

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

CRIMINAL APPEAL NO. 390 OF 2001

Bharat S/o. Neminath Salve,
Age : 38 years, Occu. Service,
As a headmaster, R/o. Shastrinagar, Hingoli,
Dist. Hingoli. ... Appellant

VERSUS

The State of Maharashtra ... Respondent

.....
Mr R. S. Deshmukh, Advocate for the appellant
Mr V. S. Badakh, APP for respondent/State
.....

WITH
CRIMINAL APPEAL NO. 374 OF 2001

Tukaram S/o Marotrao Jadhav,
Age : 52 years, Occu. Agriculture,
R/o. Hingoli, Dist. Hingoli. ... Appellant

VERSUS

The State of Maharashtra ... Respondent

.....
Mr R. S. Shinde, Advocate for the appellant
Mr V. S. Badakh, APP for respondent/State
.....

WITH
CRIMINAL APPEAL NO. 497 OF 2001

The State of Maharashtra,
Through Sanjay S/o Annarao Takalgavankar,
Age : 33 years, Occu. Service,
R/o. Hingoli, Taluka. Hingoli. ... Appellant
(Orig. Complainant)

VERSUS

1. The State of Maharashtra

2. Tukaram S/o Marotrao Jadhav,
Age : 52 years, Occu. Agril.,
R/o. Shivajinagar, Hingoli,
Tq. Hingoli, Dist. Hingoli.

... Respondents

.....
Mr V. S. Badakh, APP for the appellant/State
Mr R. S. Shinde, APP for respondent/State
.....

CORAM : T. V. NALAWADE &
A. M. DHAVALA, JJ.

RESERVED ON : 02.11.2017.
PRONOUNCED ON : 05.12.2017

JUDGMENT (PER A. M. DHAVALA, J.) :

1. In Sessions Case No. 25/1999, Bharat Salve, aged 36 years, a Headmaster and Tukaram Jadhav, aged 52 years, a President of educational institute, were prosecuted for committing murder of one Sanjay S. Kshirsagar (hereinafter referred to as "SSK") by inflicting a blow of tocha on his chest and voluntarily causing simple hurt by tocha on hands and legs and for intentionally insulting in order to provoke breach of peace and criminally intimidating the witnesses being offences punishable u/s 302 r/w 34, 324/34, 323/34, 504/34, 506/34 of IPC. By judgment dt. 31.08.2001, ld. Addl. Sessions Judge, Hingoli convicted accused no. 1 – Bharat u/s 302/34 IPC and

sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs. 1,000/-, in default, RI for six months. He was further convicted u/s 324 IPC and sentenced to suffer RI for one year. He was further convicted u/s 506 IPC and sentenced to suffer RI for six months. By the said judgment, accused no. 2 – Tukaram Jadhav was convicted u/s 326/34 IPC and sentenced to suffer RI for five years and to pay fine of Rs. 500/-, in default, RI for six months. He was further convicted u/s 323/34 IPC and sentenced to suffer SI till rising of the court and to pay fine of Rs.500/-, in default, RI for three months months. He was further convicted u/s 506/34 IPC and sentenced to undergo RI for six months.

2. Being aggrieved by this judgment, accused no. 1 – Bharat Salve has preferred Criminal Appeal No. 390/2001, accused no. 2 – Tukaram Jadhav has filed Criminal Appeal No. 374/2001 while the State has presented Criminal Appeal No. 497/2001 against acquittal of accused no. 2 u/s 302/34 IPC.

3. Since all the appeals arise out of one judgment, they are heard together and are disposed of by this common judgment. For the sake of convenience, the parties are herein after referred to as Bharat-A1 and Tukaram-A2.

4. The prosecution was initiated on the basis of FIR lodged by PW7 Sanjay Takalgavankar, the complainant (hereinafter referred to as "PW7-Sanjay T") on 18.11.1998 at 06:30 p.m. at Hingoli Police Station and on the basis of the same, crime was registered at C.R. No.146/1998 for offence u/s 302, 324, 323, 504, 506 r/w 34 IPC. As per FIR, Tukaram-A2 was the President of educational institution, which was running Vidyasagar Vidyalaya at Khanapur Chitta, of which Bharat-A1 was Headmaster. PW7- Sanjay T as well as deceased SSK and some other witnesses were working there as teachers. In the FIR, it was alleged that, Tukaram-A2 had obtained signatures of the teachers on blank cheques and those were encashed by him. When PW7-Sanjay T & other teachers told Tukaram-A2 that they would encash their own cheques, Tukaram-A2 threatened several times to dismiss them from service. Hence the teachers made complaint to the Education Officer and also went on hunger strike. On 18.11.1998 at 08:30 a.m., deceased SSK, PW7-Sanjay T, Malkar, Subhash Suryawanshi and one Shelke, all teachers were proceeding to the school in auto-rickshaw at Nanded Naka. Both the accused met them. The teachers made inquiry with the accused as to what had happened with their service book. That time, accused nos. 1 and 2 challenged them and asked whether they were owners of the school and that

