



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 565 OF 2018

Suresh S/o Narayan Sangekar
Age: Major, Occu : Service,
R/o: Police Colony, Hingoli

.... Appellant

Versus

The State of Maharashtra
Through The Police Station Officer,
City Police Station, Kalmanuri,
Ta. Kalmanuri, Dist. Hingoli

.... Respondent

.....
AND

CRIMINAL APPEAL NO. 563 OF 2018

Ravi S/o Subhash Satbhai
Age: 24 years, Occu: Service,
R/o: Morwadi,
Taluka : Kalamnuri, District Hingoli

.... Appellant

Versus

The State of Maharashtra
Through : The Police Station Officer,
City Police Station, Kalmanuri,
Ta. Kalmanuri, Dist. Hingoli

.... Respondent

....
AND

CRIMINAL APPEAL NO.540 OF 2018

1. Subhash Shankerappa Satbhai
Age: 51 years, Occu: Service,
R/o. Morwadi, Tq. Kalmanuri,
Dist. Hingoli

2. Gajanan Shankerappa Satbhai
Age: 41 years, Occu: Agri.,
R/o. As above

[As per Hon'ble Courts order dtd. 17/10/2023
separate Cri. Appeal No.76/2024 filed by Appellant No.2]

3. Shivanand Shankerappa Satbhai
Age: 28 Yrs., Occu. Agri.,
R/o. As above

... Appellants

Versus

1] The State of Maharashtra

2] Nandabai Shivanand Waikule
Age: 50 years, Occu: Household,
R/o. Palodi, Tq. Kalamnuri,
Dist. Hingoli

[Amendment made as per Court's order dtd. 22.01.2024]

... Respondents

....

AND

CRIMINAL APPEAL NO. 76 OF 2024

Gajanan Shankarappa Satbhai
Age: 50 yeras, Occupation: Agriculture,
R/o. Morwadi, Tq. Kalamnuri,
Dist. Hingoli

.... Appellant

Versus

1] The State of Maharashtra

2] Ganesh Bapurao Waykole
Age: 45 years, Occupation: Agriculture,
R/o. Padoli, Tq. Kalamnuri,
Dist. Hingoli

3] Nanadabai w/o Shivanand Waykole
Age: 42 years, Occupation: Agriculture,
R/o. Padoli, Tq. Kalamnuri,
Dist. Hingoli

.... Respondents

.....

AND

CRIMINAL APPEAL NO.518 OF 2020

Ganesh S/o Bapurao Waykole
Age: 40 yrs, Occu: Agriculture,
R/o., At. Palodi, Post Kalamnuri
Tq, Kalamnuri, Dist. Hingoli

... Appellant

Versus

1] Subhash Shankerappa Satbhai
Age: 51 years, Occ.

2] Gajanan Shankerappa Satbhai
Age: 41 years, Occ. Agri.

3] Shivanand Shankerappa Satbhai
Age: 28 years, Occ. Agri.

4] Ravi S/o Subhash Satbhai
Age: 24 years, Occ. Service

5] Ramesh S/o Subhash Satbhai
Age: 20 years, Occ. Agril

6] Shankerappa S/o Subhanji Satbhai
Age: 90 years, Occ. Agril

7] Mankarnabai W/o Subhash Satbhai
Age: 40 years, Occ. Household,
Res. No.1 to 7 are R/o Morwadi
Tq. Kalamnuri, Dist. Hingoli

8] Hari S/o Santosh Hingankar
Age: 23 years, Occ. Service
R/o, Palodi, At Present Morwadi,
Tq. Kalamnuri, Dist. Hingoli

9] Sow. Pratima W/o Gajanan Satbhai
Age: 30 years, Occ. Household

10] Sow. Joyti W/o Shivanand Satbhai
Age: 27 years, Occ. Household

11] Suresh S/ Narayan Sangekar
Age: Major years, Occ. Service
Res. No.9 to 11 are R/o Morwadi
Tq. Kalamnuri, Dist. Hingoli

12] The State of Maharashtra

... Respondents

....
AND

**APPLICATION FOR LEAVE TO FILE APPEAL BY STATE NO.91 OF
2020**

The State of Maharashtra
Through: Police Station Officer,
Police Station Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli

... Applicant

Versus

1] Subhash s/o Shankerappa Satbhai,
Age: 48 years, Occu: Agriculture

2] Gajanan s/o Shankerappa Satbhai,
Age: 38 years, Occu: Agriculture

3] Shivanand s/o Shankerappa Satbhai,
Age: 25 years, Occu: Agriculture

4] Ravi s/o Subhash Satbhai
Age: 24 years, Occ: Agriculture

5] Ramesh s/o Subhash Satbhai
Age: 20 years, Occu: Agriculture

6] Shankerappa s/o Subhanji Satbhai
Age: 90 years, Occu: Agriculture

7] Mankarnabai w/o Subhash Satbhai
Age: 40 years, Occu: Household,
Resp Nos. 1 to 7 are R/o Morwadi,
Tq. Kalamnuri, Dist. Hingoli

8] Hari s/o Santosh Hingankar
Age: 23 years, Occu: Service

9] Sow. Pratima w/o Gajanan Satbhai
Age: 38 years, Occu: Household

10] Sow. Jyoti w/o Shivananda Satbhai
Age: 27 years, Occu: Household

11] Suresh s/o Narayan Sangekar
Age: Major, Occu: Service,
Resp Nos.8 to 11 are R/o. Palodi
at present Morwadi,
Tq. Kalamnuri, Dist. Hingoli

... Respondents

Appearance :-

Mr. V. D. Sapkal [Senior Advocate] i/b Mr. S. R. Sapkal, Advocate for the Appellants in Appeal Nos.565/2018 and 563/2018 and for Respondent Nos. 4 and 11 in ALS No.91/2020

Mr. S. J. Salunke, Advocate for the Appellant in Appeal No.76/2024 and for Respondent No.2 in ALS No.91/2020

Mr. Satej S. Jadhav, Advocate for Appellants in Appeal No.540/2018 and for Respondent Nos.1, 3, 5 to 10 in ALS No.91/2020

Mr. Dhananjay M. Shinde, Advocate for Appellant in Appeal No.518/2020

Mr. S. D. Ghayal, Addl. PP for Respondent – State in Appeals and for Applicant in ALS No.91/2020

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved On : 25/09/2024
Pronounced On : 22/11/2024**

COMMON JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. As all these Appeals are directed against the Judgment and Order dated 30/07/2018, passed by the learned Additional Sessions Judge, Hingoli, in Sessions Trial No.36/2015, they are decided by this Common Judgment. The operative order of the impugned Judgment reads as under :

"1. Accused Nos.1 Subhash Shankerappa Satbhai, No.2 Gajanan Shankerappa Satbhai, 3. Shivanand Shankerappa Satbhai and 11. Suresh Narayan Sangekar are convicted under section 235 (2) of Code of Criminal Procedure for an offence punishable under Section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.25,000/- (Rupees twenty five thousand) each. In default to suffer rigorous imprisonment for one year.

2. Accused Nos.1 Subhash Shankerappa Satbhai, No.2 Gajanan Shankerappa Satbhai, 3. Shivanand Shankerappa Satbhai and 4. Ravi Subhash Satbhai and accused No.11 Suresh Narayan Sangekar are convicted under section 235 (2) of Code of Criminal Procedure for an offence punishable under section 324 of Indian Penal Code and sentenced to suffer Rigorous imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand each). In default to suffer rigorous imprisonment for three months.

3. Accused No.6 Shankerappa Satbhai and accused NO.9 Pratima Gajanan Satbhai are held guilty for an offence punishable under Section under section 323 of Indian Penal Code. Instead of sending them in jail, they be released on probation on their executing bond in a sum of Rs.10,000/- for a period of one year for their good behaviour under Section 4 of the Probation of Offenders Act. However, they shall pay Rs.5,000/- each compensation to Sakhubai Bapurao Waikule within 15 days.

4. Accused No.5 Ramesh Subhash Satbhai, No.7 Mankarnabai Subhash Satbhai, No.8 Hari Santosh Hingankar and No.10 Jyoti w/o Shivanand Sangekar are hereby acquitted under Section 235 (1) of Code of Criminal Procedure for offence under Section 147, 148, 302, 307 read with section 149 of Indian Penal Code and under Section 120 (B) of Indian Penal Code.

