

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

904. CRIMINAL APPEAL No. 3 of 2015
WITH
904.2 CRIMINAL APPLICATION No. 1307 of 2020
IN
CRIMINAL APPEAL No. 3 of 2015

Khandu S/o Jivraj Bhange,
age 45 years occupation agriculture
R/o Hadgaon Doka Taluka Kaij District Beed ...Appellant

VERSUS

The State of Maharashtra ...Respondent

WITH
904.1 CRIMINAL APPEAL No. 172 of 2015

1. Laxman S/o Subhash Bhange,
age 33 years occupation agriculture
2. Sayas @ Shashikant S/o Subhash Bhange,
age 30 years occupation agriculture
3. Rohini W/o Laxman Bhange,
age 28 years occupation household
4. Usha W/o Sayas Bhange,
age 25 years occupation household
5. Sumanbai W/o Subhash Bhange,
age 60 years occupation household
Nos. 1 to 5 R/o Hadgaon Doka
Taluka Kaij Dist. Beed.

...Appellants

VERSUS

The State of Maharashtra
Through : P.S.O., Police Station, Kaij
Taluka Kaij Dist. Beed.

...Respondent

Mr. U.B. Bondar, Advocate for appellant in Cri. Appeal No. 3/2015
Mr. N.B. Khandare & Mr. S.P. Deshmukh, Advocates for appellants in
Cri. Appeal No. 172/2015
Mr. K.S. Patil, Addl. Public Prosecutor for respondent/State in both
appeals.

CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.

DATE : 21st August, 2020

J U D G M E N T (Per : T.V. NALAWADE , J.)

1. Both the appeals are filed against the judgment and order dated 19/01/2016 passed in Sessions Case No. 18 of 2011, which was pending in the Court of the learned Additional Sessions Judge, Ambajogai, District Beed. The Trial Court has convicted all the six accused persons for offence punishable under Section 302 read with Section 149 of the Indian Penal Code and each of them is sentenced to suffer imprisonment for life and to pay fine of Rs. 1000/-. In-default of payment of fine amount, each of them is directed to undergo imprisonment of two months. Accused Nos. 1 to 5 have filed one appeal and accused No.6 has filed separate appeal. Both the sides are heard.

2. In short, the facts leading to the institution of the

appeals can be stated as follows:

All the accused persons and informant are residents of village Doka Tahsil Kaij District Beed. Deceased Raosaheb Bhangе was father-in-law of informant Shivkanya (P.W. No.1). The deceased was distantly related on cousin side with one Subhash Jaywant Bhangе. Subhash was father of accused Nos.1 & 2 (Laxman and Shashikant). There was dispute between deceased Raosaheb and Subhash over 40R portion of land survey No. 37/2 situated at village Doka. Due to the dispute, Raosaheb had filed Regular Civil Suit No. 148/2008 against Subhash and the relief of permanent injunction was claimed. Temporary injunction application, which was filed by Raosaheb by contending that he was in possession, was rejected by the Trial Court on 18th August 2009. Due to the dispute, the relations between families of Raosaheb and Subhash were strained. Accused No.6 Khandu Jivraj Bhangе is said to be a friend of accused No.1 Laxman. Accused No.3 Rohini is wife of accused No.1 Laxman, accused No. 4 Usha is wife of accused No.2 and accused No.5 Sumanbai is widow of Subhash.

3. The incident in question took place on 17th June 2010. On that day, informant Shivkanya, the deceased, Mahaveer (husband of Shivkanya) and two lady labours employed by Mahaveer

were doing agricultural operation like sowing Cotton seeds in some portion of land survey No. 7. This land is different land than the land which was involved in the litigation. The houses of accused persons are constructed in land survey No. 7 and there are many sharers in this land. At about 3.00 pm, Laxman, Shashikant, Usha, Rohini and Sumanbai came towards the place where the prosecution witnesses were busy in sowing operation. Accused No.6 Khandu Bhangе was also in the company of accused Nos. 1 to 5 and there was one more unknown person with them, who was allegedly friend of accused No.6.