they could not cause any loss to them. Thereafter, all the teachers joined the school and on that day one another teacher by name Subhash Tale received by post a notice of termination of his services. He brought this fact to the notice of all the teachers. Hence, in the recess, the teachers met the President Tukaram-A2. The President challenged them that they could do whatever they wanted. After the closure of the school, the teachers sent one teacher Shelke to Police Station and thereafter PW7-Sanjay T, deceased - SSK, Subhash Tale, Sudhakar Malkar, Subhash Suryawanshi were proceeding in Auto-rickshaw at 4:45 p.m. They got down at Nanded Naka in Hngoli and were waiting for arrival of other teachers. That time, both the accused came there in auto-rickshaw and got down in front of them. The teachers made inquiry with both the accused why Mr Tale was terminated. Then both the accused challenged them and rushed at them to assault. Then the other teachers held them and when one of the teachers Subhash Suryawanshi came forward to rescue, Tukaram-A2 assaulted him. Then Tukaram-A2 held deceased-SSK and Bharat-A1 inflicted a blow of tocha. Deceased-SSK raised shouts and fell down. PW7- Sanjay T requested the Headmaster Bharat-A1 not to assault, then he inflicted a blow of tocha on his left hand palm on both the sides and also on his stomach. PW7-Takalgavankar raised shouts. Teachers and several persons gathered there. When the

teachers were trying to control the President by holding him, he tried to run away and he fell down and sustained trauma. PW7-Sanjay T and Subhash Suryawanshi reported the matter to the police that both the accused killed SSK and had also intimidated them. PW7 lodged FIR Exh. 115 at 06:30 p.m.

5. On the basis of said FIR, crime was registered at C.R. No. 146/1998 for offence u/s 302, 324, 323, 504, 506 r/w 34 of IPC and the same was investigated into by PW13 - API Musale. Earlier to the FIR, there was a telephonic intimation to the police about some quarrel taking place at Nanded Octroi Post. PW13 API Musale proceeded to the spot. He found that, SSK was lying on the road and Tukaram-A2 was sitting at some distance from him. He put both of them in auto-rickshaw and forwarded them along with his constable to the hospital. He saw Bharat-A1 standing there with a tocha in his hand. He sent him with police to the police station. When he came to civil hospital, SSK was reported dead and accused no. 2 was admitted in the hospital. PW7 - Sanjay T was also injured and treated. After recording the FIR Exh. 115, he carried out investigation. He arrested Bharat-A1 and seized from him the weapon of offence tocha as well as clothes on his person having blood stains. During the investigation, he recorded the statement of

material witnesses and collected medical papers including PM notes. He drew spot panchanama and inquest panchanama. He also seized blood stained clothes of deceased-SSK and of PW7-Sanjay T. He collected blood samples of the accused and the witnesses and obtained opinion of the Medical Officer as to whether the injury was possible by weapon of offence 'tocha'. He seized some record of Vidyasagar Vidyalaya, Khanapur Chitta and seized blood stained clothes of BharatA1 & Tukaram-A2. He forwarded the seized clothes and blood samples to CA office at Aurangabad for analysis. He got a topographical map drawn from the revenue officer and after receipt of CA report, he submitted charge-sheet in the court. [It is pertinent to note here that, there was a counter case filed on FIR of A2 – Tukaram against the prosecution witnesses. The said case had resulted into conviction but in the high court the appeal was allowed and the witnesses herein were acquitted.] The case was duly committed to the court of Sessions. The ld. Addl. Sessions Judge framed charge at Exh. 11 against both the accused. The prosecution examined 13 witnesses.

6. It is the defence of the accused that, the performance of the teachers in question was not satisfactory and their behaviour was also indisciplined and arrogant. PW7-Sanjay T was leader of those

teachers. He was previously a journalist and continuing the said work and the accused were required to issue notice to him and other teachers on account of their poor performance and behaviour. The witnesses had a grudge against A1 & A2. Subhash was a probationer and since his performance was not good, his services were terminated as per the procedure. When the accused came to the spot, PW7-Sanjay T and other teachers pulled them down and started assaulting them. PW7-Sanjay T gave a kick which accidentally hit deceased-SSK as a result of which, SSK fell down on a wooden box having pointed nails and he died. The accused had not assaulted him and other witnesses. On the other hand, the teachers had assaulted both the accused for which they were prosecuted. PW7-Sanjay T created terror in the minds of other probationary teachers that like Subhash Tale, they would also be terminated by the management and, therefore, they conspired to assault the accused and PW7-Sanjay T lodged false report against them. The defence has examined one Medical Officer.

7. Heard Id. Advocate Shri. R. S. Deshmukh for the appellants and learned APP Shri. V. S. Badakh for the State. They have taken us through the voluminous evidence on record and the reasoning given by the trial Court. Mr R. S. Deshmukh challenged the conviction on the following main grounds:

- (i) There is documentary record to show that, the performance and behaviour of PW7-Sanjay T, deceased SKK and other teachers was not satisfactory and both the accused were required to issue notices to them to show cause. They were residing beyond the limits of town contrary to the rules.
- (ii) Subhash Tale was terminated as he was probationer and his performance was not satisfactory. His termination triggered the situation and seven probationary teachers scuffled and assaulted the Headmaster of the school and President of the institution.
- (iii) Accused no. 1 is having a height of 5 ft. and weighing 35 kg only, whereas accused no. 2 was old aged person with one eyed blindness.
- (iv) It is not probable that the accused could have assaulted the large number of teachers. It is also improbable that the Headmaster was carrying tocha in his pant pocket. He pointed out that the accused have issued several notices to the seven probationary teachers who were trying to dominate the school management.
- (v) The evidence of material witnesses is not cogent, consistent and reliable. Both the accused sustained injuries for which there is no explanation coming forward from the prosecution witnesses. Tocha was

having a blood of group B whereas; the deceased was having blood group A. Therefore, the weapon of offence has not been proved. The injury is not possible by tocha. No previous injury was sustained by any witness and accused No. 2 could have been convicted u/s 326 of IPC. The spot was a public place but no independent witnesses were examined. There is inordinate delay of one hour in lodging the FIR. The FIR was lodged after deliberation and concoction. Accused no. 1 was insisting the police officer to record his FIR but since API – Musale was knowing PW7- Sanjay T, his FIR was not recorded earlier. The rest of the injuries of PW7, PW10 & deceased SSK were possible by fall. PW7, PW10 & deceased had reason to assault the accused and falsely implicate them whereas the accused had no reason to assault the teachers and PW10 & PW7. There is no reliable evidence to prove the discoveries and the chemical analysis of the articles.