5. *Accused Nos.1 to 4, 6, 9 and 11 are acquitted under Section 235 (1) of Code of Criminal Procedure for offence punishable under Section 147, 148, 307 read with Section 149 and Section 120 (B) of Indian Penal code.*

6. *Set off under Section 428 of Code of Criminal Procedure be given to convicted accused.*

7. *After realization of fine amount Rs.75,000/- be given to the Nandabai w/o Shivanand Waikule (widow of deceased) and Rs.25,000/- be given to the injured Ganesh Waikule as compensation.*

8. *Muddemal property being worthless be destroyed after appeal period.*

9. *Accused No.5, 7, 8 and 10 are directed to execute personal Bond for Rs.15,000/- each with surety in the like amount as per section 437A of Code of Criminal Procedure.*

10. *Copy of Judgment be given to convicted accused free of costs.*

11. *Accused are informed about their right to appeal to Honourable High Court."*

2. Appeal Nos.540/2018, 563/2018, 565/2018 and 76/2024 filed by the Appellants / Convicts are against conviction. Appeal No.518/2020 filed by the Informant and ALS No.91/2020 filed by the State are against acquittal.

3. The Prosecution's case, as revealed from the Police Report is as under :-

[I] The Informant and his family members on the one hand and the Accused / Convicts on the other hand were in dispute in respect of the part of agricultural land bearing Gat No.136, situated at Village Palodi, District Hingoli. Their agricultural lands are adjacent to each other. Both were claiming possession and ownership over the disputed land. On 01/06/2015 around 8.30 a.m., Shivanand Bapurao Waikule [hereinafter referred to as 'the Deceased'] and his wife proceeded towards the agricultural land with agricultural equipments. Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai] and Accused No.6

[Shankerappa Subhanji Sathbai] obstructed them from proceeding further in the agricultural land. They were constrained to return. The Deceased informed his brother - Ganesh Bapurao Waikule [PW - 1] about the same. The Informant along with his mother and wife proceeded towards the agricultural field. They met Deceased and his wife on the way. They all went ahead to ask the aforesaid Accused as to why Deceased was obstructed. Heated exchanges took place between both the sides. The other Accused were also present on the spot. Accused No.1 [Subhash Shankerappa Satbhai] assaulted the Informant with koyta. Accused No.4 [Ravi Subhash Sathbai], Accused No.5 [Ramesh Subhash Satbhai], Accused No.8 [Hari Santosh Hingankar], Accused No.9 [Pratima Gajanan Satbhai], Accused No.10 [Jyoti Shivanand Satbhai] and Accused No.11 [Suresh Narayan Sangekar] surrounded the Informant, Deceased and the witnesses with sticks, axe, koyta and stones in their hands. The Informant was assaulted by Accused No.1 [Subhash Shankerappa Satbhai] and Accused No.11 [Suresh Narayan Sangekar] with koyta on his head and other Accused assaulted the Informant on the hands, legs and other parts of body. The Informant fell down. The Informant's mother and the Deceased intervened. The Accused assaulted Informant's mother with stones, stick and axe. The Accused persons assaulted the Deceased with stick, axe, koyta and stones on the head, backside of neck and other parts of body. The wives of Informant and Deceased were assaulted by the Accused with stones and sticks. Due to hue and cry, the neighbouring agriculturist reached on the spot and all the Accused fled. The injured were taken to the Hospital for treatment. Deceased succumbed to the injuries. The statement of the Informant was recorded by the Police and Crime No.70/2015 came to be registered with Kalamnuri Police Station for the offence

punishable under Sections 302, 307, 120[B], 143, 147, 148 and 149 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] against the Accused persons.

[II] The Inquest was done. Dead body was referred for the Postmortem. The Spot Panchnama was conducted. The statement of witnesses were recorded. The supplementary statement of the Informant was recorded. The Accused were arrested during the course of investigation. Two [2] axe, one [1] koyta and one [1] stick came to be seized at the instance of Accused No.7 [Mankarnabai Subhash Satbhai] while in police custody. One [1] axe came to be seized at the instance of Accused No.2 [Gajanan Shankerappa Satbhai] while in police custody. The clothes of Accused, Deceased and witnesses were seized. The seized Articles were referred to the Chemical Analyzer for examination. The Postmortem Report and the medical papers of witnesses were collected. On completion of the investigation, the Charge-sheet and supplementary Charge-sheet came to be submitted by the Investigating Officers.

[III] On committal, the learned Trial Court framed the Charge against the Accused for the offence punishable under Sections 147, 148, 302 r/w Section 149, 307 r/w Section 149 and 120[B] of IPC vide Exhibit – 73. The Accused pleaded not guilty and claimed to be tried. To prove the Charge, Prosecution examined in all seventeen [17] witnesses and brought on record the relevant documents. After the Prosecution closed their evidence, the statement of Accused came to be recorded under Section 313[1][b] of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC']. The Accused denied the case and evidence of the Prosecution. According to the Accused, the Informant, witnesses and Deceased were assaulted by the unknown persons and when they came to

know about the same, they went to rescue them and in that incident, they suffered injuries. The defence witness - Dr. Madhav Sambhaji Vibhute came to be examined to show that, at the relevant time, Accused No.10 [Jyoti Shivanand Satbhai] was hospitalized. After the defence closed their evidence, the learned Trial Court heard all the sides and after appreciating the evidence on record, passed the impugned Judgment and Order.

4. It is submitted by the learned Senior Advocate for the Appellants, in Appeal Nos. 565/2018 and 563/2018 that, the Charge, which was framed by the learned Trial Court, was with the aid of Section 149 of IPC, however, the Appellants are acquitted for the offence punishable under Sections 147, 148 and 149 of IPC and convicted individually for their individual act, which has caused prejudice to the Appellants. There are lot of improvements / omissions in the testimony of the Informant and the injured witnesses. Though it has come in the evidence of Prosecution witnesses, that two of the assailants, had covered their faces, no Test Identification Parade [TIP] was held. The exaggeration in the testimony of the witnesses is writ large. The Appellants had also suffered injuries on their person and this shows that, the Prosecution suppressed the genesis and clear picture is not brought before the Court. The place of incident belonged to the Appellants. The statement of PW – 2 [Madhavrao Dhurpatrao Bangale], who is examined as the eyewitness, is recorded after five [5] days from the date of incident and his evidence goes to show that, he reached the spot after the incident was over. It has come in his evidence that, the spot of incident was at height and was not visible from his land. The evidence of PW – 4 [Sakhubai Bapurao Waikule], who is examined as the eyewitness to the incident, shows that, her statement was recorded after twelve [12] days from the

date of incident. The evidence of PW – 6 [Nandabai Shivanand Waikule], who is examined as the eyewitness, is not corroborated by corresponding injuries on the Deceased and the Informant. The learned Trial Court did not appreciate the evidence in correct perspective and therefore, the conviction and sentence recorded by the learned Trial Court be quashed and set aside. The Judgments cited by him would be considered in the later part of this Judgment at appropriate stage.

5. It is submitted by the learned Advocates for the Appellants, in Appeal No.540/2018 and 76/2024 that, the incident had taken place in the land belonging to the Appellants. The Appellants were also injured and they had taken treatment in the Hospital. After they were discharged from the Hospital, they were taken in custody and therefore, they had no opportunity to lodge the FIR about the incident. The Prosecution has examined injured eyewitnesses. Under such scenario, the question is, who was the aggressor. The incident did not take place as deposed by the witnesses. There are discrepancies in the testimony of the eyewitnesses. The discovery of weapons at the instance of Accused No.7 [Mankarnabai Subhash Satbhair] would be of no assistance, considering the role attributed to her. The discovery of axe at the instance of Accused No.2 [Gajanan Shankerappa Satbhair] in absence of blood stains would be of no assistance to link with the Crime. On the same evidence, the Accused i.e. Accused No.5 [Ramesh Subhash Satbhair], Accused No.7 [Mankarnabai Subhash Satbhair], Accused No.8 [Hari Santosh Hingankar] and Accused No.10 [Jyoti Shivanand Satbhair] are acquitted for all the charges. There was no intention to cause death and there was absence of *mens rea*. Therefore, the offence would fall in the category of Section 304 [Part-I] and not 302 of IPC. The conviction be curtailed to lesser offence.

