

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

CRIMINAL APPEAL NO. 574 OF 2002

Balu s/o Eknath Bansode,
Age 35 years, Occu. Agril.,
R/o Maliwadi, Taluka Shrirampur,
District Ahmednagar

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr V.R. Dhorde, Advocate for appellant
Mr S.J. Salgare, A.P.P. for respondent

- WITH -

CRIMINAL APPEAL NO. 138 OF 2003

The State of Maharashtra

..Appellant

Versus

1. Balu Eknath Bansode,
Age 35 years, Occu. Driver,
R/o Maliwadi, Taluka Shrirampur,
District Ahmednagar
2. Ramnath @ Ramdas s/o Chandrabhan
Take, Age 40 years, Occu. Agri.,
R/o Akoli-Wadgaon, Taluka Gangapur,
District Aurangabad
3. Zumberbai w/o Eknath Bansode,
Age 50 years, Occu. and r/o as above
4. Hirabai w/o Balu Bansode,
Age 30 years, Occu. Labourer,
R/o Maliwadi, Taluka Shrirampur,
District Ahmednagar

..Respondents

Mr S.J. Salgare, A.P.P. for appellant
Mr V.R. Dhorde, Advocate for respondents no.1 to 4

**CORAM : T.V. NALAWADE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 3.11.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 14.11.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. In Sessions Case No.142/1995, by judgment dated 25.9.2002, the learned Ist Ad hoc Additional Sessions Judge, Aurangabad acquitted all the four accused of offences punishable under Section 302 read with Sec.34 of Indian Penal Code, but convicted and sentenced accused no.1 Balu as follows :

Offence u/s	Substantive Sentence	Fine	In default R.I.
324 IPC	R.I. for two years	Rs.500/-	One month
506 (2) IPC	R.I. for one year	Rs.300/-	15 days

2. The aggrieved accused no.1 Balu has preferred Criminal Appeal No.574 of 2002, whereas the State has preferred Criminal Appeal No.138 of 2003 challenging the order of acquittal of all the accused. Since there is a common judgment, common arguments are heard and the appeals are being disposed of by this common judgment.

3. The prosecution was initiated on the basis of F.I.R. lodged by Gangubai wife of deceased Raosaheb on 1.3.1995 at 22.35 Hrs. at Sillegaon police station, Taluka and District Aurangabad. The crime was registered at C.R. No.14/1995 under Sections 302, 504, 506 read with Sec.34 of Indian Penal Code and was investigated into by P.W.8 Police Inspector Mr Bhosale.

4. As per the investigation and evidence on record, it is not in dispute that deceased Raosaheb aged about 60 years was uncle of

accused no.1 Balu. Accused no.2 Ramnath is maternal uncle, accused no.3 Zumberbai is mother of accused no.1 and accused no.4 Hirabai is wife of accused no.1 Balu. It is also not in dispute that both the accused as well as the deceased were residing in a field known as 'Limbacha mala' at village Akoli-Wadgaon. They were having their separate agricultural lands with separate farm houses, but they were having one common well and they were sharing the water of the well on the basis of daily use. Accused no.1 was entitled to use the water one day and night on Tuesday, while the deceased was entitled to use the well water one day/night after the turn of the accused. It is disputed at what time the term of the deceased was to begin. There seems to be no prior disputes. On 28.2.1995, at about 6.00 p.m., deceased Raosaheb switched off the electric motor and thereby stopped the water supply to the field of the accused. It led to the quarrel.

5. As per F.I.R., when the deceased Raosaheb switched off the electric motor, accused no.1 Balu came to the house of the deceased and challenged him to come out and threatened to kill him. Thereafter, he brought one axe, abused the deceased and gave an axe blow on his skull. Raosaheb sustained injury and he sat down due to giddiness. It was time of 9.00 p.m. Raosaheb went to the village, narrated the incident to the Police Patil and he was followed by accused no.1. Balu. After sometime, P.W.1 Balu, accused no.2 - his maternal uncle Ramnath (accused no.3 - Zumberbai's brother) came to the house of Raosaheb. Ramnath was having a stick. Accused no.3 Zumberbai and accused no.4 Hirabai also come there. As Raosaheb

