

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 57 OF 2017**

Manohar Yohan Magle, **...APPELLANT**
Age-46 years, Occu- Labour,
R/o. Thana, Kusnur, Tq. Aurad Barali,
Kathora, Tq. Chopda,
Dist. Bidar (Karnataka State)

VERSUS

The State of Maharashtra **...RESPONDENT**

Mr. Satej Jadhav, Advocate for the appellant
Mr. K. S. Patil, APP for the respondent/State

WITH
CRIMINAL APPEAL NO. 65 OF 2017

Trimukh S/o. Narayan Dhokare, **...APPELLANT**
Age-70 years, Occu-Pensioner,
R/o. Kureshi Nagar, Latur,
Tq. & Dist. Latur

VERSUS

The State of Maharashtra **...RESPONDENT**
through Police Station Officer,
Police Station, Shirur Anantpal,
Tq. Nilanga, Dist. Latur

Mr. Joydeep Chatterji, Advocate for the appellant
Mr. K. S. Patil, APP for the respondent/State

**CORAM : T. V. NALAWADE &
S. M. GAVHANE, JJ.**

**RESERVED ON : 05-11-2019
PRONOUNCED ON : 12-12-2019**

JUDGMENT [PER: S. M. GAVHANE, J.]

. Since both the appeals are directed against the same judgment and order dated 23-01-2017 in Sessions Case No. 6 of 2011 passed by Additional Sessions Judge, Nilanga, they are being disposed of by this common judgment.

2. The appellants accused No. 3 Manohar and accused No. 5 Trimukh in the respective appeals alongwith three others namely accused No. 1-Balkrishana Dhokre, Accused No. 2-Vijaykumar Kamble and accused No. 4-Bablu were charged for the offences punishable under Sections 143, 147, 148 and 302, 325, 324, 323, 504 and 506 read with 149 of the Indian Penal Code (for short 'the IPC') and after the charge accused No. 4 Bablu died and therefore case was abated against him. The appellant/accused No. 3-Manohar-has been convicted for the offence punishable under Section 325 of the IPC and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500/-, in default, to suffer further rigorous imprisonment for one month and therefore challenging the said conviction and sentence, he filed criminal appeal No. 57 of 2017 while the appellant/accused No. 5 Trimukh who has been convicted for the offence punishable under Section 302 of the IPC and sentenced to suffer life imprisonment has filed criminal appeal No. 65 of 2017. The appeal against acquittal of these accused the other accused has been dismissed as leave to appeal was not granted.

3. Facts of the prosecution case as revealed from the

record are as under:-

A] The first informant Dayanand Raghunath Dhokare (PW-1) who is resident of Khadak, Omerga, Tq. Nilanga, Dist. Latur is having family land Gut Nos. 150 and 152, both admeasuring 4-Acres each, situated in Khadak, Omerga, Tq. Nilanga, accused No. 5 Trimukh who is cousin of the first informant is having land Gut No. 151, admeasuring 4-Acre and land of accused No. 5 Trimukh Dhokare is situated between aforementioned both the lands of the informant and there is a dispute between the family of the informant and the family of accused No. 5 on account of common bandh. Civil dispute is pending in the court. Accused No. 5 Trimukh has taken bore-well in his land which on measurement was found in the portion of land of the informant.

B] Accused No. 1 Balkrushana Dhokare and accused No. 4 Bablu Dhokare (since deceased) are the sons of accused No. 5 Trimukh, accused No. 3 Manohar is husband of sister of wife of accused No. 5. Accused No. 2 is son of sister of wife of accused No. 5.

C] It is alleged that on 07-02-2010 in the morning informant's parents Raghunath and Dropadabai alongwith his son Nilesh (PW-4) and his nephew Kiran (PW-3) were guarding jawar crop. Informant was in the field of Balaji Kadam. His nephew Kiran (PW-3) came in the said field to informant and informed that accused Trimukh had been to his field alongwith tempo. It was at

