalubhai and 80 feet away from the house of the

father-in-law of the accused. It is therefore submitted that as such the incident had taken place neither at the house of the original complainant-Raval Kadvabhai Lalubhai, accused in Sessions Case No. 54/2011 nor at the house of father-in-law of the original accused as contended on behalf of the both the sides. It is submitted that the injuries on the original complainant-Raval Kadvabhai Lalubhai (original accused of Sessions Case No. 54/2011) has been established and proved by leading medical evidence and examining the Doctor. It is submitted that as such the presence of the original accused at the time of commission of the offence is not disputed and as such cannot be disputed in view of the cross complaint which was given. It is submitted that even the occurrence of the incident is also not in dispute. It is submitted that in the facts and circumstances of the case the learned trial Court has not committed any error in convicting the original accused in Sessions Case No. 55/2011 for the offences punishable under Section 326 of the IPC and Section 135 of the Bombay Police Act.

Making the above submissions it is requested to dismiss Criminal Appeal No. 1576/2013.

5. Now so far as Criminal Appeal No. 1749/2013 is concerned, it is vehemently submitted by Shri K.R. Raval, learned APP appearing on behalf of the State that the manner in which the original accused had committed the offences and had caused the injury on the original complainant-Raval Kadvabhai Lalubhai and that to by deadly weapon like dharia and while trying to attack on the head the original complainant sustained the injury on the fingers and there was fracture on the fingers, the learned trial Court has materially erred in awarding the sentence of 1 year R.I. only. It is vehemently submitted that in the facts and circumstances of the case narrated hereinabove the learned trial Court ought to have imposed maximum punishment as provided under Section 326 of the IPC.

Making the above submissions, it is requested to allow Criminal Appeal No. 1749/2013.

CRIMINAL APPEAL No. 883/2014

6. Criminal Appeal No. 883/2014 has been preferred by the original complainant challenging the impugned judgment and order of acquittal passed by the learned trial Court by which the learned trial Court has acquitted the original accused in Sessions Case No. 54/2011 for the offences punishable under Sections 307, 324, 504 and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act.

7. Shri Kotai, learned advocate appearing on behalf of the original complainant has vehemently submitted that in the facts and circumstances of the case, the learned trial Court has materially erred in acquitting the original accused by giving benefit of doubt.

7.1 It is further submitted by Shri Kotai, learned advocate appearing on behalf of the original complainant that as such the incident/occurrence is not disputed by the original accused. It is submitted that even their presence at the time of the

incident is also not disputed by the original accused, as it is a cross case. It is submitted that as such the original accused in Sessions Case No. 54/2011 went to the house of the father of the original complainant and father-in-law of the original accused in Sessions Case No. 55/11 and having seen injured Raval Ranchhodbhai Kantibhai they started quarreling and abusing each other and at that time they came with the deadly weapon like dharia and axe with handle of iron pipe and caused the injury on Raval Ranchhodbhai Kantibhai on the vital part of the body i.e. head. It is submitted that the injuries by axe and dharia by the concerned respective accused have been established and proved by examining the Doctor and by leading cogent evidence like medical evidence etc. It is further submitted that even at the time of getting the treatment in the hospital the injured Raval Ranchhodbhai Kantibhai gave the history to the Doctor that he has sustained the injuries by dharia and axe by original accused Nos. 1 and 2 of Sessions Case No. 54/2011. It is submitted that merely because there were some contradictions, which cannot be said to be material contradictions fatal to the case of the prosecution, the learned trial Court has committed a grave error in acquitting the original accused by giving benefit of doubt, more particularly, when in the cross case the injured Raval Ranchhodbhai Kantibhai has been convicted by the learned trial Court for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act i.e. in the cross case. It is submitted that therefore the findings recorded by the learned trial Court while acquitting the original accused are perverse and contrary to the evidence on record and thereby the acquittal of the original accused has been resulted into miscarriage of justice. It is submitted that this is a fit case to allow the present Appeal and quash and set aside the impugned judgment and order of acquittal and consequently punish the original accused for the offences for which they were tried.

Making the above submissions, it is requested to allow Criminal Appeal No. 883/2014.

8. Shri K.P. Raval, learned APP appearing on behalf of the State has supported the case of the appellant and has adopted the submissions made by Shri Kotia, learned advocate appearing on behalf of the original complainant and has requested to convict the original accused in Sessions Case No. 54/2011.