was not at home, they started proceeding towards the village. When he saw P.W.1 Gangubai in front of her house, accused no.1 Balu abused her and inflicted blow of axe on her skull and thereafter went to the village. After sometime, P.W.1 Gangubai heard shouts of her husband as 'Melo re.. mala dharare'. P.W.1 Gangubai pressed her injury and went towards pir. Her husband was lying there with profuse bleeding. All the accused were present there and were shouting as 'Dhara' (caught hold), 'Hatpai toda' (cut off hands and legs). It is stated that accused no.2 Ramnath was saying that they were lucky to find deceased Raosaheb on the way. Accused nos.3 and 4 threatened to kill him and stated that they would hold him and accused nos.1 and 2 should kill him. On arrival of P.W.1 Gangubai, all the accused fled away. Then Gangubai's grandson Vikas also came there. Both of them brought Raosaheb to their house. Raosaheb was unconscious. He was first carried in a bullock-cart to Dr. Pawre at Mahagaon, but he referred him to the civil hospital at Aurangabad and provided his car for transport. Raosaheb was taken to Civil Hospital, Aurangabad. On the next day, at about 4.00 p.m., P.W.1 Gangubai came to the civil hospital. She learnt that her husband was dead. The incident was witnessed by her son P.W.2 Ramnath, daughter-in-law Mangal and grandson Vikas.

6. The crime was registered on the basis of F.I.R. at C.R. No.14/1995 under Sections 302, 504, 506 read with Sec.34 of Indian Penal Code and was investigated into. The medical evidence disclosed that deceased Raosaheb had sustained one contused lacerated wound on right parietal region of size 3" x 1/2" to skull

deep, two contusions on right occipital region and four more injuries, two contusions and two abrasions. Injury no.1 contused lacerated wound on the skull was found to be fatal. The Investigating Officer collected medical certificate of P.W.1 Gangubai. He drew inquest panchnama, spot panchnama and seized one axe from the house of the accused. He recorded statements of material witnesses. He seized blood stained clothes of accused nos.1 and 2 and one stick recovered at the instance of accused no.2. The seized articles were sent for chemical analysis and blood stains were found on the clothes of accused no.1 Balu, but not on the axe. After completion of investigation, the charge-sheet was submitted in the Court of Judicial Magistrate.

7. In due course, the case was committed to the Court of Sessions. The learned Additional Sessions Judge, Aurangabad framed charge against all the accused. The accused pleaded not guilty.

8. The prosecution examined eight witnesses. It is defence of the accused that deceased Raosaheb and P.W.1 Gangubai had a quarrel with accused no.3 Zumberbai and they had assaulted her and while P.W.1 Gangubai was assaulting Zumberbai, she accidentally gave axe blow to deceased Raosaheb which resulted into his death. On the basis of F.I.R. lodged by Zumberbai, P.W.1 Gangubai, P.W. 2 Ramnath and other family members were prosecuted. (submissions at the bar disclose that there was conviction by the trial Court, which was set aside and accused were acquitted by a Single Judge of this Court).

9. Heard learned Advocate Mr V.R. Dhorde for the appellant in Criminal Appeal No.574 of 2002 and for respondents in Criminal Appeal No.138 of 2003 and learned A.P.P. Mr S.J. Salgare for the State. Mr Dhorde has submitted that P.W.2 – Ramnath had not intervened nor even accompanied his parents to the hospital. The two other eye witnesses P.W.4 Waman and P.W.5 Kisan have not supported the prosecution and with the permission of the Court they were cross-examined by learned A.P.P. He submitted that the evidence on record shows that the incident took place at late night after 9.00 p.m. There was no electricity on the spot. The evidence of P.W.1 Gangubai is not sufficient, as it is not reliable and trustworthy. Her evidence is not consistent with her F.I.R. There is delay of twenty four hours in lodging the F.I.R. No blood was found on the axe. The prosecution witnesses have suppressed the genesis. There is no explanation given to the injuries sustained by Zumberbai. Therefore, the conviction of accused no.1 Balu under Section 324 of Indian Penal Code for causing injuries to deceased Raosaheb and P.W.1 Gangubai is not sustainable. Hence, the appeal of the accused should be allowed and conviction should be set aside. He relied on:

1) **Thulia Kali Vs. The State of Tamil Nadu, (1972) 3 SCC 393** on the point of delay in F.I.R.

