

*ITEM NO.109

COURT NO.6 SECTION IIA
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1159 OF 2003

YAKUB MOHAMMED BAX & ORS.

Appellant (s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(With appln(s) for permission to file additional documents and exemption from filing O.T. and permission to file additional documents and exemption from filing O.T. and with office report)

Date: 26/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. Pradip K. Ghosh, Sr. Adv.
Mr. Huzeba Ahmadi, Adv.
Mr. Rauf Rahim, Adv.
Mr. Yadunandan Bansal, Adv.
Mr. Abhijat P. Medh, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following
O R D E R

The conviction and sentence of appellant No. 3 herein - Rashidbhai Mohammedbhai Ali Mallu - are upheld and his bail bonds are cancelled. He is directed to be taken into custody to serve the sentence.

While maintaining the conviction of the appellants No. 1 and 2 - Yakub Mohammed Bax and Iqbal Mohammed Bax - the sentence is altered to the period already undergone by these two appellants. However, the fine and default clause shall remain intact. Bail bonds of appellants No. 1 and 2 herein are discharged.

The impugned judgment of the High Court is modified to the extent stated above. The Appeal is disposed of.

(Rajesh Dham) (Indu Satija)
Court Master Court Master
(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 1159 OF 2003

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Appellant (s)

VERSUS

STATE OF GUJARAT

Respondent(s)

O R D E R

Heard the learned counsel for the parties.

This Appeal, by special leave, has been filed by the appellants against the impugned judgment of the High Court of Gujarat dated 26.03.2003.

The High Court by the impugned judgment dismissed the appeal filed by the appellants herein against their conviction by the Additional Sessions Judge, Bharuch.

The Additional Sessions Judge convicted all the appellants for the offences punishable under Sections 302 read with Sections 147, 148, and 149 IPC and also for the offence punishable under Section 135 of the Bombay Police Act and sentenced them to rigorous imprisonment for life and fine of Rs. 500/- in default simple imprisonment for 30 days in so far as the offences punishable under the IPC are concerned, and also sentenced the appellants to simple imprisonment for 10 days and fine of Rs. 100/- in default simple imprisonment for 7 days for the offence under the Bombay Police Act.

The facts of the case have already been stated in the impugned judgment of the High Court, and hence we are not repeating them here.

On the facts of the case, we uphold the conviction and sentence of appellant No. 3 herein - Rashidbhai Mohammedbhai Ali Mallu since he is said to have delivered blow on the head of the deceased.

However, on the facts and circumstances of the case and to do substantial justice between the parties, we are of the opinion that ends of justice will be sub-served if, while maintaining the conviction of the appellants No. 1 and 2 - Yakub Mohammed Bax and Iqbal Mohammed Bax - who are said to

have struck only on the legs of the deceased, we alter the sentence to the period already undergone by these two appellants. We order accordingly. However, the fine and default clause shall remain intact.

By order dated 15.09.2003 this Court had granted bail to the appellants herein. Since we have upheld the conviction and sentence of appellant No. 3 herein - Rashidbhai Mohammedbhai Ali Mallu, his bail bonds are cancelled and he is directed to be taken into custody to serve the sentence.

Bail bonds of the other two appellants herein - Yakub Mohammed Bax and Iqbal Mohammed Bax - are discharged.

The impugned judgment of the High Court is modified to the extent stated above.

The Appeal is disposed of accordingly.

.....J.
(MARKANDEY KATJU)

.....J.
(T.S. THAKUR)

NEW DELHI
JULY 26, 2010.