

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.766 OF 2014

Supadu @ Bapu Kautik Patil,
Age-30 years, Occu:Agriculture,
R/o-Rajwad, Tq-Parola,
Dist-Jalgaon.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Satej S. Jadhav Advocate for Appellant.
Mr. K.D. Mundhe, A.P.P. for Respondent-State.
...

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

DATE OF RESERVING JUDGMENT : 10TH AUGUST,2016

DATE OF PRONOUNCING JUDGMENT: 8TH SEPTEMBER, 2016

JUDGMENT :

1. The Appellant - original accused has been convicted by the Additional Sessions Judge, Amalner in Sessions Case No.24 of 2008, under Section 354 of Indian Penal Code, 1860 ("I.P.C.")

in brief) and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- and in default of payment of fine, to suffer simple imprisonment for three months. He has been convicted also for offence under Section 307 of I.P.C. and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5000/- and in default of payment of fine to suffer simple imprisonment for three months. The conviction is also under Section 506 of the I.P.C. and sentence of rigorous imprisonment for one year and fine of Rs.1000/- and in default to suffer simple imprisonment for one month has been imposed. There was charge also under Section 504 of I.P.C. but the accused came to be acquitted for the same. Being aggrieved, the present Appeal has been filed.

CASE OF PROSECUTION:

2. To appreciate case of prosecution, it

would be appropriate to make brief reference to the contents of the F.I.R. Exhibit 40 which was filed by the complainant Sachin Laxman Patil at Parola Police Station and Crime No.45 of 2008 was registered at about 9.15 a.m. on 25th April 2008. The F.I.R. states as under:

(A) (i) The F.I.R. referred to the situation on the spot and the family details of the complainant and that in the evening of 24th April 2008 there was a *Halad* Ceremony in the village which was not attended by the complainant and his family and that they went to sleep at about 9.30 - 10.00 p.m. in front of their house on cots. It is stated that at about 2.00 - 2.30 a.m. in the night in the date of 25th April 2008, the complainant, his mother and father were sleeping in front of the house and suddenly the mother shouted because of which the complainant got up. The mother had called out to her husband saying as to see who has come and sat on her bed. When complainant saw in

that direction, he saw that accused Supdu Patil who resides on the back side of their house, was sitting there. Because of shouts of mother of complainant, the father also got up and at that time the accused ran away from the spot. The mother told the complainant that while she was sleeping, the accused had come and sat on her cot and had roamed his hand on her person because of which her sleep got disturbed and she got up. The father of complainant at that time said that they will look into the incident in the morning. As the accused had gone away, they slept.

(A) (ii). The F.I.R. then refers to the second part of the incident by recording that in the morning at about 5.00 a.m. when water comes in the taps, they got up and complainant and his mother (PW-5) went to the tap on the back side of their house. Time was at about 7.00 a.m. when the accused came there along with his sister Bebabai to the adjoining tap which is belonging to him.

PW-5 Nirmalabai was filling the water from the pit near the tap and the accused went and sat besides her. Mother of the complainant asked him to get up from there and he stated as to why he should get up. When the mother of the complainant tried to make the accused get up, the accused slapped her. Consequently, mother of complainant called out to her husband. Her husband (Laxman Patil) came there. Mother of complainant told her husband the incident on the tap. Laxman, father of complainant started telling accused that in the night also he had come and sat on the cot of his wife. When Laxman was so speaking, accused raised his hand holding a bucket to assault and mother of complainant obstructed the assault by hand, because of which the bucket hit back to the accused near his ear and head. F.I.R. gives names of six persons and states that those persons and others came there and explained to the accused and took him to his house.