about 07.00 am. Immediately, informant rushed to his land alongwith Kiran. There were his parents and son Nilesh. One tempo was parked near the bore-well alongwith four labours for taking out the bore-well pump set. Alongwith them, accused Trimukh and his son accused Bablu (since deceased), Trimukh's brother-in-law from Kamalnagar and two unknown persons were there. They came near the bore-well and disclosed that they will take away submersible pump of their bore-well and started abusing the informant and his parents. The informant Dayanand requested them that as the bore-well is in his land it is better to take away the pump set after the court decision. Thereupon, accused Trimukh raised the axe and gave its blow on the right thigh and head of Dropadabai mother of the informant, while accused Bablu gave blow of Katti on both the hands and head of his father Raghunath. Kamalnagar's brother-in-law of Trimukh assaulted on his both the hands and two unknown persons assaulted on his head by sticks. Informant, his mother (deceased) and his father sustained injuries. All the accused left spot by threatening them that how they would not allow them to take away the pump. Parents of the informant went to the civil hospital, Nilanga. Informant went to Nitur Police Chowki, where his statement (Exh.44) as above was recorded and treating the said statement as FIR crime No. 10 of 2010 for the offences punishable under Sections 143, 147, 148, 149, 324, 504 and 506 of the IPC was registered and the investigation was commenced by ASI Thakur (PW-12). Informant, his father and mother injureds were referred to civil hospital, Latur and doctor examined and issued injury certificates. Mother of the informant died on 10-02-2010 in

the civil hospital, Latur. Inquest panchanama was prepared. Postmortem was conducted and the Medical Officer issued postmortem report.

D] The Investigating Officer arrested the accused and he recorded statements of eye witnesses Nilesh, Kiran and driver of tempo and other witnesses. He also seized weapons and blood stained clothes of injured eye witnesses and deceased and were sent to Chemical Analyzer for analysis. Further investigation was carried by PSI Puri (PW-10). He seized stick at the instance of accused No. 2 Vijaykumar. Offence under Section 302 of the IPC was added in the crime. It appears that accused were released on bail. After completion of investigation chargesheet was submitted in the court of JMFC, Nilanga who committed case to the Sessions Court for trial as offence under Section 302 of the IPC was exclusively triable by the Sessions Court.

E] Learned Additional Sessions Judge, Nilanga framed charge against all the five accused of the offences punishable under Sections 143, 147, 148, 302, 325, 324, 323, 504 and 506 read with Section 149 of the IPC. Accused pleaded not guilty to the charge and they had claimed to be tried. Their defence was denial. They have not examined any witness. As said earlier, after charge accused No. 4 Bablu died.

F] To prove charge against the accused prosecution has examined in all 12 witnesses. Amongst them PWs-1, 3, 4 and 9 are

eye witnesses. PWs-10 and 12 are Investigating Officers. PW-7 is Doctor Dudde who conducted postmortem examination on the dead body of Dropadabai and PW-11 is Doctor Suryawanshi who examined Dayanand (PW-1) informant, his father Raghunath and his mother Dropadabai deceased on 07-02-2010. PW-2 is panch of spot of panchanam. PW-5, 6 and 8 are respectively panch on Panchanama of spot of incident, panchanam of seizure of clothes of Raghunath, Dayanand and Dropadabai and panchnama of seizure of stick which was allegedly produced by accused No. 3 Manohar.

G] At the time of their statements under Section 313 of the Code of Criminal Procedure accused N. 1 Balkrishana filed written statement at Exh.101 stating that informant is his uncle and he knows him. But, in the complaint it is not mentioned that he was present and participated in the said incident and further stated that they have been falsely involved due to dispute of land and no incident as alleged by the informant has taken place. Accused No. 5 Trimukh filed written statement at Exh. 102 stating that the proceeding is pending in the court between him and his cousin Raghunath on account of bandh. He had taken bore-well in 2005 in his land and installed motor pump on it. Since then he has been using water of said bore-well for his land. Raghunath was constantly quarreling saying that said bore-well is in his land. On the day of incident he alongwith his son Bablu, labours of taking out the motor and driver of the tempo, had gone to the field for taking out the motor of bore-well and when labourers were taking out the motor of the bore-well deceased Dropadabai came to the spot. She

was old aged and therefore, she came with stick in her hand. Out of anger she bumped her head against iron casing pipe. On that day they have not any weapons with them. They have not produced weapons before the police. His son Bablu was hot tempered and he committed suicide on 02-09-2013. At the time of incident there was no child in the field. Raghunath and Dayanand came when Dropadabai was bumping head. They started fracas with his son Bablu and might have received minor beating. His younger son is in Government service in the State Excise Department and on that day he was at Latur. Informant has falsely involved them on account of bandh of land. No incident as stated by the informant had taken place.

