

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.448 OF 2005

Abhinandan s/o Pandurang Javkar
Age : 40 yrs, Occu : Business,
R/o. Balbhim Chowk, Beed

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Beed City Police Station

.. Respondent
(Orig. Complainant)

.....

Advocate for the appellant : Shri M.P. Kale, Shri G.V. Sukale
APP for Respondent – State : Shri R.B. Bagul

....

WITH

CRIMINAL APPEAL NO.620 OF 2005

The State of Maharashtra
Through Beed City Police Station
Through Dr. Dayasagar Baburao Javkar
Age : 51 years, Occu : Private Medical
Practitioner, R/o. Balbhim Chowk, Beed

... Appellant
(Orig. Complainant)

VERSUS

Abhinandan s/o. Pandurang Javkar
Age : 40 years, Occu : Business,
R/o. Balbhim Chowk, Beed

.. Respondent
(Orig. Accused No.1)

.....

APP for the appellant – State : Shri R.B. Bagul
Advocate for the Respondent : Shri M.P. Kale,
Shri G.V. Sukale

.....

WITH

CRIMINAL REVISION APPLICATION NO.262 OF 2005

Dr. Dayasagar S/o. Baburao Javkar,
Died Through his LR's.

1. Rajani w/o. Dayasagar Javkar,
Age : 65 years, Occu : Household,
R/o. Balbhim Chowk, Beed,
Tq. and Dist. Beed
2. Dnyansagar S/o. Dayasagar Javkar,
Age : 29 years, Occu : Business,
R/o. Balbhim Chowk, Beed,
Tq. and Dist. Beed

.. Applicants
(Orig. Complainant)

VERSUS

1. Abhinandan s/o. Pandurang Javkar,
Age : 55 years, Occu : Business,
R/o. Balbhim Chowk, Beed
Tq. and Dist. Beed
2. Damodar S/o. Baburao Bagal,
Age : 50 years, Occu : Advocate
R/o. Bashir Ganj, Beed,
Tq. and Dist. Beed

.. (Orig. Accused nos.1 & 2)

3. The State of Maharashtra

... Respondents

.....

Advocate for the applicants	:	Mrs. M.A. Kulkarni
Advocate for respondent No.2	:	Shri S.S. Choudhari
APP for respondent – State	:	Shri R.B. Bagul

.....

CORAM : P.R. BORA, J.

Reserved on : 10/11/2017
Pronounced on : 21/12/2017

JUDGMENT :

1. Since the present two Appeals and the Revision

Application arise out of the Judgment and order passed by III Ad-hoc Additional Sessions Judge, Beed in Sessions Case No.35 of 1993 decided on 8th June, 2005, I have simultaneously heard these matters and I deem it appropriate to decide all these matters by a common reasoning.

2. Criminal Revision Application No.262 of 2005 was initially filed by Dr. Dayasagar Baburao Javkar for enhancement in the quantum of punishment awarded by the learned Sessions Judge to accused no.1 and also against the acquittal of accused no.2 recorded in the aforesaid sessions case. During pendency of the Revision Application, Dr. Dayasagar Javkar died. The legal heirs of Dr. Javkar have thereafter prosecuted the Revision Application further after obtaining necessary leave.

3. Criminal Appeal No.448 of 2005 has been filed by original accused no.1 namely Abhinandan Pandurang Javkar challenging the Judgment and order passed in Sessions Case No.35 of 1993. Criminal Appeal No.620 of 2005 has been filed by the State for enhancement of sentence imposed upon accused no.1 by the learned Sessions Judge in the aforesaid Sessions Case.