A) (iii). The F.I.R. then refers to the third part of the incident mentioning that the complainant and his father (Laxman) came in front of their house to attend the cattle. Laxman asked the complainant to take the cow-dung collected in the basket and throw it on the heap of cow-dung. The said heap was on the back side of the house of the accused. When the complainant was going towards that direction, the accused ran towards the complainant with an axe in his hand. Seeing this, the complainant threw the basket on the way itself and ran towards his house. The accused threw the axe towards the complainant. Complainant went and told the incident to his father Laxman. The father (Laxman) asked sister of complainant - Vaishali (PW-6) to go and get the basket. When she tried to go there, accused threatened her also to come and he will hit her by the axe. Because of the threat, the sister did not go to pick up the basket. Thereafter Laxman himself went to get the basket and at that time the accused, with the axe

which he had in his hand, gave 2-3 blows on the head of the father of the complainant and tried to kill him. Because of the blows given by the axe on the head, the father started bleeding and his clothes got blood stained. The F.I.R. refers to villagers who came there at such time including Ishwar Dagadu Patil (PW-4) who took Laxman (hereafter referred as "victim") to the Government Hospital at Parola. F.I.R. states that the incident took place at about 7.00 - 7.45 a.m. Thus, the F.I.R. was being filed.

THE INVESTIGATION:

B). Then P.I. PW-8 Sadashiv Bhadane registered the offence and immediately went to the spot and prepared spot Panchnama Exhibit 42. One of the Panchas was PW-2 Ravindra Patil. From the spot, samples of plain soil as well as blood mixed soil were collected. The Investigating Officer recorded statements of witnesses. The accused came

to be arrested. While the accused was in custody, he agreed to give discovery of the axe. In presence of Panchas, the Memorandum Exhibit 46 was recorded. The accused led the Police and Panchas to another hut which was near his house and gave discovery of the axe (Article D) hidden between leaves of sugarcane. The axe had blood stains. Panchnama Exhibit 47 was drawn. One of the Panch was PW-3 Kalim Patel. This discovery took place on 26th April 2008 between 5.30 - 5.45 p.m. On 25th April 2008 PW-4 Ishwar Patil who had helped to take the victim to the hospital, had collected the blood stained clothes of the victim and produced the same before the police and the same were seized by the investigating officer vide Panchnama Exhibit 56 in presence of Panchas. One of the Panch was PW-7 Manoj Patil. In presence of PW-7 Manoj Patil blood stained shirt from the person of accused was also seized on 25th April 2008 vide Panchnama Exhibit 55.

. It appears that the victim was earlier taken to the Cottage Hospital at Parola and was examined by PW-10 Dr. Sachin Pralhad Patil, who immediately referred the victim to the hospital at Dhule and the victim was taken to "Dr. Shah's Neuro Surgery Center" at Dhule and was treated by PW-9 Dr. Nikhil Shah, a Neuro Surgeon. The victim had three injuries on his head. The Investigating Officer earlier tried to record the statement of the victim but he was not in fit condition. The statement could be recorded only after the victim was discharged from the hospital. As per PW-9 Dr. Shah, victim was discharged on 14th May 2008. The Investigating Officer sent the seized Muddemal to C.A. and reports Exhibit 58 to 60 were collected. After the investigation, charge-sheet came to be filed.

DEFENCE:

3. The accused pleaded not guilty to the charge which was framed against him for offences

punishable under Sections 354, 307, 504 and 506 of I.P.C. His defence is of denial. In the cross-examination it was vaguely tried to suggest that PW-5 Nirmalabai got hurt due to slip of leg. It was also tried to say that as the family of accused did not vote for the candidate of party of complainant in Gram Panchayat Election, false complaint is filed. The suggestion was denied.

4. The prosecution brought on record evidence of ten witnesses. The trial Court considered the oral and documentary evidence and although it did not find offence under Section 504 of I.P.C. proved, it found that the offences under other Sections proved beyond reasonable doubt and convicted and sentenced the accused as above.

ARGUMENTS:

5. I have heard learned counsel for the Appellant – accused and learned A.P.P. for State.

The learned counsel for the accused has taken me through the evidence. It is argued that the C.A. Reports show that the blood group of the accused is "O" and as such if C.A. Reports show that blood on the axe was also of "O" group, it would not be an evidence against the accused. According to the learned counsel, the victim Laxman himself was not examined in the trial Court and thus important evidence was missing. It is argued that PW-4 Ishwar stated that he saw accused throwing axe towards PW-1 Sachin but the witness did not depose about PW-6 Vaishali being threatened by the accused, which part of the incident was stated by PW-1 and PW-6 as having occurred before the victim was assaulted. The counsel expressed surprise as to how PW-4 Ishwar himself collected the clothes of the victim and directly took them to the police station. The counsel further expressed surprise that PW-6 Vaishali, the daughter of victim did not depose about part of the incident which is stated to have taken place at 2.00 a.m. in the night.