- (vi) In the alternative, he argued that, if at all it is held that accused had inflicted a blow of tocha which resulted into death of SSK, Bharat A1 he had no intention to kill and the facts indicated that his acts would not amount to offence u/s 302 IPC. He has already undergone sentence of 3½ years and he is now aged whereas; accused no. 2 is aged about 75 years.

(vii) He therefore submitted that the State appeal be dismissed and both the appeals of the accused be allowed. Conviction of accused no. 1 be altered to some minor offence.

8. Per contra, ld. APP Shri. V. S. Badakh argued that there is consistent evidence of PW7 & PW10 that both the accused were harassing the probationary teachers and they had made complaint against them to the Education Officer. They had held hunger strike against them. The instructions were given to the bank and the Education Officer that the operation of their bank accounts should be stopped. The accused were creating false record so as to terminate the services of the probationary teachers who were not acting as per their wishes. On the day of the incident, both the accused came there. There was altercation between the accused on one side and PW7 SSK & PW10 on the other. The other teachers were not involved in the fight. Therefore, it was not a fight between two versus seven. There is consistent evidence that, Bharat-A1 gave two blows of tocha on the chest of deceased - SSK as a result of which he died on the spot. The police officer who arrived on the spot immediately after the incident had seen the tocha in the hands of accused no. 1. The accused have sustained minor injuries. The clothes of the accused having blood stains & the weapon of offence tocha were recovered from accused

no. 1. It was also having blood stains since tocha was first used for assaulting SSK and thereafter was used for assaulting PW7-Sanjay T, it was not having blood stains of SSK. There is no material to support the defence of the accused. Mere suggestions put to the witnesses cannot be considered as evidence. The Id. trial Judge has rightly convicted accused no.1 u/s 302 of IPC but accused no. 2 should have also been convicted u/s 302/34 IPC. Therefore, he argued that the state appeal be allowed and the appeals of the accused nos. 1 and 2 be dismissed and the accused no. 2 be punished accordingly.

9. On the basis of the evidence on record and the rival submissions made, the points for our consideration with our findings thereon are as follows:

Sr. No.	Points	Findings
1	Whether the deceased SSK met with a homicidal death?	Proved.
2	Whether the accused nos. 1 and 2 in furtherance of their common intention committed murder of SSK?	Bharat A1 alone caused culpable homicide not amounting to murder.
3	Whether the accused nos. 1 and 2 in furtherance of their common intention voluntarily caused grievous hurt to PW7-Sanjay T?	Bharat A1 alone caused simple hurt by tocha in private defence.

4	Whether accused nos. 1 and 2 in furtherance of their common intention voluntarily caused simple hurt to PW7 & PW10 by deadly weapon?	Hurt caused in right of private defence.
5	Whether the accused nos. 1 and 2 in furtherance of their common intention intentionally insulted PW7-Sanjay T and deceased SSK so as to provoke them to breach public peace?	Not proved.
6	Whether accused nos. 1 and 2 in furtherance of their common intention criminally intimidated deceased SSK, PW7 & PW10?	Not proved.
7	Whether any interference is warranted in the conviction and or sentence awarded by the trial Court?	Yes. Conviction of accused no. 2 – Tukaram needs to be set aside. A1 – Bharat deserves to be convicted u/s 304-I IPC.
8	What order?	Cri. Appeal No. 374/2001 is allowed. Cri. Appeal No. 497/2001 is dismissed. Cri. Appeal No. 390/2001 is partly allowed as per final order.

REASONS

10. The prosecution has examined 13 witnesses and produced number of documents which may be conveniently grouped as follows:

[I] Injured Eye-witnesses:

- (i) PW7 – Sanjay T. Proved FIR Exh. 115.
- (ii) Complaints made by him against accused Exh. 117 to Exh. 122.
- (iii) PW10 - Subhash Suryawanshi proved his statement u/s 164, Exh. 185.

[II] Medical Evidence : -

- (i) PW1 - Dr. Nilkante, he has proved PM notes of Sanjay Kshirsagar (SSK) (Exh. 90).
- (ii) Injury Certificate of PW7 Sanjay T (Exh. 91).
- (iii) Injury Certificate of PW10 Suryawanshi (Exh. 92).
- (iv) Injury Certificate of accused no. 2 (Exh.95).

[III] Other Witnesses : -

- (i) PW6 - ASI Prabhakar, who came to the spot immediately after the incident and brought SSK and accused no. 2 in Auto Rickshaw to the hospital. That time, accused no. 1 possessing tocha was taken to the Police Station.
- (ii) PW2 - Rajkumar, panch to the seizure of tocha from accused no. 1 (article no. 1) and seizure of blood stained clothes of accused no. 1 (articles no. 2 and 3). Seizure (Exh. 103). He admitted that, accused no. 1

Bharat was having a contusion on his shoulder.