9. As such, though served nobody appears on behalf of the original accused in Criminal Case No. 883/2014 arising out of Sessions Case No. 54/2011. Even bailable warrants issued against the original accused i.e. respondents Nos. 2 to 4 herein in Criminal Appeal No. 883/2014 have been served and executed upon them. Despite the above, nobody appears on behalf of respondents Nos. 2 to 4 herein-original accused in Criminal Appeal No. 863/2014, and therefore, we requested Shri Pratik Barot, learned advocate, who is also in the panel of Gujarat High Court Legal Aid Committee, to appear as amicus curie and assist the Court.

10. It is vehemently submitted by Shri Pratik Barot, learned advocate appearing on behalf of the original accused that the present Appeal is an Appeal against

order of acquittal. It is submitted that therefore unless and until it is found that the findings recorded by the learned trial Court are perverse and/or contrary to the evidence on record the same is not required to be interfered with in exercise of appellate jurisdiction. It is submitted that as per catena of decisions even if two views are possible while acquitting the original accused and the learned trial Court while acquitting the accused has taken one view, in that case the entire order is not required to be interfered with in exercise of appellate jurisdiction. In the present case the findings recorded by the learned trial Court are on appreciation of evidence, and therefore, the impugned judgment and order of acquittal is not required to be interfered with by this Court.

10.1 It is further submitted by Shri Barot, learned advocate appearing on behalf of the original accused that in the present case there are material contradictions in the deposition of the original complainant and even the injured-Raval Ranchhodbhai Kantibhai with respect to the weapon, which is used by which accused and also with respect to the place of the incident, and therefore, the learned trial Court has rightly acquitted the original accused by giving benefit of doubt.

10.2 It is vehemently submitted by Shri Barot, learned advocate appearing on behalf of the original accused that as such in the present case the husband of the original complainant-Raval Ranchhodbhai Kantibhai came to the place of the original complainant and he attacked Raval Kadvabhai Lalubhai with deadly weapon like dharia and axe and in self defence the accused might have caused injuries on the injured Raval Ranchhodbhai Kantibhai. It is submitted that as such the defence on behalf of the original accused that the incident had taken place at the house of the father-in-law of the injured-Raval Ranchhodbhai Kantibhai is also not established and proved. It is submitted that on the contrary from the panchnama of the place of the incident the incident had not taken place at the house and the father-in-law of the injured-Raval Ranchhodbhai Kantibhai. It is therefore submitted that in view of the aforesaid material contradictions and the improvement in the deposition by the complainant side, when the learned trial Court has acquitted the original accused by giving benefit of doubt the same is not required to be interfered with by this Court in exercise of appellate jurisdiction.

Making the above submissions, it is requested to dismiss the Criminal Appeal.

11. Heard the learned advocates appearing on behalf of the respective parties at length. We have perused the impugned judgment and order passed by the learned trial Court in Sessions Case Nos. 55/2011 and 54/2011. We have re appreciated the entire evidence on record in both the cases.

11.1 At the outset it is required to be noted that in the present case there were cross cases. The incident occurred in Ravalwas on 22/02/2011 at about 8:30 p.m.. The occurrence and the incident is not disputed by any of the parties. In the said incident Raval Ranchhodbhai Kantibhai (original accused in Sessions

Case No. 55/2011) sustained the following injuries on Raval Kadvabhai Lalubhai (original accused in Sessions Case No. 54/2001) by dharia;

- "a. large depressed fractures are noted in Right fronto-parietal bone.
- b. Thin extradural hematoma on right temporo-parietal region.
- c. Brain constusions with edema are noted in right temporo-parietal lobe and in left fronto-parietal lobe.
- d. ventricles swollen in size. Suggestive of generalised cerebral edema.
- e. left sided shift of middle septum."

In the aforesaid incident original accused No. 1 of Sessions Case No. 54/2011- Raval Kadvabhai Lalubhai also sustained the following injuries caused by Raval Ranchhodbhai (original accused in Sessions Case No. 55/2011);

"C.L.W. of about 5 c.m x 1.5 c.m x bone deep in size on the left hand in between space of little and ring finger of hand. Little finger dislodged from metacarpophalangeal joint"

11.2 The injuries sustained by both the aforesaid persons have been established and proved by the prosecution by leading cogent evidence and examining the Doctor and producing the medical certificate. The aforesaid is as such not disputed by the learned advocates appearing on behalf of the respective accused.