2) **Golbar Hussain and ors., Vs. State of Assam and anr., (2015) 11 SCC 242** on the point that when the trial Court has acquitted the accused on the ground of contradiction in the evidence of witnesses and absence of independent corroboration, the appellate

Court cannot interfere if the view taken by the trial Court is a reasonable and probable view.

3) **Hem Raj and anr. Vs. State of Punjab, (2003) 12 SCC 241**

on the point that when the prosecution witnesses are stating about the injuries, which are not disclosed in the F.I.R. and when they were not explaining the injuries sustained by the accused even if minor, it affects the credibility of the witnesses.

10. Per contra, learned A.P.P. Mr Salgare has argued that there is cogent and consistent evidence of P.W.1 Gangubai, partly supported by P.W.2, P.W.4 and P.W.5 and medical evidence to show that accused no.1 Balu had inflicted blows of axe on the skull of deceased Raosaheb as well as P.W.1 Gangubai. P.W.1 Gangubai is injured witness and her presence on the spot cannot be disputed. The accused are closely related to prosecution witnesses and, therefore, the identification even at the darkness is not suspicious. Clothes of the accused no.1 – Balu were having stains of blood. Therefore, the evidence shows that accused no.1 Balu has inflicted injuries by deadly weapon axe on the vital part skull which has resulted into death of Raosaheb. There is sufficient evidence to convict accused no.1 under Section 302 of Indian Penal Code. There is also evidence against accused nos.2 to 4 showing their involvement in the crime. Hence, all the accused should be convicted and the appeal filed by accused no.1 should be dismissed.

11. The points for our consideration with our findings are as follows :

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|-------|---|----|---|
| (I) | Whether deceased Raosaheb met with homicidal death ? | .. | In the affirmative |
| (II) | Whether accused nos.1 to 4 in furtherance of their common intention committed murder of Raosaheb ? | .. | Not proved |
| (III) | Whether accused nos.1 to 4 in furtherance of their common intention attempted to commit murder of P.W.1 Gangubai or voluntarily caused hurt by deadly weapon to her ? | .. | Offence under Sec. 324 of I.P.C. proved only against accused no.1 |
| (IV) | Whether accused nos.1 to 4 in furtherance of their common intention criminally intimidated P.W.1 Gangubai or her husband? | .. | Not proved |
| (V) | What order ? | .. | The appeal filed by the State (Criminal Appeal No.138 of 2003 is dismissed. The Criminal Appeal No.574 of 2002 filed by the accused no.1 Balu is partly allowed as per final order. |

- REASONS -

12. Point No.1 : Evidence of P.W.3 Dr. Anil Jinturkar who has conducted post mortem shows that the deceased had sustained following injuries :

(1) An obliquely placed contused lacerated wound over right parietal region at vertex, 3 x ½ inches x skull deep. i.e. upto periosteum, margins were irregular, beveling seen on lateral part of the wound.

(2) Two irregular dark reddish contusions over right occipital region, located side by side, admeasuring ½ x ¼ inch

(3) An oblique dark reddish contusion over dorsal of left index finger, 1 x ½ inch.

(4) An oblique contusion over antero-lateral aspect of middle right thigh, 1/3rd right thigh, 2½ x ½ inches.

(5) An irregular dark reddish abrasion over antero-lateral aspect of left knee.

(6) An oval dark reddish abrasion over medial aspect of right knee, 1 ½ x 1 inches.

All the injuries were ante-mortem and injury no.1 has caused internal damage to the brain and intra-cerebral-hemorrhage of right cerebral hemisphere. There was evidence of contusion at right parietal lobe, at top, 1.5 inch x 0.5 inch, flattening of cortical-surfaces,

within obliterations of sulci and gyri, suggestive of cerebral oedema. There was evidence of paretic-hemorrhage in cerebellum. It is not disputed that after the incident, deceased Raosaheb has become unconscious and on the next day he died in the hospital. It is obvious that Raosaheb has met with a death on account of the injuries inflicted to him by somebody else. These injuries can be neither accidental nor self inflicted. The admission of the doctor that prompt and immediate treatment could have saved the life of Raosaheb does not change the nature of death i.e. homicidal. We, therefore, hold that the homicidal death is proved.

