

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.633 OF 1996**

- |                                                        |   |                   |
|--------------------------------------------------------|---|-------------------|
| 1. Goma Dhavaji Dawoor, ( <i>since deceased</i> )      | ] |                   |
| Age : 33 years <b><u>Abated</u></b>                    | ] |                   |
|                                                        | ] |                   |
| 2. Ramesh Ambu Dapolkar,                               | ] |                   |
| Age : 35 years                                         | ] |                   |
|                                                        | ] |                   |
| 3. Dhanaji Bapu Gharat,                                | ] |                   |
| Age : 35 years                                         | ] |                   |
|                                                        | ] |                   |
| 4. Narayan Bapu Gharat,                                | ] |                   |
| Age : 37 years                                         | ] |                   |
|                                                        | ] |                   |
| 5. Kanha Sitaram Dapolkar, ( <i>since deceased</i> )   | ] |                   |
| Age : 38 years <b><u>Abated</u></b>                    | ] |                   |
|                                                        | ] |                   |
| 6. Shalik Dinkar Gharat, ( <i>since deceased</i> )     | ] |                   |
| Age : 26 years <b><u>Abated</u></b>                    | ] |                   |
|                                                        | ] |                   |
| 7. Kamalakar Govind Katekar, ( <i>since deceased</i> ) | ] |                   |
| Age : 27 years <b><u>Abated</u></b>                    | ] |                   |
|                                                        | ] |                   |
| All are agriculturist by occupation and                | ] | .... Appellants / |
| permanent resident of Vahal, Tal. Panvel,              | ] | (Original Accused |
| Dist. Raigad                                           | ] | Nos.1 to 7)       |
| <b><i>Versus</i></b>                                   |   |                   |
| State of Maharashtra                                   | ] | .... Respondent   |

Mr. Shirish Gupte, Sr. Counsel, a/w. Mr. Prakash Naik,  
for the Appellants.

Mr. H.J. Dedhia, A.P.P., for the Respondent-State.

**CORAM : P.V.HARDAS &  
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

**JUDGMENT RESERVED ON : 13<sup>TH</sup> MARCH, 2015.**

**JUDGMENT PRONOUNCED ON : 17<sup>TH</sup> MARCH, 2015.**

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

1. The Appellants/original Accused Nos.1 to 7, who stand convicted for the offence punishable under Sections 302 r/w. 149 of the Indian Penal Code and under Section 148 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- each, in default to suffer R.I. for one year, on first count, and R.I. for one year and to pay fine of Rs.500/- each, in default to suffer R.I. for three months, on the second count, by the Sessions Judge, Raigad, Alibag, by his Judgment dated 3<sup>rd</sup> October, 1996 in Sessions Case No.123 of 1992, by this Appeal had challenged their conviction and sentence. As during the course of Appeal, Appellant No.1 Goma, Appellant No.5 Kanha, Appellant No.6 Shalik and Appellant No.7 Kamalakar have died, their Appeal stands abated. This Appeal hence now stands confined as regards challenge to conviction and sentence of Appellant No.2 Ramesh, Appellant No.3 Dhanaji and Appellant No.4 Narayan only.

2. Facts, as are necessary, for the decision of this Appeal may briefly be stated thus :

3. On 20<sup>th</sup> April, 1992, at about 7 am, while PW-13 PSI Dharma Gurao was on duty at Panvel Town Police Station, PW-1 Changa Bhagat came to the Police Station and lodged complaint (Exhibit-27) about the murder of his brother Joma Bhagat. On this complaint, PW-13 PSI Gurao registered C.R. No.110 of 1992 against the present Accused/Appellants for the offences punishable under Section 302 r/w. 149 and Section 147 and 148 of the IPC. He immediately visited the scene of offence along with PW-1 Changa and found the dead body of Joma lying in his house. He noticed about 21 injuries on the dead body. He accordingly made Inquest Panchanama vide Exhibit-46 in the presence of the Panch PW-11 Haribhau Dapolkar. After the Inquest Panchanama, he sent the dead body of Joma for postmortem examination to Municipal Hospital at Panvel, along with Constable Kumbhar. Then he recorded the Panchanama of the Scene of Offence (Exhibit-19), as shown by PW-1 Changa. The Panchanama was made at two places; one in front of the house of the deceased and another near the temple, where deceased Joma was taken, assaulted and murdered.