6. It is submitted by the learned Addl. PP that, the evidence of injured eyewitnesses shows that, the Appellants used deadly weapons such as, axe, koyta, lathi and stones. Though they are articles used in the agricultural operations, when used in the Crime, they become deadly weapons. The case is based on direct evidence of injured witnesses corroborated by medical evidence. There is immediate report by the Informant in the Hospital, which reflects the names of Appellants / Accused. FIR is not an encyclopedia so as to include each and every aspect of incident. By examining the Medical Officer in whose evidence, the Postmortem Report is exhibited, the Homicidal Death of Informant's brother is proved and the revenue record is exhibited to show as to who was in possession of the land. The evidence on record shows that, there was dispute between both the sides on account of land. The Prosecution has also proved the injuries on the Appellant / Accused. False defence, that the assaulters were unknown person, is taken. The leave to appeal be granted and the order of acquittal be quashed and set aside.

7. The learned Advocate for the Informant submits that, the case is based on the testimony of injured eyewitnesses. False defence is taken by the Accused / Appellants. The defence of missed blows on the Prosecution witnesses is unacceptable. There is no slightest evidence to show that, the Accused / Appellants acted in self defence. The counter case of the Accused / Appellants filed under Section 156[3] of Cr.PC was dismissed. There is evidence of independent witness, who was having his land adjacent to the place of incident. Considering the conduct of the Accused / Appellants, the inconsistencies are to be ignored. The common object is established from the Prosecution witnesses. It is immaterial as to who caused which injury. The Trial Court's

Judgment for acquittal be set aside and all the Accused / Appellants be convicted for all the charges. The Judgments cited by him would be considered in the later part of this Judgment at appropriate stage.

8. Scrutinized the evidence available on record. The Prosecution's case is based on the testimony of the eyewitnesses. PW – 1 [Ganesh Bapurao Waikule], PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule], who are the brother, mother and sister-in-law, respectively of Deceased – Shivanand Bapurao Waikule, are examined as the eyewitnesses to the incident. The one, who reached on the spot of incident, is examined as PW – 2 [Madhavrao Dhurpatrao Bangale]. The Prosecution's case mainly rests on the testimony of these witnesses. From their evidence, it is crystal clear that, there is no dispute on the following aspects :-

- [i] The land of PW – 1 [Ganesh Bapurao Waikule], PW – 4 [Sakhubai Bapurao Waikule], PW – 6 [Nandabai Shivanand Waikule] and land of the Accused / Convicts are adjacent to each other at village Palodi, District Hingoli ;
- [ii] There is dispute in respect of agricultural land between the said witnesses and the Accused / Convicts ;
- [iii] The Civil Suit is filed by the said witnesses against the Accused / Convicts in respect of seven [7] Acre agricultural land ;

9. The Crime relating to the incident, which gave rise to the above referred Sessions case, was registered on the report at Exhibit – 75 by PW – 1 [Ganesh Bapurao Waikule]. Recording of his statement, which was in the nature of report, which formed the basis to register the said Crime, is corroborated by the evidence of Police Officer, who recorded the said report and is examined as PW – 9 [Vinayak Abhiman Lambe]. His evidence shows that, on

01/06/2015, when he was the Police Station Officer at Kalamnuri Police Station, information was received around 10.00 a.m. that, fight was going on in village Palodi and immediately, he got the information that, the injured were taken to Rural Hospital at Kalamnuri. With the permission of the Doctor, he recorded the statement of PW – 1 [Ganesh Bapurao Waikule] as per his say, wherein, he disclosed the incident and names of the assailants.

10. The evidence of PW – 1 [Ganesh Bapurao Waikule] shows that, the large part of his evidence is in the nature of omissions in his report. His evidence indicates that, his supplementary statement was also recorded. It is a settled position under the law that, the FIR is not an encyclopedia. As observed earlier, his statement, which was treated as the FIR, was registered when he was hospitalized. Excluding the omissions, which are proved through the Police Officer, who recorded his statement, his evidence shows that, on 01/06/2015, Accused No.3 [Shivanand Shankerappa Satbhai] gave blow of axe on his head and there was heavy bleeding from his head. Accused No.4 [Ravi Subhash Satbhai] gave blow of koyta on his foot. Accused No.5 – Ramesh Subhash Satbhai threw big stone on his person. His mother [PW – 4], his wife and his brother's wife [PW – 6] ran towards neem tree to save their lives raising uproar for help. Prakash Waikule and Madhavrao Bangale [PW – 2] reached on the spot and he, his mother [PW – 4] were taken to the Hospital. His brother [Deceased] died due to assault by the Accused / Appellants. He denied the suggestion that, he and Deceased were addicted to liquor and were in money lending business and they were assaulted by unknown persons. His supplementary statement was recorded on 13/06/2015. Though in his cross-examination, it has come that, he did not disclose the Doctor at Kalamnuri and at Hingoli as to how he suffered the

injuries and who caused the injuries to him, the same would not be sufficient to disbelieve him, as his statement, which was treated as the FIR, was recorded shortly after the incident in the Hospital.

11. The evidence of PW – 4 [Sakhubai Bapurao Waikule] shows that, on the day of incident, her son [Deceased] informed telephonically that, the family members of Satbhai [Accused / Appellants] obstructed in cultivation of the land and so, she, her son – PW-1 [Ganesh Bapurao Waikule] and his wife – Malti went towards the field. Deceased and his wife - Nandabai Shivanand Waikule [PW – 6] met them near the field. They all went towards their field. PW – 1 [Ganesh Bapurao Waikule] asked Accused No.1 [Subhash Shankerappa Satbhai] as to why obstruction was created, to which, Accused No.1 [Subhash Shankerappa Satbhai] told that, he had asked PW – 1 [Ganesh Bapurao Waikule] not to come towards the land. Accused No.1 [Subhash Shankerappa Satbhai] took out the koyta from the cattle shed and hit on the neck of PW - 1 [Ganesh Bapurao Waikule], which was obstructed by PW - 1 [Ganesh Bapurao Waikule] with his right hand. Accused No.4 [Ravi Subhash Satbhai] and Accused No.11 [Suresh Narayan Sangekar] came from the backside of cattle shed. The Accused No.9 [Pratima Gajanan Satbhai], Accused No.10 [Jyoti Shivanand Satbhai] and Accused No.8 [Hari Santosh Hingankar] came from the backside of cattle shade with sticks in their hands. Accused No.11 [Suresh Narayan Sangekar] gave blow of koyta on the head of PW – 1 [Ganesh Bapurao Waikule], Accused No.2 [Gajanan Shankerappa Satbhai] assaulted PW – 1 [Ganesh Bapurao Waikule] by axe. Accused No.4 [Ravi Subhash Satbhai] gave blow by koyta on right leg of PW – 1 [Ganesh Bapurao Waikule] and Accused No.1 [Subhash Shankerappa Satbhai] gave blow by koyta on left leg of PW – 1 [Ganesh Bapurao Waikule].

12. Further evidence of PW – 4 [Sakhubai Bapurao Waikule] shows that, the Deceased [Shivanand Bapurao Waikule] intervened and Accused No.2 [Gajanan Shankerappa Satbhai] caught hold his waist and took him aside. Accused No.1 [Subhash Shankerappa Satbhai] asked PW – 1 [Ganesh Bapurao Waikule] whether he want land or well and he will not leave him alive. Accused No.1 [Subhash Shankerappa Satbhai] gave blow of koyta on the backside of neck of the Deceased. Accused No.4 [Ravi Subhash Satbhai] gave blow of koyta on the head of Deceased from left side. Accused No.11 [Suresh Narayan Sangekar] gave blow of koyta on backside of waist of the Deceased. The Deceased fell down. Accused No.2 [Gajanan Shankerappa Satbhai] gave blow by axe on calf of the Deceased. She raised alarm and Accused No.6 [Shankerappa Subhanji Satbhai] hit her on the head by stone. Accused No.9 [Pratima Gajanan Satbhai] and Accused No.10 [Jyoti Shivanand Satbhai] beat her by stick and she fell down. She prayed the Accused by folding hands not to beat them. Accused No.8 [Hari Santosh Hingankar] beat her daughters-in-law with stick. The daughters-in-law ran towards neem tree raising uproar. Prakash Waikule and Madhavrao Dhurpatrao Bangale [PW – 2] heard the uproar and reached on the spot of incident. The Accused fled on two motorcycles, triple seat and some ran away. Deceased asked Madhavrao Dhurpatrao Bangale [PW – 2] to provide him water. Prakash Waikule and Madhavrao Dhurpatrao Bangale [PW – 2] tied the scarf on the injuries of PW – 1 [Ganesh Bapurao Waikule] and the Deceased. The Villagers shifted them to the Hospital. They were initially taken to Hospital at Kalamnuri and thereafter, PW – 1 [Ganesh Bapurao Waikule] and she were taken to the Hospital at Nanded.