- (iii) PW3 Raju, panch to the seizure of blood stained clothes of PW7-Sanjay T (Panchanama Exh. 106).
- (iv) PW4 spot panch Sanjay Jaiswal. Panchanama and seizure of pair of chappals of the deceased near the statue of Agrasen Maharaj, was conducted on the next date of the incident at 6.00 a.m. He admitted that, there was one wooden box at a distance of 25-30 ft. of the statue but denied that it was having nails.
- (v) PW5-Panch Sunil Jagtap. In his presence blood stained Shirt, Baniyan and Dhotar of accused no. 2 were seized from his person on 24.11.1998 under seizure memorandum Exh. 111. He admitted that, at that time, accused no.2 was having injury. (It is inherently improbable that, accused no.2 who was President of a trust running the school would wear the same clothes on 24.11.98 which he was wearing on 18.11.98).
- (vi) PW8 Education Officer - Vedprakash. He has produced several complaints received from the teachers as well as from the accused against each other. Exh. 158 to 179 are the complaints / actions against the accused whereas; the documents Exh.169 to 180 are the documents in favour of the accused against the witnesses.

- (vii) PW9 - Police Constable Narendra Chandel, Carrier, who carried the seized articles to the CA office along with covering letter copy Exh. 182 and 183.
- (viii) PW11 - Keshav, panch to the inquest panchanama Exh.187.
- (ix) PW12 - Vijaysing, the seizure of clothes of the deceased brought by a Constable (Exh. 189).
- (x) PW13 - API - Musale, the Investigating Officer. At the time of incident he had received a message from a Constable that the quarrel was going on and he had visited the spot within 1 to 2 minutes. He found SSK lying there (perhaps dead), accused. no. 2 Tukaram sitting there and accused no. 1 present with a tocha in his hand. He forwarded the injured accused no. 2 Tukaram and SSK in a Auto Rickshaw with PW6 - Prabhakar to the hospital and brought accused no. 1 Bharat with tocha to police station. He has recorded FIR Exh. 115, made various seizures recorded herein above and forwarded the seized articles to the C.A. He has proved spot panchanama Exh. 109.

11. Though the incident was small lasting for not more than 10-15 minutes, the evidence is voluminous. This paper book is of 657 pages. The evidence and documents are of 406 pages and the judgment is of 89 pages. Even statements u/s 313 are around 90

pages. It shows that, the ld. trial Judge did not hold effective control over the proceedings and the advocates were permitted to cross-examine without any control. The evidence and cross-examination is with respect to irrelevant or remotely relevant matters with more emphasis on bringing on record the disputes between the parties. The evidence of material eye-witnesses PW7 is of 51 pages and that of PW10 is 30 pages. By way of illustration, we observe that, Dr. Abasaheb Nilkante was asked whether the right lung is on right side of chest and left lung is on left side chest, he answered it and it was recorded. It is necessary that the trial Judges should hold effective control over the proceedings and should not permit the lawyers to take the proceedings in their hand. Though fair opportunity should be given to the parties and their lawyers, they cannot be permitted to protract the litigation with uncontrolled, unlimited cross.

Point No. 1 : Whether death of SSK is homicidal.

12. Evidence of PW1 Dr. Nilkante shows that, immediately after the incident on 18.11.98 at 5:45 p.m. SSK was brought to him dead and he conducted post-mortem thereon. He noticed following injuries on his person.

1. *Stab wound on right side of chest in third inter costal space, 4 cm from margin of sternum of size 0.3 cm. X 0.3 circular in shape, about 3 cm deep, passing through right lung and*

puncturing right atrium of Heart, probably caused by sharp pointed object. Nature of the injury – Grievous.

2. *Laceration – on right side of the chest in second inter costal space, 4 cm from margin of sternum, size – 0.3 cm. into 0.5 cm. Probably caused by sharp pointed object, nature is simple.*
3. *Laceration on left scapula, 0.3 cm. X 0.3 cm. X 0.4 cm probably caused by sharp pointed object. Nature is simple.*
4. *Abrasion – left knee joint anteriorly two in number 2 cm x 1 cm and 1 cm x 1 cm. probably caused by hard and blunt object. Nature is simple.*
5. *Abrasion – right nostril centrally, 0.4 cm. X 0.3 cm. probably caused by hard and blunt object. Nature is simple.*

13. All the above referred injuries were ante mortem in nature.

He also noticed internal corresponding injuries as follows..

1. *Stab injury to the wall of thorax and*
2. *Stab injury to right plura.*
3. *Stab injury to the right lung.*
4. *Stab injury to pericardium, I also found 400 ml. of blood in two pericardium.*
5. *Stab injury to the right atrium of the heart. Both the chambers of the Heart were found empty.*

14. It is obvious that, injuries no. 4 and 5 abrasions to left knee and right nostril are insignificant. The small laceration on left scapula 0.3 x 0.3 x 0.4 cm by sharp object is significant only for the purpose of showing use of a pointed object. Injury no. 1 was fatal injury. It is a stab wound of the size 0.3 x 0.3 cm with depth of 8 cm. It has punctured the right lung and right atrium and the internal examination showed that it had also punctured right plura, lung and pericardium. The PM notes at Exh. 182 discloses the cause of death as the death occurred due to cardio-respiratory arrest, due to injury to heart. There is no dispute that SSK sustained injury at the time of incident at about 5:00 to 5:30 p.m. at Nanded Naka, Hingoli. It was a punctured wound and as a result of said injury, he has died instant death. The evidence of Medical Officer discloses these facts and those are not in dispute. The only question is how the punctured wound was caused to SSK. According to evidence of PW7-Sanjay T and PW10 Suryawanshi, accused no. 1 at the time of incident inflicted two blows of tocha (in fact it is not a tocha, it is having a hole and it is a piercing instrument used for stitching gunny bags). It is about 8 cm in length. According to the defence, 7 teachers including PW7 & PW10 were assaulting accused nos. 1 and 2 and during the assault, PW7 gave a kick to accused no. 1 which accidentally hit SSK on his waist and SSK fell on pointed nails fixed

in the wooden logs and has thereby died. The suggestions to that effect made to the witnesses are denied by PW7 & PW10.