4. Case of the prosecution in brief was thus :

. On 20.09.1990 at about 07:30 p.m. when Dr. Dayasagar Javkar, in his dispensary known as Sundar Clinic situated at Gandhi road, Beed was reading the appeal filed by one Baban Tukaram Satpute, accused no.1 namely Abhinandan Javkar along with one person entered into said dispensary armed with sticks and made assaults on the head, shoulders and the hands of Dr. Dayasagar, causing him bleeding injuries on his head, to his shoulders and to his index finger of the left hand. Dr. Dayasagar shouted for help whereupon his wife and his brother rushed to the dispensary from their house. Noticing that, the wife and the brother of Dr. Dayasagar are rushing towards the dispensary, accused no.1 Abhinandan and the person with him fled from the said spot. Dr. Dayasagar, then was removed to the government hospital. After having received the necessary treatment, Dr. Dayasagar lodged the report of the alleged incident to the police person attached to the Police Chowky at Civil Hospital, Beed. On such report lodged by Dr. Dayasagar, Crime No.390 of 1990 was registered at Beed Police Station against the accused persons and the investigation was set in motion. The Investigating Officer, after having completed the investigation, filed the charge-sheet against the accused persons in the Court of Chief Judicial Magistrate, Beed for the offences punishable under Sections 323, 324, 325 & 504 of I.P.C.

5. The record further reveals that, Dr. Dayasagar was not satisfied with the charge-sheet filed by the police only for the offences punishable under Sections 323, 324, 325 & 504 of I.P.C. It was the contention of Dr. Dayasagar that, the accused have attempted to commit his murder and as such, they were liable to be prosecuted for the offence punishable under Section 307 of I.P.C. It was also the contention of Dr. Dayasagar that, the other person accompanying accused no.1 Abhinandan was set by accused no.2 and was acting on instructions of accused no.2 and as such, according to Dr. Dayasagar accused no.2 was liable to be prosecuted for the offence punishable under Section 120-B of I.P.C. Dr. Dayasagar, therefore, filed a private complaint in the Court of Chief Judicial Magistrate, Beed. The learned CJM, after appreciating the material placed on record before him, issued the process against both the accused under Sections 307, 452, 120-B & 109 of I.P.C. Since the regular complaint registered on police report and the private complaint filed by Dr. Dayasagar were arising out of one and the same incident, both the complaints were clubbed by the learned CJM. Since the offence punishable under Section 307 of I.P.C. was exclusively triable by the Court of Sessions, the learned CJM, committed the case to the Court of Sessions and the same was registered as Sessions Case No.35 of 1993.

6. The learned Sessions Judge framed the charge against both the accused for the offences punishable under Sections 307, 323, 324, 325, 452 & 120-B r.w. 34 of I.P.C. The accused did not plead guilty and claimed to be tried. In order to prove the guilt of the accused, the prosecution examined as many as 16 witnesses. The defence of the accused was of total denial and false implication.

7. The learned Ad-hoc Additional Sessions Judge, after having assessed the oral and documentary evidence brought before him, held accused no.1 guilty for the offences punishable under Sections 325 and 452 of I.P.C. and sentenced him to suffer Simple Imprisonment for one year for the offence punishable under Section 452 of I.P.C. with fine of Rs.1000/-, in default to suffer Simple Imprisonment for two months and Simple Imprisonment for two years for the offence punishable under Section 325 read with Section 34 of I.P.C. with fine of Rs.2,000/-, in default to suffer further Simple Imprisonment for six months. The learned trial Court acquitted the accused no.2 from all the offences, with which, he was charged. Aggrieved by, the informant Dr. Dayasagar, the State and accused no.1 Abhinandan have filed the present proceedings.

8. As noted herein above, the original informant died during the pendency of the present Revision Application and his legal

heirs have prosecuted the present Revision Application. Smt Kulkarni, learned Counsel appearing for the revision applicant assailed the impugned Judgment on various grounds. The learned Counsel submitted that, overwhelming evidence has come on record before the Sessions Court showing that, the assault made by accused no.1 and the person set by accused no.2, was well planned attack with an intention to kill Dr. Dayasagar. The learned Counsel further submitted that, accused no.1 made an assault on the head of the informant, which is the vital part of the body. The learned Counsel submitted that, though accused no.1 did not succeed in causing serious injury to the informant by making an assault on his head, his intention can very well be gathered from his act of making an assault on the head of the informant. The learned Counsel further submitted that, accused no.2 made assault on the shoulder and hands of the informant, because of which, the informant suffered the fracture to clavicle bone and terminal phalynx.

