IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...

CRIMINAL APPEAL NO. 254 OF 2016
WITH
CRIMINAL APPLICATION NO. 5587 OF 2017

1. Prashant s/o Pravinsingh Girase
Age 22 years, Occ. Education,
R/o. Rami, Tq. Shindkheda,
District Dhule (Accused No.1)

2. Mayur s/o Rajendrasingh Girase
Age 25 years, Occ. Education,
R/o. Kharde Bk., Tq. Shindkheda
District Dhule (Accused No.3)

3. Harshal s/o Devisingh Girase,
Age 22 years, Occ. Education
R/o. Pathare, Tq. Shindkheda
District Dhule (Accused No.4)

4. Pramod s/o Prakash Girase,
Age 23 years, Occ. Education
R/o. Rami, Tq. Shindkheda (Accused No.7)
District Dhule

...Appellants...

Versus

The State of Maharashtra
Through Deputy Superintendent of Police,
Shirpur Division, Shirpur,
Tq. Shirpur, District Dhule
(Copy to be served on Public
Prosecutor, High Court of Bombay
Bench at Aurangabad)

...Respondent...

.....

Mr. R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for the appellants.
Mr. Y.G. Gujarathi, A.P.P. for respondent-State

.....

...
WITH

CRIMINAL APPLICATION NO. 3403 OF 2016
(FOR LEAVE TO FILE APPEAL)

The State of Maharashtra,
Through Dy. S. P. Shirpur Division
...Applicant

Versus

1. Prashant s/o Pravinsingh Girase
Age 19 years, Occ. Education,
R/o. Rami, Tq. Shindkheda,
District Dhule

2. Bhushan Dilipsingh Girase
Age 22 years, Occ. Education,
R/o. Kharde Bk., Tq. Shindkheda
District Dhule

3. Mayur s/o Rajendrasingh Girase
Age 19 years, Occ. Education,
R/o. Rami, Tq. Shindkheda
District Dhule

4. Harshal s/o Devisingh Girase,
Age 19 years, Occ. Education
R/o. Pathare, Tq. Shindkheda
District Dhule

5. Rahul Ishwarsingh Girase,
Age 20 years, Occ. Education
R/o. Rami, Tq. Shindkheda
District Dhule

6. Bhatu Gulabsingh Girase,
Age 21 years, Occ. Education
R/o. Daul, Tq. Shindkheda
District Dhule

7. Pramod s/o Prakash Girase,

Age 20 years, Occ. Education
R/o. Rami, Tq. Shindkheda
District Dhule ..Respondents....
(Ori. Accused)

.....

Mr. Y.G. Gujarathi, A.P.P. for appellant-State
Mr. R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for respondent nos. 1, 3, 4 and 7
Mr. Joydeep Chatterji, advocate for respondent Nos. 2, 5 and 6.

.....

WITH

CRIMINAL APPEAL NO.543 OF 2018
(FOR ENHANCEMENT OF SENTENCE)

The State of Maharashtra,
Through Dy. S. P. Shirpur Division
...Appellant.....

Versus

1. Prashant s/o Pravinsingh Girase
Age 19 years, Occ. Education,
R/o. Rami, Tq. Shindkheda,
District Dhule (Accused No.1)

2. Mayur s/o Rajendrasingh Girase
Age 19 years, Occ. Education,
R/o. Kharde BK, Tq. Shindkheda
District Dhule (Accused No.3)

3. Harshal s/o Devisingh Girase,
Age 19 years, Occ. Education
R/o. Pathare, Tq. Shindkheda
District Dhule (Accused No.4)

4. Pramod s/o Prakash Girase,
Age 20 years, Occ. Education
R/o. Rami, Tq. Shindkheda (Accused No.7)
District Dhule ...Respondents...

...

Mr. Y.G. Gujarathi, A.P.P. for appellant-State

Mr. R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for the respondents.

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CORAM : S. S. SHINDE AND V. K. JADHAV, JJ.

...

Date of Reserving the Judgment : 17.07.2018
Date of pronouncing the Judgment :10.08.2018

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JUDGMENT (PER V.K. JADHAV, J.) :-

1. By way of criminal appeal No. 254 of 2016, appellants therein, who are the original accused Nos. 1, 3, 4 and 7, challenge the judgment and order dated 17.03.2016 passed by the learned Additional Sessions Judge, Dhule in Sessions Case No. 101 of 2012 thereby convicting them for the offences punishable under Section 304 Part I r.w. 34 of I.P.C. and sentencing to suffer R.I. for ten years and to pay fine of Rs.50,000/- each i/d to suffer S.I. for two years. The appellant-original accused No.1 Prashant is also convicted for the offence punishable under Section 324 of I.P.C. and sentenced to suffer R.I. for three years. Both the sentences of accused No.1 Prashant shall run concurrently.