4. On the same day, PW-13 PSI Gurao recorded the statements of deceased Joma's wife PW-2 Jomubai, his sister-in-law PW-3 Bayobai and her daughter PW-4 Ahilya, the niece, who were eye witnesses to the

incident. He further recorded the statements of independent eye witnesses, who were the neighbours nearby, namely, PW-5 Laxmibai Patil, PW-6 Ramakant Gharat, PW-7 Ramesh Gharat and PW-8 Jairam Mhatre and some other witnesses. Search of the Accused was taken, but they were not found. He took the search of the houses of the Accused persons in the presence of the Panch PW-9 Chandrakant Mhatre. From the house of Accused No.1 Goma, he seized the blood stained shirt under Panchanama (Exhibit-37), whereas, from the house of Accused No.3 Dhanaji, he seized his two shirts stained with blood under Panchanama (Exhibit-38). From the house of Accused No.4 Narayan, he seized the blood stained pant and shirt under Panchanama (Exhibit-39). Though the search of the house of Accused No.6 Shalik and Accused No.2 Ramesh was also taken, nothing incriminating was found from their house.

5. On 24<sup>th</sup> April, 1992, PW-13 PSI Gurao arrested all the seven Accused under Panchanama (Exhibit-21). During police custody on 28<sup>th</sup> April, 1992, Accused No.1 Goma gave a disclosure statement in the presence of the Panch PW-9 Chandrakant Mhatre that he is ready to produce the weapon of assault, the gupti, kept concealed in the forest. The Memorandum Panchanama (Exhibit-41) of his statement was prepared. Thereafter he took the Police and the Panchas to the spot and

produced the blood stained gupti (Article 12), which came to be seized under Panchanama (Exhibit-40). During interrogation on 29<sup>th</sup> April, 1992, Accused No.2 Ramesh gave a disclosure statement in the presence of the Panch PW-10 Dayaram Patil. The Memorandum Panchanama of his statement was prepared vide Exhibit-43. Thereafter at the behest of Accused No.2 Ramesh, the stick came to be seized from the bushes under Panchanama (Exhibit-44).

6. On 14<sup>th</sup> May, 1992, PW-13 PSI Gurao sent all the seized muddemal articles to Chemical Analyzer. The C.A. Report is produced on record at Exhibit-25. Meanwhile, PW-12 Dr. Murlidhar Pawar has conducted the postmortem examination on the dead body of Joma and had issued the Postmortem Notes vide Exhibit-23. As a part of further investigation, PW-13 PSI Gurao also collected the two N.C. Complaints (Exhibits “48” and “49”) lodged by PW-3 Bayobai and deceased Joma against the Accused complaining about their teasing and harassment of the female members. Further to completion of investigation, PW-13 PSI Gurao submitted Charge-Sheet in the Court against all the seven Accused.

7. On the case being committed to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-5 for the offences

punishable under Sections 147, 148 and 302 r/w. 149 of the IPC. Accused denied the guilt and claimed trial, raising the defence of false implication.

8. In support of its case, the Prosecution examined in all 13 witnesses. The Prosecution mainly placed reliance on the evidence of three eye witnesses, viz., PW-2 Jomubai, PW-3 Bayobai and PW-4 Ahilya, as other four eye witnesses, namely, PW-5 Laxmibai, PW-6 Ramakant, PW-7 Ramesh and PW-8 Jairam had turned hostile at the time of trial. The Prosecution also placed reliance on the evidence relating to recovery of the weapons of assault at the instance of Accused No.1 Goma and Accused No.2 Ramesh.

9. On appreciation of evidence on record, the Trial Court held the guilt of all the Accused to be proved beyond reasonable doubt for the offence punishable under Section 302 r/w. 149 of the IPC and Section 148 of the IPC and convicted and sentenced them, as aforesaid.