4. According to the case of prosecution, accused No.1 was holding an axe and accused Nos. 2 & 6 were holding sticks. The two lady members like Rohini and Sumanbai were carrying chilly powder. The two lady members threw chilly powder at the eyes of the prosecution witnesses and the deceased and all of a sudden male members of the side of the accused like accused Nos. 1, 2 & 6 started assaulting Raosaheb and Mahaveer with the weapons like axe and sticks. Due to the hue and cry of the prosecution witnesses, the persons, who were present in neighbouring fields like, Rajabhau Bhangе, Khandu Sudarshan Bhangе rushed to the spot of offence. As the persons started gathering, the accused persons went away.

5. Informant Shivkanya gave phone call to Babasaheb Bhangе and requested him to arrange for conveyance as Raosaheb and Mahaveer were injured in incident and they were to be shifted to hospital. The injured were taken to the Government Hospital, Kaij, and from there, Raosaheb was shifted to Government Hospital, Ambajogai, for further treatment. Raosaheb succumbed to the injuries in Ambajogai Hospital on the day of incident. Shivkanya gave report to the police on 18th June 2010 and crime at C.R. No. 79/2010 came to be registered at 18.30 hours for the offence of murder of Raosaheb.

6. The post mortem was conducted on the dead body of Raosaheb on 18th June 2010 between 11.55 am and 12.55 pm. Two injuries were found on the head of the dead body and these injuries had corresponding internal injuries like contusion with clots under scalp. These injuries had caused the death of Raosaheb. Mahaveer was also examined on 17th June 2010 and three injuries were found on his person. Parimala, wife of Raosaheb, had sustained one injury like C.L.W. over scalp in the incident.

7. Sumanbai (accused No.5), who is mother of accused Nos. 1 & 2, had sustained two external injuries in the incident and

the injuries had caused fractures of left radius ulna and also right radius & ulna. The report was given in respect of the incident in which Sumanbai was assaulted, by accused No.1 Laxman and crime at C.R.No. 80/2010 was registered against most of the prosecution witnesses for offence punishable U/s. 325 read with Section 34, etc. of the Indian Penal Code. Chargesheet was also filed against the persons like Mahaveer, Parimal, Shivkanya and Raosaheb in that crime. The prosecution witnesses, however, came to be acquitted in that case.

8. In C.R. no. 79/2010, the present case, after completion of investigation, chargesheet was filed for offences punishable U/S. 302, 326 read with Section 149 of the Indian Penal Code. Accused pleaded not guilty. They produced the record like chargesheet filed in C.R. No. 80/2010 and they took the defence that the prosecution witnesses had destroyed the standing crop of Cotton which was there in the field of accused and when Sumanbai had gone there to question this act, Sumanbai was assaulted by prosecution witnesses. It was also contended that Mahaveer had used weapon and the blows this weapon hit Raosaheb. Prosecution examined twelve witnesses in the present matter against accused. No defence witness was examined by the accused.

9. The Trial Court has believed the prosecution witnesses. On the basis of direct evidence and circumstantial evidence, the Trial Court has given conviction against all the accused for the offence punishable U/S. 302 read with section 149 of I.P.C. Though there was charge for offence of causing grievous hurt to Mahaveer punishable U/S. 326 read with section 149 of I.P.C. the operative order of the judgment of the Trial Court does not specifically show that the accused persons came to be acquitted of that offence.

10. The aforesaid prosecution case and the nature of defence taken by the accused persons alongwith the record of the chargesheet filed in C.R. No. 80/2010 show that the accused persons have not seriously disputed that some incident took place on that day and time and in that incident Raosaheb had sustained some injuries which caused his death. The record as a whole shows that presence of at-least accused Nos.1 to 5 on the spot at the relevant time is not disputed. The chargesheet filed in C.R. No. 80/2010 shows that in that case accused No. 6 was not mentioned as prosecution witness and his presence was not shown on the spot at the relevant time. The tenor of the cross-examination of the prosecution witnesses in the present matter also shows that the presence of accused No.6 on the spot is not admitted though in the

answer given in the last question put U/S. 313 of Cr.P.C. he has taken defence which is similar to the defence taken by accused Nos. 1 to 5. Let us see whether any or all the accused can be convicted for the offence of murder and as to whether the provision of section 149 of I.P.C. can be used in the present matter or other provision needs to be used for inferring the joint liability.