11.3 From the panchnama of the place of the incident it appears that the incident had taken place 20 feet away from the house of Raval Kadvabhai Lalubhai and 18 feet away from the father-in-law of Raval Ranchhodbhai Kantibhai in Ravalwas. The panchnama of the place of incident has been proved by the prosecution. As such, none of the learned advocates are disputing the panchnama of the place of the incident. Under the circumstances, the incident had taken place neither at the house of Raval Kadvabhai Lalubhai nor at the house of father-in-law of Raval Ranchhodbhai Kantibhai as contended by them. There appears to be quarrel because of the incident that had occurred on earlier day between Rajubhai, son of Raval Ranchhodbhai Kantibhai and wife of Raval Kadvabhai Lalubhai, and therefore, the incident had taken place and there seems to be a free fight.

11.4 As observed hereinabove, the entire occurrence and the incident has neither been disputed by the respective accused nor their presence at the time of the incident have been disputed. Even considering the cross cases filed by them the occurrence of the incident and their presence have been established and proved. Considering the evidence on record the prosecution has been successful in proving that Raval Ranchhodbhai Kantibhai caused the injury by dharia on Raval Kadvabhai Lalubhai and Raval Kadvabhai Lalubhai caused the injury on the head of Raval Ranchhodbhai Kantibhai by axe. Under the circumstances, as such, no error has been committed by the learned trial Court in convicting the original accused-Raval Ranchhodbhai Kantibhai in Sessions Case No. 55/2011 for the offences punishable under Section 326 of the Indian Penal Code and Section 135

of the Bombay Police Act. Under the circumstances, Criminal Appeal preferred by the original accused, being Criminal Appeal No. 15676/2013 deserved to be dismissed.

12. In the facts and circumstances of the case, more particularly, considering the fact that Raval Kadvabhai Kantibhai sustained the injury on finger and there was fracture on the finger and even the accused-Raval Ranchhodbhai Kantibhai sustained the injuries on the head, which was caused by Raval Kadvabhai Lalubhai, in the facts and circumstances of the case, it cannot be said that the learned trial Court has committed any error in imposing the sentence of 1 year R.I. The sentence imposed by the learned trial Court in the facts and circumstances of the case cannot be said to be shockingly disproportionate, which calls for the interference of this Court in Criminal Appeal No. 1749/2013 preferred by the State for enhancement of the sentence, and therefore, the same also deserves to be dismissed.

13. Now so far as Criminal Appeal No. 883/2014 preferred by the original complainant against the judgment and order of acquittal passed by the learned trial Court in Sessions Case No. 54/2011 is concerned on re appreciating the entire evidence on record, we are of the opinion that the learned trial Court has committed a grave error in acquitting the original accused-Raval Kadvabhai Lalubhai. From the deposition of Raval Ranchhodbhai Kantibhai-PW 4 examined at Exh. 30-the injured eye witness and the deposition of PW 5-Laxmanbhai Bababhai Raval who has been examined at Exh. 32, who is also the eye witness, it is established and proved that Raval Kadvabhai Lalubhai caused the injury on the head of Raval Ranchhodbhai Kantibhai by axe. Even while taking treatment Raval Ranchhodbhai Kantibhai gave the history to the Doctor in which it was so stated. From the impugned judgment and order passed by the learned trial Court, it appears that the learned trial Court acquitted the original accused by giving benefit of doubt on the ground that there are contradictions in the deposition of the original complainant-Raval Seetaben Ranchhodbhai and the complaint given by her that Raval Gokabhai Ambarambhai caused the injury on the head of Raval Ranchhodbhai Kantibhai and Raval Kadvabhai Lalubhai caused the injury by axe. However, it is required to be noted that in the cross examination Raval Ranchhodbhai Kantibhai had specifically admitted that at the time of the incident Raval Seetaben Ranchhodbhai-original complainant was not present and she was called subsequently. As such she has no personal knowledge about whether Raval Gokabhai Ambarambhai as such caused the injury on the head of Raval Ranchhodbhai Kantibhai or not. However, so far as PW 4 and PW 5 are concerned, they have specifically attributed the role by Raval Kadvabhai Lalubhai. Both of them have specifically stated that Raval Kadvabhai Lalubhai was having axe and he caused the injury by axe on the head of Raval Ranchhodbhai Kantibhai. Considering the aforesaid facts and circumstances of the case, acquittal by the learned trial Court acquitting original accused No. 1 cannot be sustained as the same has resulted into miscarriage of justice. The findings recorded by the learned trial Court acquitting respondent No. 2 are just

contrary to the evidence on record. Under the circumstances, the impugned judgment and order passed by the learned trial Court acquitting respondent No. 2-original accused No. 1 cannot be sustained and the same deserves to be quashed and set aside and respondent No. 2-original accused No. 1 is to be held guilty for the offence punishable under Section 326 of the Indian Penal Code.