10. We have heard learned Senior Counsel for the Appellants, and learned A.P.P. for the Respondent-State and in order to effectively deal with the submissions advanced before us, it would be useful to refer to the evidence of the prosecution witnesses.

11. To prove the homicidal death of Joma, Prosecution has examined PW-12 Dr. Murlidhar Pawar, who, at the relevant time, was attached to Panvel Municipal Hospital and who has conducted the postmortem on the dead body on 20<sup>th</sup> April, 1992 in between 6 pm to 7 pm. On examination, he found in all 21 external injuries on the dead body as follows :-

- (1) *Crushed injury on left chest back from posterior aspect of shoulder to lower side 13" x 6" with massive deep type of abrasions with hard skin.*
- (2) *Abrasions over posterior iliac spine to buttock left side 9" x 9".*
- (3) *Abrasions over right chest back lower and of scapula 3" x 2" with intermittent abrasions over posterior aspect of chest on right side.*
- (4) *Abrasion over right shoulder to axilla 4.5 cm x 1 cm.*
- (5) *Multiple small abrasions over left shoulder posterior aspect to elbow.*
- (6) *Abrasions over left posterior lateral aspect of thigh 6" x 5".*
- (7) *Abrasion over left chest from 3" x 1.5" near to nipple.*
- (8) *Abrasion just above left to injury No.7 3" x 1/4".*
- (9) *Abrasion over left chest front over lower aspect 2.5" x 1.5".*
- (10) *Abrasion below to injury No.9 2.5" x 2".*
- (11) *Abrasion on left knee 2.5" x 1" with surrounding small abrasions 1/2 cm x 1/2 cm x 1/4 cm x 1/4 cm.*

(12) *Abrasion on left tibia lower third are multiple small abrasions.*

(13) *Abrasions over lateral left malleolus 1 x 1 cm.*

(14) *Abrasions over right medial malleolus M/3 XIX 1 cm.*

(15) *Abrasions over right tibia medial third anteriorly 1/2" x 1/4".*

(16) *Abrasions over right knee 1" x 1/2".*

(17) *C.L.W. below left angle of mandible 1 x 1/4 x 1/4 cm. in line of mandible.*

(18) *Crush injury with C.L.W. left maxilla 1 x 1/4 x 1/4 cm. with surrounding abrasions of 1" x 1".*

(19) *C.L.W. below right eye lower lid 1 x 1/4 cm. x 1/4 cm. with black right eye.*

(20) *Abrasions over left frontal area multiple small blackish, bluish, coloured.*

(21) *C.L.W. over left frontal area 3/4 cm x 1/8 cm x 1/8 cm.*

12. In his opinion, the cause of death was "*shock secondary to collapse of lungs with multiple fracture ribs due to compressed chest injury with blunt and hard object*". He has further opined that considering the contents of the stomach, which were undigested, deceased has died within two hours after his last meal. He has further deposed that injuries which were in the nature of abrasions are possible if some one is dragged on the rough surface and fracture of ribs was possible by hard and blunt

object, like, stone or stick. According to him, those injuries were sufficient in the ordinary course of nature to cause the death.

13. He is cross-examined mostly about the time of the death and the cause of the fatal injury, which aspects will be dealt with subsequently. For the time being, it is suffice to state that the evidence of PW-12 Dr. Murlidhar Pawar goes to prove that the cause of the death was the crush injury sustained on the left chest by the deceased, which resulted into the multiple fractures and the collapse of lungs.

14. To prove the actual incident and the complicity of the Accused therein, the Prosecution has examined eight eye witnesses. Out of them four independent eye witnesses, namely, PW-5 Laxmibai, PW-6 Ramakant, PW-7 Ramesh and PW-8 Jairam have not supported the Prosecution case. Though they were declared hostile and cross-examined by the learned A.P.P., nothing of substance is elicited in their cross-examination to prove the Prosecution case.