H] Considering the evidence adduced by the prosecution the trial court has held that death of the deceased was homicidal and the prosecution has proved offence under Section 302 of the IPC against accused No. 5 Trimukh and offence under Section 325 of the IPC against accused No. 3 Manohar and accordingly sentenced them for the said offences as referred earlier in para 2 of this judgment by the impugned judgment and order and therefore these two separate appeals by accused No.3 and 5 as referred earlier in detailed on the grounds mentioned in their respective appeals. By order dated 13-02-2017 in criminal appeal No. 57 of 2017 sentence recorded against the appellant/accused No. 3 Manohar was suspended and he was ordered to be released on bail. The appellant accused Trimukh in Criminal Appeal No. 65 of 2017 is in jail.

4. Mr. Satej Jadhav, learned counsel for the appellant/accused No. 3 Manohar in criminal appeal No. 57 of 2017 submitted that informant (PW-1) has admitted that the name of accused Manohar and two others are not mentioned in the FIR. So also, it is submitted that there is omission in the FIR in respect of role attributed to accused Manohar, therefore, case against accused Manohar is nothing but an improved version. It is submitted that though Kiran (PW-3) eye witness has deposed about role of accused Manohar, in the cross-examination omission in respect of name of accused/Manohar and role attributed to him by this witness is proved and similar is the case in respect of another eye witness Nilesh (PW-4). It is submitted that accused Manohar is husband of sister of wife of accused No. 5 Trimukh and is resident of Thana, Kusnur, Tq. Aurad Barali, Dist. Bidar [Karnataka State]. In FIR (Exh. 44) informant alleged that husband of sister of wife of accused Trimukh, from Kamalnagar had participated in the incident. Thus, when no name of accused Manohar is mentioned in the FIR and when he is not resident of Kamalnagar, role attributed to him by the informant and two eye witnesses namely Nilesh and Kiran, on the background of material omission in respect of presence of Manohar in the FIR and statement of eye witnesses before police, it cannot be said that accused Manohar committed offence under section 325 of IPC of causing grievous injury to informant as held by the trial court. Thus, according to learned counsel finding of trial court holding accused Manohar guilty for the offence under Section 325 of the IPC is not sustainable and therefore, conviction and sentence

recorded against accused Manohar for aforesaid offence is liable to be set aside by allowing his appeal.

5. Mr. Chaterjee, learned counsel for the appellant-accused No. 5 Trimukh in criminal appeal No. 65 of 2017 submitted that civil dispute is pending between this accused and Raghunath on account of dispute of bandh between their lands. Trial court ought to have considered that as per the prosecution case accused Trimukh and others have formed unlawful assembly, but when trial court has held that prosecution has failed to prove said unlawful assembly, the trial court ought to have held that no offence is proved against accused Trimukh. Prosecution has examined eye witnesses Kiran and Nilesh who are respectively nephew and son of the informant. As per prosecution case, when on the day of incident, in land Gut No. 151 accused Trimukh, his son Bablu, driver of tempo and two labours had come in the land, it was possible for prosecution to examine independent witnesses available on the spot of incident to prove the alleged incident. But, said witnesses have not been examined and only witness examined is Vishnu Harale (PW-9) driver of the tempo. But, he has not supported the prosecution case. The trial court should have considered this aspect. But, he has not considered the said aspect. It is submitted that accused were not with the weapons. Thus, according to learned counsel evidence adduced by the prosecution of all interested witnesses i.e. informant, his nephew Kiran and son Nilesh is not believable and sufficient to hold that accused Trimukh is responsible for death of Dropadabai. It is submitted that though the Investigating Officer

seized several muddemal articles including axe and sent the same to the Chemical Analyzer for analysis, prosecution has not produced report of the Chemical Analyzer to show that said articles were used in the commission of offence. Accused Trimukh is aged 70 years. It is submitted that there are omissions, contradictions and improvements brought on record in the course of cross-examination of the material prosecution witnesses. Thus, according to learned counsel whatever evidence adduced by the prosecution is not sufficient to hold the accused Trimukh responsible for death of Dropadabai. Thus, according to learned counsel finding recorded by the trial court that accused Trimukh is guilty for the offence under Section 302 of the IPC is not correct and as such conviction recorded against the said accused and sentence imposed to him for the said offence is liable to be set aside by allowing his appeal.