9. The learned Counsel taking me through the evidence of PW No.3 Dr. Dayasagar and the evidence of the Medical Officers submitted that, from the aforesaid evidence, it has been undoubtedly proved that, the accused were intending to cause the death of informant Dr. Dayasagar and were having full knowledge that, the injuries which they did cause on the vital part of the body of

informant may result in causing his death. In the circumstances, according to the learned Counsel both the accused must have been held guilty by the learned trial Court for the offence punishable under Section 307 & 120-B of I.P.C. The learned Counsel submitted that, on some untenable grounds, the trial Court has instead of convicting both the accused for the offences punishable under Section 307 of I.P.C. has punished only accused no.1 that too for an offence punishable under section 325 of I.P.C. and has wrongly acquitted accused no.2 from the offences charged against him. The learned Counsel, therefore, prayed for setting aside the impugned Judgment so far as it relate to acquittal of accused no.2 and prayed for holding both the accused guilty for the offence punishable under Section 307 of I.P.C. and impose adequate punishment upon them.

10. In Criminal Appeal No.620 of 2005 the State has sought enhancement in the sentence awarded to accused no.1 by the trial Court and has prayed for holding the said accused guilty for offences, with which, he was charged. The learned APP adopted the arguments of Smt Kulkarni, learned Counsel appearing for the informant.

11. The learned Counsel appearing for accused no.1 submitted that, the order of conviction passed against the said accused is an erroneous order. The learned Counsel submitted that,

when the order of conviction itself is unsustainable, the Revision Application filed by the informant and the Appeal filed by the State, both are devoid of any substance and deserve to be dismissed.

12. The learned Counsel appearing for accused no.2 supported the impugned Judgment. The learned Counsel submitted that, no evidence has come on record against accused no.2 and the learned trial Court has, therefore, rightly acquitted accused no.2 of all the charges levelled against him. The learned Counsel submitted that, no interference is, therefore, required in the impugned Judgment and order.

13. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties, I have perused the impugned Judgment and the evidence, which was adduced in the trial before the Sessions Court. Insofar as the acquittal of accused no.2 is concerned, apparently it does not appear to me that, the learned Sessions Judge has committed any error in acquitting the said accused. As has been observed by the trial Court, none of the witnesses examined during the course of trial has deposed before the Court that, accused no.2 was involved in the alleged incident and that he made assaults on person of informant Dr. Dayasagar in conspiracy with accused no.1 Abhinandan.

Informant Dr. Dayasagar has also not deposed in evidence before Court that, accused no.2 was involved in making assaults on him in the incident occurred on 20.09.1990. What has been deposed by Dr. Dayasagar is the fact that, accused no.1 was accompanied by one unknown person. Of course, it was the case of Dr. Dayasagar that, the said unknown person was set by accused no.2 for making an assault on him and to cause his death. The prosecution has, therefore attempted to bring on record the evidence to show that, there was a long standing enmity between accused no.2 and informant Dr. Dayasagar. It was therefore the contention of the prosecution that, there was every reason to believe that, along with accused no.1 the said unknown person was set by accused no.2 for making murderous assault on informant Dr. Dayasagar. The learned trial Court has discussed the said evidence meticulously and has recorded a conclusion that, even though it is admitted that, there was enmity between accused no.2 and informant Dr. Dayasagar, the evidence, which has come on record, was not in any way indicating that, the said unknown person, who allegedly was accompanying accused no.2 was acting on instruction of accused no.2. It is undisputed that, during the entire investigation and even thereafter nothing has been revealed as to who was the said person accompanying accused no.1 Abhinandan at the relevant time. In the circumstances, the prayer made in the Revision Application to hold accused no.2 guilty for the

offences, which are proved against accused no.1, is liable to be rejected. After having considered the entire evidence on record, I have no hesitation in observing that, no evidence has come on record showing the involvement of accused no.2 in the incident allegedly occurred on 20.09.1990. The Revision Application therefore, deserves to be dismissed.