15. In view of the above facts, the issue whether it was a homicidal death or not and whether both the accused were involved in commission of murder or not will have to be decided together.

Point No. 2 : Whether A1 & A2 committed murder.

16. The unchallenged evidence on record shows that, Tukaram-A2 was the President of the trust who was running a school by name Vidyasagar Vidyalaya at Khanapur Chitta, Tq. Hingoli, which is about 6-7 kms. away from Hingoli. Bharat-A1 was Headmaster. The school was having 20 teachers, one Headmaster, four peons and one clerk. It is not in dispute that the management in the form of accused no. 2 as a President and accused No. 1 as a Headmaster was in conflict with seven teachers namely PW7-Sanjay T, PW10 Subhash Suryawanshi, deceased SSK, Subhash Tale (who was terminated on the date of incident) and Shelke, Ambhore and Malkar. It is necessary to bring on record the nature of allegations made by them against each other and the documentary record to that effect.

17. Bharat-A1 had issued notices dt. 13.10.98 to deceased SSK Exh. 28 (PB-325) showing that he was absent on duty from 10.10.98 in contravention of the service rules and his performance as a teacher was not satisfactory. He was not completing the syllabus and he had misappropriated the fees collected. He gave reply dt.06.11.98 (Exh. 129) denying all the allegations. He pointed out that, he had issued a notice dt. 10.10.98 for going on hunger strike. Accused no. 1 was forcibly taking signatures of the students against him and was not accepting his reply which was required to be sent by RP.A.D. He pointed out that the fees of exam of Rs. 10/- was taken but accused no. 1 directed him to collect Rs. 15/- per student whereas; the receipt given to the student was of Rs. 10/-. The students were also told that they would not get receipt but they would acknowledge the same. He alleged that, accused no. 1 was using separate registers. He stated that, if he would have misappropriated the fees, the students would not have been allowed to appear for the exam. This notice was preceded by another notice dt. 19.09.98 (Exh. 133) regarding disorderly behaviour and notice dt.09.10.98 for not depositing exam fees (Exh. 135). He was again served with a notice dt. 26.10.98 for his absence from 10.10.98 and he was informed that he would not be permitted to join the services without the permission of the President and/or Education Officer.

18. Accused No. 2 had served Subhash Tale with a notice of termination dt. 18.11.98 (Exh. 130, PB-329) and notice in Marathi is at Exh. 152, PB 365. It shows that he was a probationer, as he could not perform satisfactorily, his services were terminated. He was also served with a notice dt. 13.10.98 (Exh. 140, page 346). Surprisingly, he was directed to show improvement in his performance for the next session but his services were terminated before beginning of the next session. He was also served with a notice dt. 26.10.98 (Exh. 147 PB-357). It was regarding his absence, leaving headquarters, working with black ribbon and breach of service rules.

19. Accused no. 1 Bharat had also differences with PW7-Sanjay T. He had lodged report with Police of Basamba dt.14.08.98 (Exh. 132) and had served him with a notice dt. 02.10.98 (Exh. 134, PB-337), notice dt. 26.10.98 (Exh. 145, PB-353) and notice dt. 26.10.98 (Exh. 148, PB-359). These notices are in respect of performance and behavior of PW7-Sanjay T and use of arrogant & threatening language by him.

20. Bharat A1 had served PW10 Suryawanshi with notices dt. 13.10.98 (Exh. 137, PB-341) and 26.10.98 (Exh. 144, PB-352).

There are complaints that, he was collecting signatures of students on blank note books. His performance as a teacher was not satisfactory. He was not completing the syllabus and he was remaining absent. He was leaving the headquarters without permission and he was absent from 10.10.98. Similarly, there are notices dt. 13.10.98 (Exh. 138, PB-343) and 26.10.98 (Exh. 146, PB-355) to Mr. Shelke and notice 12.10.98 (Exh. 139, PB-345) and notice dt. 26.10.98 (Exh. 149, PB-361) to Mr. Ambhore. Similar notices dt. 13.10.98 and 26.10.98 (Exhs. 141 & 143, PB-347 & 351) were issued to Mr. Malkar. Besides, common circulars dt. 27.10.98 (Exh. 150 & 151, PB-363 & 364) were issued against all the teachers and one complaint was filed at the police station against five teachers (Exh. 136, PB-339).

21. There are several allegations and complaints from the teachers against accused nos. 1 and 2 as well. Those were brought on record in the evidence of PW8 - Vedprakash. Those are as follows.

[i] Exh. 158. - Letter to API, Hingoli by Education Officer dt. 04.12.1998 about registration of crime against the Principal and teachers. (It is subsequent to the incident and hence insignificant).

[ii] Exh. 159. - Complaint of Mr. Malkar against accused Nos. 1 and 2 about economical harassment, taking signatures on blank cheques and threatening to terminate his services.

- [iii] Notice by PW7-Sanjay T, PW10-Subhash Suryawanshi, Mr Shelke & Mr Malkar to the Education Officer dt. 07.09.98 (Exh. 160) to go on hunger strike for economical harassment and arrogant behaviour by the accused and about registration of crime against accused no. 1. Reply by accused no. 1 undertaking to comply with the directions of Education Officer (Exh. 162, PB-395). Letter by Education Officer to deceased SSK dt. 12.10.98 (Exh. 163, PB-396) for withdrawing the hunger strike in view of undertaking of accused no. 1.
- [iv] Show-cause notice by Education Officer dt. 30.10.98 to accused nos. 1 and 2 (Exh. 164) with respect to the allegations by the teachers against them. Report of Education Officer to Dy. Director of Education, Aurangabad dt.27.11.98 (Exh. 166, PB-402) about the hostile atmosphere against the management of the school by the teaching staff.
- [v] Order of Education Officer dt. 21.11.98 (Exh. 167) appointing a senior teacher as I/c Headmaster (not relevant as it is subsequent to the event). Order of granting permission to suspend accused no. 1 issued by Education Officer dt.04.12.98 (Exh. 168, PB-408) (subsequent event). Exh. 169 & 170 are copies of notices issued to PW7-Sanjay T by Bharat-A1. Exh. 171 is for taking action of freezing the salary of PW7, dt. 18.09.98. Exh. 172 is the copy of notice by Headmaster to PW7 about his performance. Exh. 177 is a notice by accused no.1 to Subhash Tale and Exh.

