

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.384 OF 2003

- 1) Prabhu s/o Limbaji Bade,
Aged-67 years, Occu:Agril.,
R/o-Dukadegaon, Tq-Wadvani,
Dist-Beed,
- 2) Raosaheb s/o Prabhu Bade,
Aged-37 years, Occu:Agril.,
R/o-Dukadegaon, Tq-Wadvani,
Dist-Beed

...APPELLANTS
(orig. Accused)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station Dindrud,
Tq-Majalgaon, Dist-Beed

...RESPONDENT

...
Shri S.S. Choudhari Advocate for Appellants.
Shri K.D. Mundhe, A.P.P. for Respondent.
Shri B.S. Kudale Advocate assist to A.P.P.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 15TH JUNE, 2016

DATE OF PRONOUNCING JUDGMENT: 12TH JULY, 2016

JUDGMENT :

1. The Appellants, father and son have been convicted for offence punishable under Section 307, 341, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 ("IPC" in brief). For offence under Section 307 of IPC, they have been sentenced to suffer rigorous imprisonment for five years and fine of Rs.500/- each and in default to suffer further rigorous imprisonment for three months. For the other Sections, different lesser sentences of imprisonment and fine have been passed. Sentence of imprisonment for the various Sections are to run concurrently. The Judgment of conviction and sentence was passed by IIIrd Ad-hoc Additional Sessions Judge, Beed on 8th May 2003 in Sessions Case No.24 of 2002.

2. The case of prosecution, in short, is as follows:-

(A). On 1st March 2001 complainant Nathoba

Bade (PW-1) along with Vishnu Bade (PW-11) were admitted in the Civil Hospital, Beed. Police Official Sukhdeo Landge (PW-13) attached to the Police Outpost, received M.L.C. letter and he met the medical officer. The medical officer examined PW-11 Vishnu but he was unconscious and as PW-1 Nathoba was in conscious condition, PW-13 Sukhdeo Landge recorded statement of PW-1 Nathoba. PW-1 Nathoba informed the Police that he and his brother Vishnu reside at Dukdegaon, Tq-Wadvani Dist-Beed. They do agricultural work and business in she-goats. He gave particulars of their family and that he has 12 acres land, out of which 32 Gunthas were purchased about eight years back from one Asaram Bade (PW-8) and they constructed a *Wada* i.e. house at that place. The land has Survey No.1 and since time of purchase they are in possession. Adjoining that field on the western side, accused No.1 Prabhu Limbaji Bade and accused No.2 Raosaheb Prabhu Bade have their field. They have been asking for way from the field purchased by the

complainant. They filed a case in Civil Court against the complainant and his brother two months before the incident. Still, as the complainant and his brother did not give way, they have been abusing and threatening to kill. Out of fear complainant had not taken any action against the accused. On 1st March 2001 complainant and his brother Vishnu had gone to Kuppa, Tq. Wadvani, Dist. Beed for their business and at about 7.30 p.m. they were returning home. They were proceeding from market towards their house and reached Hanuman Temple. The accused have their house near the temple. When complainant and his brother Vishnu reached near the temple, both the accused obstructed their way and asked as to why they had purchased 32 Gunthas land from Asaram Nana Bade (PW-8) and why from their *Wada* they were not giving way to the accused. So saying accused No.1 Prabhu with the help of knife he had, stabbed on the head of PW-11 Vishnu on the right side near ear with the object of killing him causing deep

injury. Vishnu fell down unconscious in a pool of blood. At that time complainant put himself on the person of Vishnu. Seeing this, Accused No.2 Raosaheb with the help of stick he had, gave blows on the left arm and right leg thigh, asking him to go aside as they want to kill Vishnu. When this was happening, Asaram Karpe (PW-10), Sukhdeo Karad (PW-6) Sudhakar Karpe (PW-5), who were nearby, came on the spot and intervened. They took the complainant and his brother Vishnu to Police Station Dindrud and as Vishnu was serious, the Police immediately sent them, with one constable, to Civil Hospital Beed where they were taking treatment. The brother was still unconscious (when the statement was given by the complainant).