2. The State of Maharashtra has also filed criminal

application No. 3403 of 2016 seeking leave to file appeal against the very same judgment and order dated 17.3.2016, thereby acquitting the respondents therein i.e. original accused Nos. 1 to 7 of the offences punishable under Sections 143, 147, 148, 302 r.w. 149, 307 r/w 149, 504 r.w.149 of I.P.C. and under Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act. The State of Maharashtra has also filed criminal appeal thereby seeking enhancement in the sentence awarded to original accused Nos. 1, 3, 4 and 7.

3. The prosecution version, as unfolded during trial, is as under:-

a. On 04.02.2012, at about 3.00 to 3.15 p.m. due to a quarrel which took place between accused No.1 and deceased Satish Nagrale, on account of dancing in college gathering, which was going on in the premises of S.V.S. Arts and Science college, Dondaicha, all accused caught hold of deceased Satish near Mandal Choufuli.

They started beating deceased Satish by means of kick and fist blows. At that time, accused No.7 brought one white Maruti car bearing registration No. MH-04-B-7054. All accused have removed swords and wooden logs from the said car and they started beating deceased Satish. The deceased was taken by the side of the road and accused No.1 Prashant Girase inserted the sword in the thigh of deceased. When the complainant P.W.1 Walmik Ganesh Zalte bent down for saving deceased Satish, accused No.1 Prashant gave a blow of sword on the head of the complainant by which the complainant had sustained head injury. At the relevant time, when several students of the said college had gathered there, all the accused fled away. The complainant Walmik and deceased Satish were taken to the Dondaicha Cottage Hospital. The Medical Officer, Dondaicha had referred the complainant Walmik and deceased Satish to Civil Hospital, Dhule for taking further treatment. The Medical Officer of the concerned Hospital at Dhule had declared injured Satish as dead. Thereafter, the statement of P.W.1 Walmik was recorded in the hospital

which has been treated as report against the accused persons.

b. On the basis of the report of complainant, crime No. 00/2012 for the offences punishable under sections 143, 147, 148, 302, r.w. 149, 307 r.w. 149, 504 r.w. 149 of I.P.C., Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act came to be registered against the accused persons. Subsequently, the said report lodged by complainant P.W.1 Walmik came to be transferred to Dondaicha police station which came to be registered as crime No. 11 of 2012 for the aforesaid offences. Since the offences were triable by the Court of Sessions, the case was committed to the Court of Sessions and numbered as Sessions Case No. 101 of 2012. The learned Additional Sessions Judge, Dhule framed charges against the accused persons for the offences punishable under Sections 143, 147, 148, 302, r.w. 149, 307 r.w. 149, 504 r.w. 149 of I.P.C., Sections 3(1)(x) and 3(2)(v) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act. All accused persons pleaded not guilty to the charges and claimed to be tried. The prosecution has examined in all 14 witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial and false implication.

c. The learned Additional Sessions Judge, Dhule, upon considering the evidence of prosecution witnesses as well as the documentary evidence on record, found that accused Nos. 1, 3, 4 and 7 have committed culpable homicide not amounting to murder of deceased Satish and convicted them for the offence punishable under Section 304 Part I r.w. 34 of I.P.C. and sentenced them, as aforesaid. The accused No.1 is also convicted for the offence punishable under Section 324 of I.P.C. and sentenced him as aforesaid. However, the learned Additional Sessions Judge, at the same time acquitted the accused Nos. 1 to 7 of the offences punishable under Sections 143, 147, 148, 302, r.w. 149, 307 r.w.

149, 504 r.w. 149 of I.P.C., Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

4. Being aggrieved by the said judgment, the appellants original accused Nos. 1, 3, 4 and 7 have filed Criminal Appeal No. 254 of 2016 and the State of Maharashtra has also filed criminal application No. 3403 of 2016 seeking leave to file appeal against acquittal of the respondents therein i.e. original accused Nos. 1 to 7 for the offences punishable under Sections 143, 147, 148, 302 r.w. 149, 307 r.w. 149, 504 r.w.149 of I.P.C. and under Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act. The State of Maharashtra has also filed criminal appeal thereby seeking enhancement of the sentence awarded to original accused Nos. 1, 3, 4 and 7, as aforesaid.

5. Learned counsel for the appellants in criminal appeal No. 254 of 2016 submits that the prosecution has failed to examine any independent witness and as such the sole testimony of complainant cannot be relied upon as his evidence would fall under the third category i.e. neither wholly reliable nor wholly unreliable. Further, the prosecution has not established that P.W.1 Walmik was a student of the same college. P.W.1 Walmik had not disclosed the said incident to any professor or Principal of the said college immediately after happening of the incident by which his conduct is not found natural one and thus the evidence of P.W.1 Walmik is vague on the point of involvement of the accused and his evidence is not trustworthy. There are contradictions between the oral evidence of P.W.1 and the medical evidence led by P.W.7. Dr. Ajit Patil. The witnesses namely Bhaiyya Marathe, Bapu Mistary and Sunil Malich have not been examined on behalf of the prosecution and the prosecution has not given any explanation about non-examination of those witnesses, and therefore, adverse inference can be drawn against

the prosecution. Learned counsel submits that accused No.1 has made a statement under Section 27 of the Evidence Act on 12.2.2012 even though he has been arrested on 5.2.2012. There is no explanation for delay of 7 days for the alleged recovery of the weapon i.e. sword from the date of his arrest.