14. Now, falls for my consideration the another prayer made by informant Dr. Javkar (since deceased through his legal heirs) in the Revision Application to convict Accused no.1 for an offence under Section 307 of I.P.C. and to impose upon him the maximum punishment for the said offence. As against it, Accused no.1 has preferred an appeal challenging his conviction by the Sessions Court for offences punishable under Sections 325 and 452 of I.P.C. and praying for his acquittal. Both the issues have to be therefore decided simultaneously.

15. In his testimony before the Court, informant Dr. Dayasagar (PW No.3) has deposed that, on 20.09.1990 at about 07:30 p.m. when he was reading one Judgment in his dispensary, accused no.1 and one unknown person entered into his dispensary holding sticks in their hands and made assaults on his head, shoulder and hands. Dr. Dayasagar, has, however, not specified or explained as

to which assault was made by accused no.1 and on which part of his body. The allegations made by the informant in his evidence before the Court are vague. No one has eye witnessed the incident of assault on informant Dr. Dayasagar. The wife of Dr. Dayasagar viz. Rajani alias Seva Dayasagar Javkar (PW No.4) and his brother though reached at the spot immediately, but admittedly after the occurrence of incident and had not witnessed the actual assault on informant Dr. Dayasagar. However, in the first information report lodged by informant Dr. Dayasagar on 20.09.1990, he has specifically stated that, at about 07:30 p.m. on the date of incident, accused no.1 Abhinandan with one unknown person with him entered into his dispensary with sticks in their hands and accused no.1 made an assault on his head with the stick in his hand. The informant Dr. Dayasagar has further stated that, the person who was accompanying accused no.1 Abhinandan made an assault with a stick on his right shoulder and his left hand. The first information report as was lodged by the informant Dr. Dayasagar was duly proved, during the course of his evidence before the Court. Thus, from the evidence on record, the fact which has come on record is that accused no.1 made an assault with a stick on the head of informant Dr. Javkar and the person who was accompanying accused no.1 assaulted Dr. Javkar on his right shoulder, as well as his left hand with the aid of a stick.

16. As has come on record, Dr. Javkar was immediately taken to the Civil Hospital at Beed. He was first examined by Dr. Tukaram Limbnath Deshmukh (PW -6). As has been deposed by PW No.6, he checked Dr. Javkar and advised to take X-ray of his right collar bone and X-ray of skull. PW No.6, Dr. Deshmukh, then referred Dr. Javkar to Dr. Gaikwad. Dr. Chandrakant Aabasaheb Gaikwad has also been examined by the prosecution as its witness no.5. Dr. Gaikwad has deposed in his testimony before Court that, Dr. Javkar was admitted in male Surgery Ward of Civil Hospital, Beed on 20.09.1990 and was discharged on 22.09.1990. Dr. Gaikwad has also deposed that, X-rays of skull and collar bone of Dr. Javkar were taken. Dr. Gaikwad has further deposed that, from the X-rays, it was noticed that, Dr. Javkar had suffered a fracture to his clavicle bone and to the terminal phalynx. Dr. Gaikwad has also deposed that, the injury noticed on the head of Dr. Javkar was a simple injury.

17. The prosecution had also examined Dr. Bari as it's witness (PW No.7). Dr. Bari has testified before the Court that, on 20.09.1990 Dr. Javkar was examined by him in Civil Hospital, Beed and he found following injuries on his person:

- “1. C.L.W. over left partial region of scalp, size 3”x1/2”x1/2”, its margins were irregular and was oblique in direction, bleeding was present.

