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

CRIMINAL APPEAL NO.207 OF 2008

1. Shri. Govind Martand Dighe	]	
aged about 48 years	]	
	]	
2. Shri. Ananda Martand Dighe,	]	
aged about 50 years,	]	
	]	
3. Shri. Kailas Govind Dighe	]	
aged about 23 years	]	
	]	
4. Shri. Vilas Ananda Dighe	]	... <u>Appellants</u>
aged about 18 years	]	Orig. accused
	]	Nos 1 to 5
	]	
5. Shri Vikas @ Pandurang Govind Dighe	]	
aged about 18 years	]	
	]	
All residing at Kohewadi Shivar	]	
Wakan Vasti, Tal. Sangamner	]	
District: Ahmednagar	]	
	]	
appellant No.1 is in Nashik Central Jail	]	

V/s.

The State of Maharashtra	]	
at the instance of Sangamner	]	 Respondent
Police Station	]	

**ALONGWITH
CRIMINAL APPEAL NO.190 OF 2008**

Tarabai Ananda Dighe,	]	
aged about : 39 years,	]	
residing at Kolhewadi Shivar	]	.. <u>Appellant</u>
Wakan Vasti, Tal. Sangamner	]	Ori.Accused
District: Ahmednagar.	]	No.6
	]	

V/s.

The State of Maharashtra	]
at the instance of Sangamner	].... Respondent
Police Station	]

Mr. Vikas Shivarkar a/w Mr. Avinash Kamkhedkar, for the Appellant Nos 1 to 5 in Criminal Appeal No.207 of 2008
Mr. Vikas Shivarkar I/by Mr. Avinash Kamkhedkar for appellant in Criminal Appeal No.190 of 2008.

Mr. A.S. Shitole, A.P.P., for the Respondent-State in both the appeals.

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

DATE : 13th JULY, 2015.

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

1. The appellants in Criminal Appeal No.207 of 2008 are the original accused Nos. 1 to 5; whereas appellant in Criminal Appeal No.190 of 2008 is the original accused No.6. They are aggrieved by the judgment and order dated 29.12.2007 of Ad Hoc Additional Sessions Judge, Nashik, in Sessions Case No.147 of 2007, as by the said judgment and order they are convicted and sentenced as stated below:-

Name of accused	Sections and sentence
Accused No.1 Govind Martand Dighe	U/s 302 r/w 149 of IPC, and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year. U/s 120-B of IPC, and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year. U/s 341 r/w 149 of IPC and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs.500/- in default to suffer Simple imprisonment for 8 days.
Accused No.2 Ananda Martand Dighe,	U/s 302 r/w 149 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-each in default to suffer rigorous imprisonment for one year.
Accused No.3 Kailas Govind Dighe	U/s 120-B of IPC, and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-each in default to suffer rigorous imprisonment for one year.
Accused No.4 Vilas Anand Dighe	U/s 323 r/w 147 of IPC, and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- each in default to suffer simple imprisonment for one month
Accused No.5 Vikas @ Pandurang Govind Dighe	U/s 341 r/w 149 of IPC and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs.500/- each in default to suffer simple imprisonment for 8 days.
Accused No.6 Sou. Tarabai Anand Dighe	U/s 302 r/w 149 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year. U/s 120-B of IPC, and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year.

	U/s 341 r/w 149 of IPC and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs.500/- in default to suffer simple imprisonment for 8 days.
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2. Brief facts, as are necessary for deciding these appeals, can be stated as follows :-

Deceased Hanumant was the younger brother of P.W.12 Rohidas. P.W.9 Sanjay is the son of Rohidas. Accused Nos 1 & 2 are cousin brothers of Rohidas and accused Nos 3 to 5 are the sons of accused Nos 1 & 2. Accused No.6 is the wife of accused No.2. There were civil disputes between deceased Hanumant and prosecution witnesses on one side and the accused on the otherside, in respect of agricultural lands.

3. On 23.11.2006 at about 6.45 a.m. while deceased Hanumant was proceeding on his motorcycle with P.W.11, his minor son Bhushan, to drop him at the school, on the road, he was obstructed and accosted by the accused. Accused No.1 gave blows of axe on his hand, cheek and neck; whereas accused Nos 2 to 5 assaulted him with sticks. When P.W.9 Sanjay tried to intervene, accused Nos 2 to 5 assaulted him also with sticks. When P.W.12 Rohidas tried to separate them,

accused No.1 gave him blow of axe on his head. After the assault accused left the spot one by one.