6. Mr. K. S. Patil, learned APP appearing for the respondent-State in both the appeals submitted that there is evidence of eye witnesses i.e. informant (PW-1), Nilesh (PW-4) Kiran (PW-3). So also, there is medical evidence in the form of postmortem report which shows that death of deceased was caused due to head injury with multiple injuries. Moreover, there is evidence of Doctor Sunanda regarding injuries noticed on the person of deceased, Raghunath and Dayanand informant (PW-1) as per injury certificates Exhs.95, 96 and 97 and that as per injury certificate of the informant, Doctor Suryawanshi noticed grievous injury on his person. Thus, considering above referred evidence, the trial court has on proper appreciation of the evidence, rightly held

accused Manohar guilty for the offence punishable under Section 325 and accused Trimukh guilty for the offence under Section 302 of the IPC and rightly convicted and sentenced them for the said offences by the impugned judgment and order. Thus, according to the learned APP there is no ground to interfere with the impugned judgment and order and as such appeals of accused Manohar and accused Trimukh are liable to be dismissed and as such he claimed to dismiss both the appeals.

7. We have carefully considered the submissions made by the learned counsel appearing for the appellants and learned APP in both the appeals and with their assistance we have perused the evidence adduced by the prosecution. So also, we have gone through the impugned judgment and order.

8. As regards homicidal death of Dropadabai, Dr. Dudde (PW-7) who was working as a Medical Officer and attached to Government Medical College, Latur and conducted postmortem examination on the dead body on 10-02-2010 deposed that when he conducted autopsy between 01.05 pm to 02.05 pm noticed that there were no signs of decomposition and he noticed following injuries namely:

1. CLW over fronto parietal region of head, size 6 x 1 x 1 cm.
2. CLW over left fore arm size 3 x 1 x ½ cm.
3. Contusion over left fore arm, size 6 x 6 cm.
4. Sutured wound over right leg, size I) 3 x ½ x ½ cm

II) 3 x ½ x ½ cm

5. Contusion over middle 2/3rd right leg, size 4 x 4 cm.

All injuries were antemortem. There were fractures to fore arms and right leg. According to him, cause of death was due to head injury multiple injuries and thus, he issued postmortem report (Exh.65). In the cross-examination, he admits that CLW injury causes by hard and blunt object and that attack by axe will cause chop injury. He also admits that there was no fracture skull and that by sickle, piercing and stab injuries are possible. He stated that CLW may be possible by stone. Generally such type of head injury is possible, if person suddenly falls on any round iron substance or casing. Postmortem report (Exh. 65) also shows injuries referred to above on the person of the deceased and that probable cause of death was head injury with multiple injuries. Thus, on the basis of evidence of Dr. Dudde (PW-7) and postmortem report, it can be said that death of the deceased Dropadabai was caused due to head injury with multiple injuries.

9. Now, it is to be seen whether aforementioned head injury by which death of the deceased was caused was self inflicted in the light of defence of the accused. There was no specific suggestion to Dr. Dudde (PW-7) that head injury due to which death was caused is possible, if person himself or herself hits the head against casing. There is suggestion to Dayanand (PW-1) informant that they themselves made injuries by stone and he denied said suggestion. Evidence of Vishnu Harale (PW-9) who was

driver of the tempo at the material time of incident and who had come in the land for carrying the motor pump and was present at the time of incident has admitted the suggestion on behalf of the accused that at the time of quarrel an old lady was bumping her forehead on the border of iron casing. Thus, there is no consistency in the suggestion given to Dayanand (PW-1) informant and Vishnu Harale (PW-9) about cause of sustaining injury to forehead of the deceased. Therefore, there is no possibility of sustaining head injury to the deceased as suggested either to the informant (PW-1) or to PW-9 tempo driver. In short, it cannot be said that head injury noticed on the person of the deceased by Dr. Dudde (PW-7) was self inflicted. Thus, for the above reasons, we hold that the prosecution has proved that death of the deceased was homicidal. Trial court has rightly held so and there is no reason to interfere with the said finding of the trial court.

10. Case of the prosecution is that all the accused in prosecution of common object of unlawful assembly assaulted deceased, informant and his father Raghunath by weapons referred earlier while narrating the facts of the case and thus, they are responsible for death of the deceased and causing injuries to the informant, his father and deceased. The trial court has held that accused No. 5- Trimukh is responsible for death of the deceased and accordingly convicted him for the offence punishable under Section 302 of the IPC and further trial court has held that accused No. 3-Manohar is responsible to cause grievous injury to the informant and thus convicted him for the offence punishable under

Section 325 of the IPC. Therefore, now it is to be seen whether accused Trimukh is responsible for death of the deceased Dropadabai and accused Manohar is responsible for causing grievous injury to the informant. To prove these facts, the prosecution has relied upon the evidence of eye witnesses informant-Dayanand (PW-1), Kiran (PW-3) nephew of informant, Nilesh (PW-4) son of informant and Vishnu Harale (PW-9).