15. The Prosecution case is, therefore, entirely based on the evidence of three eye witnesses, namely, PW-2 Jomubai, PW-3 Bayobai and PW-4 Ahilya. Their evidence is more or less of an identical nature. All the three

of them were in the house when the incident had taken place. According to their evidence, at about 9 pm, while they were taking dinner in the house along with deceased Joma, they noticed Accused No.1 Goma, Accused No.3 Dhanaji and Accused No.4 Narayan peeping inside their house from the window. Hence, all of them stood up and further noticed that Accused No.5 Kanha, Accused No.2 Ramesh, Accused No.7 Kamalakar and Accused No.6 Shalik were standing behind Accused No.1 Goma, Accused No.3 Dhanaji and Accused No.4 Narayan. Since they witnessed the Accused, the Accused went away towards temple side. Then these three witnesses and deceased Joma completed their dinner. PW-2 Jomubai and deceased Jomu remained in the eastern side room, whereas, PW-2 Jomubai's mother-in-law went to sleep in the middle room and PW-3 Bayobai and PW-4 Ahilya went to sleep in the western side room.

16. As per evidence of PW-2 Jomubai, at about 11 pm, as her husband wanted to go to answer the call of nature, both of them came out of the house. Her husband went towards the western side to ease himself and she remained standing at the door of the house. At that time, she saw Accused No.1 Goma, Accused No.4 Narayan and Accused No.3 Dhanaji coming towards her house from the temple side. She also saw remaining

four Accused were accompanying them and all of them caught hold of her husband Joma. They started scuffle with him. Hence, she began shouting. Hearing her shouts, PW-3 Bayobai and PW-4 Ahilya and her mother-in-law, came out of the house on the road. According to their evidence also, Accused persons dragged Joma forcibly towards temple side. They remained in the house weeping. At about 3 am in the night, all the seven Accused brought Joma again dragging him and thrown him in the court yard of their house. Joma was completely naked and they noticed that he was already dead. They put under-pant on his person and started weeping and waiting for the dawn. Meanwhile, her mother-in-law sent some messenger to Panvel. At about 7 am, three brothers of her husband came to the house from Panvel. PW-1 Changa is her husband's brother, who then went to Panvel Police Station and reported the matter to Police.

17. There is corroborating evidence of PW-1 Changa. He has deposed that deceased Joma, Narayan and Gajanan were his brothers. Initially, all of them were residing together in their native place at Village Vahal, where this incident has taken place. His brother Narayan was a Panch in the village. As Accused No.2 Ramesh used to tease ladies in the village, in the year 1988, the wife of Janardhan Bapu Gharat approached the Panch Narayan and informed him about it. Therefore Narayan decided to hold a

meeting of the Panchas and respectable persons in the village. However, Accused No.2 Ramesh did not allow him to hold such meeting. As a result, the relations of the family of PW-1 Changa, his brother Joma, Narayan and that of the Accused became strained. Accused No.2 Ramesh used to harass their family members and hence Narayan, Gajanan and PW-1 Changa shifted to New Panvel since 1989. Deceased Joma alone continued to reside at Village Vahal. PW-3 Bayobai is the wife of Narayan and PW-4 Ahilya is their daughter. They also used to reside at New Panvel. However, for agriculture work, they had come to the village and on the date of incident, they were in the house of deceased Joma.

18. It is further deposed by him that on 20<sup>th</sup> April, 1992, at about 7 am, one Bhagwan Lahu Gharat came to his house at Panvel and informed him that his brother Jomu was killed at the village. Hence, he and Narayan immediately came to Village Vahal. When they reached the house, they found the dead body of Joma lying at the entrance of the door. They noticed injuries on his body. PW-2 Jomubai, PW-3 Bayobai and PW-4 Ahilya were present there. They disclosed him about the incident and the fact that Accused No.1 Goma, Accused No.2 Ramesh, Accused No.3 Dhanaji, Accused No.4 Narayan, Accused No.5 Kanha, Accused No.6 Shalik and Accused No.7 Kamalakar had killed Joma. Hence, he

immediately returned back to Panvel Police Station and reported the matter to Police. Police recorded his complaint vide Exhibit-27 and then came to the spot along with him. In the complaint (Exhibit-27), the names of the Accused and the incident, as has happened, is stated.