13. The above evidence of PW – 4 [Sakhubai Bapurao Waikule] is excluding the omissions in her previous statement. Her evidence shows that, she was hospitalized for twelve [12] days and her statement was recorded after her discharge. It has come in the cross-examination of PW – 15 [Ravikant Amrut Sonune], who was the Police Inspector at Kalamnuri Police Station at the relevant time and who carried the major part of investigation, that he tried to record the statement of injured lady, but she was not in mental condition to give statement. The Prosecution also examined the Doctor, who treated PW – 1 [Ganesh Bapurao Waikule] and PW – 4 [Sakhubai Bapurao Waikule] at Nanded, as PW – 5 [Dr. Santosh Virchand Porwal]. Though it has come in the cross-examination of PW – 5 [Dr. Santosh Virchand Porwal] that, the patient i.e. PW – 1 [Ganesh Bapurao Waikule] and PW – 4 [Sakhubai Bapurao Waikule] were conscious and oriented, it is clear that, the statement of PW – 4 [Sakhubai Bapurao Waikule] was recorded immediately after her discharge from the Hospital. Thus, the delay in recording her statement will not be fatal. She denied the suggestion that, when she reached on the spot of incident, her sons were lying in an injured condition on the spot of incident. In the light of her above discussed evidence, her non-disclosure of names of the assailants to the Doctor would not be fatal for the Prosecution.

14. The evidence of PW – 6 [Nandabai Shivanand Waikule] shows that, the incident took place on 01/06/015. Deceased and the labourers started towards their field and she went behind them with break fast. Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai] and Accused No.6 [Shankerappa Subhanji Satbhai] obstructed the agricultural implements near their field and they told them that, they have no land and no way towards the side they were proceeding. Deceased

asked the labourers to return and he will pay Rs.100/- to them, upon which, Accused No.2 [Gajanan Shankerappa Satbhai] told them to return and he will pay Rs.200/- to each of them. Accused No.3 [Shivanand Shankerappa Satbhai] asked as to why he should be paid and abused. The labourers left. The said Accused started quarreling with the Deceased. Deceased gave phone call to his brother – PW – 1 [Ganesh Bapurao Waikule]. She and Deceased started returning to the village. On their way back, PW – 4 [Sakhubai Bapurao Waikule], her brother-in-law – PW – 1 [Ganesh Bapurao Waikule] and his wife met them. The Deceased disclosed the said incident to PW – 1 [Ganesh Bapurao Waikule]. Thereafter, they all went to their field and when they reached near the hut, Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.1 [Subhash Shankerappa Satbhai], Accused No.6 [Shankerappa Subhanji Satbhai] and Accused No.7 [Mankarnabai Subhash Satbhai] were present at the hut. PW – 1 [Ganesh Bapurao Waikule] questioned Accused No.1 [Subhash Shankerappa Satbhai] as to why their agricultural implements were obstructed, upon which, Accused No.1 [Subhash Shankerappa Satbhai] replied that, he will tell as to why the implements were obstructed.

15. Further evidence of PW – 6 [Nandabai Shivanand Waikule] shows that, Accused No.1 [Subhash Shankerappa Satbhai] took out the koyta from the hut and gave blow on the neck of PW – 1 [Ganesh Bapurao Waikule], which he obstructed by his right hand. Accused No.4 [Ravi Subhash Satbhai], Accused No.5 [Ramesh Subhash Satbhai], Accused No.11 [Suresh Narayan Sangekar], Accused No.2 [Gajanan Sankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.8 [Hari Santosh Hingankar] and their wives came from the backside of hut. Accused

No.11 [Suresh Narayan Sangekar] took out koyta from the hut and gave blow on the head of PW – 1 [Ganesh Bapurao Waikule]. Accused No.3 [Shivanand Shankerappa Satbhai] and Accused No.2 [Gajanan Shankerappa Satbhai] gave blow of axe on the head of PW – 1 [Ganesh Bapurao Waikule]. PW – 1 [Ganesh Bapurao Waikule] fell down. Accused No.2 [Gajanan Shankerappa Satbhai] and Accused No.3 [Shivanand Shankerappa Satbhai] gave blow of axe on the back of PW – 1 [Ganesh Bapurao Waikule]. Accused No.1 [Subhash Shankerappa Satbhai] gave blow by koyta on right calf and front portion of foot of PW – 1 [Ganesh Bapurao Waikule]. Accused No.1 [Subhash Shankerappa Satbhai] said not to keep PW – 1 [Ganesh Bapurao Waikule] alive.

16. In her further evidence, PW – 6 [Nandabai Shivanand Waikule] deposed that, Accused No.1 [Subhash Shankerappa Satbhai] gave blow by koyta on the neck of Deceased. Accused No.2 [Gajanan Shankerappa Satbhai] gave blow by axe on the head of Deceased. Deceased fell down. Accused No.11 [Suresh Narayan Sangekar] gave blow by koyta on the waist of Deceased. Accused No.2 [Gajanan Shankerappa Satbhai] gave blow by axe on calf of the Deceased. She, her sister-in-law and mother-in-law [PW – 4] ran downward raising alarm. Accused No.6 [Shankerappa Subhanji Satbhai] hit stone on the head of her mother-in-law [PW – 4]. On hearing their uproar, Madhavrao Dhurpatrao Bangale [PW – 2] and Prakash Waikule came on the spot. PW – 2 [Madhavrao Dhurpatrao Bangale] provided water to the Deceased and tied the scarf to the neck of Deceased. Prakash Waikule tied the scarf to the head of PW – 1 [Ganesh Bapurao Waikule]. The wife of PW – 1 [Ganesh Bapurao Waikule] went for calling the people. They all were taken to the Hospital by the Villagers. In the Hospital, she came to know that, her husband died. Her brother-in-law - PW – 1 [Ganesh

Bapurao Waikule] and mother-in-law - PW – 4 [Sakhubai Bapurao Waikule] were taken to Nanded and she was treated at Kalamnuri.

17. The above evidence of PW – 6 [Nandabai Shivanand Waikule] is excluding the improvements or omissions from / in her statement given to the Police. Her above discussed evidence remained unshaken in the cross-examination.

18. The evidence of PW – 2 [Madhavrao Dhurpatrao Bangale] shows that, he was the resident of village Palodi. His agricultural land was adjacent to the land of Accused persons. He knew PW – 1 [Ganesh Bapurao Waikule] and Deceased. He deposed that, the incident took place on 01/06/2015. When he was working in his agricultural field in between 8.00 a.m. to 8.30 a.m., the wife of Deceased PW – 6 [Nandabai Shivanand Waikule] and wife of PW – 1 [Ganesh Bapurao Waikule] came to him running and asking for help saying that, the persons belonging to Satbhai family were beating their husbands. He rushed towards Akhada [place of keeping cattles] and Prakash Waikule followed him. He saw Accused No.1 [Subhash Shankerappa Satbhai], Accused No.6 [Shankerappa Subhanji Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.5 [Ramesh Subhash Satbhai] and other two [2] persons, who had covered their faces with scarfs and three [3] ladies belonging to the Satbhai family. He saw the said Accused persons running towards the village. PW – 1 [Ganesh Bapurao Waikule] was in an injured condition having injuries on head, forearm, leg and foot. The Deceased was lying in an injured condition with injuries on his neck and neck was half cut. He gave phone call to his brother and asked him to send the vehicle. He along with his brother and others shifted the injured to the Hospital. Shivanand Bapurao Waikule [Deceased] was reported by the Doctor to be dead.

19. Though he was cross-examined, nothing has come so as to discard his above referred evidence. Some omissions / improvements are brought in his cross-examination, which are of trivial nature and in no way affect his testimony. His acquaintance with the witnesses and the Accused is quite natural, as he was the resident of same village and having his agricultural land adjacent to the land of Accused.

20. The evidence of PW – 3 [Dr. Rajesh Babasaheb Mudikar] shows that, he was serving as the Medical Officer in Rural Hospital, Kalamnuri. On 01/06/2015, he was on duty in the Hospital at about 11.00 a.m. PW – 1 [Ganesh Bapurao Waikule], PW – 4 [Sakhubai Bapurao Waikule] and Shivanand Bapurao Waikule [Deceased] were brought to the Hospital by their relatives. On examination, he found Shivanand Bapurao Waikule to be dead.