177 & 178 are notices to Subhash Tale. Exh. 179 & 180 are the copies of the notices served by accused no. 1 on 13.10.98 and 26.10.98 on deceased Kshirsagar (SSK). For the purpose of this case, it is not necessary to find out whose allegations are true and whose allegation are false but it is certain that the relations between management and some of the teachers were very much strained. Accused no. 1 during the short period of around two months had issued 23 notices to 7 teachers. It appears that, as PW7-Sanjay T, PW10-Suryawanshi and some other teachers were making complaints against accused nos. 1 and 2, it was reaction of accused no. 1. There is no material to find out whether the allegations made by accused no. 1 against the teachers were true or false. Similarly, the prosecution has not collected documentary evidence to substantiate the allegations made by PW7, PW10, deceased SSK and other teachers against accused nos. 1 and 2. When accused nos. 1 and 2 were arrested, no search of their houses was taken to trace out blank signed cheques allegedly issued by PW7, PW10 and other teachers. It is certain that, the relations between teaching staff and the management (accused nos. 1 & 2) were very much strained but after all they were teachers, they are not criminals.

22. The evidence of PW7 and PW10 shows a small incident, though relevant but not significant, which allegedly took place on 18.11.98 at 8:30 a.m. They have deposed that, on the day of incident, at 8:30 a.m. while going to the school, they met both the

accused near the octroi post and they made inquiry with them about their service books. The significance of the service book is that, any adverse remarks given to the employees are required to be noted in the service book. As per rules, copy of service book is to be provided to the employee and the same should be updated from time to time. Since the witnesses PW7, PW10 and others were apprehending the false record being created by them, they might have made inquiry about their service book and there was arrogant reply from accused nos. 1 and 2 to them. Nothing further happened there. It is not a significant event.

23. On that day, during the working hours, Asst. Teacher Subhash Tale was a probationer, who had received a notice sent by RP.A.D. whereby his services were terminated. According to PW7, PW10 and other teachers, his services were terminated with vindictive attitude and for different reasons. Subhash Tale told them that accused no. 2 was demanding money and as he did not pay the money, his services were terminated. Whereas; according to accused nos. 1 and 2, since his performance was not satisfactory, his probation was not completed satisfactorily and his services were terminated. Be that as it may, PW7 stated that, Subhash Tale made inquiry with accused no. 2 - President as to why his services were

terminated and the President told him that, he could do whatever he wanted to do. On same day, the aggrieved teachers prepared a report and sent it to the Police Station, Hingoli through Asst. Teacher - Mr Shelke.

24. After the school was over at about 4:30 or 4:45 pm, PW7, PW10 along with Subhash Tale, deceased SSK & Malkar went to Nanded Naka by sharing auto-rickshaw and they were waiting there for other teachers for proceeding further. At about 05:10 to 05:15 p.m., Bharat-A1 (Headmaster) and Tukaram-A2 (President) came there by auto rickshaw. These facts are not in dispute.

25. Though it was argued that, Rickshaw of the accused was halted on the other end of the bridge, this is improbable for two reasons that; (i) the said spot is far away from the octroi post where the teachers were waiting and (ii) there was no suggestion that the auto-rickshaw was halted by the teachers. It is very material to note that, none of the teachers was armed with any weapon and apparently there was no prior concert between the teachers to catch hold both the accused and assault them. Thereafter, accused nos.1 and 2 met them and PW7 and PW10 stated that they accosted them as to why Subhash Tale's services were terminated. Whereas;

according to accused they were pulled out of the auto-rickshaw. The accused are claiming that, there were 7 teachers, whereas; PW7 and PW10 stated that there were only 5 teachers including them. Even as per their evidence, there was no participation by Mr. Malkar and Subhash Tale whereas; the accused suggested that, seven teachers were assaulting them. It was argued that, it was an uneven battle of seven versus two where the teachers were young and stout and accused nos. 1 and 2 were weak and small in number. We find that, there was no premeditation on the part of any party to pick up a quarrel and assault each other. When PW7 and PW10 accosted the accused, their ego was hurt and there was heated verbal exchange. It is not material as to what exact words were used and who started the quarrel but it is certain that there was a scuffle with some manhandling and giving of blows by hands and legs between the parties.

26. As per evidence of PW1 - Dr. Nilkante, PW7 has sustained two lacerated wounds on palm and dorsal aspects and one laceration on abdomen by sharp object. As per his evidence, these injuries were caused by accused no. 1-Bharat by means of tocha (article no. 1). Doctor Nilkante has given opinion that the injuries were possible by the said weapon. These injuries are not having depth and are not

serious.

27. PW10 Suryawanshi had deposed that accused no. 2 Tukaram had assaulted and caused scratches to his left hand & he had sustained one contusion on his left little finger, five abrasions caused by nails scratchings and one contusion on lower lip. The injuries of PW10 corroborates the evidence of PW10.