19. There is further corresponding evidence of PW-13 PSI Gurao, who has recorded his complaint on that morning, came to the spot with PW-1 Changa and found the dead body of Jomu. He carried out Inquest Panchanama (Exhibit-46) in the presence of PW-10 Dayaram Patil and sent the dead body for postmortem examination.

20. Thus, there is consistent evidence of three eye witnesses, namely, PW-2 Jomubai, PW-3 Bayobai and PW-4 Ahilya, whose presence at the spot cannot be disputed, they being inmates of the house, hence the natural witnesses. Despite a searching and lengthy cross-examination, Defence Counsel has failed to make any dent in their testimonies. Their testimonies are more than sufficient to prove that deceased Joma was dragged from his house by all the seven Accused and then his dead body was brought by these Accused themselves and thrown in front of his house. The medical evidence of PW-12 Dr. Murlidhar Pawar goes to prove that Joma died due to the injuries sustained in the said incident of assault.

21. This Prosecution case is assailed by learned Counsel for the Appellants, firstly on the ground that all these three eye witnesses are interested ones, being closely related to the deceased as they are from the same family. Admittedly, the relations between the family of the deceased and the Accused were not cordial and, hence, according to him, no implicit reliance can be placed on their testimonies.

22. However, in our opinion, this submission is devoid of merits in view of the time honoured principle of law that the relationship is not a ground to discard the evidence of witnesses altogether, unless motive to spare the real culprit and to falsely implicate the innocent person is shown. As a matter of fact, the relatives of the deceased are the natural witnesses and are the last persons to implicate the innocent person and allow the real culprit to escape. Hence, the law only requires that their evidence should be accepted after careful scrutiny. In the present case, as aforesaid, the evidence of these three eye witnesses is thoroughly natural and consistent and Defence has not succeeded in pointing out any infirmities in their evidence.

23. Moreover, it is not a case where Prosecution has not examined any independent eye witnesses. Four independent eye witnesses were

examined by the Prosecution, but, it appears that considering the clout wielded by the Accused in the said Village, these independent eye witnesses have not supported the Prosecution case. In such situation, merely because these three eye witnesses, who are the relatives of the deceased, which fact itself gives an in-built guarantee of truthfulness that they will not allow the real culprit to escape, their evidence cannot be disbelieved. They have also remained truthful as to the incident. They have not exaggerated by stating that they followed the deceased and actually saw the Accused assaulting the deceased in front of temple. Therefore, in our considered opinion, their evidence is forthright, trustworthy and quite sufficient to inspire confidence in the judicial mind.

24. The second ground on which their evidence is challenged is about their conduct. It is submitted that the conduct of all these three eye witnesses of remaining in the house even though Joma was dragged from the house in their presence, is unnatural. According to learned Counsel for the Appellants, it is difficult to accept that though they raised shouts, no one came to their help, nor they sought the help of any other person. Moreover, Joma was taken at about 11 pm and his dead body was brought at 3 am., till 7 am in the morning, Police were not informed about it.

25. In our considered opinion, this argument is also without any avail, if considered in the light of the fact that at the relevant time, in the family of the deceased, there was no other male member and all of these three eye witnesses were female along with their mother-in-law. Naturally, considering the fact that Accused were seven in number and assaulting and dragging Joma from their house, they might not have dared to follow the Accused. Moreover, they also might not have anticipated or apprehended that Accused will kill Joma. It is also not the case that they did not raise commotion or the shouts. It being a night time, if no one came to their help and whosoever had come to help has not supported their case in evidence before the Court, does not mean that their evidence becomes bereft of credence. In our considered opinion, as their evidence has a ring of truthfulness, a colour of consistency and a sense of straightforwardness, implicit reliance can be placed upon it.