13. The prosecution has relied on following type of evidence :

(I) Eye witnesses - P.W.1 Gangubai, P.W.2 Ramnath, P.W.4 Waman, P.W.5 Kisan. P.W.4 Waman and P.W.5 Kisan have turned hostile.

(II) Evidence in the form of seizure of blood stained cloths of accused Balu, seizure panchnama Exh.46. P.W.8 P.I. P.B. Bhosale.

(III) Discovery of stick at the instance of accused no.2 Ramnath, memorandum Exh.47 and seizure panchnama Exh.47-A proved by P.W.8 P.I. Bhosale.

(IV) The spot panchnama Exh.45 proved by P.W.8 P.I. Bhosale.

(V) Recovery of axe from the house of the accused proved by P.W.7 panch, Exh.41, Article No.10 axe.

(VI) Medical evidence of P.W.9 Dr. Mohd. Javed Asar who has examined P.W.1 Gangubai. He found following injuries :

- (1) CLW, scalp region 10 x 2 x bone deep cms linear
- (2) Abrasion left forearm 3 x 1 cms, right middle 3rd, 3 x 1 x 1 cms linear
- (3) Contusion on left scapular region, which was ill-defined

14. P.W.4 Waman and P.W.5 Kisan are hostile witnesses. Their evidence shows that on the day of incident, in presence of both of them, there was quarrel between Raosaheb and Zumberlal near the well in Nimbacha Mala at 5.30 p.m. They had separated them. They have stated that at late night they heard shouts of Raosaheb from the side of pir, but they had not witnessed the incident of assault. In cross-examination, P.W.4 Waman has admitted that accused no.1 Balu in his presence abused Raosaheb and threatened to finish him on the ground that Raosaheb had switched off his electric motor.

15. Similarly, P.W.5 Kisan has stated about absence of accused no.1 Balu at 7.00 p.m. on account of dispute over well water. He had separated them. Thereafter, he heard some shouts of Raosaheb from the side of (pir) tomb at late night. He, in cross-examination admitted that accused no.1 Balu had threatened Raosaheb to kill. He had stated about arrival of accused no.1 Balu towards the house of Raosaheb but had not stated anything about carrying axe or making assault. He has deposed that accused no.1 Balu had abused Gangubai in his presence in front of his house.

16. Material evidence is of P.W.1 Gangubai and P.W.2 Ramnath. P.W.2 Ramnath is son of P.W.1 Gangubai and deceased Raosaheb. He had gone to Vaijapur. He stated that after his return from Vaijapur, the incident had taken place. He deposed about the assault by accused no.1 Balu at 7.30 p.m. on his father Raosaheb by inflicting blow of axe on his skull. His father sustained profusely bleeding injury. He stated that accused no.1 Balu threatened to come again along with his maternal uncle to kill his father. Thereafter his father went towards the village to inform the incident to police patil and returned after half an hour. He deposed that when his mother was going towards village, accused no.1 Balu gave blow of axe to his mother on her head.

17. We find the evidence of P.W.2 Ramnath not reliable and trustworthy. In the first place though he had seen assault on his mother P.W.1 Gangubai and father deceased Raosaheb, he did not try to save them nor raised shouts, nor accompanied them to the hospital. He admitted that he visited Ghati hospital at Aurangabad on the next day. His conduct is quite unnatural. It is tried to be explained that he was having pains in the leg due to lameness but still he could have raised shouts. He could have accompanied his parents to the hospital. The evidence shows that he had gone to Vaijapur on the day of incident and on the next day, he had gone to Ghati hospital. He was not bed ridden. His conduct does not support his version that he was eye witness. Besides, there are contradictions in his evidence regarding the time element with reference to P.W.1