11. Before considering the evidence of above witnesses facts in respect of which there is no dispute are that, informant Dayanand's father Raghunath and accused No. 5 Trimukh are cousins. Land of accused No. 5- Trimukh Gut No. 151 is situated between informant's family land Gut Nos. 150 and 152. There is dispute between both the families on account of common bandh and civil litigation is pending in the court.

12. Now, coming to the evidence of informant Dayanand (PW-1) initially he has stated about relationship interse between the accused as referred earlier in detailed and about pending civil dispute between his family and family of accused. As regards the incident in paragraph No. 5 of his deposition, he deposed that incident occurred before about five years at about 07.00 am in his field. At that time he had taken jawar crop in his field. At that time his parents, his son Nilesh and brother's son Kiran were in the field guarding the crop. He was serving with one Balaji Kadam and he was guarding crop in his field. There are survey numbers between his land and land of Balaji Kadam. His nephew Kiran came towards

him and told that accused had come in the field alongwith tempo to remove the electric pump on the bore-well. He rushed in his field near the bore-well. Tempo was parked near the bore-well in land Gut No. 151. All accused were present there. Out of them, accused Bablu is no more. Dispute started between them on account of taking out the electric pump. They told the accused that dispute is pending in the court and it is better to remove the electric pump after court's decision. Accused Trimukh assaulted by axe on the head, hands and legs of his mother. His mother sustained injuries and collapsed on the ground. Accused Bablu gave blow of katti on the left hand finger and head of his father. His father sustained injuries. Accused Balkrishana, Vijaykumar and Manohar assaulted on his head and both the hands by sticks. He collapsed. Accused alongwith pump lifting machine with tempo left the field. He has stated that he lodged report (Exh.44). He had come to Civil Hospital, Nilanga. He and his parents were sent to Civil Hospital, Latur. His mother died in the said hospital after 4-5 days. He identified the weapons i.e. axe, one katti and two sticks.

13. In the cross-examination the informant's above referred evidence regarding happening the incident is not shattered as he has denied the suggestions given to him on behalf of the accused in this respect. Some omissions in his statement before police have been brought on record and said omissions which are referred in paragraph No. 14 of his deposition are in respect of the fact that because of assault his mother was collapsed, that the accused Bablu, Vijaukumar, and Manohar assaulted on his both the hands by

sticks and he collapsed, regarding colors of the clothes on their person and that the clothes were stained with blood and said omissions have been duly proved by the Investigating Officer (PW-12). Thus, his evidence that accused Balkrishana, Vijaykumar and Manohar assaulted on his both hands by sticks and he was collapsed are material omissions in the report (Exh.44) lodged by him. He has also not specifically stated before the court that accused before the court are the same. What he has stated is that contents of report (Exh.44) are correct. In report (Exh.44) names of accused Balkrishana, Vijaumukar and Manohar are not mentioned. What is alleged in the report is that accused Trimukh, Bablu, husband of sister of wife of Trimukh from Kamal Nagar and two unknown persons had come near the bore-well and Trimukh assaulted mother of the informant i.e. deceased by axe on her thigh and head, Bablu assaulted father of the informant on his left hand and right hand finger and head, husband of sister of wife of Trimukh assaulted on the right hand, left hand and thigh of the informant and two other unknown persons also assaulted on the head and back of the informant. In fact, when Trimukh is cousin uncle of the informant and close relative of all the accused, it was possible for informant to disclose the names of all the accused in the report. Therefore, it is doubtful whether accused Balu (Balkrishana), Vijaukumar and Manohar were present at the spot of incident, therefore, evidence of informant attributing role to these three accused is not believable. However, evidence of informant attributing role to accused Trimukh and deceased accused Bablu is believable.