(B). The statement so recorded of the complainant (PW-1) was forwarded by PW-13 Sukhdeo Landge to PW-9 Kazi Mujiboddin (Head Constable) at Police Station and in the same night at about 2.30 a.m. crime came to be registered at 19/2001 in the

date of 2nd March 2001. The investigation was handed over to P.S.I. Shankar Citikar (PW-14). In the same night this P.S.I. arrested both the accused and in the morning went to the spot and prepared the spot panchnama Exhibit 29 between 7.00 - 7.30 a.m. He recorded statements of witnesses. On 3rd March 2001 he seized clothes of both the accused vide Panchnamas Exhibit 31 and 32. The clothes of complainant, injured Nathoba (PW-1) and his brother Vishnu (PW-11) which were blood stained, were seized on 4th March 2001 at about 10.00 a.m. vide Panchnama Exhibit 34. The accused were in custody and PW-14 P.S.I. Citikar interrogated them. In presence of Panchas they stated that they want to give discovery of the knife used in the incident as well as the stick which was used. Memorandum Exhibit 35 was recorded at about 10.45 a.m. on 4th March 2001 and the accused persons took the Police and Panchas to their home. Accused No.1 Prabhu gave discovery of the knife - cum - *kukri* hidden

in dung-pit and accused No. 2 gave discovery of stick which was concealed behind a tin sheet in his house. Panchnama Exhibit 36 came to be drawn. The Investigating Officer collected blood samples of the accused as well as the complainant and PW-11 Vishnu and the same were sent to C.A. The reports were received from C.A. and the examination of the articles which were seized as well as the blood samples. Completing the investigation, the Police filed Charge-sheet and the accused came to be prosecuted.

(C). At the time of trial, in answer to the charge for offence under above Sections, the accused pleaded not guilty. Their defence as appearing from cross-examination of witnesses and statement under Section 313 of the Code of Criminal Procedure is that they have old enmity with the complainant and his brother. It is claimed that they had strained relations with the witnesses who came to be examined as eye witnesses

as well as the Panchas. They have strained relations with one Eknath Avadh who works as human rights activist and at his instigation the offence was registered against the accused. The complainant and his brother were robbed on the way while coming to the village and took opportunity to attribute their injuries to the accused.

3. The trial Court, after considering the evidence discussed the same and has found the accused persons guilty of the Sections mentioned above and sentenced them to various imprisonments and fine.

4. I have heard learned counsel for the Appellants - accused persons. The learned counsel referred to the oral evidence of witnesses. It has been submitted by the learned counsel that there was long standing enmity between the complainant and his brother with the accused persons. There were various cases pending between the accused on

one side and the complainant and other villagers and witnesses on other side. One Eknath Avadh is connected with human right movement and he brought about false case against the accused persons. The witnesses examined by the prosecution were of the opposite group of the accused. The injuries suffered by the complainant and his brother were simple injuries, but the witnesses exaggerated the incident. According to the learned counsel, no independent witness has been examined. It is argued that PW-12 Dr. Kailas deposed that the injury suffered by PW-11 Vishnu was not such so as to cause any abnormality in the body. The counsel submitted that the accused deserve to be acquitted.

5. Per contra, the learned A.P.P. argued that the evidence of the various witnesses examined shows that there were strained relations between the complainant and his brother with the accused persons and due to such strained relations

the accused persons were angry and that was the motive for them to attack the complainant and his brother. The injury inflicted was on the vital part of body of PW-11 Vishnu and the same was inflicted by knife. Because of this, intention and knowledge can be attributed to the accused persons that they had intention to kill Vishnu and offence under Section 307 of IPC was rightly established. The learned A.P.P. submitted that the Appeal deserves to be dismissed.

6. Regarding the incident, prosecution examined the complainant PW-1 Nathoba Bade who proved the F.I.R. filed by him at Exhibit 26. The other witnesses examined regarding the incident are PW-5 Sudhakar Karpe, PW-6 Sukhdeo Karad, PW-7 Baban Avadh, PW-8 Asaram Nana Bade, PW-10 Asaram Tulshiram Karpe and the injured PW-11 Vishnu himself.

