

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

CRIMINAL APPEAL NO. 707 OF 2015

1. Dattarao S/o Manchakrao Ambhore,
Age: 38 years, Occupation: Agriculturist,
R/o Sukli, Taluka Basmath, Dist. Hingoli.
2. Ghanashyam Sundarrao Ambhore,
Age: 30 years, Occu. : Agriculturist,
R/o Sukli, Taluka Basmath, Dist. Hingoli.
3. Sudarshan Sundarrao Ambhore,
Age: 26 years, Occu. : Agriculturist,
R/o Sukli, Taluka Basmath, Dist. Hingoli. .. **Appellants**

Versus

1. The State of Maharashtra
Through Police Station Officer,
Kurunda Police Station,
Taluka Basmath, District Hingoli.
2. Bhimrao Babanrao Ambhore,
Age: 68 years, Occu: Agriculturist,
R/o Chikhli, Taluka Basmath,
District Hingoli. .. **Respondents**

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Mr. P.S. Paranjape, Advocate for the appellants.

Mr. S.B. Narwade, APP for the respondent-state.

Mr. S.S. Biradar, Advocate for the respondent no.2.

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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

**DATE OF RESERVING THE JUDGMENT : 02.03.2020
DATE OF PRONOUNCING THE JUDGMENT : 29.05.2020**

JUDGMENT :- (Per: *M.G. Sewlikar, J.*)

This appeal is preferred by the original accused nos.1 to 3 against the judgment and order passed by the learned Additional Sessions Judge by his judgment and order dated 03.08.2015 whereby accused nos.1 to 3 have been convicted of the offence punishable under Section 302, 323, 504, 506 read with Section 34 of the I.P.C. whereby accused nos.1 to 3 have been sentenced to imprisonment for life for the offence punishable under Section 302 read with Section 34 of the I.P.C. and fine of Rs.5,000/- each in default to suffer rigorous imprisonment for one year. Further, they have been convicted for the offence punishable under Section 323 read with Section 34 of the I.P.C. and thereby sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/- each in default to suffer R.I. for one month. Further, they have been convicted for the offence punishable under Section 504 read with Section 34 of the I.P.C. and thereby sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.3,000/- each in default to suffer R.I. for three months. Further, they have been convicted for the offence punishable under Section 506 read with Section 34 of the I.P.C. and thereby sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.3,000/- each in default to suffer R.I. for three months. Accused nos.1 to 3

were directed to pay Rs.50,000/- by way of compensation to PW1-informant. Accused no.4 dead-abated.

2. Facts giving rise to this appeal can be briefly stated as under:-

3. PW-1, the informant lodged the FIR alleging that the deceased Abasaheb was his son. About four years, ago, PW1 had purchased land to the extent of one acre from Bandu S/o Uttamrao Ambhore. He had taken the crop of Soyabean in the said field. Since incorrect boundaries were mentioned in the sale-deed, the said land was mutated in the name of accused no.1-Dattarao. Accused no.1 was laying claim over the land. PW1, the informant had filed a civil suit in Civil Court, Basmath which was decreed. Accused no.1 always used to threaten PW1 that accused no.1 would kill his family.

4. On 10.10.2011, PW1 and his son, the deceased Abasaheb harvested the crop of Soyabean in Gut No.295 and started returning to the village at 7.00 pm in a bullock cart. When accused nos.1 to 3 reached in front of the house of Archana Bhosale, accused nos.1 and 3 got into the bullock cart and accused no.1 delivered a blow of axe on the head of Abasaheb, Accused no.3-Sudharshan delivered a blow of stick to Abasaheb. Accused

nos.2 and 4 pulled him down and beat him with stone on his hand, nose, chest and waist. All of them were saying as to why PW1 harvested the crop.

5. It is further alleged in the F.I.R. that Manohar Ambhore, Pandit Ambhore were present at the scene of the offence. They rescued the informant and the deceased.

6. It is further alleged that since the deceased Abasaheb was bleeding profusely, the informant and Abasaheb were taken in the jeep of Deepak Narwade by Vitthal, his wife Kantabai and Kusum Ambhore and were admitted in Sub-District Hospital, Basmath. Primary aid was given in the hospital at Basmat and since the condition of Abasaheb was critical, he was referred to Nanded. Accordingly, Abasaheb was admitted in Aadhar Hospital, Nanded at 11.00 pm. Abasaheb died during treatment on 11.10.2011 at 10.30 pm. Thereafter, the informant lodged the FIR in Police Station Kurunda on 12.10.2011 in the morning on the basis of which offence punishable under Section 302, 323, 504, 506 read with Section 34 of the I.P.C. came to be registered against the appellants/accused.