According to the counsel, PW-7 Manoj Patil, the Panch of seizure of clothes of the victim as well as of the accused, should be disbelieved because he admitted that he was the friend of PW-1 complainant. Referring to the evidence of PW-9 Dr. Nikhil Shah and PW-10 Dr. Sachin, the counsel submitted that in the evidence and certificate issued by Dr. Sachin who first examined the victim, there is no reference of brain matter coming out. The counsel stated that the evidence of PW-8 P.I. Sadashiv Bhadane shows that he did record statement of the injured victim Laxman but Laxman was not examined in the trial Court. It is argued that although the evidence is that in the course of incident due to PW-5 Nirmalabai obstructing assault the bucket rebounded and hurt the accused himself, the medical evidence of the accused was not brought on record. According to the counsel, regarding outraging modesty of PW-5, there is no other independent witness except the complainant and his mother PW-5 Nirmala. Regarding

the incident on the tap, the counsel argued that it would be difficult to accept that in presence of his sister the accused would go and sit near PW-5 Nirmala and misbehave with her. Learned counsel argued in alternative that if the Court does not agree to acquit the accused, the Section for punishment should be converted from Section 307 to 326 of the I.P.C., as according to the counsel the victim alone could have stated about the intention of the accused and the victim has not been examined. The spot of incident was closer to the house of accused and the evidence shows that the accused was angry about some thing, the reason of which has not come on record. There were no repeated assaults by the accused and so according to the counsel, at the most the offence under Section 326 of I.P.C. could be stated to be there. According to him, there was no prior enmity and so the sentence should be reduced.

6. Per contra, the learned A.P.P. submitted

that the Judgment of the trial Court itself shows that the victim died subsequently on 9th September 2009 regarding which purshis Exhibit 69 was filed. The evidence started in 2014 and by that time the victim was not available for evidence. According to learned A.P.P., there was no reason to disbelieve the complainant, his mother and sister, looking to the grievous injuries inflicted on the head of the victim. According to the learned A.P.P., there were more than one blow given on the head. The certificates of doctors PW-9 and PW-10 shows that there were three injuries on the head of the victim and by the time the victim was taken to Neuro Surgeon, the brain matter had started coming out. According to the learned A.P.P., facts of the matter clearly show that intention was to kill as with the help of axe grievous injuries were caused on the head of the victim. The A.P.P. referred to C.A. Report Exhibit 58 to submit that C.A. Report showed that the blood group of the victim was also "O" and thus according to the

learned A.P.P., only because accused has also blood group "O" does not make any difference and the blood on the axe and clothes of the victim and accused was of "O" group which belonged to the victim. The A.P.P. submitted that the offence has been duly proved and the trial Court has rightly convicted the accused and the conviction may not be disturbed.

FIRST PART OF INCIDENT:

7. I have gone through the oral and documentary evidence brought on record by the prosecution in the trial Court. Coming to the first part of incident which took place between the night of 24th April 2008 and 25th April 2008, there is evidence of PW-1 Sachin, the complainant and PW-5 Nirmala the mother. The evidence of both these witnesses read collectively makes it clear that in the concerned night this family slept in the court-yard in front of their house and it

appears that at about 2.00 – 2.30 a.m. sleep of PW-5 Nirmala got disturbed as she felt that a hand was moving on her person. She has deposed that the accused came and sat on her bed at about 2.00 – 2.30 a.m. and moved his hand on her cheek. Her evidence is that she called out to her husband and her husband and son woke up. Seeing them wake up, the accused ran away. The evidence of PW-1 and PW-5 shows that PW-5 Nirmala had immediately told as to how the accused had come and sat on her bed while she was sleeping and moved his hand on her cheek. It appears from the evidence of these two witnesses that the father (victim Laxman) suggested that they will look into the matter in the morning.