7. Collectively read, the evidence of PW-1

complainant Nathoba and his brother PW-11 Vishnu Bade shows that on the day of incident (1st March 2001) they had gone to Kuppa. As per PW-10 Asaram Karpe this place is about 2½ k.ms. away from their village Dukdegaon. Complainant and his brother deposed that after finishing their work at Kuppa, in the evening they were returning and reached near the Hanuman Temple. The spot panchnama Exhibit 29 as well as the evidence of witnesses shows that the accused persons have a house near the Hanuman Temple. As per the spot panchnama, to the west of the spot there is also house of PW-8 Asaram Bade. Even otherwise, the spot panchnama shows that at short distance there was common well where villagers fetch water. The evidence of various witnesses also shows that the villagers visit Maruti Temple. The time was about 7.30 a.m. Thus, the presence of various villagers on such road of the village is natural. As per Spot Panchnama it was stone and mud road and place of heavy commuting and no special marks were found.

8. The evidence of complainant and brother shows that when they reached near Hanuman Temple, accused person were there on the eastern side of the road. The evidence of PW-11 Vishnu shows that both the accused obstructed him and his brother in front of the temple and at that time Accused No.2 Raosaheb had a stick in his hand and the accused persons asked them why they had purchased 32 Gunthas land from PW-8 Asaram Bade and why they were not giving way to the accused from the Wada. The evidence of these witnesses shows that at such time Accused No.1 Prabhu took out a knife and gave a blow on the head of PW-11 Vishnu. PW-11 Vishnu claims that because of blow he felt giddiness and fell down. PW-1 Nathoba (complainant) has deposed that blow was given on the left side of the head of PW-11 Vishnu, which injury was above the ear and because of the injury blood started oozing. According to PW-1 Nathoba, because of the blow given, PW-11 Vishnu shouted loudly and he went to

rescue of his brother and fell on his body. According to him at that time Accused No.2 Raosaheb gave two stick blows on his left back side and on his waist towards back side, which hit him on the left buttock. According to the complainant in the course of incident, accused No.1 Prabhu was saying that these both the brothers to be finished once for all.

9. The evidence of complainant and his brother shows that the villagers gathered and intervened. These witnesses have given names of the persons who intervened. The F.I.R. also has in it recorded some names. The evidence of complainant and his brother gets corroboration from different witnesses. PW-5 Sudhakar Karpe deposed that he was going so as to buy kerosene and got attracted due to shouting because of quarrel and heard the shout "*Melo Baba*" (i.e. - I am dying). According to him, he saw both the accused abusing the complainant and his brother.

His evidence is that he saw that blow of knife had been given to PW-11 Vishnu and that Vishnu had fallen down and blood was coming out from his injury and the complainant had fallen on his body while Accused No.2 Raosaheb gave stick blows to the complainant. PW-5 Sudhakar Karpe claimed that seeing this, he along-with PW-8 Asaram Bade and PW-6 Sukhdeo Karad intervened in the quarrel. Such evidence of Sudhakar is corroborated by PW-6 Sukhdeo Karad as well as PW-8 Asaram Bade. There is corroboration from PW-7 Baban Avadh also. PW-7 Baban has deposed that accused asked complainant and his brother as to why they were not giving way from their land. Even PW-7 Baban corroborated the other witnesses that Accused No.1 did give knife blow on the head of PW-11 Vishnu and when complainant tried to protect his brother by covering him, Accused No.2 Raosaheb had given stick blows to the complainant. These witnesses are further corroborated by another person PW-10 Asaram Tulshiram Karpe. He has also given similar

evidence.

10. PW's 5 to 8 and PW-10 were extensively cross-examined by the counsel for the accused. It is suggested to PW-5 Sudhakar Karpe that he is friend of complainant and his brother Vishnu. The suggestion has been denied by the witness. It was suggested to PW-6 Sukhdeo Karad and he fairly accepted that he is son of maternal uncle of the complainant and his brother. However, his evidence that he is resident of the said village Dukdegaon is not denied. I have already referred to the spot which is road near temple and near public well. Gathering of villagers at such place in the evening in a small village is not surprising. PW's 5, 6 and PW-10's presence on spot is recorded in F.I.R. also. It was suggested to PW-7 Baban Avadh and he accepted that he is a worker of Human Rights Abhiyan in Beed District and that one Eknath Avadh is their leader. He denies that he and Eknath Avadh are the directors of the said

Abhiyan. He accepted that earlier he had filed a case against both the accused persons. It was suggested to PW-8 Asaram Bade that accused had filed suit against him regarding the way. This witness appears to be vendor of 32 Gunthas land to the complainant and his brother, which appears to be bone of contention between the complainant and the accused persons. It was suggested to PW-10 Asaram Tulshiram Karpe that in the disputes between the complainant and his brother at one side and the accused in other, in various Panchnamas he has signed the same. The witness, however, denied such suggestion.