11. Shivkanya (P.W.1) has given evidence that the incident took place at about 3.00 pm of 17th June 2010 in the portion of survey No. 7 which belongs to them. She has deposed that her husband Mahaveer, deceased Raosaheb, wife of Raosaheb and two lady labourers were doing operation of sowing Cotton seeds in the strip belonging to them. She has deposed that all the accused came there together. According to her, accused No.1 was holding axe, accused Nos. 2 & 6 were holding sticks and lady accused were carrying chilly powder. She has deposed that lady accused threw chilly powder at the eyes of the persons of her side and then accused started giving beating to the persons of her side. She has deposed that in the incident, Raosaheb, Mahaveer and Parimala were assaulted. No evidence is given that the two lady workers were also assaulted. One such a lady is examined by the prosecution as eye witness, but she has also not given evidence that she herself and

her colleague were assaulted.

12. Shivkanya (P.W.1) has given evidence that when the assault was started on them, they raised hue and cry and after that, witnesses like Rajabhau and one Khandu came there. This Khandu is different from accused No.6. She has deposed that when neighbouring persons started gathering there, all the accused went away.

13. Shivkanya (P.W.1) has given evidence that injured persons were first shifted to the Government Hospital, Kaij, and then they were referred to Ambajogai Government Hospital. She has given evidence that Raosaheb died at 11.00 pm of that night in Ambajogai Hospital. She has deposed that funeral of dead body of Raosaheb was completed on 18th June 2010 and after that she went to police and gave the F.I.R. in respect of the incident. The evidence on the record shows that all the prosecution witnesses knew all the accused persons from prior to the date of the incident.

14. In the cross-examination of Shivkanya (P.W.1) suggestions are given to her about the litigation which was pending in respect of land survey No. 37/2. Though she avoided to admit such litigation and the dispute, the record produced in respect of the

litigation was admitted by both the sides and that record shows that there was the litigation and temporary injunction application filed in that suit by Raosaheb was rejected by the Trial Court. The nature of contentions made in that suit needs not be discussed in detail here but that record is sufficient to infer that the relations between these two families were strained. Copy of plaint of that suit, copy of temporary injunction application and copy of order made on temporary injunction application by the Trial Court are on record. Both the sides were claiming that they were in possession of disputed portion of survey No. 37/2 and Raosaheb failed to get relief of temporary injunction. The record is at Exhs. 70 to 75. At the cost of repetition, this Court wants to mention here that the incident in question took place in survey No. 7 and not in survey No. 37/2.

15. In the cross-examination of Shivkanya (P.W.1) she has admitted that on one side of the portion of land survey No. 7 which is owned by them there is land of accused persons. She has also admitted that in some portion of survey No. 7 there is house of accused Nos.1 to 5 and it was there from prior to five years of the incident. She has admitted in cross-examination that the sharers of land survey No. 7 have portions which are in long strips of the width of around 20 feet but she has claimed that width of share of her

family is more than 20 feet. She has admitted that there is '*Bandh*' which starts from the house of accused and it goes upto the share of her family from survey No. 7. In her cross-examination it is brought on record that there were two trees on this *Bandh*. She has contended that one tree belongs to her family and the other tree belongs to the family of the accused. However, she has specifically stated in her evidence that the quarrel took place in the portion belonging to her family.

16. Shivkanya (P.W.1) has admitted that at the relevant time there was standing crop of Cotton in the share of the accused. It is suggested to P.W.1 in the cross-examination that the incident started as she, her husband and her in-laws had together assaulted Sumanbai (accused No.5). It is suggested to her that persons of her side had caused fracture injuries to Sumanbai in the incident. She has denied this suggestion. In the cross-examination, she has admitted that witness Rajabhau who is examined and Khandu Sundar Bhange who is not examined, are her relatives. In the cross-examination she has stated that the witnesses gave priority for saving life of Raosaheb and she approached the police after the death of Raosaheb. Some omissions in F.I.R. were confronted to her with regard to the substantial evidence but these omissions are

not material in nature and so they are not being discussed.