21. On examination of PW – 1 [Ganesh Bapurao Waikule], he found the following injuries on his person :-

- "1- *Incised wound 7 x 3 x 3 cm. On right leg lower part anterior aspect.*
- 2 - *Incised wound 3 x 2 x 2 cm. On left upper part anterior aspect.*
- 3 - *Incised wound 7 x 2 bone deep cm. On mid frontal region.*
- 4 - *Incised wound 5 x 3 x 3 cm. On right leg upper part anterior aspect.*
- 5 - *Incised wound 2 x 1 x 1 cm. on right thumb palm surface.*
- 6 - *Incised wound 5 x 2 x 2 cm. On left foot upper posterior sole.*
- 7 - *Incised wound 3 x 2 x 2 cm. On right forearm extensor aspect.*
- 8 - *Contusion 4 x 4 cm. On left side of chest over 6 to 8 ribs."*

21.1 The above Injuries Nos.1 to 7 were simple and caused within 24 hours, possible by hard and sharp object. Injury No.8 was possible by hard object. Injury Nos.1 to 7 were also possible by koyta. Injury No.8 was also possible by opposite side of axe. He

referred him to Civil Hospital at Hingoli. The Police provided the copy of the prescription and C.T. Scan report, which revealed that, Injury No.8 was grievous, as there was fracture of 6th, 8th and 9th ribs. Accordingly, he issued the Medico Legal Certificate at Exhibit – 85. It has come in the cross-examination that, Injury Nos.1 to 7 were also possible by knife.

22. He examined PW – 4 [Sakhubai Bapurao Waikule] and found the following injuries on her person :

- "1- CLW 3 x 1 x 1 cm. on frontal to parietal region on left side.
- 2 - Contusion 3 x 2 cm. On dorsal aspect of right wrists."

22.1 The said injuries were simple and caused within 24 hours. Injury No.1 was possible by hard and blunt object and Injury No.2 was possible by hard object. Injuries were also possible by stick, stone and opposite side of axe. He referred her to Civil Hospital at Hingoli. The Police supplied the copy of the prescription and he found fracture of 'distal shaft of right wrist and styloid process of right ulna'. There was cerebral contusion on left parietal region of brain with post traumatic sub-arachnoid with cerebral edema. The fracture injuries were grievous in nature. He issued the Medico Legal Certificate at Exhibit – 86. In the cross-examination, it has come that, the injuries found on her person were possible by fall on hard surface from bullock-cart.

23. His further evidence shows that, on 02/06/2015 i.e. on the next day, PW – 6 [Nandabai Shivanand Waikule] was brought to the Hospital for examination by relatives. On her examination, he found the following injuries on her person :

- " 1 - Contusion 3 x 2 cm. Just below left eye.
- 2 - Contusion 3 x 3 cm. Middle one third of anterior aspect of left eye."

23.1 The injuries were caused within 24 hours and simple in nature and were possible by hard object. The Injuries were also possible by stick, stone and opposite side of axe. He issued Medico Legal Certification at Exhibit – 87.

24. Though in the cross-examination of the above referred Medical Officer, it has come that, the Injury Certificates at Exhibits 85 and 86 were issued on 15/07/2015 and at Exhibit – 87 on 14/07/2015, respectively, it would not affect the credibility of his testimony, as his cross-examination shows that, the said certificates were issued pursuant to the letter dated 11/07/2015 received from the Police. It has come in the cross-examination, in clear terms that, he recorded the history of injuries found on the person of PW – 1 [Ganesh Bapurao Waikule] and PW – 4 [Sakhubai Bapurao Waikule]. The history recorded was that of assault.

25. Further evidence of PW – 3 [Dr. Rajesh Babasaheb Mudikar] shows that, on the same day i.e. on 01/06/2015, he performed the Postmortem on the body of Shivanand Bapurao Waikule [Deceased] from 05.05 p.m. to 06.05 p.m. and he found the following external injuries :-

- "1 - Chop wound over neck just below hairline horizontally placed and measuring 4 x 2 cm. x Spinal cord deep with fracture of spinous process of C-2 and C-3 vertebra.*
- 2 - Incised wound over center of scalp vertically placed measuring 6 x 3 x 2 cm.*
- 3 - Incised wound over lateral side of neck surrounding right side of neck measuring 8 x 2 x 0.5 cm.*
- 4 - Chop wound over upper side of right buttock vertically placed measuring 7 x 3 bone deep.*
- 5 - Incised wound over right leg just below knee joint vertically placed measuring 10 x 3 x 2 cm.*

- 6 - *Incised wound over lateral aspect of upper one third of right thigh vertically placed and admeasuring 3 x 2 x 1 cm.*
- 7 - *Incised wound left leg just below knee joint vertically placed admeasuring 2 x 2 x 0.5 cm.*
- 8 - *Contused abrasion over upper lateral part of left shoulder 3 x 2 cm. Horizontally placed."*

25.1 On internal examination, he found under scalp injury on center of scalp vertically placed 6 x 2 x 2 cm. Brain, right and left lungs, heart, liver and gall bladder, pancreas, supra-nails, spleen, kidneys were found pale. He found chop wound over left of neck just below hairline horizontally placed admeasuring 4 x 2 cm. Spinal cord deep with fracture spinous process of C-2 and C-3 vertebra with hemi section of spinal cord. The injuries were ante-mortem and Deceased probably died within four hours of his last meal. On postmortem, he opined the cause of death as "*neurogenic as well hemorrhagic shock due to injury to spinal cord with other multiple injuries*". He issued the provisional cause of death certificate at Exhibit – 88 and the Postmortem Report at Exhibit – 89.

25.2 Further evidence of PW – 3 [Dr. Rajesh Babasaheb Mudikar] shows that, Injury Nos.1 and 4 were possibly by axe and Injury Nos.2, 3, 5, 6 and 7 were possible by hard and sharp object. Injury No.8 was possible by hard object. The incised wound was possible by koyta. The stone and stick were the hard object. Injury No.1 was sufficient to cause death in ordinary course of nature. Injury Nos.4 to 8 were not fatal injuries. There was no fracture to skull associated with Injury No.2. Injury No.3 was not possible by axe. Injury No.8 was simple. Injury Nos.2, 3, 5, 6 and 7 were also possible by knife.

26. Further evidence of PW – 3 [Dr. Rajesh Babasaheb Mudikar] shows that, on the same day i.e. 01/06/2015 at about 9.30 a.m.,

Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.5 [Ramesh Subhash Satbhai], Accused No.6 [Shankerappa Subhanji Satbhai] and Accused No.7 [Mankarnabai Subhash Satbhai] were brought to the Hospital by their relatives in injured condition. He examined them all.

27. On examination of Accused No.1 [Subhash Shankerappa Satbhai], he found the following injuries :

- "1- Contusion 3 x 3 cm. On forehead over left eye brow.*
- 2 - Contusion 3 x 2 cm. On right temporal region of scalp.*
- 3 - Abrasion 1 x 0.5 cm. On medial aspect of middle one third of right leg."*

27.1 The injuries were simple in nature and caused within 6 hours. Injury Nos.1 and 2 were possible by hard object and Injury No.3 was possible by hard and sharp object. He issued the Medico Legal Certificate at Exhibit – 81.

28. On examination of Accused No.2 [Gajanan Shankerappa Satbhai], he found the following Injury :

- "1- CLW 0.5 x 0.5 cm. on central region of forehead."*

28.1 The injury was simple in nature and caused within 6 hours. It was possible by hard object. He issued the Medico Legal Certificate at Exhibit – 80.

29. On examination of Accused No.3 [Shivanand Shankerappa Satbhai], he found the following injuries.

- "1- CLW 3 x 1 x 0.5 cm. On right temporal region of scalp.*
- 2 - Contusion 2 x 2 cm. On middle of right arm lateral aspect."*

29.1 The injuries were simple in nature and caused within 6 hours and may be possible by hard and blunt object. He issued the Medico Legal Certificate Exhibit – 79.

30. On examination of Accused No.5 [Ramesh Subhash Satbhai], he found the following injury :

"1- Contusion 3 x 3 cm. On left hand hypothenar region."