7. Investigation was take up. Inquest panchanama (Exhibit-39) was prepared. Statements of the witnesses were recorded. Appellant no.1 gave the memorandum (Exhibit-79) that he had concealed the axe in his house.

Accordingly, memorandum was reduced to writing. As led by accused no.1, axe was seized under seizure panchanama (Exhibit-85). Spot panchanama (Exhibit-84) was prepared. Accused no.3 gave the memorandum that he would produce the stick accordingly, memorandum was reduced to writing and after seizure of stick, seizure panchanama was prepared. Clothes of the deceased were seized vide seizure panchanama (Exhibit-86). Clothes of the informant were seized. Dead body was sent for post mortem. Post mortem report was collected and after disclosure of the offence, charge-sheet was submitted before J.M.F.C. Basmath who committed the same to the Court of Sessions, Parbhani in usual manner.

8. Charge (Exhibit-17) was framed by the learned Additional Sessions Judge, Basmath, it was read over and explained to the accused. They pleaded not guilty to it and claimed to be tried. Their defence is of total denial and false implication.

9. Prosecution examined as many as 11 witnesses to substantiate the charges against the accused. After considering the entire evidence adduced before him, the learned Additional Sessions Judge convicted all the accused under Section 302, 323, 504, 506 read with Section 34 of the I.P.C. and have been sentenced as stated above. This order is impugned in this appeal.

10. Heard Shri Paranjape the learned counsel for the appellants and Shri S.B. Narwade the learned APP for the State.

11. Shri Paranjape argued that there is delay of one day in lodging the FIR for which no explanation is forthcoming. He argued that the informant was not seriously injured. Evidence of Medical Officer shows that he had tenderness on chest. He could have lodged the report. But he did not do so. This delay has gone unexplained which is fatal to the prosecution's case. He further argued that there are houses of Sahebrao, Madhavrao, Punjaji Patil, Keshavrao Tukaram, Gayabai Jayram, Nago Yogaji and Baban Narwade around the spot of the incident. None of them has been examined. He further contended that PW1-Bhimrao has admitted in the cross-examination that several relatives met him from the time of the incident till the date of filing of the FIR i.e. 12.10.2011. He submitted that PW1 has stated that he sustained injuries of dislocation of teeth, blunt trauma on waist. However, medical certificate produced by the prosecution does not show any of these injuries. He argued that no blood has been detected on the clothes of accused nos.1 to 4 nor on the axe. He further contended that PW6-Kishanrao Ambhore is the witness on memorandum and seizure panchanama of the axe. PW6 cannot be believed as he is from the family of the informant.

He also argued that PW6-Kishanrao has admitted that during the period from 10.10.2011 to 12.10.2011, police had come to the village two to three times. Then, why PW1-Bhimrao did not lodge the complaint is not explained by the prosecution. He further contended that Hiranman Raoji Magar, Dadarao Hanmantrao Bhosale are residing near the spot of the incident. Prosecution has not examined them. No explanation is forthcoming for the same. PW9-Dr. Ranjan Dase also cannot be believed as he has admitted that he did not bring original papers. He deposed on the basis of xerox copy of the certificate. He further contended that the spot of the incident is not proved. There is variance between the evidence of the PW1 and intimation (Exhibit-98) given by Aadhar Hospital, Nanded. According to the PW1, incident took place on the road in front of the house of Archanabai Bhosale, whereas in the intimation it is stated that the relatives stated that the incident took place in the field. He submitted that this information was supplied by the informant himself. Therefore, the informant deliberately delayed the lodging of the FIR. Learned counsel Shri Paranjape further argued that the relation between the PW1-informant and the accused are strained on account of land dispute and therefore possibility of false implication cannot be ruled out. He therefore prayed for the acquittal of all the accused.

12. Learned A.P.P. Shri Narwade argued that the evidence on record clearly shows that all the accused had assaulted the deceased and they had the motive to do so as the dispute over the land survey no.295 is pending. The civil suit filed by the PW1-informant has been decreed. When the deceased and PW1 were coming back after harvesting the crop of Soyabean, the accused got enraged and attacked the deceased and PW1. He submitted that independent witnesses have been examined by the prosecution and the learned trial Court committed gross error in holding that these witnesses are not worth relying. He further submitted that medical evidence shows that the deceased sustained head injury owing to which the deceased lost his life. He submitted that Medical Officer-PW12 of Aadhar Hospital has stated that such type of injury is possible because of axe and stick. He submitted that medical evidence also supports the evidence of PW1. He submitted that the learned trial Court did not commit any error in recording conviction. He placed reliance on the case of **Makan Jivan V/s. State of Gujarat** reported in **AIR 1971 Supreme Court 1797** and **Majju V/s. State of Madhya Pradesh** reported in **AIR 2001 Supreme Court 2939**.