. Going through the cross-examination of these various witnesses, although the accused tried to show that some of the witnesses had strained relations with them, it does not appear that the witnesses were giving evidence of some imaginary incident. Although cross-examined, no material contradictions or omissions appeared to

have been proved so as to discard evidence of so many witnesses. The Investigating Officer was not asked about any omissions or contradictions in statements of witnesses. Evidence of these witnesses shows that when due to interventions the assault was stopped, some of these witnesses started taking the victim Vishnu, who was unconscious, towards village Kuppa so that complainant and his brother could be taken to hospital. PW-6 Sukhdeo Karad rushed by cycle to Kuppa and brought a Jeep by which time the witnesses had brought PW-11 Vishnu to some distance and then put him in Jeep. The evidence shows that the complainant and his brother, who was not conscious, were taken to some hospital at Kuppa but doctor was not there and so they went ahead to Police Station Dindrud. Evidence of these witnesses shows that on seeing the condition of PW-11 Vishnu, Police first asked them to proceed to the Civil Hospital and after they were admitted at the Hospital, PW-13 Sukhdeo Landge recorded the

statement which was converted into F.I.R. In the cross-examination of witnesses, it has been tried to show that these people had first gone to the Police Station before they were sent to the hospital and they had some talk with the police. I find that when the citizens after becoming victim of such incident rush to the Police Station and have at hand a person who appears to be seriously injured, if the police instead of first sitting down to write F.I.R., advices the persons to first go to hospital and save life of the injured, that by itself can not be subject of criticism or fact good enough for raising doubts. The evidence shows that incident had occurred at about 7.30 p.m. in the village Dukdegaon and after trying a hospital at Kuppa, the complainant and injured had reached the Civil Hospital Beed after knocking the door of the Police Station. The statement of complainant was recorded, as per the evidence of PW-13 Sukhdeo Landge, at about 10.30 p.m. at the hospital. Initially it appears to have been recorded as if

it was a dying declaration taking endorsement of doctor, which does not appear to have been necessary looking to the fact that the complainant was not seriously injured. However, looking to this, it does not appear that it could be said that there was delayed F.I.R.

11. Regarding the injury of PW-11 Vishnu, there is evidence of PW-12 Dr. Kailash Dudhal read with the medical certificate Exhibit 54 which was issued by him. It appears that the doctor examined PW-11 Vishnu in the same evening of 1st March 2001 at about 10.00 p.m. and found one incised wound at right side of the occipital region. It was injury which was 7 X 2 c.m. The doctor deposed that he had found incise wound at the right side of occipital region and the X-ray was required to be taken of the skull of PW-11 Vishnu. As per the doctor, injury was possible by sharp edged weapon like knife. The doctor, of course, has deposed that by the injury of Vishnu, death was not

possible.

12. PW-12 Dr. Kailash deposed that he examined the complainant Nathoba also and found that he had a contusion to his left elbow. Complainant deposed that he was hit on his left back side. Then he deposed of a blow which fell on his buttock. May be, it did not show on his buttock or he did not show it to the Doctor.

13. There is evidence of PW-3 Panch Vijaykumar Shinde and the evidence of Investigating Officer PW-14 Citikar which shows that the clothes of both the accused persons were seized on 2nd March 2001 vide Panchnamas Exhibit 31 and 32. Blood stained clothes of complainant and PW-11 Vishnu were seized on 4th March 2001 vide Panchnama Exhibit 34, which is proved by PW-4 Sheshrao Avadh as well as PW-14 P.S.I. Citikar. Evidence of PW-14 P.S.I. Citikar shows that seized articles as well as blood samples were sent to

C.A. The C.A. report Exhibit 64 shows that the clothes of the injured PW-11 Vishnu had various blood stains. The oral evidence of witnesses is that the complainant had tried to cover his brother at the time of assault and in the process his own clothes suffered blood stains. The C.A. report Exhibit 64 shows blood stains also to the clothes of the complainant. The *kukri*-cum-knife or dagger sent to the C.A. also had blood stains which was human blood but the group could not be deciphered. The clothes of the complainant and his brother had blood group "O" and C.A. report Exhibit 67 shows that the blood group of PW-11 Vishnu was "O". Thus, there is evidence showing that in the incident, PW-11 Vishnu suffered bleeding injury and his blood fell on his own clothes as well as on the clothes of his brother, complainant Nathoba.

