

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

CRIMINAL APPEAL NO. 111 OF 2006

1. Shriram S/o Janardhan Jethe
Age : 28 years, Occ : Agri.,
R/o Shahajanpur, Tq. Georai,
Dist. Beed.
2. Shivaji S/o Laxman Pawal
Age : 39 years, Occ : Service,
R/o As above.

..APPELLANTS

-VERSUS-

1. State of Maharashtra
2. Dattu S/o Ambadas Shinde
Age : 40 years, Occ : Agri.,
R/o Loladgaon Shivar Basti,
Tq. Georai, Dist. Beed.

..RESPONDENTS

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APP for Appellants : Mr. Joydeep Chatterji
Advocate for Respondent/State : Mr. S.D. Kaldade
Advocate for Respondent No.2 : Mr. T.B. Bhosale

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WITH

CRIMINAL APPEAL NO. 573 OF 2006

The State of Maharashtra
through the Police Station Officer,
Georai Police Station, Dist. Beed.

..APPELLANT

-VERSUS-

1. Shriram S/o Janardhan Jethe
Age : 28 years, Occ : Agri.,
R/o Shahajanpur, Tq. Georai,
Dist. Beed.

2. Shivaji S/o Laxman Pawal
Age : 39 years, Occ : Service,
R/o As above.

..RESPONDENTS

...

APP for Appellant : Mr. S.D. Kaldate
Advocate for Respondents : Mr. Jooydeep Chatterji

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WITH

CRIMINAL REVISION APPLICATION NO. 70 OF 2006

Dattu S/o Ambadas Shinde
Age : 36 years, Occ : Agri.,
R/o Loladgaon Shivar Wasti,
Tq. Georai, Dist. Beed.

..APPELLANT

-VERSUS-

1. The State of Maharashtra
2. Shriram S/o Janardhan Jethe
Age : 29 years, Occ : Agri.,
R/o Shahajanpur, Tq. Georai,
Dist. Beed.
3. Shivaji S/o Laxman Pawal
Age : 40 years, Occ : Service,
R/o Shahajanpur, Tq. Georai,
Dist. Beed.

..RESPONDENTS

...

Advocate for Appellant : Mr. T.B. Bhosale
Advocate for Respondent/State : Mr. S.D. Kaldate
Advocate for Respondent Nos.2 and 3: Mr. Joydeep Chatterji

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

**RESERVED ON : February 02, 2015
PRONOUNCED ON : March 09, 2015**

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JUDGMENT (PER S.S. SHINDE,J):-

1. Criminal Appeal No. 111 of 2006 is filed by the original accused, who are convicted for the offence punishable under Section 326 read with section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1,500/- each, in default, to undergo rigorous imprisonment for two months. So also accused no.2 is further convicted in respect of offence punishable under section 506 of I.P. Code and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1500/-, in default to undergo rigorous imprisonment for two months.

Criminal Appeal No. 573 of 2006 is filed by the State of Maharashtra for enhancement of sentence and also the original complainant has also filed Criminal Revision Application No. 70 of 2006 praying therein for convicting the accused for offence under Section 307 read with section 34 of I.P. Code and also

the acquittal order of accused of the offence punishable under section 307 read with section 34 of I.P. Code and further acquitting the accused no.2 Shivaji Pawal of the offence punishable under section 504 of I.P. Code. It is further prayed that, the accused may be held guilty for the offence under section 307 read with section 34 of I.P. Code and maximum sentence be imposed upon them.

2. The brief facts of the prosecution case, are as under :-

(i) On or about 09.10.2004, at about 12.00 noon, on Shahajanpur-Madalmohi road, the accused no.2 named Shivaji Laxman Pawal was proceeding towards Shahajanpur, on motor cycle. On seeing the complainant named Dattu Ambadas Shinde, he stopped and told the complainant that, he should vote for B.J.P. in the forthcoming legislative assembly election, and he would pay some amount to him. On

this, the complainant told him that, he would not vote for B.J.P., but would vote for Rashtravadi Congress Party. Then the accused no.2 threatened him that, in case he vote for Rashtravadi Congress Party, then accused no.2 would see him.