13. The prosecution has examined as many as twelve witnesses. Defence did not adduce any evidence.

14. It will be worthwhile to examine the medical evidence so as to find out nature of injury which the deceased and the informant had suffered.

15. According to the prosecution, the deceased was immediately taken to Sub-District Hospital, Basmath and from there he was referred to Aadhar Hospital, Nanded. The deceased died in Aadhar Hospital on 12.10.2011.

16. The prosecution has examined PW12-Dr. Satish Swami who had examined the deceased on his admission in Aadhar Hospital on 10.10.2011. He has stated that the deceased was admitted in Aadhar Hospital, Nanded on 10.10.2011 at about 10.00 pm with a history of beating with sharp edged weapon. On examination, he found that the deceased was in coma and was having CLW on right high fronto parietal region, associated skull fracture and brain outing out.

17. He has further stated that CT scan of the deceased was done in which it was found that there was contusion on brain with pressure effect. Accordingly, it was decided to carry out the operation and the surgery was performed on the deceased. He has further stated that such type of injury was possible due to forceful blow of axe and stick.

18. Thus, the medical evidence indicates that the deceased was admitted in the hospital. He was in coma at the time of admission.

19. Post mortem was done by PW2-Dr. Maroti Dake. He has stated following injuries on external examination:

- (i) Stitched incised wound present on head extending from frontal region to front tragus of right ear pinna passing through vertex and right parietal region with concavity forward, 24 stitches present in situ, on opening margins inflamed easily separable, size 38 cms x 1 cm. X cavity deep, blood oozing out.
- (ii) Stitched incised wound present on right thigh lateral aspect mid and lower part, vertical with 14 stitches in situ on opening the suture size of injury was 17 cms. X 3 cms x muscle deep. Margins easily separable.
- (iii) Contused abrasion present on right clavicle mid part region, 2 cms x 1 cms.
- (iv) Contused abrasion present on right thigh frontal aspect, obliquely placed, 30 cms. Above right knee of size 3 x 1 cms.

Age of all the injuries was up to 24 hours and were ante mortem.

On internal examination he found following injuries:

- (i) Under the scalp hematoma present on whole cranium, red. Craniotomy of size 15 cms x 10 cm. Size present on right fronto-parieto temporal region, bone of skull cap of same size absent. Underlying meninges (dura) cut, brain oozing out (bulging out), bone wax and blood clots present, about 30 gm. Extradural hematoma present. Subarachnoid hemorrhage present on all over brain surface.

Brain was pale, oedematous, midline shift towards right present. Contusion necrosis of whole right parietal lobe and superior lateral surface of right temporal lobe present. Intra ventricular hemorrhage present in both lateral ventricles.

(ii) Larynx, trachea and bronchi were in tact, mucosa was congested, sub mucosal hemorrhage present. Scanty blood was present in heart and large vessels.

20. He has further stated in his deposition that the probable cause of death was head injury. Viscera was preserved for chemical analysis report. After showing the chemical analysis report (Exhibit-56) to him, PW2-Dr. Maroti Dake answered that final cause of death is head injury. He has further stated that injury no.1 mentioned in column no.17 of the post mortem report corresponds to internal injury mentioned in column no.19 (1) (2) (3) and they were sufficient in ordinary course of nature to cause death. He has further stated that injury no.1 in column no.17 corresponding to the injury mentioned in column no.19 is possible because of blow of axe article 21. Injury no.2 in column no.17 is possible by blow of an axe. Injury nos.3 and 4 in column no.17 are possible by blow of stick.

21. In the cross-examination he has stated that weapon used for causing this injury was not shown to him and his opinion was not obtained in respect of description of the weapon.

22. It is not in dispute that PW1-Bhimrao had filed a civil suit in Civil Court, Basmat which was decreed. It is also not in dispute that appeal is preferred against this decision which was pending at the time of decision of the case.

23. PW1 is the father of the deceased. It has come in his evidence that the incident took place on 10.10.2011 at about 7.00 pm in front of the house of Archana Bhosale. On that day he harvested crop of Soyabean sown in the disputed land. He and the deceased Abasaheb shifted that crop in bullock cart to another land of his. Thereafter, they started coming back to the village in the evening. The deceased was driving the bullock cart and he was sitting by the side of the deceased. The bullock cart came in front of the house of Archana. Accused nos.1 to 4 came from behind the bullock cart. Accused nos.1 and 3 i.e. Dattarao and Sudarshan got into the bullock cart. Accused no.1 Datta gave a blow of axe on the head of Abasaheb. Accused no.3 gave stick blow to Abasaheb on the head. Because of blow of axe, Abasaheb sustained bleeding injury and he fell down. Accused no.2-Ghanshyam caught hold of his (PW1) hand and pulled him out of the bullock cart. Accused no.4-Manchak (since deceased) picked up a stone and gave a blow on his face, chest and left wrist. He sustained injuries. This incident