30.1 The injury was simple in nature and caused within 6 hours and may be possible by hard object. He issued the Medico Legal Certificate at Exhibit – 83.

31. On examination of Accused No.6 [Shankerappa Subhanji Satbhai], he found the following injuries.

*"1- CLW 3 x 1 x 0.5 cm. On left temporal region of scalp.
2 - Abrasion 2 x 0.5 cm. On dorsal aspect of left hand."*

31.1 The injuries were simple in nature and caused within [six] 6 hours. They were possible by hard and sharp object. He issued the Medico Legal Certificate at Exhibit – 82.

32. On examination of Accused No.7 [Mankarnabai Subhash Satbhai], he found the following Injury :-

"1- Contusion 5 x 2 cm. On back of trunk on left side."

32.1 The injury was simple in nature and caused within 6 hours and was possible by hard object. He issued the Medico Legal Certificate at Exhibit – 84.

33. The evidence of PW – 5 [Dr. Santosh Virchand Porwal] shows that, since 2005, he was serving at Yashoda Hospital, Nanded as Medical Officer. On 01/06/2015, PW – 1 [Ganesh Bapurao Waikule] and his mother – PW – 4 [Sakhubai Bapurao Waikule] were brought to the Hospital with injuries on their person. He examined them and got their C.T Scan done and admitted them for treatment.

34. On examination of PW – 1 [Ganesh Bapurao Waikule], he found the following injuries :-

- "1- *Sutured wound over mid frontal region admeasuring 5 cm. Oblique.*
- 2 - *Abrasion over right forearm posterior surface middle third admeasuring 3 x 3 cm.*
- 3 - *Sutured wound over right leg upper third anterior surface admeasuring 5 cm. Transverse.*
- 4 - *Sutured wound over left leg upper third anterior surface 5 cm. Oblique.*
- 5 - *Abrasion over left chest posteriorly admeasuring 3 x 3 cm.*
- 6 - *Abrasion over right leg lower third anterior surface admeasuring 3 x 3 cm.*
- 7 - *On X-ray of chest there found fracture of left 8th 6th and 9th ribs posteriorly with right sided pleural effusion is noted."*

34.1 The aforesaid injuries Nos.2, 5 and 6 were fresh, simple in nature and were possible by hard and blunt object. Injury No.7 was fresh, grievous in nature and was possible by hard and blunt object. He issued the Medico Legal Certificate at Exhibit – 95.

35. On examination of PW – 4 [Sakhubai Bapurao Waikule], he found the following injuries:

- "1- *Sutured wound over mid frontal region admeasuring 5 cm. Oblique.*
- 2 - *On X-ray of right wrist there found fracture of crustal shaft of right radius with fracture styloid process on right ulna.*
- 3 - *From the report of C.T. Scan there found cerebral contusion of left high parietal region with post traumatic arachnoid hemorrhage with cerebral edema."*

35.1 The injury Nos.2 and 3 were fresh, simple in nature and were possible by hard and blunt object. He issued the Medico Legal Certificate at Exhibit – 96. Injury No.1 was possible by the use of axe and other injuries were possible by stick.

36. The cross-examination could not create any dent in the evidence of above referred Medical Officer.

37. The evidence of PW – 10 [Dinkar Baburao Kokare] shows that, on 01/06/2015, the Police Officer Mr. Ravikant Amrut Sonune [PW – 15] called him in the Kalamnuri Police Station. From the Police Station, he, Mr. Sonune and his staffs went to the spot of incident in Village Palodi. There was one hut and one tin shed at the spot of incident. There were blood stained clothes on the spot. The iron and wooden cots were kept on the spot of incident. There was one water reservoir. The Police prepared the Spot Panchanama, which was read over to him and he along with the other panch signed on the same. The Spot Panchanama at Exhibit – 114 is brought on record. His evidence shows that, the Police collected the soil, blood mixed soil, blood stained stones and stick from the spot. From the cross-examination, it is seen that, the Spot Panchanama was not seriously disputed. Nothing has come so as to discard the evidence of this panch witness. His evidence gets corroboration from the testimony of PW – 15 [Ravikant Amrut Sonune], who was the Police Inspector at the Kalamnuri Police Station. His evidence shows that, on 01/06/2015, he went to the spot of incident after the crime was registered on the statement / report of PW – 1 [Ganesh Bapurao Waikule] regarding the incident. Two panchas were summoned. The Spot Pacnahnama at Exhibit – 114 was prepared and the articles such as, blood stained stones, stick, soil and blood stained soil came to be seized from the spot of incident. From the cross-examination, it is seen that, the going of this Police Officer on the spot and preparing the Spot Panchanama was not disputed.

38. Evaluation of the above referred evidence shows that, PW – 1 [Ganesh Bapurao Waikule], PW - 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule] were the eyewitnesses to the incident. Since the Accused were known to them, there is no question of establishing the identity. Though the evidence of PW –

1 [Ganesh Bapurao Waikule] in respect of the events prior to the incident of assault are not taken into consideration being the omissions, the evidence of PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule] find corroboration in respect of the incident of assault. The consistent evidence of PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule] shows that, the Deceased and PW – 6 [Nandabai Shivanand Waikule] were obstructed while they were proceeding towards their agricultural field. When PW – 1 [Ganesh Bapurao Waikule] was informed about the same by the Deceased, PW – 1 [Ganesh Bapurao Waikule] and PW – 4 [Sakhubai Bapurao Waikule] started towards the field and they met the Deceased and PW – 6 [Nandabai Shivanand Waikule]. They all went ahead to question the Accused / Appellants about their act of restraining the Deceased from proceeding further. The evidence of PW – 2 [Madhavrao Dhurpatrao Bangale] shows that, he reached on the spot of incident after hearing hue and cry of the women witnesses and when he reached the spot of incident, he saw the Deceased and witnesses in an injured condition. Though these witnesses were cross-examined, nothing has come so as to discard their evidence. As earlier observed, their above discussed evidence is sans the omissions / improvement.

39. By examining the Medical Officer, the Prosecution has proved that, Shivanand Bapurao Waikule, who was the brother and son of PW – 1 [Ganesh Bapurao Waikule] and PW – 4 [Sakhubai Bapurao Waikule], respectively, succumbed to the injuries suffered in the assault. The cause of death of Shivanand Bapurao Waikule is proved. The Prosecution has clearly established that, the death of Shivanand Bapurao Waikule as Homicidal. Through the medical evidence, the Prosecution has proved the injuries on the person of

eyewitnesses i.e. PW – 1 [Ganesh Bapurao Waikule], PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule]. It is needless to state that, the testimony of the injured witnesses stands on higher pedestal. Soon after the incident, the Crime was registered on the report of PW – 1 [Ganesh Bapurao Waikule], recorded while he was in the hospital.

40. The above discussed medical evidence i.e. of PW – 3 [Dr. Rajesh Babasaheb Mudikar] has proved the injuries on the Accused / Appellants i.e. Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.5 [Ramesh Subhash Satbhai], Accused No.6 [Shankerappa Subhanji Satbhai] and Accused No.7 [Mankarnabai Subhash Satbhai]. The age of injuries on the Appellants / Accused and that of the witnesses, clearly relate them to the incident as deposed by the injured eyewitnesses. The defence of the Accused / Appellants is that, the injured witnesses were assaulted by the unknown persons, and they intervened and therefore, they suffered the above referred injuries on their person. In absence of any material in support of the said defence, the said defence does not appear probable. The spot of incident gets corroboration from the spot panch and the Investigating Officer. The above discussed evidence on record is cogent, convincing and acceptable. It is established beyond all reasonable doubt by the Prosecution that the Deceased died due to assault in the above referred incident and the eyewitnesses suffered injuries in the above referred incident.

41. Learned Senior Advocate for the Appellants relied on the following Judgments in support of his contention that, prejudice is caused to the Accused / Appellants, as the Charge was framed with

the aid of Section 149 of IPC and the conviction is recorded for their individual act.

1. **Subran Alias Subramanian Vs. State of Kerala; 1993 AIR [SCW] 1014**
2. **Saddak Hussain Vs. State [NCT of Delhi] in CRL.A 717/2018**
3. **Suraj Pal Vs. State of Uttar Pradesh; 1955 AIR [SC] 419**
4. **Parshuram Vs. State of Madhya Pradesh; 2023 [4] Crimes [SC] 173**
5. **Gurwinder Singh @ Sonu Etc. Vs. State of Punjab and Another; 2018 AIR [SC] 2277**

42. Learned Advocate appearing for the Informant, assisting the Prosecution, relied on the following Judgments in support of the contention that, no prejudice is caused to the Accused / Appellants.