2. Contusion over top of the rt. Shoulder, size 2"x2", with irregular margin, red in colour.
3. Contusion over tip of the left little finger, size 1/2x1/2" with irregular margin and red in colour.
4. Fracture, right clavicle lateral end
5. Fracture, on terminal phalynx of the left little finger."

Dr. Bari further deposed that, the injury nos.1 to 3 were simple in nature and could be caused by hard and blunt object and age of the said injuries was within 6 hours of his examination. Dr. Bari has further deposed that, injury nos.4 & 5 were grievous in nature and could be caused by hard and blunt object and the age of the said injury was also 6 hours of his examination. Dr. Bari had accordingly issued the injury certificate, which is at Exh.252. In the cross-examination, Dr. Bari has admitted that, the injuries as were mentioned in Exh.252 were not sufficient to cause death and none of the said injury was on the vital part of the body. Dr. Bari had also admitted that, the body parts to which the injury nos.4 & 5 were caused, were liable to become normal after treatment.

18. The prosecution had also examined Dr. Vinayak Male, the then Civil Surgeon of Civil Hospital Beed. Dr. Male (PW No.16) has deposed that, on 20.09.1990 he had seen Dr. Javkar and noticed that, there were 5 injuries on his person. Dr. Male has specifically deposed that, the head injury shown in Exh.252 could not have caused death of Dr. Javkar. Dr. Male has clarified that, though head is

the vital part of the body, death cannot be caused unless there is an injury to the brain or there is internal hemorrhage or fracture of the skull. Dr. Male in his cross-examination admitted that, there was no such injury or skull fracture suffered by Dr. Javkar.

19. After having considered the medical evidence as was brought on record by the prosecution, the inevitable conclusion emerges that, no such injury was caused to Dr. Javkar, which would have resulted in causing his death. Though it was vehemently canvassed by Advocate M.A. Kulkarni, learned Counsel appearing for informant – Dr. Javkar that, the injuries caused to Dr. Javkar may not be sufficient or serious enough to cause the death of Dr. Javkar, the intention of the assailants to cause the death Dr. Javkar can be gathered from the fact that, the assailants had chosen the head of Dr. Javkar for making an assault by stick. The learned Counsel submitted that, Dr Javkar was fortunate enough that, no serious damage was caused to him because of assault and that he survived. In the circumstances, according to the learned Counsel, the learned Additional Sessions Judge must have held both the accused guilty for the offence punishable under Section 307 of I.P.C. The learned Counsel submitted that, the learned Additional Sessions Judge has grossly erred in holding only accused no.1 guilty and that too for an offence under Section 325 of the I.P.C.

20. After having considered the entire evidence on record, it is difficult to accept the contention of the learned Counsel for the informant that, accused no.1 was intending to cause the death of Dr. Javkar. Merely because accused no.1 made an assault on the head of Dr. Javkar, no such conclusion can be arrived at. From the evidence on record, it is quite evident that, only one stick blow was given by accused no.1 on the head of Dr. Javkar. The blow so given resulted in causing a simple head injury to Dr. Javkar. It indicates that, the assault was not made by applying heavy force. Admittedly, there was no damage to the brain part. The blow so given also did not result in causing fracture of skull. It is also quite clear that, no repeated assaults were made by accused no.1 on the head of Dr. Javkar or on any other part of his body. Further, there is no such evidence on record which may lead to an inference that, accused no.1 has purposely chosen the head of Dr. Javkar for making an assault on him. Possibility cannot be ruled out that it may be a simple co-incidence. After having considered the entire evidence on record, it does not appear to me that, any case is made out for holding accused no.1 guilty for the offence punishable under Section 307 of I.P.C. There is no substance in the submission made on behalf of informant that, from the evidence which has been brought on record, accused no.1 is liable be held guilty for the offence punishable under

Section 307 of I.P.C. The contention so raised is devoid of any substance and deserves to be rejected.