26. There is also sufficient evidence brought on record to show that these three witnesses were in a position to see the Accused persons in the light of their own house and also in the light of the temple. Accused were very much from their village and known to them. Therefore, there was no question of any dispute relating to identification of the Accused.

27. As regards the submission relating to absence of motive, the

evidence of PW-1 Changa is more than sufficient to prove that due to Accused No.2 Ramesh teasing the ladies in the village, wife of Janardhan Bapu Gharat has approached Narayan, the brother of deceased. An attempt was made to hold Panchayat, but Accused did not allow to hold the same. Hence, the relations between them were strained. This fact is proved through the certified extracts of the N.C. Complaints (Exhibits "48" and "49"), which are admitted in evidence under Section 294 of the Cr.P.C. One of the N.C. Complaints (Exhibit-48) goes to prove that it was lodged by PW-3 Bayobai against the four Accused, namely, Accused No.3 Dhanaji, Accused No.1 Goma, Accused No.4 Narayan and Accused No.2 Ramesh on 13<sup>th</sup> June, 1990 in respect of the incident dated 12<sup>th</sup> June, 1990, whereas, the other Complaint (Exhibit-49) was lodged by deceased Joma himself on 20<sup>th</sup> September, 1990 against Accused No.4 Narayan. The evidence of these three eye witnesses goes to prove that on the date of incident, these Accused came in front of their house at about 9 pm and teased the female members in the family. Therefore, the argument advanced that there was no immediate cause or the motive for the Accused to assault the deceased cannot be accepted. Moreover, when the evidence of eye witnesses is believed upon that deceased was dragged in front of their eyes and his dead body was brought back, then even the absence of motive becomes irrelevant.

28. The next submission of the learned Counsel for the Appellants is that there is delay in lodging the complaint and even before the complaint, the statements of witnesses appeared to have been recorded. However, this submission also cannot be accepted because the nearest Panvel Police Station is situate at the distance of 15 kms. to 16 kms. from the house of the deceased. At about 3 am in the night, his dead body was brought by the Accused. Therefore, at night, female members alone, who were in the house, are not expected to go to such a far away Police Station and lodge the complaint. Even then, the Police were informed at about 7 am. As regards the contention that PW-2 Jomubai has admitted that Police made enquiries with her even before recording of complaint, it must be borne in mind that these witnesses are totally illiterate and rustic witnesses. Their statements recorded before registration of the F.I.R. are not produced on record. Therefore, this contention also cannot be accepted.

29. The Prosecution has also relied upon the evidence relating to recovery of the weapons, i.e. gupti and stick, at the instance of Accused No.2 Ramesh (stick) and Accused No.1 Goma (gupti). However, the Trial Court itself has disbelieved the evidence relating to recovery. Moreover, in our considered opinion, there is no evidence to prove that these weapons

were used in the commission of offence. Though PW-3 Bayobai and PW-4 Ahilya have stated that when dead body of Jomu was brought to the house, Accused No.1 Goma was having gupti in his hand and Accused No.2 Ramesh was having stick in his hand, it is brought out through cross-examination of Investigating Officer PW-13 PSI Gurao that this evidence is in the nature of omissions as they have not stated so in their statements recorded by the Police. Even the evidence of PW-12 Dr. Murlidhar Pawar, who has conducted the postmortem examination does not prove the use of the sharp edged weapon like gupti or the stick. As per his evidence, the injuries were in the nature of abrasions and the fatal injury, which resulted into the death, was the crush injury on the chest. There is also no evidence to prove that these weapons of assault were sealed with wax when they were sent to Chemical Analyzer. The recovery evidence, therefore, loses its significance or relevance. Hence, even if it is left out of consideration, the evidence of the three eye witnesses, in our considered opinion, is more than sufficient to prove the guilt of the Accused.