14. The evidence of PW-4 Sheshrao and the evidence of PW-14 P.S.I. Citikar shows that the

accused persons while in custody, gave statement Exhibit 35 to show where concerned knife and stick were. The evidence of these witnesses shows that the accused took Panchas and Police to their house and as per the evidence of PW-14 P.S.I. Citikar the knife - cum - *kukri* was seized from dung-pit from where it was taken out by accused No.1 Prabhu and accused No.2 Raosaheb produced the stick which was concealed behind tin sheet. In this regard, Panchnama Exhibit 36 came to be recorded.

15. The trial Court considered all this evidence and found the witnesses examined to be reliable. Trial Court dealt with the defence put up by the accused persons and discarded the claim that the complainant had constructed the house on Government road. It found that there were strained relations due to the complainant and his brother purchasing 32 Gunthas land from PW-8 Asaram Bade. The trial Court referred to the Regular Civil Suit No.230 of 2000(Exhibit 85) filed by the accused

persons against the complainant and his family raising dispute of way. The dispute between the parties shows that the accused persons did have a motive to assault the complainant and his brother as they found that inspite of long standing dispute raised and even filing of suit, the complainant and his brother were not conceding. Trial Court discussed the copies of various other litigations filed, to discuss and discard them as not linked to the complainant and his brother. The trial Court also found that there was no material to show that the complainant and his family had taken part in "*Manav Hakk Abhiyan*". Trial Court found that the evidence of various witnesses corroborated the complainant and injured PW-11 Vishnu. The argument that PW-5 Sudhakar Karpe had friendly relations with the complainant and Vishnu and so he was deposing, was discarded. Trial Court reasoned that evidence of PW-5 Sudhakar appears to be natural. Although it was suggested that PW-6 Sukhdeo Karad was relative of complainant, the

trial Court found the witness to be reliable. The argument that PW-7 Baban had filed criminal case against the accused was also considered by the trial Court, but the trial Court still found that the witness could have been present at the time of incident. Trial Court found the testimony of PW-7 Baban to be natural and that he was trustworthy and could not be discarded only because he has filed some case against the accused. Similarly, the trial Court discarded the argument that PW-8 Asaram Bade deserved to be disbelieved as he had sold land to the complainant. Trial Court had found that various witnesses had referred to the presence of PW-8 Asaram Bade. (Even otherwise, this witness had a house at the spot concerned and his presence at that place was most natural, looking to the place and time.) Trial Court found that there was nothing on record to show why the evidence of PW-10 Asaram Karpe could be said to be not trustworthy, believable and acceptable. Trial Court thus, discussed the witnesses and accepted

their evidence rejecting defences raised. Trial Court further accepted the other evidence and recorded various reasons to discard the defence. It also found that there was no delay in filing of the F.I.R. and concluded that the offence had been proved.

16. Going through the evidence of witnesses, I also find that the prosecution has duly proved that the accused persons, due to earlier strained relations, did wrongfully restrain PW-1 and PW-11 on their way home and cause bleeding injury to PW-11 Vishnu and the complainant was also given stick blow.

17. The evidence shows that the accused persons wrongfully restrained the complainant and his brother and voluntarily caused hurt by means of knife - cum - *kukri* to PW-11 Vishnu and by stick to the complainant. However, regarding holding the accused guilty for offence under

Section 504 and 506 of IPC, as has been done by the trial Court, I do not find that there is much material. Although the complainant PW-1 Nathoba deposed in his evidence that accused No.1 Prabhu, at the time of incident stated that both these brothers need to be finished of once for all, the F.I.R. claims that when the complainant tried to cover his brother, he was told to go aside as Vishnu is to be killed, there is no clear corroboration regarding what exact criminal intimidation was committed. The trial Court while recording reasons, took up all the Sections together for discussion and does not appear to have shown as to how Section 504 of IPC was made out. There is no clear evidence regarding how the accused persons provocatively insulted the complainant and his brother so as to prove Section 504 of IPC. Thus the accused need to be acquitted for the offence punishable under Sections 504 and 506 of IPC.