21. The next question which falls for my consideration is 'Whether the conviction of accused no.1 for the offences under Section 325 and 452 of I.P.C. is sustainable? Shri Kale, learned Counsel appearing for accused no.1 submitted that, the prosecution has utterly failed in proving that, the assault on Dr Javkar was made by accused no.1. The learned Counsel submitted that, the witnesses, which are examined by the prosecution have not supported the case of the prosecution. The witnesses, who have supported the case of prosecution are all interested witnesses and their evidence cannot be relied upon unless it is corroborated by the evidence of any independent witness. The learned Counsel submitted that, the accused has sufficiently brought on record that, there is long standing enmity between Dr Javkar and accused no.1. The learned Counsel further submitted that, the circumstances brought on record by accused no.1 clearly indicate the possibility of false implication of accused no.1 by informant Dr. Javkar. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and acquit applicant no.1 of all the charges leveled against him. The learned Counsel in the alternative submitted that, in no case the learned Additional Sessions Judge could have convicted accused no.1 for the offence

punishable under Section 325 of the I.P.C. in view of the fact that, there is no evidence to show that, accused no.1 caused any grievous hurt to informant Dr Javkar. The learned Counsel submitted that, since the entire incident is imaginary and concocted, even no offence under Section 452 of the I.P.C. can be said to have been proved by the prosecution. The learned Counsel, therefore, reiterated the request for acquittal of the accused of all the charges leveled against him.

22. The submissions made on behalf of accused no.1 that his involvement in the alleged occurrence also has not been proved and that, the possibility of his false implication is difficult to be ruled out, is liable to be rejected in view of the evidence on record. It has come on record that, after occurrence of the alleged incident, Dr Javkar was immediately removed to Civil Hospital, Beed. After he was examined, without loss of any time he lodged the report of the alleged incident to the police person on duty at police Chowky attached to the Civil Hospital, Beed. In the F.I.R., Dr. Javkar has specifically alleged that, accused no.1 with one unknown person entered into his dispensary with stick in his hand and made assault on his person. The wife of Dr. Javkar has also corroborated the said version. Further, no such material has been brought on record through the cross-examination of Dr. Javkar so as to disbelieve his version that, accused no.1 entered into his dispensary and made

assault on his head by a stick. The prosecution has brought on record sufficient evidence to prove the involvement as well as complicity of accused no.1 in making assault on informant Dr. Javkar by entering into his house with the said intention with stick in his hand.

23. Thus, insofar as the offence under Section 452 of I.P.C. is concerned, the prosecution has beyond reasonable doubt proved the said offence against accused no.1. Entry of accused no.1 into the dispensary of Dr Javkar with stick in his hand and making of an assault by him on the head of Dr. Javkar immediately on entering into the said dispensary clearly indicates that, accused no.1 had made preparation for causing hurt to Dr. Javkar and for that purpose, he entered into the dispensary of Dr. Javkar.

24. However, insofar as the conviction of accused no.1 for an offence under Section 325 of I.P.C. is concerned, there appears substance in the objection raised by the learned Counsel appearing for accused no.1. Section 325 of the I.P.C. reads thus:

Section 325 of the I.P.C. :-

“325. Punishment for voluntarily causing grievous hurt.-Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven

years, and shall also be liable to fine.”

25. Section 320 describes the grievous hurt as under :

“320. **Grievous hurt.**-The following kinds of hurt only are designated as “grievous”:-

First.- Emasculation.

Secondly- Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear,

Fourthly- Privation of any member or joint.

Fifthly – Destruction or permanent impairing of the powers of any member or joint.

Sixthly – Permanent disfiguration of the head or face.

Seventhly – Fracture or dislocation of a bone or tooth.