6. Learned counsel for the appellants-accused submits that the evidence of P.W.8 and P.W.14 is not found convincing on the point of preparing seizure panchnama of sword vide article No.13 on the basis of the statement of accused No.1 Exh.132. The evidence of P.W.1 Walmik is not found in corroboration with the medical evidence led by P.W.7 Dr. Ajit Patil as regarding injuries caused to the deceased. Though, there is delay of two months for sending seized Muddemal property to Chemical Analyzer, however, P.W.14 has not given any explanation about the same. The sole testimony of complainant i.e. P.W.1 is not sufficient for involving accused No.1 in the alleged crime. The learned Additional Sessions Judge has not considered the evidence of P.W.1 Walmik on the point of registration

number of vehicle i.e. white colour Maruti car, as in the report lodged by the complainant he has mentioned the same as MH-04/B-7054 whereas, in the supplementary statement, he has stated the same as MH-01/B-7054. The prosecution has failed to prove the fact that as to which accused person has brought the said Maruti car on the spot. Learned counsel submits that, the complainant P.W.1 Walmik has improved his version before the Court by stating that he was well acquainted with accused nos. 2 and 6 by their faces prior to the incident. Thus, the evidence of the complainant is inconsistent and unreliable, particularly for identifying the accused persons before the Court. When the complainant has not stated the names of the accused persons in the report, then it was expected on behalf of the concerned investigating officer i.e. P.W.14 to conduct identification parade of the accused persons, who were unknown to the complainant. However, the concerned investigating officer has not conducted the identification parade. Learned counsel submits that in absence of identification parade during investigation,

identification of the accused persons for the first time before the Court by the complainant cannot be accepted.

7. Learned counsel for the appellants submits that the evidence of P.W.1 Walmik does not inspire confidence involving accused persons in the alleged crime. P.W.1 Walmik has not attributed specific roles to each accused in the report but he has improved his version before the Court by stating in his evidence that accused Nos.1, 2, 6 and 7 have used swords and the remaining accused persons have used sticks while causing injury to himself and to deceased Satish. Learned counsel submits that the prosecution has not examined any other independent witnesses and, as such, the accused persons are entitled for the benefit of doubt. The evidence of P.W.11 and 14 is not corroborated with each other on the point of seizure of sticks. The version of complainant on the point of injuries sustained by him in the incident is doubtful as the Medical Officer, Civil Hospital, Dhule has found abrasion over occipital region and blunt trauma to

abdomen. Learned counsel submits that the learned Additional Sessions Judge has acquitted accused Nos. 2, 5 and 6 by giving them benefit of doubt. However, on the same set of facts, the learned Additional Sessions Judge has convicted the present appellants. There are omissions and contradictions in the evidence of the witnesses, which go to show that the appellants have not committed any offences as alleged by the prosecution.

8. Learned counsel for the appellants-accused, in order to substantiate his submissions, placed reliance on the following judgments:-

i) Fulchand Gope and another Vs. State of Jharkhand, reported in (2011) 12 SCC 514,

ii) Ramu vs. State of U.P. reported in (2004) 12 SCC 250,

iii) Khuman Singh and others vs. State of M.P., reported in (2005) 9 SCC 714,

iv) Laxmichand Alias Balbutya vs. State of Maharashtra, reported in (2011) 2 SCC 128,

v) Kedar Prasad and others vs. State of M.P., reported in 1992 CRI.L.J. 2520.

9. Learned A.P.P. for the respondent/State in criminal appeal No. 254 of 2016 and applicant in

criminal application No. 3403 of 2016 as well as the appellant in criminal appeal submits that prosecution case is based upon direct evidence. The evidence of eye witness is reliable, cogent and trust worthy. Learned A.P.P. submits that PW 1 Walmik has deposed about the incident in detail with names of accused, their role in the assault and also stated in specific about arrival of accused persons at the spot, assaulting the deceased without any altercations. It fulfills the requirement of Section 149 of the Indian Penal code. Accused persons have formed an unlawful assembly and in prosecution of the common object of that assembly assaulted deceased Satish with the help of deadly weapons. Learned A.P.P. thus submits that the learned Additional Sessions Judge has not considered all these aspects while convicting respondents/original accused Nos. 1, 3, 4 and 7 for the offences punishable under Section 304 Part I r.w. 34 of I.P.C. and acquitting the respondents i.e. original accused Nos. 1 to 7 of the offences punishable under Sections 143, 147, 148, 302 r.w. 149, 307 r.w. 149, 504 r.w.149 of I.P.C. and under

Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

10. We have heard the learned counsel appearing for the appellants and learned APP appearing for the State. With their able assistance, we have perused the pleadings in the appeal memo, grounds taken therein. We have also perused the Record and Proceedings.