14. Now, coming to the evidence of second eye witness Kiran (PW-3) who was about 9 years at the time of incident is that on the day of incident he was guarding crops in their field alongwith grand-parents and cousin Nilesh and incident occurred at about 07.30 am. According to him from Kelgaon boundary one tempo came to their field near the bore-well. Accused Balu, Vijaukumar, Manohar, Bablu and Trimukh were in tempo alongwith unknown driver. They got down from the tempo. They were removing coupling of bore-well. He, grand-fatehr and Nilesh came near the bore-well and asked the accused not to remove the electric pump from the bore-well. They replied that they would remove the pump. Grand-father asked him to call uncle Dayanand. Dayanand was in the field of Balaji Kadam which is half kilometer away from their field. He went there and called uncle Dayanand (Informant). Uncle Dayanand asked accused not to remove pump set. They again replied that they would remove it. Dayanand asked them not to remove the pump set till the decision of the court case. Accused started abusing. Accused Trimukh assaulted on both hands, head and private part of the grand-mother by axe. Grand mother collapsed sustaining injuries. Accused Bablu assaulted by katti on the left hand and right hand of index finger of the grand-father. Grand father also collapsed. Accused Balu, Manohar and unknown persons assaulted uncle Dayanand by sticks on both arms and Dayanand sustained fracture injury. Thereafter, accused removed the pump set and left the field by tempo. Dayanand, aunt Kamalabai and Nilesh went to Nitur outpost. Police came to spot.

Grand parents were shifted to Government Hospital, Nilanga and then they were shifted to Latur Hospital and during treatment grand-mother died.

15. In the cross-examination Kiran (PW-3) has denied that he is got up witness and uncle Dayanand has tutored him and brought in the court for evidence and that he is deposing at his instance. He admitted that accused came near the bore-well and started to take out the electric pump set and they never came towards them. They went there to resist them (accused) and that electric pump set was of accused. Thus, from this evidence, it can be said that witnesses went near the bore-well to resist the accused to remove the electric pump set and therefore, incident occurred.

16. In the evidence of Kiran (PW-3) some omissions in his statement before the police have been brought on record as recorded in paragraph Nos. 5 and 8 of his deposition. Those, omissions are in respect of the fact that accused Balu, Vijaukumar and Manohar came in the field by tempo, that uncle Dayanand asked the accused Balu, Vijaumukar and Manohar not to remove the pump set from the bore-well, that uncle Dayanand had been to Nitur Police Chowki to inform the incident to police, that after assault grand-mother collapsed and that accused Balu and Manohar have assaulted uncle Dayanand by sticks and he fell down at some distance. These omissions have been duly proved by the Investigating Officer (PW-12). So also, he has admitted that he has not stated that after assault by Trimukh grand-mother sustained

injury and collapsed. Above omissions in respect of coming of accused Balu, Vijaykumar and Manohar at the spot of incident by tempo and regarding their act of assaulting the informant Dayanand by sticks are material omissions and therefore, the evidence of Kiran (PW-3) regarding presence of these three accused at the spot of incident and their involvement in the incident of assaulting informant is not believable. However, his evidence regarding role attributed to accused Trimukh in assaulting the deceased corroborates the evidence of informant.

17. The evidence of next eye witness Nilesh (PW-4) son of the informant about the incident is that incident occurred about five years at about 07.30 am in their field. He, cousin Kiran and grand parents were in the field. One tempo came from Kelgaon boundary and stopped near their field. Balkrishana, Bablu, Trimukh, Vijaykumar and Manohar and two unknown got down from the tempo. They (witnesses and other) went near them and asked not to remove the pump set as the matter is pending in Nilanga Court. They asked them to call Dayanand informant. Kiran (PW-3) called Dayanand. His evidence further shows that before arrival of the Dayanand accused started abusing grand-parents and same was continued after arrival of Dayanand. Dayanand asked them not to remove the pump set as the matter is going on in Nilanga court. They have not paid heed to their request. Accused started assaulting. Accused Trimukh and Balkrishna started assaulting grand-mother Dropadabai by axe. Grand-mother sustained injuries to both the hands and head. Accused Vijaykumar and Manohar

assaulted father Dayanand by sticks on both the hands and head and he sustained fracture to both hands. Accused Bablu assaulted grand- father on left hand, right hand and index finger by katti. He again stated that Bablu also assaulted on the head of his grand- father by katti. His mother came in field. Accused removed the pump set and they left the field by tempo. Grand-mother succumbed to injuries during treatment at Latur hospital.