8. I have gone through the cross-examination of both these witnesses. Apart from suggestions which have been denied, there is nothing material in the cross-examination so as to disbelieve these witnesses regarding this part of the incident.

Learned counsel for the accused expressed surprise that PW-6 Vaishali, who must also have been sleeping nearby, did not refer to the incident which took place in the night. I do not think that because PW-6 Vaishali did not refer to this part of incident, PW-1 and PW-5 should be disbelieved. If the evidence of PW-5 Nirmalabai is examined, what she deposed was, in the night when she had called out, her husband and son woke up. Thus, if PW-6 Vaishali did not wake up from her sleep, and thus did not refer to that part of incident in her evidence, that by itself cannot be reason to disbelieve PW-1 and PW-5. It would also depend on how deep sleep she was in at that prime time of the night.

SECOND PART OF INCIDENT:

9. Coming to the second part of the incident, the evidence of PW-1 and PW-5 shows that at about 5.00 – 5.30 a.m. these people woke up and

PW-5 Nirmala alongwith her son went to fill water on the tap which was behind their house. The evidence is that the accused and his sister Bebabai also came there to fetch water. The taps are stated to be near each other. PW-5 Nirmala was fetching water from the pit and the evidence shows that the accused went and sat besides her. PW-5 Nirmala asked him to stand up and go away but accused started saying that as to why he should stand and go away. The evidence shows that at such time accused slapped Nirmala, who immediately called out to her husband. The evidence is that when victim Laxman came there, he reminded accused of the facts of the incident which took place in the night. Thus what appears is that the victim had tried to tell the accused that he misbehaved in the night also and now also he was misbehaving. The evidence shows that at such time the accused raised bucket which was in his hand in order to assault PW-5 Nirmala. PW-1 Sachin has deposed that at such time his mother raised her hands to save

the assault and consequently the bucket hit to the ear and head of the accused himself, who sustained injury. The evidence shows that thereafter some villagers gathered and the accused was taken away to his house.

10. The learned counsel for the accused has argued that if this evidence is seen, the accused must have suffered injury but the medical certificate of the accused was not brought on record by the State. Even if the medical certificate has not been brought on record, the Arrest Memo available in the original file of the trial Court shows that the accused was arrested on 25th April 2008 itself at about 4.10 p.m. and entry in Column No.7 is that he had been medically examined. The photo affixed on the Arrest Memo shows the accused with head bandage. Thus, it does appear that PW-1 and PW-5 were giving truthful account of the incident. The injury on the person of the accused has rather been explained. Looking

to the cross-examination of PW-1 and PW-5 although various suggestions are put denying the details of the incident, nothing material has come out. No contradictions or omissions are proved.

. The argument that accused is unlikely to misbehave in presence of his sister so as to go and sit near PW-5, has no substance. It depends on the person and merely because the sister was there, does not make it an impossibility.

THIRD PART OF INCIDENT:

11. In the chain of instances, the third part then unfolded. Evidence of PW-1 Sachin is that after the incident which took place on the tap the accused was taken away to his house by villagers, and the complainant and his father came back to their house to clean the cattle-shed. He collected the dung of cows and buffalos and put it into a basket as it was to be thrown on the heap of dung which

was near the house of the accused. PW-1 deposed that when he collected the dung to throw it near the heap of dung, the accused holding axe came towards him. Seeing the accused coming like this, the witness has deposed that he threw the basket containing dung there only and started running towards his house at which time the accused threw axe towards his person. It appears the axe missed him. He came back home running and told the incident to his father. PW-1 is corroborated by PW-5 Nirmala who has also deposed that when her son collected dung and her husband asked complainant to go and throw it on the heap of dung which is on the back side of the house of the accused, the accused had rushed towards her son and accused threw axe towards the person of complainant but same did not hit him and the son came back home weeping and told the incident to her and her husband. The evidence of PW-1 complainant Sachin, PW-5 Nirmala and the evidence of PW-6 Vaishali shows that after such incident,

Vaishali was asked by the father to go and get the basket. The evidence is that when Vaishali had gone towards the heap of dung to get the basket, the accused told her to come to him and he will assault her on her head by means of axe. Consequently Vaishali also came back. Thus, it is clear that the accused threatened complainant PW-1 as well as PW-6 Vaishali with injury if they went towards the heap of dung and threatened them with assault and hurt.