11. P.W.1 Walmik Ganesh Zalte is an injured eye witness to the alleged incident, who has lodged the First Information Report about the incident vide Exh.105. PW 1 Walmik Zalte has attributed a specific role to each of the accused persons inflicting the injuries on the person of deceased Satish by means of sword and sticks. Prosecution has relied upon the sole testimony of the complainant P.W.1 Walmik Ganesh Zalte to prove the charges levelled against the accused persons.

12. The alleged incident was occurred on 4.2.2012 at

about 03.00 to 03.15 p.m. near Mandal Choufuli situated at some distance from S.V.S Arts and Science College, Dondaicha. PW 1 Walmik Zalte was taking education in the third year of Art faculty and deceased Satish was taking education in the first year of Art Faculty in the same college. On the day of the incident, at about 12.00 noon, the complainant alongwith deceased Satish had been to the said college to attend the gathering programme. Thereafter, Fancy Dress Competition begun and participants in the said competition started proceeding towards the stage from the Laboratory. As per the prosecution story, accused no.1 Prashant Pravinsingh Girase and three to four persons were dancing in the said group of participants by taking swords in their hands. At about 03.00 to 03.15 p.m. complainant and deceased Satish when watching the later part of the gathering programme, deceased Satish had questioned accused no.1 Prashant as to why they were dancing by taking swords in their hands. At that time accused no.1 Prashant Girase, accused no.3 Mayur Girase, accused no.4 Harshal

Girase and other 2-3 persons were standing there. Accused no.1 Prashant Girase annoyed by the said question and replied to deceased Satish that said college belonged to them and Chairman and Principal of the said college are from their community. They have also questioned the status of deceased Satish being a person of 'Mahar' community to raise such a question. They have also given abuses to him on his caste. Thereafter, PW 1 Walmik Zalte has further deposed that accused no.1 Prashant Girase, accused no.2. Bhushan Girase, accused no.3 Mayur Girase, accused no.4 Harshal Girase and 2 to 3 other persons have caught hold the collar of the deceased Satish and started beating him. PW 1 Walmik Zalte went for intervening the quarrel, however, they have taken him by the side and started beating deceased Satish continuously. PW 1 Walmik Zalte has further deposed that deceased Satish escaped from their clutches and started running. Thereafter, accused no.1 Prashant, his associates and other accused persons as named above also started chasing him. They have caught hold the deceased Satish near

Mandal Choufuli. They started beating him by means of kick and fist blows. At that time, accused no.7 Pramod Girase brought a white colour Maruti 800 vehicle bearing registration No.MH-01/B-7054. Those accused persons have removed the sword and wooden logs and started beating to the deceased. PW 1 Walmik Zalte has further deposed that accused no.1 Prashant inserted sword in the right thigh of deceased Satish. Deceased Satish had fallen down and even then accused persons were beating him by means of fist and kick blows including wooden logs. PW 1 Walmik Zalte bent down for saving the deceased Satish and at that time accused no.1 Prashant gave a blow of sword on his head from back side, by which PW 1 Walmik Zalte had sustained the head injury. Thereafter, deceased Satish as well as PW 1 Walmik Zalte were taken to the nearby hospital by some persons from the spot of incident.

13. PW 7 Dr. Ajit Patil, Medical Officer, who has found seven injuries on the person of deceased Satish as per the postmortem notes exh.128. PW 7 Dr. Patil has opined that injuries nos.1 and 2 mentioned in column

no.17 of the postmortem notes could be possible by means of sword i.e. Article 13 before the Court and remaining injuries caused to the deceased could be possible by means of sticks, kicks and hand blows. PW 7 Dr. Patil has deposed about the injuries which are as follows :-

1. Sutured wound over right thigh lower 1/3rd anteriorly 3cm in depth.

   Sutured wound over right thigh lower 1/3rd posteriorly 3.05 cm in length.
   On opening sutures of injury nos. 1 and 2, no.1 is 3x1.5 cm cavity deep with clean cut margins, over in shape.

2. Injury no.2 is 3.5 x 2 cm x cavity deep oval in shape, margins clear cut and collectively injury nos.1 and 2 are the stab (perforating) wound over lower 1/3 rd of right thigh.

   Track injury no.2– fascia-Biscepts femoris muscle – fascia injury no.1.
   Underlying muscles, branches of popliteal artery txein, sciatric and femoral nerve severed.

3. Abrasion over back right scapular region 2 x 1 cm redish.

4. Contusion over left shoulder 7 x 4 cm reddish.

5. Contusion over right arm posteriorly 2 x 1 cm reddish.

6. Abrasions 3 in no, oblique, parallel 2 x 0.3 cm each on abdomen right lumbar region.

7. De gloving injury over right palm dorsum 0.8 x 0.5 cm.

The cause of death as opined by the PW 7 Dr. Patil is due to shock and hemorrhage due to stab injury over

right thigh. PW 7 Dr. Patil has opined that injury nos. 1 and 2 and corresponding injuries are sufficient to cause death in ordinary course. Postmortem report is marked at exh.128. Injury nos. 1 and 2 on the person of the deceased Satish are over the right thigh lower 1/3 rd with the size as mentioned above interiorly and posteriorly.