4. Injured Hanumant and Rohidas were taken to Tambe Hospital. There Hanumant was declared dead; whereas P.W. 12 Rohidas was admitted and treated there till 26.11.2006. P.W.9 Sanjay went to Sangamner Police Station and lodged complaint Exh.39 against accused. On his complaint C.R.No.382 of 2006 came to be registered by P.W.13 Head Constable Shete, for the offences punishable under Sections 143, 147, 148, 149, 120-B, 323, 342, 307 and 302 of the Indian Penal Code. Further investigation of the case was handed over by him to P.W.14 PSI Bacchav.

5. On being entrusted with investigation of the crime, P.W.14 PSI Bacchav, went to the spot of incident and drew the scene of offence panchanama Exh.20. From the spot, he collected blood mixed soil and simple soil, belt of the wrist watch, pair of footwear and four sticks, in the presence of panch P.W.3 Babasaheb Jondhale. Thereafter he recorded the statements of two witnesses viz. Namdeo and P.W.10 Mhatarba Dighe. On the same day he arrested accused Nos 1

to 5 under panchanamas Exh.13 to 17. At the time of arrest, he seized the shirt which accused No.1 was wearing on his person. He also collected blood stained clothes of the deceased under panchanama Exh.24. The inquest panchanama on the dead body was carried out by P.W.13 Head Constable Shete, in presence of panch P.W.1 Bhikaji Gunjal. Thereafter dead body of Hanumant was referred for the postmortem examination which was conducted by P.W.6 Dr. Sandip Kacheriya at Cottage Hospital, Sangamner. He found the cause of death as polytrauma due to hard and sharp weapons. He issued postmortem report Exh.28 accordingly.

6. During the course of further interrogation, accused No.1 Govind expressed his willingness to produce the axe which was used in commission of crime. His statement was reduced to memorandum panchanama vide Exh.22 in presence of panch P.W.4 Babasaheb Kadlak. Thereafter accused No.1 guided police and panchas to the heap of fodder near Wakan road. From the heap, he produced axe (Article No.1) which came to be seized under panchnama Exh.23. As a part of further investigation, P.W.14 PSI Bachhav sent all the seized articles to Chemical Analyzer. C.A. reports

are produced at exh. 57 to 59. Further to completion of investigation, chargesheet is filed in the court against accused.

7. In due course, case was committed to the Sessions Court. The trial Court framed charge against the accused vide Exh.10. The accused pleaded not guilty and claimed trial. They raised defence of denial and false implication.

8. In support of its case, prosecution examined in all 14 witnesses whereas accused also examined one defence witness. On appreciation of their evidence, trial Court held the guilt of the accused to be proved and convicted and sentenced them, as aforesaid.

9. This judgment of the trial Court is challenged in this appeal by learned counsel for the appellant Shri. Shivarkar; whereas supported by learned APP Shri. Shitole. In our considered opinion, before adverting to rival submissions advanced by them, it would be useful to refer to evidence on record.

10. The prosecution case stands on the evidence of four eye witnesses viz P.W.9 Sanjay, P.W.10 Mhatarba, P.W.11 Bhushan and P.W.,12 Rohidas; as also medical evidence and recovery of weapon at the instance of accused No.1.

11. To prove homicidal death of Hanumant, prosecution has led evidence of P.W.6 Dr. Kacheriya, who has conducted postmortem examination on the dead body of Hanumant on 23.11.2006 at Cottage Hospital, Sangamner. He found following external injuries :-

1. Incised wound on right hand dorsum at base of ring (4th) finger with regular edges with exposing underneath tendons with right hand 4th finger. Meta tarsal bone. Size 10 cm x 2 cm x 2 cm with bleeding .

2. Two incised wounds over throat:-

One at upper throat just above thyroid cartilage Regn centrally with dried leaf of sugarcane within it. Size 10 cm x 3 cm x 3 cm; and

second below first wound parallel and laterally towards left side of throat size 9 cm x 2 x 3 cm with regular edges with bleeding at both wounds.

3. Big incised wound on left side of face from left nasal to left infra orbital Regn laterally 8 cm x 3 cm x 3 cm with regular edges with bleeding.
4. Incised wound on left ear pinna size 2 x ½ x ½ cm with bleeding.

P.W.6 Dr. Kacheriya, found following internal injury:-

Head injury - incised wound over head at left post auricular Regn size 10 cm x 2 cm x 2 ½ cm bone deep injury with regular edges with exposing below lying bone of skull.

According to him internal injuries were corresponding to the external injuries and they were sufficient in the ordinary course to cause death. In his opinion, therefore, the cause of death was poly trauma due to hard and sharp weapon. In his evidence before the Court, he has opined that the injuries found on the dead body are possible due to assault by muddemal article No.1, the axe. His cross-examination is declined by the defence, thereby indicating that the accused are not disputing homicidal death of Hanumant. Learned counsel for the appellants Shri. Shivarkar, has also fairly conceded to that effect. Moreover, presence of four incised wounds on the vital parts of the body like, neck,

nose and head leaves no manner of doubt about the cause and nature of death of Hanumant as homicidal one.