28. Accused no. 2 had sustained one laceration on tip of left nostril. One contusion of 1x2" cm on left shoulder and one swelling and deformity on left shoulder 2 x 1 cm. (this deformity is attributed to old fracture and not caused in that incident). Contusion 1 x 4 cm. on left arm. Considering the nature of these injuries, it is clear that it was a scuffle, manhandling and assault of minor nature.

29. PW2 has admitted that, accused no. 1 was also having a contusion on his right shoulder. There is no medical evidence to that effect but PW2 has admitted this fact. Considering the nature of injuries, it is certain that accused nos. 1 and 2 have sustained minor injuries small in number. Those could not have been caused by assault by seven persons. The evidence of PW7 & PW10 shows that, only three persons were involved in the incident. The accused have

given no role to SSK, Mr Malkar, Shelke, Ambhore and Tale. According to PW7 & PW10, Mr Shelke and Mr Ambhore were not present there. Besides filing of copy of FIR Exh. 122, the accused have not led any evidence. There is no witness examined nor the suggestions given to PW7 and PW10 were admitted. There is some substance in the contention that, PW 7 and PW10 have not explained the injuries sustained by PW1 and PW2 but accused nos. 1 and 2 in the FIR have not even disclosed the death of SSK at the time of incident. After carefully considering the evidence, we find that, but for the fatal injury caused to SSK, the incident was a minor scuffle with assault of simple nature in sudden unpremeditated fight.

30. The evidence of PW1 shows that, he had sustained three lacerations whereas; deceased SSK has sustained three lacerations. Out of these six lacerations, only one is 8 cm. deep, others are quite minor. The evidence of PW1 shows that, deceased had sustained one stab wound and one laceration on his chest. Therefore, the evidence of PW7 and PW10 that there was assault by accused no. 1 with a tocha and he inflicted two stab wounds on the chest of SSK is corroborated.

31. The story regarding SSK sustaining injury by fall on a

pointed nail cannot be accepted for several reasons.

- (i) No pointed nails were found in the wooden box on the spot.
- (ii) The evidence shows suggestion that accused no. 1 was surrounded by the teachers and that time PW7 gave a kick which hit SSK on his waist. In that case, SSK would not have fallen on his chest, he could have fallen on back side as he was facing towards accused no. 1 and PW7.
- (iii) Thirdly, there are three injured persons including deceased SSK. Besides, A1 & A2 have also sustained injuries. All of them could not have fallen and all of them could not have sustained injuries simultaneously by fall.
- (iv) PW7 and deceased SSK had sustained lacerated wounds which are having dimension of 0.3 x 0.3 with varying depth. These injuries are possible by tocha (article no. 1). Doctor has given such opinion and we also find that such lacerations of such dimensions can be caused by tocha (article 1).

32. A lame attempt was made to show that the injury of 8 cm depth could not have been caused by tocha considering the length of the same. However, the tocha is having length of 8.25 inches, out of which the handle is of 3 inches and the pointed rod is of 5 inches.

The depth of injury is 8 cm which is equivalent to 3.2 inches. We find that the said injury is certainly possible by the tocha.

33. It was argued that, there was huge delay of one hour and 15 minutes in lodging the FIR. We do not find substance in it. The evidence shows that, the incident was over by 5:30 p.m. Thereafter, PW7 and PW10 first went to Police Station but the Police directed them to go to the hospital which is at a distance of 20 minutes walk. They went there on foot. The doctor made inquiry with them as to why they directly came to the hospital but on their own information Doctor contacted police. Doctor made inquiry with Police and thereafter received letter from Police Station and examined them. The evidence of Dr. Nilkante shows that, the dead body was brought to him at 5:30 p.m. He examined PW7 at 6:00 p.m. (certificate Exh. 91) and PW10 at 6:10 p.m. (certificate Exh. 92). Thereafter, they had gone to the police station and lodged FIR at 6:30 p.m, which is not at all a delayed FIR. One cannot sit with a stopwatch to count the delay in lodging FIR. Pertinently, accused no. 2 has lodged FIR immediately after recording of the FIR of PW7.

34. Lot of arguments were advanced to suggest that, A1 was insisting to record his FIR but it was not recorded. Whereas, the FIR

of PW7 was recorded earlier. It is evident that, SSK, one person from the side of teaching staff consisting of PW7 and PW10 had died on the spot whereas; accused no. 1 had sustained a minor injury on the shoulder and A2 had sustained four minor injuries. It was not certain whether the assault on accused nos. 1 and 2 was a cognizable offence or not. In this situation, there is nothing wrong if the Police Officer directs to record first FIR in a case involving murder.

35. There is corroborative evidence in the form of blood stains on the clothes of accused nos. 1 and 2. Immediately after the incident, the clothes of accused no. 1 were seized. Clothes of the accused no. 1 and tocha were seized in the presence of PW2 under panchanama Exh. 103. Those were forwarded to CA and the blood spots were found on them. Similarly, blood stains were found on the clothes of accused no. 2 but the panchanama Exh. 111 drawn before PW5 is not reliable. Accused no. 2 could not have worn the same blood stained clothes from 18.11.98 to 24.11.98. Therefore, seizure of blood stained clothes on 24.11.98 will have to be discarded.

36. There is evidence of PW6-ASI Prabhakar and Investigating Officer - Musale that they had received a message about quarrel at the Police Station. Within two minutes, they reached the spot and

they found SSK lying on the spot, accused no. 2 sitting at some distance and accused no. 1 holding a tocha. Then A1 was brought to the police station and tocha was seized from him. It is quite improbable that accused no. 1 would keep tocha in his hand till reaching the police station but it is an exaggeration. PW7 and PW10 have not deposed about arrival of police on the spot during their presence. Therefore, evidence of PW6 and PW13 that tocha was found in the hands of accused no. 1 cannot be accepted. But evidence of PW7 and PW10 is convincing, reliable and trustworthy. The police might have picked up the tocha lying on the spot and shown it in the hands of accused no. 1.