14. PW 12 Dr. Amol Jaywant Jain, is the Medical Officer of Dondhaicha Cottage Hospital. He had examined PW 1 Walmik Zalte on 4.2.2012 and noted following injuries on the person of PW 1 Walmik Zalte.

1. CLW over occipital region 2cm x 1cm x 0.5 cm.
2. Contusion over right side of chest over upper side of nipple 2 cm x 2 cm.
3. Blunt trauma over all over abdomen.
4. Contusion over back side right scapular region 3 cm x 3 cm.

15. In the opinion of PW 12 Dr. Amol Jain that all injuries are simple in nature including injury no.1 which PW 1 Walmik Zalte alleges that accused no.1 has caused the said injury with the help of weapon sword

from handle side.

16. PW 13 Dr. Madhuri Magan Suryavanshi is the Medical Officer of Civil Hospital, Dhule, who has also examined the complainant and she found following injuries on the person of PW 1 Walmik Zalte.

1. Blunt trauma to skull with abrasion on occipital region and;

2. Blunt trauma to abdomen.

In the opinion of PW 13 Dr. Madhuri Suryavanshi, injury no.1 mentioned above could be possible by article 13 which was shown to her and injury no.2 as mentioned could be possible by blows of hands and kicks and with sticks.

17. It is well settled that injured witness stands on a higher pedestal than ordinary eye witness. The testimony of the injured is sufficient to base the conviction and no further corroboration is required, if his testimony is credible and cogent. The presence of the injured witness at the time of incident cannot be ruled out and testimony of such an injured witness has

its own relevance and efficacy. The fact that witness sustained injuries at the time and place of occurrence lends support of his testimony that witness was present during the occurrence. Further, testimony of injured witness vis-a-vis improvement and inconsistencies in his evidence as regards part played by each of the accused may not itself be a ground to dis-believe the witness. Further, the testimony of an interested witness cannot and should not be ignored only on the ground that they are the related or close to the victim. The evidence of an interested witness does not suffer from any infirmity as such, but, the courts are required as a rule of prudence not as a rule that evidence of such a witness should be scrutinized carefully.

18. Evidence of PW 1 Walmik Zalte inspires confidence. He is injured witness and his evidence is duly corroborated by the medical evidence as discussed above. There is no reason to disbelieve the evidence of PW 1 Walmik Zalte on the ground that the prosecution has not examined other witnesses whose names have been mentioned in the report exh.105 lodged by PW 1

Walmik Zalte. PW 1 Walmik Zalte has deposed that initially accused no.1-Prashant Girase, 3-Mayur Girase, 4-Harshal Girase and 7-Pramod Girase caught hold the collar of deceased and started beating him. Deceased Satish had succeeded in escaping from the clutches of them and started running towards Mandal Choufuli and the accused as mentioned above started chasing him alongwith some other persons. Meanwhile, accused no.7 Pramod Girase, who has been duly identified by PW 1 Walmik Zalte, brought a white colour Maruti 800 Car carrying in it the weapons like swords, sticks and accordingly, the aforesaid accused used those weapons and assaulted deceased Satish at Mandal Choufuli spot by the side of the road. Though, the allegations have been made by participation of seven accused persons in the crime, in absence of the proper identification and specific role attributed to them, the learned Judge of the Trial Court has rightly given benefit of doubt to accused no.2-Bhushan Girase, 5-Rahul Girase and 6-Bhatu Girase. It is necessary to be mentioned that names of accused nos. 2, 5 and 6 are not stated specifically in the

FIR Exh.105 and after a long gap as admitted by the Investigating Officer PW 14 Madhuri Kangane, names of those accused have been mentioned specifically in the supplementary statement. Admittedly, there was a large crowd assembled in the premises of the College to view the programme of the gathering and in such eventuality possibility of spectators more in numbers cannot be ruled out and, so also the insertion of the names of some innocent persons in the alleged commission of crime. In view of the same, we find no substance in the application no.3403 of 2016 preferred by the State (The State of Maharashtra Vs. Prashant Pravinsingh Girase and others) against the acquittal of the accused nos. 2, 5 and 6, respectively.

19. The learned Additional Sessions Judge, Dhule recorded the conviction against the accused no.1-Prashant Pravinsingh Girase, 3-Mayur Rajendrasingh Girase, 4- Harshal Devisingh Girase, and 7-Pramod Prakash Girase under section 304 Part I read with Section 34 of Indian Penal Code and further recorded the conviction as against accused no.1-Prashant Girase

alone for the offence punishable under section 324 of the Indian Penal Code, the State has also preferred an appeal for enhancement of the sentence as against aforesaid accused no.1-Prashant Pravinsingh Girase, 3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase, and 7-Pramod Prakash Girase, we are required to examine whether the learned Judge of the trial court has rightly convicted the aforesaid accused persons under section 304 Part I read with section 34 of the Indian Penal Code. We also need to examine whether accused no.3-Mayur Rajendrasingh Girase, 4- Harshal Devisingh Girase, and 7-Pramod Prakash Girase are rightly convicted by the Trial Court alongwith accused no.1 Prashant Girase when their role is limited to the extent of causing simple injuries to the deceased Satish with the help of fist, kick blows or at the most by sticks.