Gangubai's evidence. He deposed that accused no.1 Balu came within five minutes after abusing his father. P.W.1 Gangubai stated that accused no.1 Balu came after one hour. He stated that when the accused gave blow of axe on the skull of his mother, he was sitting in the door of the farm house. There is evidence that there was no electric lights in the field and P.W.2 Ramnath had not raised shouts nor intervened nor begged the accused not to assault his mother. P.W. 2 Ramnath has stated that accused nos.2 to 4 were present when his mother was beaten. The evidence on record shows that accused no.4 Hirabai had delivered a child and her child was just six weeks old. It is highly improbable that accused no.4 Hirabai could have participated in the incident. No role has been assigned by P.W.1 Gangubai as well as P.W.2 Ramnath to accused nos.2 to 4. P.W.2 Ramnath has also not gone to the police station to report the incident. Considering the facts, we find evidence of P.W.2 Ramnath unreliable and we discard it.

18. P.W.1 Gangubai is injured eye witness. She deposed that her husband Raosaheb switched off the electric motor at about 6.00 p.m. According to the accused, the turn of Raosaheb was starting on the next day morning, whereas according to P.W.1 Gangubai their turn was starting at 7.00 p.m. In either case, Raosaheb could not have switched off electric motor at 6.00 p.m. This incident is not in dispute, but according to P.W.4 Waman and P.W.5 Kisan, there was a quarrel between Raosaheb and accused no.3 Zumberbai and Raosaheb had assaulted accused no.3 Zumberbai.

19. It is the matter of common sense that only because the water supply of accused no.1 Balu was stopped by his uncle Raosaheb, accused no.1 Balu would not have tried to kill his uncle and aunt. As per evidence of P.W.4 Waman and P.W.5 Kisan, there must have been some quarrel between deceased Raosaheb and Zumberbai and Zumberbai might have been assaulted by deceased Raosaheb or she might have been very much insulted by Raosaheb, which could have enraged her son accused no.1 Balu to take the extreme step.

20. Learned Advocate Mr Dhorde has argued that the prosecution has not explained the injuries sustained by Zumberbai but we find that the defence has not proved any injury to Zumberbai. The injury certificate is also not proved on record. Mere production of her letter to Superintendent of Police dated 20.3.1995 will not prove the defence case of assault on Zumberbai. The said letter has also not been proved by examining the witnesses. Though there are admissions to show that there was counter case against P.W.1 - Gangubai and P.W.2 - Ramnath and others, no record of the said case is produced in this case and, therefore, the accused cannot take any benefit of counter case. In the light of the facts, the judgment in Hem Raj's case (cited supra) regarding duty to explain injuries on the accused by the prosecution is also not applicable.

21. According to evidence of P.W.1 Gangubai, the assault took place in three separate incidents as follows :

(i) Accused no.1 came in front of her house, when she and her husband were sitting in front of the house and accused no.1 Balu gave

blow of axe on the skull of her husband causing bleeding injury.

(II) Thereafter her husband had gone to village Akoli-Wadgaon to give intimation of the incident. When she was going towards the village to see her husband, accused no.1 Balu came near her farm house, obstructed her and gave a blow of axe on her head and thereby caused bleeding injury to her.

(III) After sometime, there was commotion from the side of pir which is about 500 to 1200 feet away from the house of P.W.1 Gangubai. She heard shouts of her husband and when she had gone there, she saw all the accused present there. Accused no.1-Balu was armed with axe, accused no.2 was armed with stick and on her arrival, they left the spot.

22. On carefully considering the evidence of P.W.1 Gangubai, we find that the incident no.1 described as assault by accused no.1 Balu by axe on skull of Raosaheb could not have taken place in front of their house. As per the medical evidence, the contused lacerated wound on the skull of P.W.1 Gangubai was the fatal wound. It was of the size 3" x 1/2" by skull deep. It is inherently improbable that after sustaining such injury, deceased Raosaheb could have gone to the village, which is at a distance of half hour's walk and his family members would have let him go alone. Evidence of P.W.1 Gangubai shows that at the relevant time, she her two sons, two daughters-in-law and grandson were present in the house. They did not come out. They did not accompany Raosaheb either to go to the police patil for reporting the matter or for taking him to the hospital. After carefully

considering the evidence, we find that deceased Raosaheb must have sustained all the injuries at one and the same time. The evidence of P.W.3 Dr. Jinturkar and post mortem show that he had sustained some contusion and abrasions which must have been caused by blows of sticks. Evidence of P.W.1 Gangubai is silent about assault by sticks. We, therefore, find that P.W.1 Gangubai is not telling the truth when she is deposing about the first incident of assault by accused to her husband in front of her house.