30. Now coming to the time of the death, the learned Counsel for the Appellants has submitted that if the deceased had taken the dinner at about 9 pm and he was dragged from the house at about 11 pm, then

there should have been semi-digested food in his stomach. However, the stomach contents showed that the food was undigested. This fact is also admitted by PW-12 Dr. Murlidhar Pawar, who has conducted postmortem examination on the dead body, and, hence, according to learned Counsel for Appellants, there is sufficient doubt as to the manner in which the incident has happened, as deposed by the witnesses. However, in our considered opinion, having regard to the fact that these witnesses are illiterate and rustic, their evidence relating to time of taking the dinner cannot be so perfect or accurate as like the urban witnesses. Secondly, in the Postmortem Report itself, PW-12 Dr. Murlidhar Pawar has stated that the patient has died within two hours after having his last meal. Therefore, much significance cannot be given to this aspect.

31. The real question for consideration before us is *which offence stands proved against the Accused?* The evidence on record proves that deceased was dragged by the Accused and his dead body was brought to his house after four hours. There is no eye witness in the real sense of the incident to the actual assault on the deceased. There is no evidence to prove which weapon, if any, was used in assault on deceased. As per evidence of PW-12 Dr. Murlidhar Pawar, the injury, which proved fatal, was the crush injury on the chest, which is not possible by the stick-blow

or even by the gupti. Evidence of PW-2 Jomubai, PW-3 Bayobai and PW-4 Ahilya also does not prove that when Accused dragged deceased with them at 11 pm, they were armed with any weapon. Hence, there is no evidence on record to prove that Accused intended to kill the deceased. It appears that Accused had dragged the deceased with them and assaulted him only with an intention to teach him a lesson and not necessarily to cause his death. Hence, in the absence of any evidence proved as to how the crush injury, which resulted into his death was caused to him, it would be, therefore, hazardous to hold the Accused guilty for causing his homicidal death amounting to murder. At the same time, considering the injuries on the body of the deceased, Accused can be attributed with knowledge on their part that these injuries are likely to result in his death. Therefore, the present case falls under Section 304 Part II.

32. As regards the question of sentence, the record shows that the incident has taken place about more than 22 years ago, in April, 1992. Out of the seven Accused, four Accused, namely, Accused No.1 Goma, Accused No.5 Kanha, Accused No.6 Shalik and Accused No.7 Kamalakar, are already dead and the case against them is abated. The Accused were on bail during the trial and also in the pendency of the Appeal. They were arrested on 24<sup>th</sup> April, 1992 and released on bail by the Trial Court on 10<sup>th</sup>

June, 1992. They were convicted and taken into custody on 3<sup>rd</sup> October, 1996 and released on bail on 4<sup>th</sup> November, 1996. Therefore, they had undergone punishment in Jail only for 2 to 3 months. Hence, it will not be possible to release them on the punishment already undergone. At the same time, in our opinion, it would meet the ends of justice if they are sentenced to imprisonment for four years by enhancing the fine amount, which can be paid as compensation to the family of the deceased. The Trial Court has sentenced them to pay fine of Rs.2,000/- each for the offence punishable under Section 302 of the IPC. In our considered opinion, it would meet the ends of justice if it is enhanced to Rs.20,000/- each and the entire fine amount is ordered to be paid to the family of the deceased.

33. Consequently, Criminal Appeal No.633 of 1996 is partly allowed. The conviction and sentence of the Accused No.2 Ramesh, Accused No.3 Dhanaji and Accused No.4 Narayan for the offence punishable under Section 302 r/w. 149 of the IPC is quashed and set aside and instead they are convicted for the offence punishable under Section 304 Part II of the IPC and sentenced to suffer R.I. for four years and to pay fine of Rs.20,000/- each, in default to suffer R.I. for one year. Their conviction and sentence for the offence punishable under Section 148 of the IPC is

maintained, with a direction that substantive sentences of imprisonment to run concurrently. Fine amount, if recovered, shall be paid to PW-2 Jomubai, the wife, and children, of deceased Joma.

34. The bail bonds of the Accused No.2 Ramesh, Accused No.3 Dhanaji and Accused No.4 Narayan stand cancelled. Time of 8 weeks is granted to the appellants to surrender to their bail.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**

**[P.V.HARDAS, J.]**