20. Main incident has occurred on 4.2.2012 at about 03.00 to 03.15 p.m. Before that, on the same day at about 12.00 noon the participants of the Fancy Dress Competition started proceeding towards the stage from a practical Laboratory and in the said procession of the

participants, accused no.1 Prashant with some other boys started dancing by taking swords in their hands. Admittedly, it was annual gathering day of the College and students like accused no.1 tend to enjoy the various programmes by making their participation in the way they think deem fit. There is no evidence that by making dance in the said procession of Fancy Dress Competition by holding swords in the hands, accused no.1 and his associates had annoyed the participants or spectators. At about 03.00 to 03.15 p.m. when the complainant, deceased Satish and accused no.1-Prashant Pravinsingh Girase, 3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase with some other persons watching the gathering, deceased Satish had questioned accused no.1 Prashant as to why they were dancing by taking swords in the procession. As a result thereof, there was a sudden quarrel without any premeditation. Thus, the question arises whether accused no.1-Prashant Pravinsingh Girase, 3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase and 7-Pramod Prakash Girase are rightly convicted by the

trial court for the offence punishable under section 304 Part I read with section 34 of Indian Penal Code or not ?

21. In a case **Lavghanbhai Devjibhai Vasava Vs. State of Gujrat**, reported in **(2018) 4 Supreme Court Cases page 329**, the Supreme Court has laid down the parameters which are to be taken into consideration while deciding the question whether a case falls under section 302 of Indian Penal Code or section 304 of Indian Penal Code. The Supreme Court for that purpose has referred the earlier case Dhirendra Kumar Vs. State of Uttarakhand reported in 2015 SCC online page 163 and in paragraph no.7 made following observations :-

> "7. This Court in Dhirendra Kumar Vs. State of Uttarakhand has laid down the parameters which are to be taken into consideration while deciding the question as to whether a case falls under section 302 IPC or Section 304 IPC, which are the following :-
>
> (a) The circumstances in which the incident took place;
>
> (b) The nature of weapon used;
>
> (c) Whether the weapon was carried or was taken from the spot;
>
> (d) Whether the assault was aimed on vital part of body;
>
> (e) The amount of the force used.
>
> (f) Whether the deceased participated in the sudden fight;
>
> (g) Whether there was any previous enmity;

(h) Whether there was any sudden provocation.

(I) Whether the attack was in the heat of passion; and

(j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner."

22. In a case **Surain Singh Vs. State of Punjab reported in (2017) 5 SCC page 796** in paragraph nos. 12, 13 and 14 has made following observations :-

"12. Before proceeding further, it is relevant to produce Section 300 which is as under:-

"300.Murder--.Except in the case hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

Secondly-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

Thirdly-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— Fourthly—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self- control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 4-- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

13. Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception

itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.

14. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

23. In paragraph nos. 19, 20, 21 and 23 the Supreme Court has made following observations :-

"19. The appellant-accused, at the relevant time, was wearing Kirpan and he took out the same and gave 3 or 4 blows on the left side of the chest of Bhajan Singh. When the other side came to his rescue, the appellant- accused gave a blow on the back side of the waist of Mander Singh. The appellant-accused was further found to have given a blow on the backside of the left shoulder of Amrik Singh-the complainant and also two blows each using Kirpan on the right flank of Sukhchain Singh and Harbans Singh.

20. In view of the above, it is relevant to quote the statement of Dr. Sarabjit Singh Sandhu (PW-4), who conducted the autopsy on the body of Harbans Singh, which is as under :-

> "On the same day, at 4.50 p.m. I also conducted the post mortem examination on the dead body of Harbans Singh S/o Mandir Singh R/o Pakhi Khurd 27 years age, male brought by ASI Sukhdev Singh and HC Parson Singh No. 1432 of P.S. City Faridkot. Body was identified by Bohar Singh S/o Ajmer Singh and Tej Singh S/o Kartar Singh. Length of the body was 5'9". It was dead body of moderately built and moderately nourished young man wearing Sweater, Shirt, Jarsi, Paint, Kachha, Turban, Short Kirpan with black thread, White metallic kara in right forearm. P.M. staining as present series of marked patches at the back of trunk and lower limbs. Rigor mortis was present in the neck muscles and upper limbs. Absent in lower limbs (developing stage) clothes were blood stained and corresponding holes were present with clothes. I found the following injuries on his person:-
>
> 1. An onlique stab wound 3 x 0.5 cm was present on the lateral side of right side of chest in mid Axiliary line 22 cm below the Axillary apax. C.B.P. it was bone deep.
>
> 2. A transverse stab wound 2.0 x 5 cm was presentation the right side back of abdomen, 8 cms below and lateral of injury no. 1 on exploring, it was going medially and in words cutting subcutaneous tissue, muscles, right kidney. Peritoneum and large intestine. Peritoneum cavity contained above 1000 C.C. of fluid and clotted blood. Stomach contained about 150 C.C. of semi digested food. All other organs were healthy.
>
> All the injuries were anti mortem in nature. The cause of death in this case in my opinion was due to right kidney (hemorrhage and shock) and large intestine, as a result of injury no. 2 which was sufficient to cause death in ordinary course of nature."