(ii) Thereafter, it so happened that, on 11.10.2014 at about 6.30 P.M. the complainant was returning from Madalmohi to his village, and one Bhiku Baliram Ghongde and Bapu Bhaskar Ghongde both r/o Ankota and Punjaram Erande, Pintya Amruta Erande both r/o Shahajanpur were accompanying him, at that time when they were passing on Kaccha road leading to village Shahajanpur, and when they reached near the agricultural land of Vishnu Genu Bhople, the accused nos. 1 and 2 came from behind on motor-cycle, and stopped their motor-cycle just ahead of the complainant and his companions, and asked the complainant as to why he was not going to vote for B.J.P. ? and started abusing him. Then the accused

no.1 lifted one stone and the accused no.2 instigated accused no.1. Then the accused no.1 assaulted the complainant by pelting said stone on his head on left side above the ear, and thus the complainant sustained injury which was bleeding. The companions of the complainant caught hold the accused no.1. Then the complainant became unconscious. He regained consciousness on 15-10-2004 in the evening but he was not able to talk. His brother named Sudam was sitting near him and he told him about the incident which took place on 11-10-2004 and that he had undergone operation on 14-10-2004. After lapse of considerable time, the complainant/injured had lodged the complaint at Police Outpost at Madalmohi under Georai Police Station on 07-11-2004. Accordingly, offence was registered at Georai Police Station vide Crime No. 163/2004 under Sections 307, 504, 34 of Indian Penal Code against accused nos. 1 and 2 and on investigation, both of them have been charge-sheeted.

(iii) The charge in respect of the offence punishable under Sections 504, 307 r.w. 34 of Indian Penal Code has been framed against the accused nos. 1 and 2 vide Ex.6. Both the accused pleaded not guilty and claimed to be tried. Their defence is of denial in toto. They have also suggested that, the complainant/injured is in the habit of lodging false complaints in order to extract money.

3. The trial Court, after recording the evidence and hearing the parties, convicted accused nos. 1 and 2 for the offence punishable under Section 326 read with section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1,500/- each, in default, to undergo rigorous imprisonment for two months. Accused no.2 – Shivaji Laxman Pawal is further convicted for the offence punishable under section 506 of I.P. Code and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1500/-, in default to

undergo rigorous imprisonment for two months. However, the trial Court acquitted the accused nos. 1 and 2 of the offence punishable under Section 307 read with section 34 of I.P. Code and accused no.2 – Shivaji Pawal is acquitted of offence under Section 504 of I.P. Code. Hence this appeal.

4. The learned counsel appearing for the accused submits that, the prosecution has utterly failed to prove its case against the accused beyond reasonable doubt. It is submitted that, the prosecution story is rendered doubtful and unbelievable because of the inordinate, undue and unexplained delay of 27 days in lodging of the First Information Report by the victim – P.W.1. It is also submitted that, the conduct of victim – P.W.1 in keeping mum from 09.10.2004 to 07.11.2004 despite several opportunities to lodge First Information Report or disclose to the police, brands his F.I.R. as a product of after thought, careful deliberation and pre-mediation. This inference is fortified by his

admission that “I was at my house during the period from 26.10.2004 to 07.11.2004. It is true that my relatives used to come to meet me during the said period, I had informed my brother Sudam about the alleged incident which took place on 11.10.2004 on my return to village from Aurangabad and when I could speak. It may be either on 27.10.2004 or 28.10.2004.”

The learned counsel also submitted that, the non-examination of Sudam, brother of the victim – P.W.1 is fatal to the prosecution case. P.W. 7- Dr. Dunakhe has spoken of informing the police at Aurangabad about admission of P.W.1 at his hospital and about the police coming there on 12.10.2004. It is strange, no First Information Report was lodged even then although his relatives were undoubtedly present. It is submitted that, the evidence of the doctors run counter to each other. P.W.4 (Dr. Jadhav) has issued a certificate (Exh. 17) which reveals 2 injuries on the head. He admits in cross-examination that, injury No.2

(Contusion on left tempero parietal region) is superficial and does not have any depth and not sufficient to cause depressed fracture. In sharp contrast, P.W.7 – Dr.Dunakhe states that, there was no injury on the right side of the head and he has issued a certificate (Exh.25) which reveals a depressed fracture of the left temporal bone. It is difficult to reconcile these features.

The learned counsel further submitted that, the admission of P.W. - 6 – ASI Shelke that he did not seize the stone on the spot or the blood stained clothes of P.W. 1 vitiates the prosecution case. The version of the defence witness – D.W. 2- Radhakishan Yanegar, which has emerged unscathed after cross-examination by the prosecution leaves no doubt that the victim was injured in an accident when he was dashed by a Jeep. The endorsement – History Vehicular accident on the medical certificate (Exh. 17) issued from the hospital where the victim was taken initially corroborates this. This completely demolishes the prosecution story. The

learned counsel appearing for the original accused further submitted that, the delay in lodging the First Information Report was fatal to the prosecution case, same is not explained and therefore, the trial Court ought to have acquitted the accused of all the charges levelled against them. Therefore, he submits that, the impugned order deserves to be set aside.

The learned counsel appearing for the accused without prejudice to the case of the accused and arguments advanced hereinbefore for clear acquittal, in the alternatively submits that, in case this Court comes to the conclusion to uphold the order of the conviction of appellant no.1 -Shriram Janardhan Jethe, his sentence may be reduced as already undergone, by further directing him to pay reasonable amount of compensation to the complainant.

5. The learned Additional Public Prosecutor appearing for the State and the learned counsel

appearing for the original complainant, jointly submit that, the trial Court accepted the evidence of PW-7, however, wrongly acquitted the accused for offence punishable under section 307 read with section 34 of I.P. Code. It is submitted that, once the trial Court recorded the finding that, the evidence of the complainant is trustworthy and gets corroboration from the Medical evidence, inescapable conclusion is that, the accused ought to have been convicted for an offence punishable under Section 307 read with section 34 of I.P.Code. It is submitted that, if the offence is committed punishable under Section 307 of I.P. Code, in that case, the injuries sustained is not the relevant consideration, but whether the accused had intention to commit the murder and as a matter of fact, attempted to commit murder is relevant consideration. Therefore, it is submitted that, in addition to conviction of the accused for offence punishable under section 326 read with section 34 and sections 504, 511 of I.P.Code, the accused deserves to be convicted for an offence

punishable under Section 302, by awarding them maximum punishment provided in the said section.

6. We have given careful consideration to the submissions advanced by the learned counsel for the parties. With their able assistance, we have perused the entire evidence brought on record so as to reappraise the same. In the present matter, following charge was framed and on the said charge, the trial Court proceeded further. The said charge reads thus :-

“That, you accused no.2 Shivaji Laxman Pawal on or about 9th day of October, 2004 at 12.00 noon on Shahajanpur-Madalmohi road, intentionally insulted and thereby gave provocation to Dattu Ambadas Shinde, intending or knowing it to be likely that such provocation would cause the said Dattu Ambadas Shinde to break the public peace and thereby committed an offence punishable under Section 504 of the Indian Penal Code and within my cognizance;

Secondly, that, you accused nos.1 and 2 viz. Shriram Janardhan Jethe and Shivaji Laxman Pawal on or about 11th day of October, 2004 at 6.30 p.m. on Madalmohi - Shahajanpur road, in furtherance of common intention, did an act by assaulting Dattu Ambadas Shinde by stone on the head, above the left ear, with such intention or knowledge and under such

circumstances, that, if by that act you both had caused death of Dattu Ambadas Shinde, you both would have been guilty of murder and that you caused hurt to said Dattu Ambads Shinde by the said act and thereby committed an offence punishable under Section 307 read with Section 34 of the Indian Penal code and within my cognizance."

In the present case, since the complainant himself is injured witness, his evidence is important. He is examined as PW-1 and his evidence is at Exhibit -11. In his examination-in-chief, he has stated that, on 09.10.2004, he was proceeding towards village Madalmohi on foot. When he reached near the agricultural land owned by Annasaheb Nawale, accused no.2 named Shivaji came on motorcycle and met him there. The accused no.2 asked him that, he should vote for B.J.P. during the general elections to the Assembly. He told him that, he would vote for Rashtrawadi Congress and not for B.J.P. Then accused no.2 threatened him that, if he did not vote in favour of B.J.P., he would see him. Then accused no.2 went to his village. It is stated by this witness that, then he went to village Madalmohi and purchased grocery

articles and returned to his village (Wasti). Then he narrated about the incident regarding the threat given by accused no.2 to his brother named Sudam. This witness has further stated that, again on 11.10.2004, he went to Madalmohi in the evening at about 6.00 p.m. for purchase of grocery articles. Then this witness along with Bapu Ghongde, Bhiku Ghongde, Punjaram Yerande, Pintu Yerande were returning to their village, and when they were passing from near the agricultural land owned by Vishnu Bhople, accused nos. 1 and 2 named Shriram and Shivaji came there on motorcycle. At that time, Shivaji was riding the said motorcycle. He stopped the motorcycle. Then accused nos. 1 and 2 threatened him that, if he did not vote for B.J.P., then they would see him. Both of them asked him as to how he would dare not to vote for B.J.P. Accused no.1 took one sharp edged stone lying there and accused no.2 asked him to beat this witness. Then, accused no.1 assaulted this witness by means of said stone on his head. As a result of which he sustained bleeding injury

and he was fell down and became unconscious. This witness was brought to Civil Hospital at Beed. The Medical Officer in the said hospital referred him to Dr.Milind Dunake's Hospital at Aurangabad (Neurologist). This witness regained consciousness after about 8 days and he came to know from his brother as to how he was admitted in that hospital. At that time, he was not able to speak though he could hear. He was discharged from the said hospital. Then he returned to his village Shahajanpur and lodged the complaint at Police Outpost at Madalmohi. He identified the complaint which is at Exhibit – 12 and contents thereof. This witness identified accused nos. 1 and 2 who assaulted him on the date of incident who were present in the Court.

7. This witness was cross-examined by the counsel appearing for the defence on the aspect of delay in lodging the First Information Report and also on other aspects including the presence of accused

no.2 at the spot on the date of incident.

8. Upon careful perusal of his examination in cross, he did admit that, it is his 6th complaint, however, it does not mean that, 6th complaint against the present accused. He has admitted that, his brother Sudam was also accompanied with him at the Police Outpost at Madalmohi. He reiterated his contention that, accused no.1 assaulted him by means of stone. He has further stated that, it is true that, his clothes were stained with blood due to injury sustained by him on his head. He denied the suggestion that, he is in habit of asking money by filing false complaint. He fairly stated that, the alleged incident had taken place on 9th October, 2004 and complaint was lodged on 7th November, 2004. He did admit that, accused no.2 is serving as teacher in Junior College situated near Jai Bhawani Sahakari Sakhar Karkhana. He has further admitted that, accused no.2 proceeds to Gadhi in the morning at about 8.30 a.m. on motorcycle for attending

his duties and returns to village at about 5.00 p.m. However, he denied the suggestion that, he falsely implicated accused no.2 about the incident happened on 9th October, 2004. In his cross-examination he has further stated that, though the incident had taken place on 9th October, 2004, he was able to speak on 27.10.2004 or 28.10.2004.

9. If the evidence of PW-1 is considered in its entirety, as rightly held by the trial Court, it appears to be trustworthy and reliable and there is no reason to disbelieve his evidence. At this juncture, it would be appropriate to refer the evidence of Medical Officer. Dr. Sunil Ramrao Jadhav was examined as PW-4. PW-4 in his examination-in-chief has stated that, he was working as medical officer at Civil Hospital, Beed in the month of October, 2004. He stated the history of road traffic accident. The patient named Dattu Ambadas Shinde was brought to Civil Hospital, Beed by Radhakrishna Dhondiba Yamgar. The patient had

sustained injury due to accident. This witness noticed the following injuries :-

1. C.L.W. in right tempero parietal region 2 cm x 1 cm x half cm., fresh, probable weapon might be hard and blunt object. It was simple injury.
2. Contusion Site left tempero parietal region, dimension 2 x 3 cm. age of injury-fresh, probable weapon hard and blunt, nature of injury-simple.

This witness stated that, on seeing the injury sustained by complainant i.e., injured, the same might have been caused by hard and blunt object. Though the said injury is simple in nature, it is likely to cause damage to the brain. The companion of the injured had told history of assault. This witness issued medical certificate, which he identified and stated that, the contents thereof are correct.

10. The defence tried to bring on record during cross-examination of PW-4 that, injury no.2 is not

sufficient to cause depress fracture. PW-4 further admitted that, if the person falls on hard and blunt object, then such injuries are possible. He specifically denied the suggestion that, the patient is suffering from aphasia. He further admitted in his cross-examination that, injury nos. 1 and 2 are on different parts of head i.e. left and right parietal region.

11. The prosecution examined Milind Prabhakar Rao Dunakhe as PW-7. In his examination-in-chief he stated that, he is neurosurgeon and he is running hospital in the name and style as "Brain and Spine Centre" at Aurangabad. The complainant, injured named Dattu Ambadas Shinde had come to his hospital on 12.10.2004. He had history of assault by stone on 11.10.2004. He had history of unconsciousness, vomiting, aphasia. On examining the injured, this witness noted as follows :-

"He was conscious having motor aphasia,

pupils normal. On local examination; he found that, he had sutured wound left temporal region, 3 cms long, on C.T. Scan, head, he was having depressed fracture left temporal bone with small extradural bleed, left parietal region.”

This witness stated that, he informed the Police at Kranti Chowk Police Chowky about the injuries sustained by the said patient in medico-legal case. The nature of injury is grievous. The said patient was conscious at the time when he came to his hospital. However, he was suffering from aphasia. On 14.10.2004, he had operated the said patient and he was discharged on 14.10.2004. The patient had sustained compound depressed fracture on left temporal region and he had aphasia. In case, a stone with sharp edge is hit on the head of the said patient, then such injury is possible. Then he issued the medico-legal certificate. He identified the said certificate

and the signature on it. This witness stated that, the said medico-legal certificate was handed over to P.S.I. Shri. A.R. Jadhav on 30.12.2004.

12. PW-7 in his cross-examination stated that, he issued medico-legal certificate at Exhibit – 25 on 30th December, 2004. He has brought the case papers pertaining to C.T. Scan. There was compression on the brain due to fracture. Brother of the injured Jagannath Pawal has gave history of assault. He cannot say how deep the injury was, on seeing the case papers. He denied the suggestion that, he issued false certificate. He further stated that, the said patient had come with reference letter issued by Civil Hospital, Beed. He identified contents of the said letter shown to him. He further stated that, patient was admitted in his hospital at 3.45 p.m. on 12.10.2004. He further stated that, the police had come to his hospital on 12th October, 2004 at about 8 p.m. He stated that, entry dated 24th October, 2004 in admission paper is correct.

13. If the evidence of PW-7 is read in its entirety, in uncertain word, he stated that, nature of injury is grievous. However, he has given vital admission in his evidence that, the said patient was conscious at the time when he came to his hospital. He further stated that, on 14th October, 2004 he operated the said patient and he was discharged on 24th October, 2004. He further stated that, the patient had sustained compound depressed fracture on left temporal region and he had aphasia. He specifically stated that, in case a stone with sharp edge is hit on the head of the said patient, then such injury is possible. Therefore, if the evidence of the complainant is examined in the light of the medical evidence, it is abundantly clear that, the injury inflicted is on head, which was grievous in nature and very fact that, accused no.1 Shriram Jethi assaulted on the head of PW-1 Dattu, that would make clear that, accused no.1 had intention to cause grievous hurt to the injured.

14. Upon perusal of the points framed by the trial Court for its determination, the trial Court did not frame the point for its determination that, whether the accused persons have committed the offence under Section 307 read with section 34 of I.P. Code, however, acquitted them on the ground that, the injuries sustained by the victim are simple in nature.

15. The prosecution examined Pandurang Shripatrao Shelke as PW-6. This witness stated in his examination-in-chief that, he was working as A.S.I. at Police Outpost at Madalmohi since 6th October, 2002. On 7th November, 2004, the complainant named Dattu Shinde had come to the police Outpost at Madalmohi at about 12.00/12.30 p.m. and lodged the complaint, which is at Exh.12. This witness stated that, then he recorded his statement at Police Outpost, Madalmohi. Then he took the complainant and the complaint lodged by him to Georai Police Station and produced

the complainant before Shri. Jadhav, P.S.I. Then P.S.I. Shri. Jadhav registered the offence accordingly. In cross examination of PW-6 nothing useful to the defence has been brought on record.

16. The prosecution examined Ashok Ramchandra Jadhav as PW-5, who was working at the relevant time as P.S.I. at Georai Police Station. He stated that, A.S.I. Shelke had brought the complaint lodged by the complainant on 7th November, 2004. Accordingly, he registered the offence vide Cr. No.I 163/2004 under sections 307, 504 read with section 34 of I.P. Code. He took over the investigation into the offence in this case. He went to the scene of offence. The panchas named Navnath Bhople and Udhav Sarpate were called to act as panchas, at the time when the panchanama of scene of offence was drawn. He identified the said panchanama at Exhibit – 13 which was shown to him. This witness stated that, then he recorded the statements of witnesses. This witness has

stated that, the medical certificate in the case of injured was obtained from Dr. Dunake, Aurangabad. He identified the said medical certificate and stated that, he himself collected the said certificate from Dr. Dunake. This witness further stated that, it was transpired during investigation that, the offence alleged against the accused persons has been made out substantially and therefore, he submitted charge-sheet against them in the Court of Judicial Magistrate, First Class at Georai. He identified accused nos.1 and 2 who were present before the Court.

17. This witness has admitted in his cross-examination that, there was delay of about one month in lodging the complaint. Though this witness has stated that, the complainant has not lodged the complaint against six different persons, his statement runs contrary to the statements of complainant as complainant in his cross-examination did admit that, he lodged six complaints. This witness has further

admitted that, blood stained clothes of the injured were not seized. He denied the suggestion that, he has filed a false charge-sheet against accused persons, at the instance of Shri. Badamrao Pandit, who was M.L.A. at the relevant time. He denied that, he did not visit scene of offence.

18. The defence did examine Shaukat Dagdubhai Patel, so as to bring on record that, on the date of incident i.e. on 9th October, 2004, as a matter of fact accused no.2 was present in the college. In his examination-in-chief he stated that, he was working as Principal in the Jai Bhawani Secondary and Higher Secondary School, Gadhi, Tq. Georai since 20th June, 2000. On 9th October, 2004, he was attending his duties in the said college. Accused no.2 named Shivaji Laxman Pawal is known to him as he is serving as Junior lecturer in the said college, since 1st July, 1991. He teaches biology subject to the students of 11th and 12th standard. He brought the muster roll to show that,

accused no.2 was attending his duty in the said college on 9th October, 2004. The timing of the said college for science faculty is from 9.00 a.m. to 4.30 p.m. inclusive of the lunch break from 1.00 to 1.30 p.m. Accused no.2 was attending his duties to deliver lecture between 10.20 to 11.00 a.m. on 11th (B) Science, then he attended duties on the class 11th (A) Science from 11.00 a.m. to 11.40 a.m., from 11.40 to 12.20 p.m. on 12th Science (B), then on class 12th A Science from 12.20 to 1.00 p.m. This witness stated that, then he attended the periods for practicals during the period from 1.30 p.m. to 4.30 p.m. The teaching staff members are required to sign the muster roll at 10.00 a.m. and at about 1.00 p.m. on every working day. He had brought the original muster roll with him on that day. He identified the entries pertaining to the month of October. There is no page number to each page in the register. On seeking the entries in the case of accused no.2, this witness stated that, he attended the duties in the month of October on every working day, except on

27th October, 2004, on which day he availed C.L. He had also brought the copy of time table and he identified the same and signature thereon. On seeing record, he stated that, accused no.2 was present in the said college for whole day on 9th October, 2004. Nothing useful to the prosecution is brought on record in cross to disbelieve the evidence of D.W.1.

19. Defence also examined Radhakishan Dhondiba Yamgar as D.W.-2 to prove that, the victim was injured in accident. In his cross-examination, he admitted that, he did not witness the actual incident, therefore, his evidence is not believed by the trial Court.

20. We have re-appreciated the entire evidence of the prosecution witnesses hereinbefore. So far accused no.2 is concerned, the complainant in his evidence has only stated that, he threatened him on 9th October, 2004 that, accused should vote for B.J.P., else he would face the consequences. We are prepared to

accept the evidence of defence witness Shaukat Dagdubhai Patel that, on the relevant date the Respondent No.2 was in the school. There is no reason to disbelieve the D.W. 1 and we do not find any cogent and justifiable reason in the judgment of the trial Court, why the trial Court has not elaborately discussed and accepted the evidence of D.W.1. Even in cross examination of the complainant he admitted that, accused no.2 Shivaji Pawal is serving as a teacher in Junior College situated near Jai Bhawani Sahakari Sakhar Karkhana and accused no.2 proceeds to Gadhi in the morning at about 8.30 a.m. on motorcycle for attending his duties and returns to the village at about 5.00 p.m.

21. Even if the allegations in the complaint are taken as it is so far incident on 11th October, 2004 is concerned in respect of accused no.2, except accused no.2 instigated and encouraged accused no.1 to assault the complainant, no any specific overt act is attributed

to accused no.2. Therefore, in our opinion, accused no.2 is entitled for benefit of doubt. So far, accused no.1 is concerned, though the trial Court has believed the evidence of complainant and also the medical evidence, nevertheless, he is acquitted from the offence punishable under section 307 of I.P. Code with observations that, the victim sustained two simple injuries, and therefore, the offence punishable under section 307 of I.P. Code is not committed. At this juncture, it would be worthwhile to reproduce the provisions of Section 307 of I.P. Code, which reads thus:-

“307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.-[When any person offending under this section is under sentence of

[imprisonment for life], he may, if hurt is caused, be punished with death.]

22. If the act of accused no.1- Shriram Jethe assaulting the complainant on head by stone is considered, there is no manner of doubt that, accused no.1 Shriram Jethe had knowledge that, in case, if he assault by stone on head of the complainant, it would cause grievous hurt and may cause death of the complainant. Even such attempt by accused no.1 with an intention or knowledge was sufficient to convict accused for offence punishable under section 307 of I.P. Code. Though the trial Court has observed that, the complainant Dattu has sustained two simple injuries, upon perusal of the evidence of PW-7 Dr. Milind Dunake, it is abundantly clear that, the complainant was assaulted on his head and he sustained grievous injuries, which would have caused his death but for timely treatment, not resulted in to death. The Supreme Court in the case of **Vasant Virthu Jadhav V/s State**

of Maharashtra¹ while interpreting and explaining the scope of section 307, held that, the important thing to be borne in mind determining the question whether an offence under section 307, is made out is the intention and not the injury. In the case of **Ansarudin V/s State of Madhya Pradesh**², the Madhya Pradesh High Court held that, it is not necessary that injury, capable of causing death, should have been inflicted. What is material to attract, the provisions of section 307 is the guilty intention or knowledge with which the all was done, irrespective of its result. The intention and knowledge are the matters of inference from totality of circumstances and cannot be measured merely from the results.

Therefore, in our opinion accused no.1 ought to have been even convicted for offence punishable under section 307 of I.P. Code. As already observed, the spot of incident has been proved by the

1 (1997) 2Crimes 539(Bom)

2 (1997) 2 Crimes 157(MP)

prosecution witnesses and same is admitted by the accused. Therefore, inescapable conclusion is that, the accused no.1 who had assaulted the complainant Dattu on his head with knowledge that, his assault by stone on head of the complainant would result into death, is liable to be punished for offence punishable under section 307 of I.P. Code.

23. We have already observed that, the prosecution has not proved the case beyond reasonable doubt against accused no.2 – Shivaji Pawal and also no specific overt act is attributed qua him on the date of incident on 11th October, 2004 by the complainant therefore, the accused no.2 is entitled for benefit of doubt.

24. So far accused no.1 is concerned, upon perusal of findings recorded by the trial Court, so far convicting him for offence punishable under Section 326 of I.P. Code is concerned, we confirm the said

findings and sentence awarded by the trial Court in clause (3) of the operative part of the order. So far, sentence for offence punishable under section 307 of I.P. Code is concerned, there are some mitigating factors in favour of the accused, which deserves to be kept in view while awarding the sentence viz., (i) though the alleged incident had taken place on 9th October, 2004, the complaint is filed belatedly on 7th November, 2004. (ii) Though the complainant was able to speak from 27th October, 2004, the First Information Report was not promptly lodged. (iii) Though the complainant was not able to lodge the First Information Report, it was possible for his brother to lodge the complaint. (iv) the motive to assault on complainant Dattu by accused no.1 Shriram Jethe is on account of refusal of the complainant to vote in favour of candidate belonging to B.J.P. It appears that, accused no. 1 did not come prepared to assault the complainant. However, at the spot of incident he picked up stone and assaulted on the head of the complainant. But certainly, accused

had knowledge that, such assault on the head of the complainant would result into grievous hurt and may cause death of the complainant. (v) PW-7 in his evidence before the Court stated that, when the complainant was brought to hospital, he was conscious. (vi) The accused is acquitted of the offence punishable under Section 307 in the year 2006. (vii) The learned counsel appearing for the appellants by way of alternate submission argued that, this Court may award compensation in lieu of sentence. Therefore, keeping in view, the aforementioned factors, in our opinion, ends of justice would meet, if accused no.1 is sentenced to suffer rigorous imprisonment for six months and to pay compensation of Rs. 3,00,000/-to injured informant Dattu Ambadas Shinde. Hence, the following order :-

- (i) The impugned order of acquittal of accused no.1 – Shriram Janardhan Jethe for offence punishable under Section 307 read with section 34 of the Indian Penal

Code is quashed and set aside. Accused no.1 – Shriram Janardhan Jethe is convicted for the offence punishable under Section 307 of Indian Penal Code and he is sentenced to suffer rigorous imprisonment for six months and to pay compensation of Rs. 3,00,000/-, (Rs. Three Lacs Only) to injured informant Dattu Ambadas Shinde as per provisions of Section 357(3) of the Cr.P.C. within one month from the date of this order, in default, to suffer rigorous imprisonment for two months. Conviction of accused no.1 for offence punishable under Section 326 of I.P. Code, as ordered by the trial Court, stands confirmed.

(ii) So far accused no.2 – Shivaji Laxman Pawal is concerned, he is acquitted of the offences punishable under Section 307, 326, 506 of I.P. Code and is acquitted from all the charges levelled against him.

(iii) Period of detention, if any, in the case of accused no.1 – Shriram Janardhan Jethe is hereby set

of, as provided under Section 428 of the Code of Criminal Procedure.

(iv) Both the sentences to run concurrently.

(v) The order passed by the trial Court is modified accordingly and substituted by the order passed by this Court today.

25. In the light of discussion in foregoing paragraphs, Criminal Appeal filed by the accused is partly allowed. So also Criminal Appeal filed by the State is also partly allowed. The Criminal Revision filed by the complainant is disposed of in view of the disposal of State Appeal. Accordingly both appeals are disposed of on above terms.

Sd/-

(**A.M. BADAR, J.**)

Sd/-

(**S.S. SHINDE, J.**)

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sga/-