1. **Willie [William] Slaney Vs. State of M.P; AIR 1956 SC 116**
2. **Mala Singh & Ors. Vs. State of Haryana; 2019 AIR [SC] 1026**

43. We have gone through the said Judgments. In the case on hand, admittedly, the Charge was framed with the aid of Sections 147, 148 and 149 of IPC and the Appellants / Accused are acquitted of the said Charge. The Charge clearly spelt out the incident with required details. The witnesses examined by the Prosecution were cross-examined by the learned Advocates representing the Appellants / Accused at considerable length. The witnesses were examined by the Prosecution includes the eyewitnesses to the incident. The Accused / Appellants were fully aware of the case that was being put against them. The incriminating evidence was put to the Accused / Appellants in the statement recorded under Section 313 of Cr.PC. Section 464 of Cr.PC provides that, no finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no Charge was framed or

on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Except bare argument, there is nothing to show that, prejudice was caused to the Accused / Appellants due to their conviction, despite acquittal for the above referred offences punishable under Sections 147, 148 and 149 of IPC. In the light of above reasons, we are of the considered view that, no failure of justice has occasioned. Thus, we are unable to accept the contention in respect of prejudice.

44. The evaluation of the above referred evidence of the injured eyewitnesses unequivocally established that, the Appellants / Accused had not come with the preparation to assault the Deceased and the witnesses. It was not a premeditated attack. There is absolutely no evidence to show that, the Accused / Appellants were already armed and lodged the attack as soon as the Deceased and injured eyewitnesses had come. What the evidence unequivocally goes to show is that, the Deceased and the injured eyewitnesses had gone to the place of incident to question the Accused / Appellants for restraining the Deceased and PW – 6 [Nandabai Shivanand Waikule] from going to the agricultural field and due to the quarrel, the incident of assault took place. Reference can be made to the cross-examination of PW – 1 [Ganesh Bapurao Waikule], wherein, it has come that, it was a sudden incident. The cross-examination of PW – 4 [Sakhubai Bapurao Waikule] shows that, there was no incident of beating prior to the incident. The evidence of above referred injured eyewitnesses shows that, the weapons were removed from the hut. This evidence on record shows that, the death of Shivanand Bapurao Waikule, though Homicidal, will not fall within the ambit of Section

300 of IPC, which is the offence of Murder. The act of Homicidal Death would fall within Exception - 4 of Section 300 of IPC, which reads as under :-

"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The explanation to the said exception speaks that, it is immaterial in such cases which party offers the provocation or commits the first assault."

44.1 Considering the evidence as discussed above, in our considered view, the learned Trial Court has erred in recording the conviction for the offence punishable under Section 302 of IPC.

45. The above evidence of the injured eyewitnesses completely rules out the unlawfully assembly by the Accused / Appellants. True it is that, it is settled position under the law that, an assembly can subsequently become unlawful. The Accused / Appellants were already present on the spot of incident. It is only after the Deceased and injured had gone to the spot of incident, the incident of assault took place suddenly out of quarrel. The evidence do not show that, the Accused / Appellants shared common object to kill the Deceased [Shivanand Bapurao Waikule] and cause injury to the witnesses. The evidence on record clearly shows absence of essential ingredients for the offence punishable under Sections 147, 148 and 149 of IPC and therefore, it will have no application to the case on hand. The learned Trial Court has rightly acquitted the Accused / Appellants for the offence punishable under Sections 147, 148 and 149 of IPC.

46. The above discussed evidence of PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule] is consistent in respect of assault by Accused No.1 [Subhash Shankerappa Satbhai] by koyta on the backside of neck / neck of Deceased and assault by Accused No.11 [Suresh Narayan Sangekar] by koyta on the backside

of waist / waist of the Deceased. As regards the assault by Accused No.2 [Gajanan Shankerappa Satbhai], evidence of PW- 4 [Sakhubai Bapurao Waikule] shows assault by axe on calf of Deceased [Shivanand Bapurao Waikule] and evidence of PW – 6 [Nandabai Shivanand Waikule] shows assault by axe on the head of Deceased [Shivanand Bapurao Waikule]. The medical evidence shows incised wound over center of scalp of Deceased [Shivanand Bapurao Waikule]. Thus there is corresponding injury of assault by Accused No.2 [Gajanan Shankerappa Satbhai] on the head of Deceased [Shivanand Bapurao Waikule]. Though evidence of PW – 4 [Sakhubai Bapurao Waikule] shows that, Accused No.4 [Ravi Subhash Satbhai] assaulted the Deceased by koyta on the head from left side, there is no corresponding injury on the left side of head of Deceased [Shivanand Bapurao Waikule] as can be seen from the medical evidence. Further, PW – 6 [Nandabai Shivanand Waikule] is completely silent on the point of assault by Accused No.4 [Ravi Subhash Satbhai] over Deceased [Shivanand Bapurao Waikule]. There is no corroboration at all to the testimony of PW – 4 [Sakhubai Bapurao Waikule] attributing assault by PW – 4 [Sakhubai Bapurao Waikule] on Deceased.

47. The medical evidence shows that, Injury No.1 on Deceased was sufficient to cause death in ordinary course of nature. The said injury is attributed to Accused No.1 [Subhash Shankerappa Satbhai] in the consistent evidence of PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule]. The medical evidence shows that, there was no fracture to skull associated with Injury No.2. Injury No.3 was 0.5 cm deep and Injury Nos.4 to 8 were not fatal injuries. From this, it is clear that, fatal blow was lodged by Accused No.1 [Subhash Shankerappa Satbhai]. The weapon used, the body part on which assault is lodged by Accused No.1 [Subhash

Shankerappa Satbhai] and the medical evidence shows the intention of Accused No.1 [Subhash Shankerappa Satbhai] to cause such bodily injury as is likely to cause death.

48. The evidence of eyewitnesses shows that, injuries on PW – 1 [Ganesh Bapurao Waikule] were the result of assault by Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.4 [Ravi Subhash Satbhai] and Accused No.11 [Suresh Narayan Sangekar]. Though PW – 1 [Ganesh Bapurao Waikule] deposed of throwing big stone on him by Accused No.5 [Ramesh Subhash Satbhai], the medical evidence do not relate the injuries suffered by him with stone. Further evidence of other eyewitnesses i.e. PW – 4 [Sakhubai Bapurao Waikule] and PW – 6 [Nandabai Shivanand Waikule] nowhere show assault on PW – 1 [Ganesh Bapurao Waikule] by Accused No.5 [Ramesh Subhash Satbhai].

49. As regards the injuries of PW – 4 [Sakhubai Bapurao Waikule] are concerned, the evidence of Doctor shows that, the injuries on her person were possible by fall on hard surface. It has come in the evidence of PW - 4 [Sakhubai Bapurao Waikule] that, she fell down. The evidence of PW – 1 [Ganesh Bapurao Waikule] shows that, his mother [PW – 4] fell down in the incident and there were stones on the spot of incident, as it was hilly area. Thus, it cannot be said with all certainty that, the injuries on PW – 4 [Sakhubai Bapurao Waikule]] were the result of the assault.

50. As regards the injuries on PW – 6 [Nandabai Shivanand Waikule] are concerned, there is no clear evidence, as her evidence that, she was assaulted by Accused No.9 [Pratima Gajanan Satbhai] and Accused No.10 [Jyoti Shivanand Satbhai], was an improvement/

omission from / in her previous statement. More so, the defence evidence of DW – 1 [Dr. Madhav Sambhaji Vibhute], who was the Medical Officer in Rural Hospital, Umari, Taluka Umari, District Nanded, proved that, PW – 10 [Jyoti Shivanand Satbhai] had come to the Hospital on 30/05/2015 at about 11.55 a.m. with the history of fever since last seven [7] days and she was admitted in the Hospital till 8.00 a.m. of 04/06/2015. The medical papers are brought on record in the evidence of this witness. The incident is dated 01/06/2015. Therefore, the presence of Accused No.10 [Jyoti Shivanand Satbhai] on the spot at the time of incident is rendered doubtful.