. The evidence of PW-1, PW-5 and PW-6 further shows that after this part of incident, victim Laxman went to get the basket and at that time the accused went near the victim who had reached near Neem tree which is in the open ground behind the house of the complainant (and is in between the house of complainant and the accused). When the victim was near the said Neem tree, the accused went up to him and gave 2-3 blows by the axe on the head, is the evidence of these

witnesses. The victim started bleeding from the head and collapsed on the ground with his clothes getting blood stained. At this point of time the accused ran away. PW-1, PW-5 and PW-6 get corroboration from independent witness PW-4 Ishwar Patil also.

12. PW-4 Ishwar Patil has deposed that on 25th April 2008 he was going as he wanted to engage labourers. He was along with one Sambhaji Patil. They heard shouts of quarrel and his evidence is that he saw that the quarrel was going on between wife of Laxman Patil (PW-5 Nirmala) and accused. He deposed that they rescued the quarrel. This relates to Second Part of Incident. According to this witness, he then went to call labourers and while they were returning, he saw the part of incident of accused throwing axe towards complainant PW-1 Sachin. PW-4 Ishwar deposed that thereafter victim Laxman went there to take the basket and accused gave two axe blows on the head

of the victim Laxman, due to which Laxman fell down with blood falling on his clothes and the accused ran away from the spot. This witness PW-4 Ishwar has deposed that he rushed home and brought his Pick-up vehicle and carried Laxman in the Pick-up van to Government Hospital, Parola. The doctors referred the patient to Dhule and the victim was taken there by ambulance.

. I have gone through the cross-examination of PW-4 Ishwar. He was asked details regarding his purchase of Pick-up vehicle and its permit. Then various suggestions have been given so as to deny the evidence given by the witness. The suggestions given by the accused were not accepted by the witness and going through the examination, it cannot be said that the witness was shattered in any manner. There appears no reason why this PW-4 Ishwar should have deposed against the accused or in favour of the victim Laxman or his wife. The witness remained un-shattered in the cross-

examination.

13. The learned counsel for the accused submitted that PW-4 Ishwar did not depose about PW-6 Vaishali trying to go and get the basket before Laxman went to do so. Even if PW-4 Ishwar did not refer to that part of the incident, it must have been a brief incident unlike the act of throwing axe towards PW-1 Sachin which would register in the mind of a person witnessing the incident and the actual assault on Laxman which would remain unforgotten when such incident takes place, for a witness. Thus only because the small part of PW-6 Vaishali trying to go and get the basket and accused threatening her, has missed the attention of PW-4 Ishwar Patil, that will not make any difference. It is not that the witness has accepted that no such incident occurred of PW-6 Vaishali trying to go and get the basket. There is no contra evidence and only because some portion of incident is not deposed to by PW-4 Ishwar, that

will not make the evidence doubtful.

MEDICAL EVIDENCE:

14. Coming to the medical evidence, the evidence of PW-10 Dr. Sachin Patil shows that he was working as medical officer at Cottage Hospital, Parola. He deposed that at about 7.30 a.m. injured Laxman was brought to the hospital and the history given was of assault at about 6.00 a.m. The doctor noted the following injuries on the person of victim:-

"1) Contused lacerated wound on right parietal occipital region, liner in shape, antero-posterior in direction. Size 12 X 1 X 1 ½ cm.

2) Contused lacerated wound on right side extending from forehead to parietal region antero-posterior in direction. Liner in shape of size 7 x 1 x 1 ½ cm.

3) Right frontal bone suspicious fracture

of right frontal bone".

. This doctor deposed that the patient was referred to Civil Hospital, Dhule for further investigation and the injuries were within six hours and had been caused due to sharp and hard object. He deposed that nature of injury No.3 was grievous. He issued Certificate Exhibit 70.