18. Coming to the main Section of 307 of IPC, it is necessary to consider the evidence of PW-12 Kailash. This witness, no doubt, deposed that PW-11 Vishnu had incise wound to the right side of occipital region and the X-ray of the skull was required to be taken, but he clearly deposed in the examination-in-chief itself that after perusing the injury of Vishnu, he found that there was no possibility of death due to the said injury. In the cross-examination he accepted that the injury of PW-1 Nathoba was simple. In fact he accepted that the injury of PW-11 Vishnu was superficial and would not even cause any abnormality in the body. In spite of such evidence, the trial Court found that there was intention to commit murder of PW-11 Vishnu. It relied on the case of **State of Maharashtra vs. Balram Bama Patil and others, reported in A.I.R. 1983 Supreme Court 305** to observe that to prove offence under Section 307 of IPC, it is not necessary that bodily injury capable of causing death should have been

inflicted. Trial Court observed that it was not necessary that the injury caused by the accused to the injured should be sufficient to cause death of the person assaulted. Thus, the trial Court found that Section 307 of IPC was made out.

. Trial Court appears to have kept in view only the head-note. It would be proper to note observations of Hon'ble Supreme Court in Para 9 of the Judgment in the case of **State of Maharashtra vs. Balram Bama Patil and others**, cited supra, which are reproduced:-

"To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the

accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

. I find that the less gravity of injury would not by itself be decisive when the relevant fact is that with knife the assault was made on the head. But the question is whether there was intention to kill. Assault on the head with the knife would, no doubt, indicate intention to cause injury on the vital part of body, but then it would be a matter of consideration in each matter

to see what are the facts and the impact of facts collectively. In the present matter, although there is evidence of accused No.1 Prabhu giving knife blow near the head of PW-11 Vishnu, it was only a superficial injury which was caused and there is no evidence to show that accused No.1 Prabhu made any other or repeated attempt to cause injury against PW-11 Vishnu. No doubt the complainant did intervene to save his brother, but still there is no further act of assault attributed to accused No.1 Prabhu. Even if other villagers got attracted due to the shout of PW-11 Vishnu when he was injured, it is not a case that instantly after the first assault the accused was physically obstructed and held and stopped from making any further attack. Thus, collectively seeing these facts, it is difficult to calculate that the accused No.1 Prabhu and accused No.2 Raosaheb had intention to kill PW-11 Vishnu. Thus, I do not concur with the trial Court that offence under Section 307 of IPC was established.

19. Thus, it would be necessary to scale down the Sections proved. As it was only a simple injury which had been caused with the help of instrument like knife which was recovered from the accused and has been identified by various witnesses, looking to the cutting instrument, as only simple injury was caused to PW-11 Vishnu, the offence proved must be held to be under Section 324 of IPC. Offence under Section 323 read with 34 of IPC must be also held to be proved looking to the assault by stick at the hands of accused No.2 against the complainant.

20. For above reasons, I pass the following order:-

O R D E R

(I) The Criminal Appeal is partly allowed.

(II) The conviction of the Accused No.1 Prabhu and Accused No.2 Raosaheb under Section 307 read with 34 of the Indian Penal Code is converted into conviction under Section 324 read with 34 of the Indian Penal Code, 1860 and both the accused are sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5000/- (Rupees Five Thousand) each and in default, to suffer further rigorous imprisonment for three months by such of the accused who does not deposit fine.

(III) The conviction and sentence against both the accused persons under Section 341 and 323 read with 34 of the Indian Penal Code, 1860 as imposed by the trial Court, is maintained.

(IV) The conviction and sentence against both the accused persons under Section 504 and 506 read with 34 of the Indian Penal Code, 1860 as imposed by the trial Court is quashed and set aside.

(V) Both the accused are acquitted of the offence punishable under Section 504, 506 read with 34 of the Indian Penal Code, 1860. Fine, if paid on this count, shall be considered while calculating fine imposed supra.

(VI) Sentences of imprisonment to run concurrently.

(VII) The Criminal Appeal is accordingly disposed of.

[A.I.S. CHEEMA, J.]