17. In the cross-examination of Shivkanya (P.W.1) it is suggested to her that accused Nos. 1 & 2 came to the spot of offence to save Sumanbai. She has denied that only accused Nos.1 & 2 had come there and that too for saving Sumanbai. The Counsel for accused No. 6 had suggested that accused No. 6 had not come to the spot of offence.

18. In F.I.R. Exh. 64, which is duly proved in the evidence of Shivkanya (P.W.1), names of all six accused are mentioned. The evidence of P.W.1 shows that it is her evidence that accused Nos. 1, 2 and 6 all gave beating to them. On that point number injuries sustained by the persons from the side of the informant can be considered and consistency, if any, in the evidence on that point of all the eye witnesses can be considered. Here only it needs to be observed that not only evidence of Shivkanya (P.W.1) but the evidence of other two ladies examined as eye witnesses in this matter, is vague. The evidence given as against the lady accused is also vague. Shivkanya (P.W.1) has deposed that chilly powder was thrown by the two lady members and that chilly powder had entered the eyes of Mahaveer and her in-laws. The injury certificates in respect of Mahaveer and his mother do not support this contention.

19. Mahaveer (P.W.2), husband of Shivkanya (P.W.1), was injured in that incident. His evidence is specific as against accused Nos. 1 & 2. He has deposed that accused No.1 Laxman had come with axe and he gave blow of axe to the deceased. He has deposed that accused No.2 had come with stick and he gave blow of stick to his father Raosaheb. He has deposed that accused No.1 then gave blow of axe on his face and accused No.2 gave stick blow on his left hand and back. He has given evidence against accused Rohini and Sumanbai that they threw chilly powder at their eyes. Other evidence of P.W.2 is similar to the evidence of P.W.1.

20. In the cross-examination of Mahaveer (P.W.) it is suggested to him that the persons of his side had caused damage to one line of standing Cotton crop of accused. It is suggested that when accused Sumanbai went there to question the complainant side about this act, she was assaulted by Mahaveer, his wife and his parents with stick and axe. These suggestions are denied by Mahaveer (P.W.2)

21. In the cross-examination of Mahaveer (P.W.2), he has stated that he was not feeling well on 17th June 2010 and after the incident he had become unconscious. Though he has tried to say

that he was unconscious from 17th June 2010 to 30th June 2010, again he has stated that he was discharged after 4 to 5 days of the incident and due to that he could not attend funeral of the dead body of Raosaheb. This evidence needs to be kept in mind as wife of Mahaveer gave the F.I.R. and not Mahaveer. This Court is discussing the medical evidence which is there showing that Mahaveer had sustained injuries in the incident.

22. The evidence of Mahaveer (P.W.2) shows that he did not attribute specific role to accused No.6 in the incident. From the evidence of Mahaveer it is not possible to draw inference that in any way accused No.6 was helping accused Nos. 1 to 5 or he was member of the unlawful assembly, if any, which was formed by accused Nos.1 to 5.

23. Rajabhau (P.W.4) is a relative of complainant side. His evidence is similar to the evidence of Shivkanya (P.W.1). He has deposed that all the accused persons were giving beating to Raosaheb Bhang, Parimala and Shivkanya with axe and sticks. There is medical evidence in respect of Mahaveer, Raosaheb and Parimala but there is no evidence to show that Shivkanya had sustained any injury. It is already observed that allegations made by Shivkanya (P.W.1) are vague. The evidence of Rajabhau (P.W.4)

does not show that he had heard noise of the quarrel and he could have reached the spot to witness the actual incident of assault. There is no evidence that map of scene of offence was prepared. Such map is always relevant when prosecution wants to examine witnesses like Rajabhau (P.W.4). In cross-examination of Shivkanya (P.W.1), it is brought on record that it was bazaar day and due to that most of the persons of adjacent fields were not present in their fields. The evidence of Mahaveer (P.W.2) shows that, first beating was given to them and then there was hue and cry. Nature of evidence given by the prosecution witnesses in respect of presence of Rajabhau and Khandu shows that probably they had not arrived to the spot when the incident was going on. There is one more circumstance to support that probability. The evidence of Shivkanya (P.W.1) shows that she was required to contact Babasaheb Bhangе for help and it is their contention that Babasaheb helped them by arranging conveyance. She was required to do everything for collecting such help. If persons like Rajabhau and Khandu were already present there, in ordinary course, they would have given such help.