Now so far as original accused No. 2-Raval Gokabhai Ambarambhai is concerned, in their deposition PW 4 and PW 5 have specifically stated that though at the time of the incident Raval Gokabhai Ambarambhai was present however Raval Gokabhai Ambarambhai had not participated in commission of the offence and he did not use any weapon. In examination in chief both the aforesaid witnesses have categorically stated that Raval Gokabhai Ambarambhai did not do anything and PW 5 in the examination in chief has stated that he did not do anything and after Raval Ranchhodbhai Kantibhai became unconscious he ran away. Considering the aforesaid facts and circumstances of the case and even considering the deposition of PW 4 and PW 5, it cannot be said that Raval Gokabhai Ambarambhai committed any offence. Under the circumstances, the learned trial Court has rightly acquitted respondent No. 3-original accused No. 2-Raval Gokabhai Ambrambhai.

Similarly, so far as respondent No. 4-original accused No. 3-Raval Bhavnaben Kadvabhai Lalubhai is concerned, nothing has been attributed to her on appreciation of entire evidence on record and no role has been attributed to her in commission of the offence. Under the circumstances, the learned trial Court has rightly acquitted respondent No. 4-original accused No. 3-Raval Bhavnaben Kadvabhai.

To the aforesaid extent the impugned judgment and order of acquittal deserves to be confirmed.

14. We have heard Shri Pratik Barot, learned advocate appearing on behalf of the original accused in Criminal Appeal No. 883/2014 on sentence. He has stated that the incident had taken place all of a sudden because of small dispute and it was a free fight, and therefore, maximum punishment provided under Section 326 might not be imposed and/or inflicted. Relying upon the decision of the Hon"ble Supreme Court in the case of Sakharam v. State of Madhya Pradesh and Anr reported in , (2015) 10 SCC 557 he has requested to impose lesser punishment.

15. Having heard the learned advocates appearing on behalf of original accused No. 1-Raval Kadvabhai Lalubhai and considering the fact that in fact he caused injury by axe on Raval Ranchhodbhai Kantibhai-original accused in Sessions Case No. 55/2011 on his head, however it seems to be a free fight and the dispute was with respect to the earlier quarrel between the son of the injured-Raval Ranchhodbhai Kantibhai and the wife of Raval Kadvabhai Lalubhai and Raval Bhavnaben Kadvabhai, we are of the opinion that while convicting respondent No. 2-original accused No. 1 for the offence punishable under Section 326 of the

Indian Penal Code if punishment of 3 years RI is imposed it will meet the ends of justice and it can be said to be just and adequate punishment commenced with the gravity of the offence.

16. In view of the above, Criminal Appeal No. 1749/2013 preferred by the State is hereby dismissed.

16.1 Criminal Appeal No. 1576/2013 preferred by the original accused of Sessions Case No. 55/2011 is hereby dismissed and the impugned judgment and order of conviction passed by the learned Sessions Judge, Mehsana in Sessions Case No. 55/2011 convicting the original accused-Raval Ranchhodbhai Kantibhai for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act is hereby confirmed. It is reported that original accused-appellant in Criminal Appeal No. 1576/2013 was on bail during pendency of the present Appeal. His bail bond stands cancelled and time to surrender to undergo the remaining sentence is hereby granted up to 16/03/2016 and now he shall surrender before the concerned Court on or before 16/03/2016, without fail.

16.2 Criminal Appeal No. 883/2014 is hereby partly allowed. The impugned judgment and order passed by the learned Sessions Judge, Mehsana in Sessions Case No. 54/2011 is hereby quashed and set aside so far as acquitting original accused No. 1-Raval Kadvabhai Lalubhai is concerned and original accused No. 1 is hereby held guilty for the offences punishable under Section 326 of the Indian Penal Code and Section 135 of the Bombay Police Act and is sentenced to undergo 3 years R.I. with a fine of Rs. 1000/- and in default to undergo further 6 months S.I. for the offence punishable under Section 326 of the IPC and is sentenced to undergo 7 days S.I with a fine of Rs. 1000/- and in default to undergo 2 days S.I for the offence punishable under Section 135 of the Bombay Police Act.

16.3 The impugned judgment and order of acquittal passed by the learned Sessions Judge, Mehsana in Sessions Case No. 54/2011 so far as acquitting original accused Nos. 2 and 3 is hereby confirmed.

16.4 On conviction of original accused No. 1, original accused No. 1 shall surrender before appropriate Court to undergo remaining sentence as per the present judgment and order within a period of four weeks from today, failing which he shall be arrested by issuing non-bailable warrant. It goes without saying that any sentence undergone by original accused No. 1 shall be given set off in accordance with law.