21) In the instant case, it is evident from the materials on record that there was bitter hostility between the warring factions to which the accused and the deceased belonged. Criminal litigation was going on between these factions. It is also proved from the material on record that the attack was not premeditated and preplanned. Both the parties were present in the Court of

> Executive Magistrate, Faridkot at the relevant time with regard to the proceedings under Section 107/151 of the Code. When the appellant-accused objected the presence of a member of the opposite side, the scuffle started between the parties which resulted into death of two persons. The conduct of the appellant-accused that he at once took out his Kirpan and started giving blows to the opposite party proves that the attack was not premeditated and it was because of the spur of the moment and without any intention to cause death. The occasion for sudden fight must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset.
>
> 23. Thus, if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not intention to cause murder and bodily injury then the same would fall under Section 304 Part II. We are inclined to the view that in the facts and circumstances of the present case, it cannot be said that the appellant- accused had any intention of causing the death of the deceased when he committed the act in question. The incident took place out of grave and sudden provocation and hence the accused is entitled to the benefit of Section 300 Exception 4 of the IPC."

24. In the facts of the instant case, we have discussed in detail the circumstances in which the incident had taken place. Admittedly, the deceased Satish, PW 1 Walmik Zalte and accused persons are the students of the said College present in the premises of the College to attend the annual gathering programme. They had not carried the weapons alongwith them and, those weapons like swords, sticks were brought suddenly on the spot by accused no.7 Pramod Girase in a Maruti Car. Though, PW 1 Walmik Zalte has deposed that it was not happened that two groups from the students gathered on the spot and there was actual fight between two groups, the way in which weapons were brought at

the spot indicates the same.

25. PW 1 Walmik Zalte has given certain admissions in his cross-examination which are relevant to find out the intention of the accused persons.

I] PW 1 Walmik Zalte has not sustained any injury or even he was not assaulted during the incident when accused persons caught hold the collar of the deceased.

II] Said incident of catching the collar of the deceased was going on for one to one and half minutes.

III] Main incident occurred at Mandal Choufuli was going on for two to three minutes.

IV] All the accused persons have not gone towards the car for bringing the weapons kept in the said car at the relevant time.

V] When deceased was being taken towards the opposite side of the road Mandal Choufuli he was being beaten by means of hand and at that time accused persons were holding sticks and swords in their hands.

VI] PW 1 has received injury on back side of his head by means of handle of sword.

26. Further considering the nature of the injuries sustained by deceased Satish as well as PW 1 Walmik Zalte, we do not find that assault was aimed on the vital part of the body. There was no previous enmity between

them. Said attack was in the heat of passion and there was a sudden provocation on the part of the deceased Satish questioning the accused about their dance with sword in the Fancy Dress procession.

27. We have carefully examined the entire evidence on record. In the assault at Mandal Choufuli, accused no.1 Prashant had inflicted a blow of sword forcefully on the right thigh of deceased Satish. Even when PW 1 Walmik Zalte bent upon the deceased Satish to save him, accused no.1 Prashant thereafter given a blow of sword from the handle side on the back side of the head of PW 1 Walmik Zalte. We find no fault in the order of conviction as against accused no.1 Prashant by the trial court under section 304 part I of the Indian Penal Code. However, in the given set of facts, it appears that, the learned Judge of the Trial Court has committed a mistake in recording the conviction of accused nos.3-Mayur Girase, 4-Harshal Girase and 7-Pramod Girase for the offence punishable under section 304 Part I read with Section 34 of the Indian Penal Code. Thus, considering the role played by accused no.3-Mayur

Girase, 4-Harshal Girase, 7-Pramod Girase and the injuries 1 and 2 sustained by the deceased Satish which are attributed to accused no.1 alone and remaining injuries sustained by deceased Satish are simple in nature, they are liable to be convicted for the offence punishable under Section 323 of the Indian Penal Code instead of Section 304 Part I read with section 34 of Indian Penal Code. So far as accused no.1 Prashant Girase is concerned, considering the entire prosecution evidence on record, in our considered opinion, the sentence of R.I. of ten (10) years under section 304 Part I of the Indian Penal Code as against accused no.1 Prashant Girase is adequate and we accordingly maintain the same. Accused nos.3-Mayur Girase, 4-Harshal Girase and 7-Pramod Girase are also the college going students, less than 20 years of age as on the date of incident. Since, the occurrence had taken place in the year 2012, accused no.3-Mayur Girase, 4-Harshal Girase and 7-Pramod Girase have also detained in jail for certain period during the trial and and at present they are in jail for near about two years and some odd months, they are entitled to be released on probation for a period of one

year subject to furnishing Personal Bond and the bonds of the sureties.