24. Babasaheb Bhangе (P.W.6) is examined by the prosecution to prove that he had helped prosecution witnesses to

shift Mahaveer and Raosaheb to hospital. He has given evidence that he received phone call from Shivkanya and it was informed to him that Raosaheb and Mahaveer were killed. He has deposed that he ran towards that side and then he noticed that all the accused were running away. The evidence of Babasaheb (P.W.6) shows that he gave evidence on some part of incident and he acted as a panch witness on many panchnamas. He is shown as a panch witness of panchnama of seizure of clothes of P.W.2, clothes of accused No.1, etc.. He appears to be interested witness. In view of the nature of the evidence given by the prosecution witnesses already discussed, it is not probable that Babasaheb (P.W.6) had an opportunity to see that the accused were running away from the spot. The evidence on record shows that there is house of accused Nos. 1 to 5 in the vicinity of the spot of offence. In the ordinary course, they could have returned to their house immediately.

25. Ulphabai Bhange (P.W.7) has given evidence that she had gone to the field of Raosaheb on that day for sowing operation. Her name is mentioned as a witness in F.I.R. by Shivkanya (PW.1). She has given evidence which is similar to the evidence of P.W 1. She has attributed specific role to accused Laxman and Shashikant. She has deposed that lady members like Sumanbai, Rohini and

Ushabai had given beating to prosecution witnesses with kicks and fist blows but there is no such narration of incident by other witnesses. She has not given specific evidence as against accused No.6 though she has taken name of accused No.6 as the person who had come with other accused to the spot of offence. The F.I.R. was not given immediately after the incident and that way there was room for some concoction and there is probability that the names of witnesses, like Ulphabai, Rajabhau and Khandu, were added to show that there were some independent witnesses to the incident. They have admitted that they are relatives of the complainant side.

26. To corroborate the direct evidence, the prosecution has given some circumstantial evidence. Karbhari Bhang (P.W.5) has given evidence to prove the spot panchnama. The spot panchnama at Exh. 88 shows that the spot is situated in Survey No. 7. One Bamboo stick of the length of three feet was found on the spot and it was having bloodstains. There was rope of the length of 150 feet showing that for sowing operation, the rope was brought there. In spot panchnama it is mentioned that some chilly powder was found on the spot and there were remains of vomiting on the spot. There was also some blood. The spot panchnama shows that adjacent to the spot of offence, there is land of accused. The evidence does not

show that damage was caused to the standing crop of Cotton of accused. The earth sample mixed with blood, chilly powder, etc. were taken over under the panchnama.

27. The nature of defence taken by the accused and the circumstances mentioned in the spot panchnama show that some incident did take place on the spot shown in spot panchnama. The spot panchnama does not support the contention of defence that some damage was caused to their standing crop. However, circumstance that accused Sumanbai had sustained injury in the incident needs to be kept in mind while appreciating the evidence given by the prosecution.

28. The post mortem report in respect of dead body of Raosaheb is proved in the evidence of Dr. Raut (P.W.9). His evidence shows that he found following two injuries on the dead body, which were ante-mortem in nature.

" (1) Stitched lacerated wound present on frontal region on right side 2 cm on above right eye brow. 4 stitches were present 3 x 2 cms in size

(2) Stitched lacerated wound present on occipital region on right side, 6 stitches present, 5 X 2 cms in size. On removal of stitches underlying scalp is contused, margins irregular and black. "

29. The evidence of the doctor and the post mortem report at Exh. 107 show that the aforesaid injuries had caused internal injury and there were clots and contusions under scalp at parietal and occipital region. He has deposed that there was diffused sub-archnoid hemorrhage on lobes of brain. He had issued the provisional certificate about cause of death which is at Exh. 106 and then he had given opinion in post-mortem report which is duly proved. The evidence shows that the death took place due to head injury. The evidence is sufficient to infer that there were two separate blows given on the head. His evidence in examination-in-chief itself shows that the blade of axe, sharp weapon, had not caused these injuries. He has deposed that such injuries can be caused by blunt side of axe or by stick.