15. Then there is evidence of PW-9 Dr. Nikhil Shah. The victim appears to have been rushed from Parola to Dhule and had reached the Hospital of PW-9 Dr. Nikhil Shah by 9.30 a.m. The wife Nirmala appears to have been there with him. The Doctor PW-9 has deposed that the victim had injury on right tempo parietal of the skull with brain matter coming out in 15 cm. in long C.L.W. The doctor had taken C.T. Scan photo of the injury of the patient. The doctor PW-9 recorded the following injuries:-

"1] There was right high parietal hemorrhagic infarct with extra cerebral bone fragment noted.

2] Sub arachnoid hemorrhage pneumocephalus with diffused cerebral oedema.

3] Frontal bone fracture on right side with depressed fracture parietal bone on the right side with bone fragment."

. According to this doctor the injuries had been caused by sharp and hard object. He issued certificate Exhibit 66. The doctor was shown the axe which had been seized. According to the doctor, the injuries were possible by such axe. In the cross-examination PW-9 Dr. Nikhil Shah admitted that if forcibly person is made to fall down on stone, the injuries would be possible. Other than this, from the evidence of PW-9 and PW-10 nothing material is found in the cross-examination so as to disbelieve these doctors regarding the injuries they had recorded and the fact that they had examined the victim. Even if

PW-9 Dr. Nikhil deposed about possibility of such injuries by forcibly falling of a person on stone, there is neither such defence nor, evidence indicates any such possibility. Again, if a person is forcibly made to fall, it would still be an offence. A given injury is possible by various ways and means. That is not material. Important is to see whether the evidence regarding the incident and the injury noticed by the doctor match, so as to appreciate the evidence regarding the incident.

16. It has been argued by the learned counsel for the Appellant-accused that PW-10 Dr. Sachin Patil had not mentioned about brain matter coming out. I do not find that this is material. The doctor PW-10 who has examined the victim at Cottage Hospital, Parola and his notings of the injuries must be treated as prima facie, from external examination of the victim whereas doctor PW-9 had the advantage of going into C.T. Scan and is even otherwise qualified Neuro Surgeon and his

evidence is material. In the rush-up of the victim being taken from the spot to the Cottage Hospital at Parola and then being taken to Dhule, if by the time patient reached Dhule the brain matter had started coming out, that does not mean that there is any contradiction between the findings recorded by the doctor at Parola and the doctor at Dhule.

PROMPT F.I.R.:

17. Frontal bone fracture on the parietal region of the head and the fact that brain matter had started to come out shows that it was a grievous injury on most vital part of the body which is the head, and apparently the injury was sufficient in ordinary course of nature to cause death. Had it not been that the victim was rushed so fast, the consequences could have been different. The evidence shows that while PW-5 Nirmala rushed with her husband to take him to two different Hospitals, PW-1 Sachin Patil had rushed

to the police station and had immediately filed F.I.R. with the offence also getting registered by 9.15 a.m.

18. The counsel for the accused did not submit but it was claimed by the accused in the trial Court as a surprise that PW-10 Dr. Sachin Patil had mentioned that the victim had been brought to the Hospital at about 7.30 a.m., whereas the witnesses had claimed the incident to have occurred at about 7.00 - 7.30 a.m. If the evidence of witnesses is seen, it appears that at about 5.00 - 5.30 a.m. the second part of the incident was taking place near the tap which was followed by further incident of the assault on the victim in quick succession. The trial Court has discussed this evidence and observed that the witnesses were from rural background and their evidence can not be judged with the same standard as that of the witnesses from the urban areas. Trial Court observed that the witnesses are not

expected to have photographic memory and with regard to time usually people make their estimate by guess work or on the spur of moment at the time of interrogation. Trial Court did not refer, but appears to have picked up the reasoning from the Judgment of the Hon'ble Supreme Court in the matter of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, reported in (1983) 3 Supreme Court Cases 217.** I find that the appreciation of evidence and reasonings recorded by the trial Court in this regard are proper and there is no reason to doubt the evidence which is brought on record by the prosecution.