12. The main plank of prosecution case is on the evidence of four eye witnesses viz P.W.9 Sanjay, P.W.10 Mhatarba, P.W.11 Bhushan and P.W.12 Rohidas injured witness. The evidence of P.W.9 Sanjay reveals that on the day of incident at about 6.00 a.m. he had gone to the field of Hanumant. At about 6.45 to 7.00 a.m., he found that deceased Hanumant was proceeding towards Sangamner on his motorcycle for dropping his son P.W.11 Bhushan to the school. At that time accused Nos 1 to 5 accosted him near his land. They quarrelled with the deceased and in the said quarrel, accused No.1 inflicted axe blow on the head of Hanumant. Hanumant tried to resist he said blow by his right hand. Accused No.1 then inflicted blows of axe on head, nose and neck from front side of his body. Accused Nos 2 to 5 were beating Hanumant with sticks in their hands. When he rushed there and tried to pacify them, accused Nos 2 to 5 bet him also with sticks. Due to shouts, his father P.W.12 Rohidas, mother and aunt Valubai came there. His father tried to separate the deceased from the accused. However, accused

No.1 inflicted axe blow on the head of his father. Due to the assault, his father P.W.12 Rohidas became unconscious. By that time hearing shouts, P.W.10 Mhatarba also came there. Then accused left the spot one by one. He himself and others gave some water to Hanumant and took him and Rohidas to Cottage Hospital where Hanumant was declared dead. In respect of this incident, he has lodged F.I.R. immediately at Sangamner Police Station vide Exh.39 which reveals that the offence was registered instantly on the said F.I.R., at about 9.20 a.m., giving details of the incident.

13. Though this witness is cross-examined at length by defence counsel, nothing worthwhile is elicited in his cross-examination to disbelieve him. Moreover, his evidence gets complete support and corroboration from the prompt lodging of the F.I.R. and registration of the offence.

14. Evidence of P.W.9 Sanjay gets further corroboration from the evidence of P.W.10 Mhatarba, who is having his house and land near the spot of incident. According to him, on that day, upon hearing shouts, he went to the spot of incident and with the help of P.W.9 Sanjay, Valubai and Shantabai, be

brought the injured Rohidas and Hanumant near the main road,. He noticed that Hanumant was having injuries on his head, neck and face. He was shouting as “water”, “water”, hence he brought some water and gave it to Hanumant. Thereafter P.W.9 Sanjay took Hanumant on his motorcycle whereas Dattatray took Rohidas on his motorcycle to Tambe Hospital.

15. It is true that this witness has not actually seen the incident of assault. However, his evidence proves that he found Hanumant and Rohidas in injured condition when he rushed there after hearing shouts. In his cross-examination, it is also brought on record that he saw accused No.1 very much present there and giving threat to him, not to give water to the deceased Hanumant. The presence of this witness at the spot is natural as he is resident of same locality and is totally an independent witness.

16. The prosecution has also placed reliance on the evidence of P.W.11 Bhushan. Evidence of this witness reveals that deceased was proceeding on the motorcycle with this witness to drop him at the school. According to him, when

they came at the curve of internal road, accused No.6, accosted them. Accused Nos 1 to 5 also came there. Accused No.1 gave blow of axe on the neck of his father. His father fell down, rest of the accused then beat his father with sticks. Therefore, his father shouted for help, then accused ran away. He was frightened. At that time P.W.9 Sanjay and P.W.12 Rohidas came there.

17. Lastly there is evidence of P.W.12 Rohidas, who is elder brother of the deceased Hanumant and the father of P.W. 9 Sanjay. P.W.12 Rohidas has stated that on the date of incident at about 6.00 a.m. he was milching the cow; whereas P.W.9 Sanjay was watering wheat crop. Deceased Hanumant was going to school on his motorcycle to drop P.W.11 Bhushan at school. At about 6.45 a.m. as he heard shouts of Hanumant, he rushed to the spot and found that accused No.1 was giving axe blows to Hanumant on his head, nose and neck; whereas accused Nos 2 to 5 were beating him with sticks. Accused No.1 gave blow of axe on his head whereas accused assaulted P.W.9 Sanjay also with sticks.