51. It is true that, it has come in the evidence of PW – 17 [Mukund Ramrao Deshmukh], who was the Police Inspector at Kalamnuri Police Station and who carried some part of investigation, that Accused No.11 [Suresh Narayan Sangekar] was working in his office on 01/06/2015, will not by itself sufficient to hold that the Accused No.11 [Suresh Narayan Sangekar] was not present on the spot of incident, as the incident is of morning hours and not during office hours. Except this, no other material is brought on record by the defence to show that, Accused No.11 [Suresh Narayan Sangekar] was at his office at the time of incident.

52. The other evidence is that of PW – 7 [Vijay Deosing Chavan], who acted as the panch witness for discovery and seizure of two [2] axe, one [1] koyta and one [1] stick at the instance of Accused No.7 [Mankarnabai Subhash Satbhai]. As her evidence in respect of her active participation in the assault is not proved, the said discovery at her instance would be of no assistance for the Prosecution. There is evidence of PW – 8 [Anil Hariharrao Sarode], who acted as panch for discovery and seizure of one [1] axe at the instance of

Accused No.2 [Gajanan Shankerappa Satbhai]. His evidence nowhere shows that, the said axe was stained with blood. The CA reports at Exhibits – 195 and 197 shows that, the blood group of Deceased [Shivanand Bapurao Waikule] and Accused No.2 [Gajanan Shankerappa Satbhai] was of the similar group i.e. “O”. Therefore, the detection of blood of group “O” on axe [Article – 14] and human blood on axe [Article-13] would be of no assistance to the Prosecution.

53. PW – 11 [Kanta Bapurao Bedre [Patil]], who was examined as panch witness, did not support the case of Prosecution. PW – 12 [Shivaji Purabhinath Ghogre] was the Police Constable, who carried muddemal to the Chemical Analyzer. PW – 13 [Niranjan Tanhaji Sataw] and PW – 14 [Kishan Yadavrao Dhengle] are the Photographers, who clicked the photos during the course of investigation. PW – 15 [Ravikant Amrut Sonune], PW – 16 [Anantkumar Bapurao Waghmare] and PW – 17 [Mukund Ramrao Deshmukh] were the Police Officers, who investigated the Crime and filed Charge-sheet, supplementary Charge-sheet.

54. The evaluation of above referred evidence proved that, Accused No.1 [Subhash Shankerappa Satbhai] is liable for causing Homicidal Death of Deceased not amounting to Murder and his act would fall within the ambit of Section 304 [Part-I] of IPC. Accused No.1 [Subhash Shankerappa Satbhai] is behind the bars for a period of nine [9] years, five [5] months and eighteen [18] days. The punishment provided for the offence punishable under Section 304 [Part-I] of IPC is imprisonment for life or imprisonment of either description for a term which may extend to ten [10] years and shall also be liable to fine. Accused No.1 [Subhash Shankerappa Satbhai] has undergone the imprisonment for a period of little short of ten [10] years. We, therefore, sentence him to suffer imprisonment for

the period which he has undergone and maintain the amount of fine and default sentence imposed by the learned Trial Court.

55. The acts of Accused No.2 [Gajanan Shankerappa Satbhai] and Accused No.11 [Suresh Narayan Sangekar] for assault on the Deceased would attract the offence punishable under Section 324 of IPC, which pertains to voluntarily causing hurt by dangerous weapons or means. The punishment provided for the said offence is imprisonment of either description for a term which may extend to three [3] years, or with fine, or with both. Accused No.2 [Gajanan Shankerappa Satbhai] is behind the bars for a period of nine [9] years, five [5] months and eighteen [18] days. Accused No.11 [Suresh Narayan Sangekar] is behind the bars for a period of six [6] years, three [3] months and twenty five [25] days. We, therefore, sentence Accused No.2 [Gajanan Shankerappa Satbhai] and Accused No.11 [Suresh Narayan Sangekar] to suffer imprisonment for a period of one [1] year with fine of Rs.5000/- each, in default, to suffer Rigorous Imprisonment for three [3] months.

56. As regards the assault and injuries on PW – 1 [Ganesh Bapurao Waikule] are concerned, Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.4 [Ravi Subhash Satbhai] and Accused No.11 [Suresh Narayan Sangekar] would be liable for punishment for the offence punishable under Section 324 of IPC. The grievous injuries in the nature of fractures to ribs of PW – 1 [Ganesh Bapurao Waikule] is not corresponding to assault by any of the said Accused. Accused No.3 [Shivanand Shankerappa Satbhai] is behind the bars for a period of nine [9] years, five [5] months and twenty two [22] days.

Accused No.4 [Ravi Subhash Satbhai] is on bail and was behind the bars for a period of one [1] month and eleven [11] days. We, therefore, sentence Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.4 [Ravi Subhash Satbhai] and Accused No.11 [Suresh Narayan Sangekar] to suffer Imprisonment for a period of one [1] month with fine of Rs.5000/- each, in default, to suffer imprisonment for three [3] months.

57. As regards the Accused i.e. Accused No.5 [Ramesh Subhash Satbhai], Accused No.6 [Shankerappa Subhanji Satbhai], Accused No. 7 [Mankarnabai Subhash Satbhai], Accused No.8 [Hari Santosh Hingankar], Accused No.9 [Pratima Gajanan Satbhai] and Accused No.10 [Jyoti Shivanand Satbhai] are concerned, they are entitled for acquittal.

58. Resultantly, the Appeals filed by the Appellants / Convicts are partly allowed. The Appeal filed by the Informant and Application for leave to Appeal by State are liable to be dismissed. Resultantly, we proceed to pass the following order :-

ORDER

a] The Criminal Appeal Nos.565/2018, 563/2018, 540/2018 and 76/2024 are partly allowed.

b] The conviction and sentence recorded by the learned Trial Court for the offence punishable under Section 302 of IPC against Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai] and Accused No.11 [Suresh Narayan Sangekar] is quashed and set aside. They are acquitted of the same. Instead,

[b-i] Accused No.1 [Subhash Shankerappa Satbhai] is convicted for the offence punishable under Section 304 [Part-I] of IPC and is sentenced to suffer imprisonment for the period, which he has already undergone i.e. nine [9] years, five [5] months and eighteen [18] days, with fine of Rs.25000/- [Twenty Five Thousand Only], in default, to suffer imprisonment for one [1] year. The fine amount is paid. Thus, he be set at liberty forthwith, if not required in any other offence.

[b-ii] The Accused i.e. Accused No.2 [Gajanan Shankerappa Satbhai] and Accused No.11 [Suresh Narayan Sangekar] are convicted for the offence punishable under Section 324 of IPC and sentenced to suffer Imprisonment for a period of one [1] year and to pay fine of Rs.5000/-[Five Thousand] each, in default, to suffer Imprisonment for three [3] months. As they have already undergone the said period of imprisonment and paid the fine, they be set at liberty forthwith, if not required in any other offence.

c] The conviction recorded by the learned Trial Court against Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2 [Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai], Accused No.4 [Ravi Subhash Satbhai] and Accused No. 11 [Suresh Narayan Sangekar] for the offence punishable under Section 324 of IPC is maintained. They are sentenced to suffer Imprisonment for a period of one [1] month with fine of Rs.5000/- [Five Thousand] each, in default, to suffer Imprisonment for three [3] months. As they have already undergone the said period of imprisonment and the fine is paid, the Accused No.1 [Subhash Shankerappa Satbhai], Accused No.2

[Gajanan Shankerappa Satbhai], Accused No.3 [Shivanand Shankerappa Satbhai] and Accused No. 11 [Suresh Narayan Sangekar] be set at liberty forthwith, if not required in any other offence. The Accused No.4 [Ravi Subhash Satbhai] is on Bail. His Bail Bond stands cancelled.

d] The Accused i.e. Accused No.6 [Shankerappa Subhanji Satbhai] and Accused No.9 [Pratima Gajanan Satbhai] are acquitted for the offence punishable under Section 323 of IPC. The Bond executed by them for release on probation as per the order of learned Trial Court stands cancelled. The amount of compensation paid by them as per the order of learned Trial Court, be refunded.

e] The fine amount imposed on the convicted Appellants be adjusted from the fine amount paid by them pursuant to the order of learned Trial Court and remaining amount, if any, be refunded.

f] The order of acquittal passed by the learned Trial Court is maintained.

g] The Muddemal be dealt with as directed by the learned Trial Court.

h] Criminal Appeal No.518/2020 and Application for leave to file Appeal by State No.91/2020 are dismissed.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer