

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.634 OF 1993

1. Sudhakar Pandurang Jagtap, Aged : 24 Yrs., Occ.: Agriculturist	]	
	]	
	]	
2. Shahaji Vishwanath Jagtap, Aged : 19 Yrs., Occ.: Agriculturist	]	<i>(Deleted as per Court</i>
	]	<i>Order dt. 12/03/2015)</i>
	]	
3. Pandurang Chandru Jagtap, Aged : 65 Yrs., Occ.: Agriculturist	]	<i>(Abated as per Court</i>
	]	<i>Order dt. 05/03/2015)</i>
	]	
All residents of Kodoli, Taluka Karad, District Satara.	]	 Appellants

Versus

State of Maharashtra	]	 Respondent
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ALONG WITH
CRIMINAL REVISION APPLICATION NO.9 OF 1994

Sambhajirao Ramchandra Jagtap, Adult, residing at Village Kodoli, Taluka Karad, District Satara.	]	 Applicant
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Versus

1. Sudhakar Pandurang Jagtap, Aged : Adult, Occ.: Agriculturist	]	(Original Accused No.1)
	]	
	]	
2. Shahaji Vishwanath Jagtap, Aged : Adult, Occ.: Agriculturist	]	<i>(Deleted as per Court</i>
	]	<i>Order dt. 12/03/2015)</i>
	]	
3. Pandurang Chandru Jagtap, Aged : Adult, Occ.: Agriculturist	]	<i>(Abated as per Court</i>
	]	<i>Order dt. 05/03/2015)</i>
	]	
All residents of Kodoli, Taluka Karad, District Satara.	]	
	]	
	]	
4. The State of Maharashtra	]	 Respondents

AND
CRIMINAL APPEAL NO.69 OF 1994

The State of Maharashtra] Appellants

Versus

1. Sudhakar Pandurang Jagtap,	]	
Aged : 24 Yrs., Occ.: Agriculturist	]	
	]	
2. Shahaji Vishwanath Jagtap,	]	<i>(Deleted as per Court</i>
Aged : 19 Yrs., Occ.: Agriculturist	]	<i>Order dt. 12/03/2015)</i>
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3. Pandurang Chandru Jagtap,	]	<i>(Abated as per Court</i>
Aged : 65 Yrs., Occ.: Agriculturist	]	<i>Order dt. 05/03/2015)</i>
	]	
All residents of Kodoli, Taluka Karad,	]	
District Satara.	]	 Respondents

Mrs. A.S. Pai, A.P.P., for the Appellant-State
in Cr. Appeal No.69 of 1994, for the
Respondent in Cr. Appeal No.634 of 1993
and for Respondent No.4 in Cr. Revision
Application No.9 of 1994.

Mr. Ashok P. Mundargi, Sr. Counsel, a/w.
Mr. Umesh Pawar and Mr. Abhishek Yende
for the Respondents in Cr. Appeal No.69 of
1994, for Respondent Nos.1 to 3 in Cr.
Revision Application No.9 of 1994 and for
the Appellants in Cr. Appeal No.634 of
1993.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

RESERVED ON : 18TH JUNE, 2015

PRONOUNCED ON : 2ND JULY, 2015

JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. As these two Appeals and Revision Application are arising out of the one and same Judgment dated 11th October, 1993, passed by the Additional Sessions Judge, Satara in Sessions Case No.87 of 1989, they are decided by this common Judgment. For the sake of convenience, therefore, the parties are referred to by their original nomenclature.

2. By the impugned Judgment, Accused Nos.1 and 2 are convicted for the offence punishable under Section 304 Part I r/w. 34 of the IPC, whereas, Accused No.3 is convicted for the offence punishable under Section 304 Part I r/w. Section 109 of the IPC. Each of the Accused is sentenced to undergo R.I. for seven years and to pay fine of Rs.2,500/-, in default to suffer R.I. for a period of one year. Hence, they have preferred the Criminal Appeal No.634 of 1993, challenging their conviction and sentence.

3. As by the impugned Judgment, Accused Nos.1, 2 and 3 are acquitted for the offence punishable under Sections 302 and 447 r/w. 34 of the IPC, the State has preferred Criminal Appeal No.69 of 1994, whereas the brother of the deceased has preferred Criminal Revision Application No.9 of 1994 against the acquittal

of the Accused for the offence punishable under Sections 302 and 447 r/w. 34 of the IPC.

4. Facts, as are necessary, for deciding these proceedings may be stated as follows :-

PW-1 Sambhaji and his brother deceased Tanaji were having agricultural land at Village Kodoli. PW-5 Baban and PW-6 Tukaram were also having their own agricultural lands, adjoining to the land of the deceased. Accused No.1 Sudhakar is the son of Accused No.3 Pandurang and Accused No.2 Shahaji was the nephew of Accused No.3. Their land was also situate nearby. PW-4 Jagannath was working as Driver on the Tractor Trolley of deceased Tanaji.

5. The incident giving rise to this case took place on 4th March, 1989. On that day, at about 2:30 pm, while deceased Tanaji and PW-4 Jagannath were sitting in their field, after carrying out usual farming activities, Accused No.1 Sudhakar arrived there with a loaded tractor and trolley. He was driving the tractor and Accused No.2 Shahaji and Accused No.3 Pandurang were sitting on the trolley of the tractor. Accused No.1 Sudhakar picked-up the quarrel with deceased Tanaji on the count that due to the

water clogging in the field of deceased Tanaji, he is finding it difficult to proceed from the said field. Accused No.1 Sudhakar threatened deceased Tanaji of dire consequences and also of twisting his testicles, on their return way. Giving such threatening, Accused left for their field.

6. After some time, PW-5 Baban came there and sat with deceased Tanaji and PW-4 Jagannath, discussing about the release of water for cultivation of sugar-cane crops. While they were so discussing, Accused Nos.1, 2 and 3 returned on their tractor trolley, after having unloaded the same, and started abusing and quarreling with the deceased on the same count of water clogging. Thereupon, deceased Tanaji replied that, on account of the leakage from the water-pipe of the Accused, there was water clogging in his field and damage was caused to his crops, even then, he was not picking-up the quarrel. Saying so, Tanaji went ahead, near the tractor of the Accused, in order to reconcile the things. Accused No.1 Sudhakar, however, again gave the same abuses and threatening. Accused No.3 Pandurang instigated him to hold deceased Tanaji and not allow him to go away. Accused No.1 Sudhakar switched off the engine of the tractor, jumped therefrom and rushed towards the deceased. He

held the deceased by neck and then pressed his neck with the right hand. In the process, he pushed the deceased towards the trolley. Accused No.2 Shahaji also jumped from the trolley and joined Accused No.1 Sudhakar in assaulting deceased Tanaji. Both of them fell the deceased on the ground behind the trolley. They sat on the chest of the deceased and beat him with fist blows and legs. Accused No.1 Sudhakar also twisted the testicles of the deceased. PW-4 Jagannath intervened and pulled Accused No.1 Sudhakar aside. PW-5 Baban and PW-6 Tukaram separated deceased from the Accused. Then Accused left with their tractor towards their residence at Village Kodoli.

7. As Tanaji was breathing heavily and had become feeble, PW-4 Jagannath gave him support and took him towards the water chamber, made him sit under the shed of Nilgiri tree, gave him some water to drink. However, the condition of Tanaji was becoming worse and ultimately he succumbed to death.

8. PW-4 Jagannath then requested PW-6 Tukaram to sit near Tanaji and he went to call Tanaji's brother PW-1 Sambhaji, who was in another field. He narrated the incident to PW-1 Sambhaji. PW-1 Sambhaji rushed to the spot and then went to the Police

Station at Karad and lodged the complaint of entire incident to the Police, as narrated to him by PW-4 Jagannath.

9. On his complaint (Exhibit-14), PW-9 PSI Vijaykumar Chougule registered C.R. No.43 of 1989 against the Accused for the offence punishable under Section 302 r/w. 34 and Section 109 of the IPC. He immediately came to the spot and made Inquest Panchanama (Exhibit-14) in the presence of the Panch PW-2 Vasant Jagtap. After the Inquest Panchanama, he sent the dead body for postmortem examination. As it was night, he placed two Constables to guard the scene of offence and went to take search of the Accused. Accused No.2 Shahaji and Accused No.3 Pandurang were found in the house. They were brought to the Police Station and were arrested under Panchanama. Accused No.1 Sudhakar was not traceable. He could be arrested finally on 8th March, 1989. On the next day of the incident, PW-9 PSI Chougule carried out the Panchanama of the Scene of Offence (Exhibit-16) in the presence of the Panch PW-3 Sharad Jagtap. From the spot, he seized blood mixed mud, simple mud and other articles. On the same day, he recorded supplementary statement of PW-1 Sambhaji and the statements of some more witnesses. On receipt of the Postmortem Report (Exhibit-24) and

on completion of investigation, he filed Charge-Sheet in the Court against the Accused on 13th April, 1989.

10. On committal of the case to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-3. Accused abjured the guilt and claimed trial.

11. In support of its case, the Prosecution examined in all 9 witnesses and on appreciation of their evidence, the Trial Court convicted Accused Nos.1 and 2 for the offence punishable under Section 304 Part (I) r/w. 34 of the IPC and Accused No.3 for the offence punishable under Section 304 Part (I) r/w. 109 of the IPC and sentenced them, as stated above. In view of acquittal of the Accused for the offence punishable under Sections 302 and 447 r/w. 34 of the IPC, the State and the brother of deceased Tanaji, namely, PW-1 Sambhaji also, have challenged the Judgment of the Trial Court.

12. During pendency of the Appeal, Accused No.3 Pandurang has expired. Hence, as per the order dated 5th March, 2015, the Appeals and Revision Application are abated against him; whereas by order dated 12th March, 2015, the name of Accused No.2 Shahaji is deleted, as he was found to be juvenile-in-conflict

with law at the time of incident. Hence, the Appeals preferred by the Accused and the State, and the Revision Application, preferred by the brother of the deceased, are proceeded only against Accused No.1 Sudhakar.

13. In these Appeals and Revision Application, we have heard learned Counsel for the Accused and Revision Applicant. We have also heard learned A.P.P. for the State. In our considered opinion, in order to effectively deal with the rival submissions advanced by them, it would be useful to refer to the evidence on record.

14. The Prosecution case stands on a solid foundation of the ocular account of three eye witnesses, namely, PW-4 Jagannath, PW-5 Baban and PW-6 Tukaram. The presence of all these three eye witnesses at the time of incident is natural one. PW-4 Jagannath is the tractor driver of the deceased, whereas, PW-5 Baban is the adjoining land owner and who, at the time of incident, was discussing the issue of providing water to his field with deceased Tanaji. PW-6 Tukaram is again a farmer, whose field is adjoining to the field of deceased Tanaji and who was returning to his house walking behind the tractor trolley of the Accused. Their evidence is more or less of an identical nature.

15. The incident has occurred in two phases; the first one, when the Accused were proceeding to their field to unload the tractor trolley and at that time they gave the threatening to the deceased on account of water clogging in the field, which was making it difficult for the Accused to proceed on their tractor trolley. In respect of this incident, the evidence of PW-4 Jagannath is of importance. According to him, on that day, at about 2:30 pm, when he and deceased Tanaji were in the field, Accused No.1 Sudhakar arrived there with loaded tractor and trolley. He was proceeding from Village Kodoli towards his field. He was driving that tractor, whereas, Accused No.2 Shahaji and Accused No.3 Pandurang were sitting on the trolley of the tractor. As there was water clogging in the field of the deceased, Accused No.1 Sudhakar confronted him about it and also threatened him of dire consequences on their return way.

16. The second phase of incident took place when some time thereafter Accused were returning from their field on the tractor trolley. At that time, deceased Tanaji was sitting along with PW-5 Baban, who had come there to discuss about release of water for cultivation to his sugar-cane crops. PW-4 Jagannath was sitting

just there, whereas, PW-6 Tukaram was in the cattle-shed of his field. He found that Accused were proceeding on their tractor from Dag's field towards Kodoli side and they were abusing deceased Tanaji. Accused No.1 Sudhakar was driving the tractor and other Accused were on the trolley. As per evidence of PW-6 Tukaram, he was, in fact, following the tractor. When Accused came near the deceased, Accused No.1 Sudhakar stopped the tractor and again confronted the deceased that, *'whether he could not see that water from his field had spread on the road?'*. Deceased Tanaji replied that, he had not purposely allowed the water to spread on the road, but it was the water pipeline belonging to the Accused, which was passing through his field and on account of the leakage from that water pipeline, the water was clogged; even his own crops were damaged because of the said water clogging. Tanaji then tried to pacify Accused No.1 Sudhakar. However, Accused No.1 Sudhakar was not in the mood to be pacified. He again threatened the deceased of twisting his testicles. Accused No.3 Pandurang exhorted Accused No.1 Sudhakar to hold the deceased and not allow him to go away and further to kill the deceased. Accused No.1 Sudhakar then stopped the engine and got down from the tractor, held the

deceased by his neck and pressed the neck of the deceased with his right hand. While doing so, Accused No.1 Sudhakar pushed the deceased towards the trolley. Accused No.2 Shahaji also got down from the tractor to join Accused No.1 Sudhakar. Both of them beat the deceased with fist blows and kicks on his chest, ribs and thighs. They fell him on the ground and sat on his chest. Accused No.1 Sudhakar then also twisted the testicles of the deceased. Meanwhile, PW-5 Baban and PW-6 Tukaram intervened and pulled the Accused away, separating the deceased from their clutches. Accused then left the spot in their tractor trolley. PW-4 Jagannath has also spoken about the presence of PW-5 Baban and PW-6 Tukaram at the time of incident and in their evidence, both these witnesses have spoken about the presence of PW-4 Jagannath.

17. It is further their evidence that due to this assault, Tanaji was breathing heavily and had become feeble. PW-4 Jagannath helped him to get up, gave him support and took him by walking towards the water chamber. Finding that the incident was over, PW-5 Baban left the place since he had to go to his duty, whereas, PW-6 Tukaram also left for his work in the field. However, the incident was not over as such, because Tanaji

continued to feel uneasy. His breathing had become heavier. He asked for water to PW-4 Jagannath. PW-4 Jagannath gave him water from water chamber. Tanaji asked him to bring his under-pant from the cattle-shed, as the string of his underwear was broken during the incident. Accordingly, PW-4 Jagannath brought the under-pant. Deceased Tanaji changed the under-pant with his help. However, his condition was worsening. He laid down on the ground. The white froth started coming from his nostrils. The pace of his breathing reduced. His pulse also went down and stopped. Tanaji succumbed to the injuries sustained in the assault. PW-4 Jagannath became nervous and brought PW-6 Tukaram, who was in his field. He requested PW-6 Tukaram to sit near deceased Tanaji and called PW-1 Sambhaji from the other field and narrated him the incident.

18. The evidence of PW-1 Sambhaji is corroborating to the effect that on the receipt of this information from PW-4 Jagannath, he rushed to the field and saw that his brother has already succumbed to death. Therefore, he first went to home, informed his parents and other family members about the incident. Then he proceeded in a borrowed vehicle to Karad Police Station, which was at the distance of 8 kms. There he

lodged the report (Exhibit-12).

19. The evidence of PW-9 PSI Chougule reveals that the complaint of PW-1 Sambhaji came to be registered at about 6 pm. There is an endorsement to that effect on the complaint (Exhibit-12). In due course, Inquest Panchanama was carried out and the dead body of Tanaji was sent for postmortem examination.

20. The medical evidence in the case goes hand in hand with the ocular evidence and it proves that the cause of the death was "*asphyxia following strangulation*". There is evidence of PW-7 Dr. Lila Salunkhe to that effect. She has conducted the postmortem at Cottage Hospital, Karad on the next day, in between 9 am to 10 am. On her examination, she found following injuries :-

- (i) Diffused swelling over right axilla and right chest reddish in colour.
- (ii) Contusion over right upper arm upto the elbow joint 10" x 6" reddish in colour.
- (iii) Contusion over left upper arm and shoulder and lateral side of chest 10" x 6" reddish in colour.

- (iv) Diffused swelling all over neck congested reddish in colour.
- (v) Contusion over right thigh on anterior medial aspect oblique 4" x 2" reddish in colour.
- (vi) Contusion over left thigh anteriorly just below the groin 3" x 2" reddish in colour.
- (vii) Ant bite marks over back and both axilla and both groins.

21. She further noticed that neck and face were congested, swollen, congestive; eyes closed, mouth closed, tongue inside mouth, watery oozing from both nostrils present.

22. According to her, Injury Nos.1 to 6 were antemortem and have been caused by hard and blunt object, whereas, Injury No.7 was postmortem. She found the brain, livers and lungs were also congested. She also noticed intermuscular haematoma over both sides of neck. On the basis of her examination, she has opined the cause of death as "*asphyxia following strangulation*". The Postmortem Report is at Exhibit-24.

23. It is also brought on record from her evidence that since there was diffused swelling, there was no ligature mark. Therefore, according to her, injuries could have been possible by mugging, which was actually the case. Though the witnesses

have deposed it as strangulation, considering the evidence on record, it can be clearly said that it was a case of mugging. As per her evidence, injuries on the chest, arm and thighs could have been possible by blows of fists and kicks. Injury No.3 was possible because of plurality of blows given with great force. Injury Nos.5 and 6 also, in her opinion, were caused on account of forcible blows. She has given a categorical finding that all the injuries combined, were sufficient in the ordinary course of things to cause the death. She further opined that Injury No.4, diffused swelling all over the neck, was individually itself sufficient in the ordinary course of nature to cause the death. According to her, considering the injuries which were found on the body of the deceased, a person is likely to survive for not more than 5 to 10 minutes. This is so because there was partial compression of the neck.

24. In her cross-examination, it is elicited that she did not find any discrepancy between the Inquest Panchanama (Exhibit-14) and the external injuries found on the person of the deceased. It is further brought on record that the internal appearance of the organs of the body would be the same in case of strangulation by mugging or any other form of strangulation. She has denied

suggestion that Injury No.4 was simple, though she has admitted that other injuries may be simple and caused during scuffle. She denied suggestion that deceased could have died on account of vasogova shock and has given reasons for the same, like, the brain was slightly congested, right lung and liver was found congested, larynx was also oedomatous and congested. The only admissions the Decence could elicit from her evidence is that, if a person was held by the collar, Injury No.4 can be possible and if medical aid was made available, deceased could have been survived.

25. In view of these two admissions given by PW-7 Dr. Lila Salunkhe, the submission of learned Counsel for the Accused is that the case, at the most, can fall under Section 325 of the IPC or, alternatively, under Section 304 Part II of the IPC. According to the learned counsel for the Accused, in the instant case, there was neither the intention nor any motive on the part of the Accused to commit the murder of the deceased. No weapon is also alleged to have been used in the commission of offence. It was a sudden fight, which took place as a result of hot exchange of words between the deceased and Accused on account of clogging of the water. PW-7 Dr. Lila Salunkhe has also admitted

that Injury No.4, which has resulted into the death, can be possible by holding the collar of the shirt or banian worn by the deceased. It was simplicitor a case of mugging. Hence, the Trial Court has also, in paragraph No.19 of its Judgment, observed that,

“there are reasons to believe that all that happened might have happened on account of sudden fight and in heat of passion.”

26. Hence, according to learned Counsel for the Accused, the benefit of Exception IV to Section 300 of IPC should have been extended by the Trial Court to the Accused. According to him, as no weapon is proved to be used, the case can also fall under Section 325 of the IPC. In the alternate, he has submitted that if it is proved that the assault was made with the knowledge, then case can fall at the most under Section 304 Part (II) of the IPC, but definitely not under Section 302 or Section 304 Part (I) of the IPC.

27. Moreover, learned Counsel for Accused has also submitted that, now in view of the death of Accused No.3 Pandurang and the name of Accused No.2 Shahaji being deleted, he being

juvenile at the time of incident, the case stands against Accused No.1 Sudhakar alone. Therefore, the punishment, which is imposed by the Trial Court, of seven years imprisonment is required to be reduced to the punishment already undergone by him, which is of about one month. Especially, considering that the incident had taken place in the year 1989, whereas now we are in the year 2015 and during all this period, Accused No.1 Sudhakar was on bail. Therefore, according to him, the amount of fine can be enhanced by releasing Accused No.1 Sudhakar on the punishment of one month already undergone by him.

28. As against it, the submission of learned A.P.P. and learned Counsel for the Revision Applicant is that this is a case which squarely falls under Section 302 of the IPC. It was not a sudden fight in which the incident has occurred. The earlier part of the incident goes to reveal that Accused had threatened the deceased that he will have to face dire consequences, as they will look after him while returning from their field after unloading the trolley. According to learned A.P.P., in the back-drop of this earlier incident, it would be difficult to hold that the incident has occurred in sudden fight and the case of the Accused can fall under Exception IV to Section 300 of the IPC.

29. In our considered opinion also, if the facts proved on record in the present case are considered, then it cannot be accepted that incident was the outcome of the sudden fight. The Accused had left the spot giving threatening of dire consequences to the deceased and while returning, they have implemented that threatening. Without any provocation on the part of the deceased or without there being any quarrel or even hot exchange of words between the parties, the Accused had made the assault on the deceased.

30. The benefit of Exception IV to Section 300 of the IPC can be extended to the Accused only when the fight is not prearranged and the assault is unpremeditated, committed in the heat of passion upon a sudden quarrel. The word "*fight*" also connotes something more than a verbal quarrel. It takes two to make a fight, though it is not necessary that weapon should be used in the fight. Hence, in order to constitute a fight, it is necessary that blows should be exchanged, even if they do not find their target. In the instant case, there is absolutely no evidence to prove that there was fight in this sense between the deceased and Accused. The evidence of PW-4 Jagannath and other two eye

witnesses goes to prove that the deceased went near the Accused to persuade and pacify them that, on account of the water leakage from their pipeline, his crops are damaged, but even then, he is not raising any quarrel. Despite that, Accused had started assaulting him.

31. Moreover, even assuming that there was some verbal quarrel or hot exchange of words, there was no 'fight' as such between the deceased and the Accused, as from the cross-examination of these three eye witnesses, nothing is elicited to show that there was exchange of blows between the deceased and Accused. The assault was also not unpremeditated or sudden. Conversely, the Accused had given the threatening of such assault while proceeding to their field. Even if they were not carrying weapons, the fact that they were three in number and assaulting one person, is sufficient to infer that weapon was not necessary to be carried.

32. Further, to bring the case under Exception IV to Section 300 of the IPC, it also needs to be shown that the assault was *“without the offenders having taken undue advantage or acting in a cruel or unusual manner”*. Here in the case, the deceased

and witnesses were unarmed. The Accused have not stopped merely assaulting the deceased with fist blows, but they have strangled him, fell him down, sat on his chest, gave fist blows to him on chest and other vital parts of the body and they also twisted his testicles, which is a delicate part of the body. Hence, it can be definitely said that they had acted in cruel and unusual manner. Though PW-7 Dr. Lila Salunkhe has admitted that there were no external injuries on the genitals, she found contusions over right and left thigh on anterior medial aspect, just below the groin, 4" x 2" cms and 3" x 2" cms, reddish in colour.

33. Now the question for consideration is, '*whether the instant act was committed by the Accused with intention or knowledge?*'. As held by the Apex Court in **Camilo Vaz Vs. State of Goa, (2000) 9 SCC 1**, relied upon by learned Counsel for the Accused,

"Section 304 is in two parts. If analysed, the section provides for two kinds of punishment to two different situations; (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention"; (2) if the act is

done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death.”

34. Therefore, the essential ingredient for attracting part I of Section 304 of the IPC is “intention”, whereas, the essential ingredient for attracting Part II of Section 304 of the IPC is “knowledge”. The Trial Court itself has, in paragraph No.19 of its Judgment, observed that,

“there was no motive for the Accused persons to kill the deceased. No weapon whatsoever was used and there was none with the Accused when they arrived at the scene of the offence. However, they said to have knowledge that the injury was such which was likely to cause death.”

35. Trial Court has thus attributed the '*knowledge*' and not the '*intention*' on the part of the Accused to cause such bodily injury as is likely to cause the death. In our view, therefore, Trial Court's order of convicting the Accused for the offence punishable under Section 304 Part (I) of the IPC is against its own findings and is

required to be set aside. The case of the Accused, therefore, in our opinion also, falls under Section 304 Part II of the IPC and not under Section 304 Part I of the IPC.

36. As regards the punishment, learned Counsel for the Accused has advanced submission that as now only Accused No.1 is facing the conviction, hence, his punishment should be reduced to the imprisonment already undergone by him in the Jail. In our considered opinion, this submission cannot be accepted. Even if Accused No.1 Sudhakar is held guilty for the offence punishable under Part II of Section 304 of the IPC and even if it is more than 25 years from the occurrence, the Accused No.1 Sudhakar is required to be sent to Jail, as the punishment already undergone by him is hardly of one month and the offence proved against him is of a serious and grave nature, inviting the minimum punishment upto ten years. The evidence on record also shows that it was Accused No.1 Sudhakar, who was the aggressor and the active partner in the crime. Accused No.3 Pandurang has merely given the instigation, whereas, Accused No.2 Shahaji has given fist blows and kicks to the deceased. Injury which has resulted into the death of deceased, that of strangulation, was inflicted by Accused No.1 Sudhakar.

37. At the same time, considering the time lapsed from the date of incident and the fact that the conviction of Accused No.1 Sudhakar is also altered from Section 304 Part I to Section 304 Part II of the IPC, in our considered opinion, the punishment can be reduced to R.I. for five years, in place of R.I. for seven years. Proportionately, fine amount also deserves to be enhanced from Rs.2,500/- to Rs.50,000/-, which amount should be paid to the legal heirs of the deceased as compensation under Section 357(1) of the Cr.P.C.

38. Consequently, Criminal Appeal No.69 of 1994 preferred by the State and Criminal Revision Application No.9 of 1994 preferred by the brother of deceased Tanaji challenging acquittal of the Accused for the offence punishable under Sections 302 and 447 of the IPC stand dismissed.

39. Criminal Appeal No.634 of 1993 is hereby allowed partly. Conviction and sentence of Accused No.1 Sudhakar for the offence punishable under Section 304 Part I of the IPC is set aside. Instead thereof, he is convicted for the offence punishable under Section 304 Part II of the IPC and sentenced to suffer R.I. for five years and to pay fine amount of Rs.50,000/-, in default to

suffer R.I. for one year. Fine amount, if recovered, be paid to the legal heirs of the deceased as compensation under Section 357(1) of the Cr.P.C.

40. Bail Bond of Accused No.1 stands cancelled and he is to surrender to bail within four weeks.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]