28. So far as the charges levelled under sections the Scheduled Castes and The Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') are concerned, the prosecution has not brought on record the cogent, convincing and sufficient evidence to prove the charge under section 3 (1)(x) of the Act. Even if the allegations are taken as it is, simply addressing a person by his caste in absence of any cogent and sufficient evidence on record attributing an intention on the part of the accused to insult or intimidate, it would not constitute the offence under the said section. Moreover, there is no evidence that the appellants/accused had used ugly words relating to the caste of the deceased Satish. In this way, there was no evidence on record to make out the offence punishable under section 3(1)(x) of the Act against the appellants/accused. So far as the charge under section 3 (2)(v) of the Act is concerned, it is well settled that an offence must have been committed against a person on the ground that such a person is a

member of Scheduled Castes or the Scheduled Tribes. In the instant case, no evidence has been led to establish this requirement. It is not the case of the prosecution that beating has been extended to the victim since he is a member of Scheduled Castes. In absence of the evidence to that effect, Section 3(2)(v) has no application. The learned Judge of the Trial Court has rightly given benefit of doubt to the appellants/accused. We find no reason to interfere in it. Accordingly, we proceed to pass the following order.

O R D E R

I. Criminal Appeal No.254 of 2016 (Prashant Pravinsingh Girase and three others Vs. The State of Maharashtra) is hereby partly allowed.

II. The judgment and order of conviction and sentence passed by the Additional Sessions Judge, Dhule dated 17.03.2016 in Sessions Case No.101 of 2012 to the extent of accused no.1-Prashant Pravinsingh Girase for the offence punishable under section 304 Part I of the Indian Penal Code thereby sentencing him to suffer rigorous imprisonment for the period of ten years and to pay fine amount of Rs.50,000/-(Rs. Fifty Thousand), and in default of payment of fine

amount, he shall suffer simple imprisonment for two years and for the offence punishable under Section 324 of the Indian Penal Code thereby sentencing him to suffer rigorous imprisonment for the period of three years, is hereby confirmed.

a]. Fine amount of Rs.50,000/- (Rs. Fifty Thousand), if recovered from accused no.1 Prashant Pravinsingh Girase, the same shall be paid to the father of deceased Satish namely Daulat Jatar Nagarale, as a compensation. The order to that effect passed by the Trial Court is thus maintained.

b].Both the substantive sentence as against accused no.1-Prashant Girase shall run concurrently.

c]. Accused no.1-Prashant Pravinsingh Girase shall surrender his bail bonds and he shall be committed to the jail to undergo remaining part of the sentence.

d] Criminal Appeal No.254 of 2016 (Prashant Pravinsingh Girase and three others Vs. The State of Maharashtra) is hereby dismissed to the extent of accused no.1 Prashant Pravinsingh Girase.

III. The judgment and order of the conviction passed by the Additional Sessions Judge, Dhule dated 17.3.2016 in Sessions Case No.101 of 2012 as

against accused no.3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase and 7-Pramod Prakash Girase for the offence punishable under Section 304 Part I read with section 34 of Indian Penal Code and sentencing thereby them to suffer R.I. for 10 (Ten) years and to pay fine of Rs.50,000/-(Rs. Fifty Thousand) each, in default of the payment of fine to suffer S.I. for two years is hereby quashed and set aside and instead;

i] Accused no.3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase and 7-Pramod Prakash Girase are hereby convicted for the offence punishable under Section 323 read with section 34 of Indian Penal Code and, instead of sentencing them at once to any punishment, they are directed to be released on probation for a period of one year subject to furnishing a Personal Bond of Rs.20,000/- (Rs. Twenty Thousand) by each of them, and bonds of the sureties of the like amount by each of them to the satisfaction of the trial Court with an undertaking that during the period of probation they shall be of good conduct and peace.

ii] Accordingly, Criminal Appeal No.254/2016 is hereby partly allowed to the extent of accused no. 3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase and 7-Pramod Prakash Girase.

IV. Accused No.3-Mayur Rajendrasingh Girase, 4-Harshal Devisingh Girase and 7-Pramod Prakash Girase are hereby directed to pay the the compensation amount of Rs.50,000/- (Rs. Fifty Thousand) each, to the father of deceased namely Daulat Jatar Nagarale under section 5 of the Probation of Offenders Act, 1958 and amount of the compensation as ordered to be paid may be recovered from them as a fine in accordance with the provisions of Section 421 and 422 of the Criminal Procedure Code.

V. Criminal Application No.3403/2016 (State of Maharashtra Vs.Prashant Pravinsing Girase and six others) filed by the State seeking leave to prefer an appeal against the acquittal stands rejected.

VI. Criminal appeal no. 543 of 2018 preferred by the State i.e. (State of Maharashtra Vs. Prashant Pravinsingh Girase and three others) as against accused no.1, 3, 4 and 7 filed for enhancement of sentence also stands dismissed.

VII. Both the Criminal appeals and criminal applications are accordingly disposed of.

(V.K. JADHAV, J.) **(S.S. SHINDE, J.)**

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aaa/-

Anuja Abhay Ankush
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