18. In the cross-examination of Nilesh (PW-4) some omissions have been brought on record and said omissions are in respect of the fact that Balkrishana is also known as Balu, that Balkrishana, Vijaykumar and Manohar got down from tempo, that before arrival of Dayanand accused abused grand-parents and same was continued on arrival of Dayanand, that accused Balkrishna assaulted grand-mother by axe, that accused Manohar and Vijaykumar and assaulted father Dayanand by sticks and that at the end of incident mother came in the field. Said omissions have been proved by the Investigating Officer ASI. Thakur (PW-12). Thus, evidence of Nilesh in respect of above omissions which are material in nature is not believable and therefore, no inference can be drawn on the basis of his evidence regarding presence of accused Balkrishana, Vijaykumar and Manohar and their involvement in the incident. However, on the basis of his evidence, it can be said that accused Trimukh assaulted the deceased grand-mother of this witness by the axe and accused Bablu (since deceased) had assaulted grand-father of this witness on his hands and index finger by katti. Thus, he has corroborated the evidence of

informant and Kiran (PW-3) regarding act of accused Trimukh of assaulting the deceased by the axe.

19. Now coming to the evidence of next eye witness Vishnu Harale (PW-9) who was driver of tempo and who had come to the spot of incident as per the prosecution case, the evidence of this witness as regards the incident is that before 5-6 years he had been to the field of accused at village Khadak Omerga for taking submersible pump of bore. Bablu Dhokare had engaged him for said work. According to him he reached field at about 07.00 to 07.30 am. He went there alongwith Bablu, his father and his associate Bankat Makane. Someone had resisted them from taking out the motor. One old aged man and lady came there alongwith two children. Those children left the field to call their family members on account of quarrel. Quarrel was going on in between Bablu and his father and that old lady. Bablu took the stick from the hand of that old aged man and gave its blow on the left arm of that old aged lady. Therefore, they left the field. He has not supported the prosecution and therefore, he was cross-examined on behalf of the learned APP and in the cross-examination on behalf of the learned APP he had denied portion marked-A in his statement before police that when Dropadabai, Raghunath and Dayanand requested the accused not to take out the motor before court decision, accused Trimukh, Bablu and Manohar assaulted Dropadabai, Raghunath and Dayanand by axe, katti and stick on their head, hand, legs and back, which portion is proved in the evidence of Investigating Officer (PW-12) as Exh.99. However, as

this witness has denied truth of contents of said portion marked Exh.99 and not supported the prosecution case evidence of this witness is not believable as regards the act done by the accused. However, on the basis of his evidence an inference can be drawn that on the day of incident at about 07.00 to 07.30 am he had gone to the field of accused Trimukh alongwith Trimukh, his son Bablu alongwith his (witnesses) associate Bankat Makane and that at the relevant time of incident the deceased, her husband, witness Nilesh and Kiran were present. While considering the aspect of homicidal death of the deceased as observed earlier his evidence regarding self inflecting injury to the deceased is not believable.

20. On Careful consideration of the evidence of the informant (PW-1), Kiran (PW-3), Nilesh (PW-4) and Vishnu Harale (PW-9) an inference can be drawn that on the day of incident at about 07.00 to 07.30 am accused No. 5 Trimukh alongwith his son deceased accused No. 4 Bablu came in their land Gut No. 151 for taking out the electric pump on the bore-well. On the basis of evidence of informant, Kiran and Nilesh an inference can be drawn that accused Trimukh assaulted deceased Dropadabai by axe when the deceased opposed the said accused while taking out the electric pump and she was assaulted on her head and legs and as a result, she sustained injuries and particularly injury to head by axe as referred earlier. It has come in the evidence of Dr. Dudde (PW-7) who did postmortem examination on the dead body that he noticed in all five injuries referred earlier including injury No. 1 CLW over fronto parietal region of head, size 6 x 1 x 1 cm and injuries on

both the hands and legs as referred earlier. Said doctor also deposed that death of the deceased was caused due to head injury and multiple injuries. Postmortem report shows cause of death as "head injury with multiple injuries" as referred earlier. Thus, it can be said that accused No. 5 Trimukh is responsible for causing head injury to the deceased Dropadabai due to which her death was caused.