18. The evidence of P.W.7 Dr. Maske reveals that both

the deceased and P.W.12 Rohidas were brought to Tambe Hospital. On arrival, he found Hanumant is no more alive and hence declared him dead; whereas Rohidas was admitted in hospital upto 26.11.2008 and was under his treatment till 2.12.2006. On examination of Rohidas, he found one C.L.W. over vertebrate region admeasuring 2" x 1" x 2". He has opined that this injury was caused by hard and blunt object. It was simple in nature. The injury certificate is produced at Exh.36.

19. The weapon of assault axe is recovered from accused No.1 in pursuance of memorandum panchanama of the statement of accused vide Exh.22 which is proved through the evidence of P.W.4 panch Kadlak and P.W.14 PSI Bacchav. The blood stained axe was seized from the heap of fodder near Wakan road under panchanama Exh.23. The axe was sent to Chemical Analyzer alongwith blood stained clothes of deceased. The C.A. reports are at exh.57 to 59 reveal that blood stains on the axe were of the group "A" which was the blood group of deceased.

20. Thus, prosecution case stands on a very solid

foundation that of consistent and reliable evidence of eye witnesses, supported and corroborated with medical evidence and also recovery evidence. It is true that there are some minor inconsistencies in the evidence of these eye witnesses, but they are of a very trivial nature and instead of discrediting them, they give an inbuilt guarantee of truthfulness of these witnesses. Their presence at the spot is also natural as they are residing there.

21. The prosecution has also proved motive, which was strained relations between the parties, in view of civil dispute relating to landed property. Absolutely no reason is pointed out as to why evidence of these witnesses should be disbelieved, especially as regards the incriminating role attributed to accused No.1, that of inflicting assault by axe on the deceased, which resulted into incised wounds and ultimately poly trauma. The defence raised by accused that an assault is likely to be caused in an attempt of robbery is too far fetched and is referred, only to reject it as the evidence on record is so strong and clinching. Hence as regards accused No.1, we have no hesitation in upholding his conviction, for the offence punishable under Section 302 of the Indian Penal

Code and the punishment of life imprisonment with fine, as imposed by the trial Court.

22. However, as regards injury caused to P.W.12 Rohidas, as per his evidence, accused No.1 has inflicted axe blow on his head which resulted in causing injury to his head and he became unconscious. However, injury certificate and the evidence of P.W.7 Dr. Maske goes to prove that no such incised wound was found on his person. He had only one C.L.W., which was caused by hard object and it was simple in nature. Therefore, in respect of causing injury to P.W.12 Rohidas, case as made out by the prosecution for offence punishable under Section 307 of IPC cannot be held as proved.

23. As regards involvement of accused Nos 2 to 6 also, we find that evidence is not of a clinching nature. P.W.9 Sanjay has not stated anything about presence of accused No.6 though P.W. 11 Bhushan has stated that accused No.6 accosted him and the deceased. P.W.10 Mhatarba has not stated anything about presence of accused No.6. He has spoken about presence of accused No.1 alone and attributed incriminating role to accused No.1 alone. P.W.9 Sanjay, P.W.10

Mhatarba and P.W.12 Rohidas, have made a general statement against accused Nos 2 to 5 of assaulting deceased with sticks. However, postmortem report Exh. 28 does not show any C.L.W. or wheal mark on his body. Therefore, in respect of accused Nos 2 to 6, in our considered opinion, the evidence on record not being so strong and clinching as it is against accused No.1, the benefit of doubt is required to be extended to them. Even in respect of injury caused to P.W.12 Rohidas, he has attributed said injury to accused No.1 and not to these accused. Therefore, the conviction of accused Nos 2 to 6, for the offences charged and held to be proved against them by the trial Court, is required to be quashed and set aside. Hence following order.

Order

I) Criminal Appeal No.207 of 2008 is partly allowed.

1. The conviction of appellant No.1 Govind recorded by the trial Court, for the offence punishable under Section 302 of Indian Penal Code and the sentence to suffer life imprisonment and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for one year, is upheld and confirmed.
2. The conviction and sentence of appellant No.1 Govind for the offences U/s 120-B, 341 r/w 149 of IPC, is however,

quashed and set aside and he is acquitted of the said offences.

3. The conviction of appellant Nos 2 to 5 for the offences punishable under Sections 302 r/w 149, 341 r/w 149, 120-B, 323 r/w 147, as recorded by the trial Court stands quashed and set aside and they are acquitted of those offences.

II) Criminal Appeal No.190 of 2008 filed by accused No.6 Tarabai is allowed. Her Conviction for the offences punishable U/s 302 r/w 149, 120-B, 341 r/w 149 of IPC is hereby quashed and set aside and she is acquitted of the said offences.

III) Bail bonds of appellant Nos 2 to 6 stand cancelled. Fine amounts, if any, paid by them be refunded to them.

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