ORAL EVIDENCE:

19. The prosecution brought on record further evidence which shows that in presence of PW-7 Manoj Patil from person of the accused, PW-8 P.I. Sadashiv Bhadane seized blood stained shirt. PW-4 Ishwar Patil produced clothes of the victim which

were also seized. Panchnamas on this count Exhibits 55 and 56 were proved by the State. Evidence of Investigating Officer is that these clothes were sent to C.A. The C.A. Reports show that clothes sent to C.A. had blood stains of "O" group. It also appears that the accused and the victim both had blood group "O". Looking this evidence alongwith ocular evidence of the incident there is an additional circumstance supporting the case of prosecution. Then there is evidence of PW-3 Kalim Patil as well as Investigating Officer PW-8 Sadashiv Bhadane which shows that on 26th April 2008 the accused while in custody agreed in presence of Panchas and led the Police and Panchas to a hut near his house and from below the Sugarcane leaves the axe was discovered. The evidence is that axe had blood stains. C.A. report shows the blood stains were of "O" group. The evidence of PW-2 Ravindra Patil shows that from the spot, the police had seized blood stained mud sample and even this sample has later on been

found of blood group "O". Thus these corroborative pieces of evidence are also available and lend credence to the oral evidence of witnesses regarding the incident. The ocular evidence, it may be stated, stands strongly, with or without support of these corroborative pieces of evidence.

20. There is no substance in the argument that Panch PW-7 Manoj Patil should be disbelieved only because he accepted that he is friend of the complainant.

21. I have gone through the Judgment of the trial Court. I am ignoring the observations of the trial Court in Para 20 of its Judgment where it attempted to read the statement of the victim given to police, under Section 32(1) of the Evidence Act because by the time the evidence was recorded the victim had passed away. Counsel for accused did not argue on this count but I am preferring to ignore these reasonings as recorded

in Para 20 of the impugned Judgment. However, rest of the reasonings recorded by the trial Court for accepting the evidence appear to be correct and proper and the trial Court appears to have rightly convicted the accused for the Sections as mentioned earlier.

SECTION 307 OR SECTION 326 OF I.P.C.?

22. The submission of the learned counsel for the accused that offence under Section 307 of the I.P.C. is not made out and it should be converted into Section 326 of I.P.C. deserves to be rejected. I have already discussed medical evidence which shows that the injuries of the victim were sufficient in ordinary course of nature to cause death. The facts proved in this matter show that the accused went on behaving like a bully so as to go and violate modesty of PW-5 Nirmala in the night and in the morning also on the tap started misbehaving with her and when

resisted he himself got injured by the bucket he was trying to use against PW-5 Nirmala. He was taken back by villagers. Thereafter he rather aggravated his assault by trying to attack PW-1 Sachin and PW-6 Vaishali when they tried to go towards heap of dung and actually assaulted the victim. He gave more than one blows on the head by axe and the intention and knowledge must be stated to be obvious. He gave vent to his anger when PW-1 Sachin and PW-6 Vaishali and the victim were trying to go towards heap of cow dung. It cannot be said to be any grave and sudden provocation from the side of these persons for the accused to behave in the manner in which it has been noticed in this matter. The over-all reading of the evidence of PW-1, PW-5 and PW-6 shows that inspite of provocation from the side of accused, they had not retaliated. Rather they were defensive. In the incident of night rather the victim postponed taking action by saying that they will look into the matter in the morning. The accused rather got

encouraged to misbehave on the tap and when he himself got injured due to his own act, he started behaving violently. While the victim and his family went on tolerating misbehaviour after misbehaviour, accused went on aggravating bullying behaviour and in the process committed offences of not merely outraging modesty of a woman and criminal intimidation but when got injured on being resisted went on to attempt to commit murder of his weak neighbour. Bullies don't really need reason to misbehave and trouble and in the process to commit offence. I find that the offence under Section 307 of I.P.C. has been rightly concluded by the trial Court.

23. There is no substance in the Appeal. The Appeal is dismissed. The Appellant-accused shall surrender to his bail bonds. Trial Court to ensure sentence passed is complied with.

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