21. Now it is to be seen whether aforementioned act of accused No. 5 Trimukh causing head injury to the deceased which resulted into her death is amounting to murder punishable under Section 302 of the IPC. To arrive at the said conclusion, it is necessary to see whether accused Trimukh had intention to cause head injury and had intention as well as knowledge that by the said head injury death of the deceased would be caused. It has come in the evidence of the informant (PW-1), Kiran (PW-3) and Nilesh (PW-4) who is son of informant that accused No. 5 Trimukh used axe to assault the deceased Dropadabai and he had given several axe blows to Dropadabai. Moreover, prosecution has proved seizure of axe from Trimukh as per panchanama (Exh. 46) which is proved by panch Mahadu More (PW-2). Blade of said axe is 4 cm wide and length of which is 9 cm. Thus, on considering the fact that accused Trimukh used weapon like axe in assaulting the deceased on her head, it can be said that he had intention as well knowledge that by the act of assaulting the deceased by axe, there would be injury to her head and her death would be caused. Therefore, it can be said that act of accused Trimukh in assaulting the deceased by axe on

her head and ultimately causing her injury and her death amounts to culpable homicide amounting to murder punishable under Section 302 of the IPC. Therefore, we hold that the trial court has rightly held that prosecution has proved offence under Section 302 of the IPC against accused No. 5 Trimukh. Thus no fault can be found with the said finding.

22. The trial court has held accused No. 3 Manohar guilty for the offence punishable under Section 325 of the IPC of causing grievous injury to informant Dayanand (PW-1). As referred earlier the evidence of informant Dayanand as regards the presence of accused Manohar on the spot of incident and assaulting him is not believable as there is material omission in this respect in the report lodged by the informant. Similarly, the evidence of Kiran (PW-3) and Nilesh (PW-4) eye witnesses regarding his presence at the spot of incident and assaulting the informant is also material omission in their statements before the police. Therefore, as observed earlier, the evidence of informant, Kiran and Nilesh that accused Manohar assaulted informant Dayanand and caused him injuries is not believable. It has of course come on record in the evidence of Dr. Suryawanshi that he examined the informant Dayanand (PW-1) on 07-02-2010 and noticed injuries namely : CLW over scalp on vertex right side, size 4 x 1 x 0.5 cm, swelling with abnormal mobility and crepitus on right fore arm upper part, size 4 x 3 x 3, swelling with tenderness on left hand posteriorly size 3 x 2 x 2 cm, abrasion over left fore arm anteriorly, size 3 x 1 cm and swelling with tenderness on left thigh lower part laterally and that first two injuries were

grievous and remaining injuries were simple in nature as per certificate (Exh.97) issued by him, but when ocular evidence of informant, Kiran and Nilesh regarding presence of accused Manohar at the spot of incident and his involvement is not believable, it cannot be inferred that accused Manohar is responsible for grievous injuries noticed by doctor on the person of the informant Dayanand to state that prosecution has proved the offence under Section 325 of the IPC against the accused Manohar as held by the trial court. Thus, finding of the trial court that the prosecution has proved offence under section 325 of the IPC against accused Manohar is not correct and sustainable and said finding is liable to be set aside.

23. For all the reasons discussed above, we hold that criminal appeal No. 57 of 2017 filed by accused No. 3/Manohar is to be allowed and conviction and sentence recorded against him for the offence punishable under Section 325 of the IPC is liable to be set aside and he is to be acquitted of the said offence. We further hold that there is no ground to interfere in the conviction and sentence recorded against accused No. 5 Trimukh for the offence punishable under Section 302 of the IPC. Therefore, criminal appeal No. 65 of 2017 filed by accused Trimukh is liable to be dismissed. In the result following order is passed.

ORDER

- I. Criminal Appeal No. 57 of 2017 filed by Accused No. 3 Manohar Yohan Malge is allowed.

II. Conviction and sentence recorded against accused Manohar Yohan Malge for the offence punishable under Section 325 of the IPC as per the impugned judgment and order dated 23-01-2017 in Sessions Case No. 06 of 2011 is quashed and set aside.

III. Accused Manohar Yohan Malge is acquitted of the offence punishable under Section 325 of the IPC. If fine is paid by accused no. 3 Manohar Yohan Malge, the same shall be refunded to him.

IV. Bail bond of accused Manohar Yohan Malge stands cancelled.

V. Accused Manohar Yohan Malge to furnish the bail as per Section 437-A of the Code of Criminal Procedure and furnish P.R. bond and surety bond of Rs. 15,000/- in the trial court within a week.

VI. Criminal Appeal No. 65 of 2017 filed by accused No. 5 Trimukh Narayan Dhokare is dismissed.

[S. M. GAVHANE, J.]

[T. V. NALAWADE, J.]