37. Shri. R. S. Deshmukh, learned counsel for the appellant vehemently argued about improbabilities. He assumed the defence case to be proved though the defence story put up to the witnesses was denied. When the suggestions made are not admitted by the prosecution witnesses or are not probabalized by the circumstances, those cannot be considered as matters of fact. There is no material to show that, seven teachers were present on the spot and all of them participated in the assault. The assault took place between two accused on one hand and PW7 and PW10 and deceased SSK on the other. Accused nos. 1 and 2 were superiors and in position to

dominate the teachers in normal circumstances. The teachers working under them would not have dared to attack them as suggested. There must have been verbal exchange which resulted into scuffle and manhandling which might have resulted into free fight. Accused no. 1 Bharat was having a tocha in his pant pocket. He lost control over himself and in the sudden fight he started using tocha. He caused some lacerations to deceased SSK as well as to PW7 and inflicted one stab blow near the chest of SSK. It went 8 cm deep caused puncture of heart, lung, plura and pericardium resulting into profuse bleeding and instant death. We find that this is a clear case of culpable homicide.

38. It is a matter of common knowledge that a person does not go for committing murder with a tocha. He would certainly select a better instrument. We therefore find that there was no premeditation on the part of accused no. 1. There was no prior concert between accused nos. 1 and 2 to commit murder of SSK. There could not be. Therefore, it is not possible to accept the evidence of PW7 and PW10 that accused no. 2 held SSK and accused no. 1 inflicted a blow of tocha. We find that, in a free fight, accused no. 1 was tempted to use tocha and all of a sudden, he lost his control and gave blow of tocha on his chest. There is nothing to show that accused no. 2 knew

that accused no. 1 was likely to commit such an act and he would hold SSK so that accused no. 1 can stab him. We therefore find that accused no. 2 cannot be held guilty in the act of accused no. 1 which resulted into death of SSK.

39. As blow of such tocha on heart is bound to cause death, the act of accused no. 1 clearly falls in the definition of murder appearing in Section 300 IPC, however, his act falls within exception no. 4. Accused no. 1 might have been using the tocha to protect himself and he has exceeded his right of private defence while inflicting the fatal injury. Besides his act was without premeditation in a sudden fight and in a hit of passion upon a sudden quarrel and he had not taken any undue advantage. But it is an intentional act.

40. We therefore hold that accused no.1 guilty u/s 304-I of IPC.

41. There is evidence that accused nos. 1 and 2 have caused injuries to PW7 and PW10. The evidence of PW7 and PW10 in this regard is consistent with the medical evidence. PW10 has stated that accused no. 2 had caused him scratch injuries whereas; accused no. 1 has caused small lacerations to PW7. There are some injuries to accused nos. 1 and 2 as well. It was a free fight. Both have sustained

injuries. Both are not serious. There is possibility that accused nos. 1 and 2 might have caused injuries to PW7 and PW10 in exercise of right of private defence. Hence, accused nos. 1 and 2 cannot be convicted for voluntarily causing hurt to PW7 and PW10.

42. Considering the strained relations and wild allegations made by both the parties against each other, the allegations about verbal offences like intentional insult or criminal intimidation cannot be believed. Besides, there is no evidence to satisfy the ingredients of Section 503 IPC namely the intimidation given with an intention that the victim should do which he is not interested in doing or not to do which he is legally entitled to do. Therefore, the conviction u/s 506 IPC is also not sustainable. In view of our above findings, we hold that accused no. 1 alone guilty u/s 304-I IPC. Accused no. 2 is not guilty for any offence and accused no. 1 deserves to be acquitted for the remaining offences. Hence, we record the findings on the points accordingly.

43. Considering these findings, Criminal Appeal No. 374 of 2001 filed by accused no. 2 – Tukaram deserves to be allowed while Criminal Appeal No. 497 of 2001 filed by State deserves to be dismissed and Criminal Appeal No. 390 of 2001 filed by accused no.

1-Bharat deserves to be partly allowed.

44. Considering the facts that the incident took place in 1998 and now accused no. 1 is aged around 55 years and considering the nature of assault, we feel that sentence of seven years rigorous imprisonment with fine of Rs. 2,00,000/- will meet the ends of justice. Hence the order.

ORDER

- (i) Criminal Appeal No. 497 of 2001 filed by the State is dismissed.
- (ii) Criminal Appeal No. 390 of 2001 is partly allowed. The conviction of accused no. 1 u/s 302 of IPC is set aside and modified that he is held guilty u/s 304-I of IPC and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 2,00,000/-, in default, to suffer further rigorous imprisonment for two years. As far as possible the fine amount be recovered and it shall be paid to heirs of deceased - Sanjay Kshirsagar. Accused no. 1 is acquitted of the remaining charges. He shall surrender before the Id. trial Judge within 15 days for undergoing the sentence failing which the Id. Sessions Judge shall take steps to secure his presence and issue conviction warrant.
- (iii) Criminal Appeal No. 374 of 2001 filed by accused no.2 is allowed. He is acquitted of all the charges.

His bail bonds stands cancelled. He shall furnish PR bond of Rs. 10,000/- with like solvent surety u/s.437A of Cr.P.C.

- (iv) The order regarding muddemal property shall stand as it is but the muddemal property be preserved till the appeal period is over.

[A. M. DHAVAL]
JUDGE

[T. V. NALAWADE]
JUDGE

sgp