30. In the evidence of Dr. Chate (P.W.11) the injury certificate in respect of Mahaveer (P.W.2) is proved. The evidence of the doctor and the injury certificate show that Mahaveer had sustained following injuries:

- " (1) CLW over upper lip and below nose, 3 x 2 x 1 cms, irregular, simple in nature, caused by hard and blunt object, age within 6 hours,*
- (2) Fracture of nasal bone, age within 6 hours, caused by hard and blunt object, grievous in nature,*
- (3) Contusion over left forearm , 2 x 3 cms, irregular, age*

within 6 hours, caused by hard and blunt object, simple in nature. "

Evidence of the doctor shows that injury No.2, which had caused fracture of nasal bone, can be caused by blunt side of axe and other injuries can be caused by weapon like stick. This medical evidence is consistent with the evidence of Mahaveer (P.W.2) that in the incident he was assaulted. Nature of the defence taken by the accused does not show that they have any say about these injuries though they have stated that blow of weapon used by Mahaveer had hit Raosaheb. It also needs to be kept in mind that in the incident two male persons from the side of the complainant like Mahaveer and his father were involved. Accused Nos. 1 & 2 are admitting their presence on the spot at the relevant time but neither accused No.1 nor accused No.2 was injured in the incident. Accused No.5 Sumanbai was injured in the incident as per the record.

31. Dr. Asma (P.W.12) has given evidence to prove that Parimala widow of Raosaheb had sustained one injury like C.L.W. over scalp. She has described the injury as under :

" Contused lacerated wound over scalp mid parietal region, 5 X 7 cms caused by hard and blunt object. Simple in nature. Age within 24 hours. "

The injury certificate is proved at Exh. 149 and the doctor has deposed that such injury can be caused by weapon like stick. It was simple injury and it was sustained within 24 hours. Though this old injured lady is not examined, the presence of this lady on the spot is not disputed by the defence and this circumstance supports the case of the prosecution that many members from the side of complainant were assaulted in the incident.

32. The evidence, which can be considered in this case of prosecution and the defence show that three persons of complainant side were injured. Total six injuries were caused to them. On the other hand, Sumanbai sustained fracture injuries to her both hands. The injuries, which were sustained by Sumanbai, are not explained by the prosecution. Due to this circumstance, an inference in the matter can be drawn against the prosecution that Sumanbai was assaulted by some persons from the side of the complainant. Though the witnesses of complainant side got acquittal in the case, the fact remains that Sumanbai had sustained injuries and it was necessary for the prosecution to give some explanation in this case. Due to absence of such explanation at-least some probability is created in favour of the accused.

33. The possibility that quarrel had started first between

Sumanbai and the prosecution witnesses and during the quarrel she had sustained injuries and after that the male persons, sons of Sumanbai, had rushed to the spot, cannot be ruled out. This possibility needs to be kept in mind as it was necessary for the prosecution to establish that unlawful assembly was formed by the accused persons. The C.A. report shows that nothing is mentioned about the sample which was allegedly containing chilly powder. The medical evidence also does not show that either Mahaveer or other lady witnesses were suffering in their eyes due to the chilly powder. Vague evidence is given against lady members who include Sumanbai. If Sumanbai had sustained injuries of aforesaid nature, it was not possible for her to fetch chilly powder from the residential place. Attempt is made by the prosecution to show that chilly powder was fetched from the residential place by the accused and chilly powder is shown to be seized from the residential place. Thus, there is no convincing evidence with the prosecution to prove that all the accused had come together and they had formed an unlawful assembly. Probability is more that only Sumanbai had reached the spot first and afterwards accused Nos. 1 & 2 had rushed to the spot. Due to this probability this Court holds that it is not possible to infer that all the six accused had formed unlawful assembly and the object of the unlawful assembly was to cause death of Raosaheb. It

is already observed that there is no convincing evidence against accused No.6 about his presence on the spot at the relevant time.