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

26. As elaborately discussed by me herein above, the only fact which has been proved against accused no.1 is that, he made an assault on the head of Dr. Javkar, which resulted in causing the head injury to Dr. Javkar. As has come on record through the medical evidence, the injury caused on the head of Dr. Javkar was a simple injury. The injury as was noticed on the head of Dr Javkar as described in Exh.252 does not fall in the category of grievous hurt as prescribed in Section 320 of I.P.C. The fracture of skull and the fracture of terminal phalynx caused to Dr. Javkar were not because of

the assault made by accused no.1. It is the case of Dr. Javkar himself that, the assault on his head was made by accused no.1, whereas the assault on his shoulders and on his hand was made by unknown person, who was accompanying accused no.1 at the relevant time. The clavicle bone fracture and terminal phalynx was thus caused as a result of assault made by the said unknown person, but not by accused no.1. Having regard to the nature of injury, which was caused because of the assault made by accused no.1 on the head of informant Dr. Javkar, it cannot be said that, accused no.1 caused grievous hurt to informant Dr. Javkar. In the circumstances, the conviction of accused no.1 by the Sessions Court for the offence under Section 325 of I.P.C. cannot be sustained.

27. From the evidence on record, which I have elaborately discussed herein above, it is however sufficiently established that, accused no.1 voluntarily caused hurt to Dr. Javkar by making an assault on his head by a stick. It need not be stated that, the stick also falls in the category of a dangerous weapon. In the circumstances, I hold accused no.1 guilty for the offence under Section 324 of I.P.C.

28. The next question now arises as to what would be the appropriate punishment for accused no.1 for the offences punishable under Section 452 and 324 of I.P.C. proved against him.

29. From the material on record, it can be gathered that, accused no.1 Abhinandan Javkar is nearing the age of 70. The alleged incident had admittedly occurred in the year 1990 i.e. prior to about 27 years. While imposing the punishment on accused no.1 for the aforesaid offences, both the aforesaid facts will have to be taken into account. Section 324 of I.P.C. provides that, the person committing the offence under the said section shall be punished with imprisonment of either description for term, which may extend to three years or with fine or with both, whereas Section 452 of I.P.C. provides that, the person held guilty for the said offence shall be punished with imprisonment of either description for the term, which may extend to 7 years and shall also be liable to fine. In view of the fact that the alleged incident had occurred prior to about 27 years, it does not appear to me that there is any propriety to now sentence the accused, who is aged about 70 years to suffer imprisonment more than till rising of the Court. To strike the balance, amount of fine can, however, be adequately increased. Hence, the following order.

ORDER

- i) Criminal Appeal No.620 of 2005 and Criminal Revision Application No.262 of 2005 both stand dismissed.

ii) Criminal Appeal No.448 of 2005 is partly allowed in the following terms.

(a) The conviction of accused no.1 Abhinandan s/o Pandurang Javkar for the offence under Section 325 read with 34 of I.P.C. is set aside.

(b) Accused no.1 Abhinandan s/o Pandurang Javkar is held guilty for the offence under Section 324 of I.P.C. and is sentenced to pay fine of Rs.50,000/-, in default to suffer simple imprisonment for six months.

(c) Punishment imposed by the trial Court on accused no.1 Abhinandan s/o Pandurang Javkar for the offence under Section 452 read with 34 of I.P.C. is modified as below :

Accused no.1 Abhinandan s/o Pandurang Javkar is convicted for the offence under Section 452 read with 34 of I.P.C. and is sentenced to suffer Simple Imprisonment till rising of the Court and to pay fine of Rs.50,000/-, in default to suffer Simple Imprisonment for six months.

(d) Accused no.1 Abhinandan s/o Pandurang Javkar to

surrender before the Sessions Court, Beed within three weeks from the date of this order to suffer the sentence imposed by this Court.

- (e) If accused no.1 Abhinandan s/o Pandurang Javkar fails to surrender before the Sessions Court within the period stipulated as above, the Sessions Court shall take coercive steps to secure his presence to suffer the sentence imposed by this Court.
- (f) If the fine amount is deposited, Rs.90,000/- out of the same shall be paid to the legal heirs of Dr. Dayasagar Baburao Javkar i.e. the applicants in Criminal Revision Application No.262 of 2005.

(P.R. BORA, J.)