23. No doubt, there is spot panchnama showing blood on the wall and in front of house of P.W.1 Gangubai, but as per F.I.R., the assault on P.W.1 Gangubai also took place at the same place. The muddemal property was sent for chemical analysis, but there is no record to show what was the blood group of deceased Raosaheb and P.W.1 Gangubai. The blood found in the soil on the spot is human blood, but its group had not been determined. There is nothing to suggest that there were two separate assaults by accused no.1 in front of house of P.W.1 Gangubai. It is also natural that if accused no.1 could have assaulted her husband, P.W.1 Gangubai would not have alone gone towards the village and her family members would not have let her go alone. We, therefore, find evidence of P.W.1 Gangubai about assault by accused no.1 Balu on her husband's skull by axe as unreliable and untrustworthy.

24. The second incident is assault by accused no.1 after sometime on the skull by the accused. As already stated that axe (Court Article no.10) is recovered. As per Chemical Analysis report (Exh.50), no

blood was found thereon. The evidence shows that it was dark night. P.W.1 Gangubai has stated that there were no electric lights in the farm house. The incident of assault on her had taken place late at night. Still, we find that there was quarrel between accused no.1 Balu and deceased Raosaheb. He had given abuses to P.W.1 Gangubai. Therefore, even in darkness, she could have identified him by voice. In the darkness, she might not have seen what was the nature of weapon, but it must have been a sharp weapon. A contused lacerated wound can be caused by sharp weapon, like axe and not when the blade is very sharp like razor and not by blunt weapon. The evidence of P.W. 9 Dr. Mohd. Javed Asar that the contused lacerated wound to P.W.1 Gangubai could have been caused by blunt object, cannot be accepted, as it is not according to medical jurisprudence.

25. We find that injury sustained by P.W.1 Gangubai is only bone deep and, therefore, the weapon used might not be axe. We find that accused nos.2 to 4 had not taken any part in the said assault. The evidence regarding their presence is also not reliable. Accused no.1 Balu must be held responsible for causing the said injury. Considering the depth of injury and the fact that P.W.1 Gangubai did not go for medical treatment till next day 9.00 p.m., we find that the said injury was not threatening life and the offence disclosed would be under Section 324 of Indian Penal Code.

26. We find that after the quarrel between Raosaheb and Zumberbai at the well, Raosaheb must have gone to the village and the assault on him took place while returning to his house. It is stated

that it took place near pir. The admitted topographic map Exh.56 discloses a distance of 500 feet from the house of accused to the place of pir, whereas P.W.8 P.I. Bhosale has stated that peer is at a distance of 1200 to 1300 feet. From the evidence of the witnesses, we find that Raosaheb must have been assaulted very late, when there was total darkness. The evidence of P.W.1 Gangubai and other witnesses that they heard shouts and they went there and P.W.1 Gangubai's evidence that she saw all the accused present there is totally unnatural, unreliable and untrustworthy. P.W.1 Gangubai has lodged F.I.R. after a period of twenty four hours. It is true that P.W.1 Gangubai had lost her husband and she had sustained injury on her skull. Therefore, mere delay in lodging the F.I.R. cannot be fatal and her evidence cannot be said to be totally untrustworthy. However, her evidence with regard to involvement of accused nos.2 to 4 and about hearing of shouts of her husband from the spot near peer and P.W.1 Gangubai going to the spot alone and watching accused nos.2 to 4 present there is totally unnatural and unreliable.