34. The aforesaid evidence and discussion shows that the part played by only accused Nos. 1 & 2 in the incident is proved by the prosecution. There is specific evidence by injured witnesses against them that they had assaulted Raosaheb and two blows were given by accused Nos.1 & 2 on the head of Raosaheb. Though the Trial Court has not given conviction to the accused for the offence punishable U/s. 326 of I.P.C. but the fact remains that there is evidence to prove that Mahaveer was injured in the incident and he had sustained injuries of the nature mentioned above. The evidence is sufficient to prove that Mahaveer and his father were over powered during the incident. As many as six injuries were caused to the prosecution witnesses and deceased and that shows that accused Nos. 1 & 2 had common intention to commit the offence. The blows were given on the head of Raosaheb who was aged about 65 years as per post-mortem report and so inference is possible that there was intention of murder or there was intention to cause the injury on head. Though the medical evidence is not specific that such injuries are sufficient in the ordinary course of nature to cause the death, the description of the injuries both external and internal

sides shows that those are sufficient to cause death. Raosaheb died due to those injuries on the same day, within few hours. As in Part I of Section 300 of I.P.C. it is provided that if there was intention of murder, conviction can be given for the offence of murder, this Court holds that accused Nos. 1 & 2 can be held responsible for the offence of murder of Raosaheb.

35. The aforesaid evidence is sufficient to infer that accused Nos. 1 & 2 had common intention, as mentioned in Section 34 of I.P.C. Though there was no such charge for offence punishable U/S. 302 read with Section 34 of I.P.C., this Court holds that no prejudice is caused due to absence of such charge and accused Nos.1 & 2 can be safely convicted for the offence punishable U/S. 302 read with Section 34 of I.P.C. For that, this Court is relying on the ratio of following four cases:

- (I) ***Karnali Singh and another Vs. State of Punjab***
(A.I.R. 1954 S.C. 204)
- (II) ***Harwant Singh and others Vs. State of Haryana,***
[1969 (3) Supreme Court Cases 717]
- (III) ***Bhoor Singh and another Vs. State of Punjab,***
(A.I.R. 1974 Supreme Court 1256)
- (IV) ***State OF Orissa Vs. Arjun Das Agrawal and another***
(AIR 1999 Supreme Court 3229)

36. In view of the aforesaid discussion, this Court holds that

the appeal of appellant No.1 Laxman and appellant No.2 Shashikant deserves to be dismissed by holding that they can be convicted for the offence punishable U/S. 302 read with Section 34 of I.P.C. For the reasons already given this Court holds that the remaining accused are entitled to the benefit of doubt and the conviction given against them needs to be quashed and set aside. In the result, the following order.

ORDER

1. Appeal of appellant No. 1 Laxman S/o Subhash Bhange and appellant No.2 Sayas @ Shashikant S/o Subhash Bhange (Criminal Appeal No. 172/2015) stands dismissed.
2. Appeal of appellant No.3 Rohini W/o Laxman Bhange, appellant No.4 Usha W/o Sayas Bhange and appellant No.5 Sumanbai W/o Subhash Bhange (Criminal Appeal No. 172/2015) from the First Appeal stands allowed. The judgment and order of conviction of the Trial Court given against them is quashed and set aside. They stand acquitted of the offences for which they were charged and tried. The bail bonds executed by them are continued for the period of six months under Section 437-A of the Code of Criminal Procedure.

3. Criminal Appeal No. 3/2015 is allowed. The judgment and order of the Trial Court delivered against this appellant Khandu Jivraj Bhangé is hereby quashed and set aside. He stands acquitted of the offences for which he was charged and tried.

4. The appellant in Criminal Appeal No. 3/2015 is to be set at liberty forthwith. However, before doing so, bail bonds in the sum of Rs. 15,000/- (Rs. Fifteen thousand only), each, shall be obtained from him, as provided under Section 437-A of the Code of Criminal Procedure.

5. The fine amount, if any, deposited by the appellant in Criminal Appeal No. 3/2015 and appellants No. 3 to 5 in Criminal Appeal No. 172/2015 shall be refunded to them.

6. Criminal Application No. 1307/2020 stands disposed of.

Sd/-
(MANGESH S. PATIL)
JUDGE

Sd/-
(T.V. NALAWADE)
JUDGE