27. The clothes of accused no.1 Balu were seized and those were sent for chemical analysis along with covering letter Exh.48 by P.W.8 P.I. Bhosale. Its chemical analysis report is received by him at Exh.50. It shows human blood on the clothes of accused no.1 Balu. However, the chemical analyst's report shows that blood groups of deceased Raosaheb and of P.W.1 Gangubai could not be determined. The blood group of the blood on the clothes of accused no.1 Balu also could not be determined. Evidence of human blood found on the clothes of accused no.1 Balu is sufficient to corroborate the evidence of P.W.1

Gangubai about assault by accused no.1 on her skull, but it is not sufficient to connect accused no.1 Balu with the murder of Raosaheb. No witness has identified the axe seized as the weapon of offence and no blood was found on the stick. In the light of these facts, we find that the learned trial Judge has rightly acquitted the accused under Section 302 read with Sec.34 of Indian Penal Code, but we find that the learned trial Judge has committed error in holding accused no.1 Balu guilty for causing simple hurt by deadly weapon to deceased Raosaheb. We hold that the finding of learned trial Judge that accused no.1 Balu has committed offence under Section 324 of Indian Penal Code by causing injury to P.W.1 Gangubai by means of deadly weapon is proper and correct.

28. The learned trial Judge rightly acquitted the accused for offence under Section 504 as no specific abuses were disclosed. The learned trial Judge erred in convicting the accused no.1 Balu for offence of criminal intimidation punishable under Section 506 (2) of Indian Penal Code. P.W.1 Gangubai herself had not stated that accused no.1 Balu had threatened her or her husband that he would commit their murders. Learned trial Judge has relied on the evidence of P.W.4 Waman and P.W.5 Kisan, who were declared hostile and who have given answers after leading questions were asked to them.

29. For the offence punishable under Section 506 of Indian Penal Code, mere statement that the accused threatened to commit somebody's murder or would cause some injury to him is not sufficient. As per definition of criminal intimidation under Section 503

of Indian Penal Code, the accused must threaten the witness with injury or death to his person, or reputation or property, of anyone, in whom that person is interested; with intent to cause alarm to that person, to cause that person to do any act which that person is not legally bound to do, or omit to do any act which that person is legally entitled to do, as means of avoiding the execution of such threat. Then only the offence of criminal intimidation would complete. In the present case, it was mere declaration of intention by accused no.1 Balu as per evidence of P.W.4 Waman and P.W.5 - Kisan which is not supported by main witness P.W.1 Gangubai. It is not alleged that accused no.1 Balu wanted P.W.1 Gangubai or deceased Raosaheb to do certain things which they were not bound to do or omit to do certain things, which they were legally entitled to do. Therefore, conviction under Section 506 (2) of Indian Penal Code is not sustainable.

30. In the light of the facts stated hereinabove, the appeal by the State will have to be dismissed, whereas the appeal of accused no.1 Balu will have to be partly allowed. The conviction under Section 506 (2) of Indian Penal Code deserves to be set aside, whereas the conviction of rigorous imprisonment for two years passed by learned trial Judge under Section 324 of Indian Penal Code needs to be modified. The judgment shows that the learned trial Judge held accused no.1 Balu guilty for voluntarily causing hurt by deadly weapon to both deceased Raosaheb and P.W.1 Gangubai. In that case, he should have imposed separate punishments for each offence. Considering the nature of injury (bone deep) and the fact that the use

of weapon axe is not duly established, we take lenient view to reduce the sentence under Section 324 of Indian Penal Code. Hence the order:

- ORDER -

(I) Criminal Appeal No.574 of 2002 is partly allowed. The conviction of accused no.1 Balu under Section 506 (2) of Indian Penal Code is set aside. Conviction of accused no.1 Balu under Section 324 of Indian Penal Code is confirmed, however, the sentence is modified. The accused shall undergo rigorous imprisonment for six months and shall pay fine of Rs.5000/-, in default to suffer rigorous imprisonment for 50 days. The fine amount be recovered and be paid as compensation to P.W.1 Gangubai.

(II) The accused no.1 Balu shall surrender before the trial Judge within fifteen days for undergoing the sentence, failing which the trial Judge shall take steps to secure his presence and issue conviction warrant accordingly.

(III) Criminal Appeal No.138 of 2003 filed by the State is dismissed.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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