was witnessed by Pandit Babarao Ambhore-PW3. Nirmalabai Vinayak Ambhore-PW5 and Manohar Vinayak Ambhore. They rescued the informant and the deceased. The deceased was shifted to Sub-District Hospital, Basmath. He has further stated that after the incident accused nos.1 to 4 ran away on motorcycle. Abasaheb was in serious condition and was lying in the bullock cart. Then his son Vitthal, his wife, sister in law came there and all of them brought the informant and Abasaheb to Sub-District Hospital, Basmath. They were referred to Nanded. They were admitted in Aadhar Hospital, Nanded. On the next day Abasaheb died at about 10.30 pm. Thereafter they went to Kurunda Police Station and lodged the F.I.R. This witness has been cross-examined at length but nothing of substance could be elicited from him so as to discredit his testimony. The head injury as stated by PW1-Bhimrao stands corroborated by the head injury stated by PW-12-Dr. Satish Swami and PW2-Dr. Maroti Dake.

24. There is delay of one day in lodging the complaint. The incident took place on 10.10.2011 and the F.I.R. was lodged on 12.10.2011 in the morning. It is pertinent to note that soon after the incident the deceased Abasaheb fell in to the bullock cart. He was shifted to Sub-District Hospital, Basmath and from there he was shifted to Aadhar Hospital, Nanded. All these facts have been proved by the prosecution. When the deceased was admitted

in Aadhar Hospital he was in coma. At that time saving the life of the deceased-Abasaheb was the utmost priority before the informant PW 1 Bhimrao. PW1-Bhimrao, the informant, was with him all the time. Therefore, there is nothing wrong if the informant gave priority to save the life of his son. No fault can be found in this conduct of this witness. PW1 was more concerned in saving the life of the deceased-Abasaheb. Only after the death of deceased-Abasaheb he thought it fit to lodge the report against the accused-appellants. Thus, conduct of the informant cannot be stated to be unnatural. After all the deceased was his son. Therefore, the delay has been properly explained by the prosecution.

25. Moreover, there is no evidence to show that during this period informant had engaged himself in embellishment or fabricating the evidence against the appellants. He was constantly with the deceased ensuring that the deceased gets proper treatment.

26. The prosecution has produced intimation letter given by Aadhar Hospital at (Exhibit-98) to Police Station, Nanded. This intimation (Exhibit-98) shows that Medical Officer Dr. Ranjan Dase (PW9) who examined the informant has made an endorsement that relative stated that the incident took place in the field in a fight. It was argued by Shri Paranjape that the reference

of relative is to the informant only, because the informant was the person who was accompanying the deceased right from the commencement Of the incident till the death of the deceased.

27. This intimation (Exhibit-98) does bear such an endorsement. Exhibit-94 is intimation given by Aadhar Hospital about the injuries on the person of the informant. It bears an endorsement that the incident took place at village Sukli i.e. the village of the informant. This intimation (Exhibit-94) shows that Vitthal, another son of the informant was with the deceased and the informant. This clearly shows that the deceased and the informant were accompanied by Vitthal who had not seen the incident but had arrived after the incident. Moreover, PW1 has not been cross examined on this point. If PW1 had been examined on this point he would have thrown light as to who had made this endorsement. Therefore, there is no force in the contention of Shri Paranjape that this intimation was given by the informant.

28. Thus, the evidence of this witness clearly shows that accused no.1 had delivered a blow of axe on the head of the deceased.

29. According to the prosecution there are independent eye witnesses corroborating the evidence of PW1. PW3-Pandit Ambhore, PW5-Nirmalabai are the eye witnesses. PW3-Pandit has stated that accused no.1-Dattarao and

accused no.3-Sudarshan were in the bullock cart. Accused no.3-Sudarshan was holding the stick and accused no.1 was holding an axe. Accused no.3 was beating Abasaheb with stick. He has stated that accused no.1 gave a blow of axe on the head of Abasaheb. Accused nos.2. and 4 dragged the informant-Bhimrao from the bullock cart. Accused no.2 caught both hands of PW1 and accused no.4 assaulted Bhimrao by means of stick and chain on his face and nose. The testimony of this witness shows that accused no.1 had delivered a blow of axe on the head of the deceased. It is pertinent to note that the learned trial Court disbelieved this witness solely on the ground that he did not state to the police that the deceased was lying in the bullock cart in a pool of blood. This is not a circumstance which can go against the prosecution. It is such a miniscule circumstance that it cannot be used to doubt the presence of this witness at the spot of the incident. It is true that this witness was a witness in the civil suit filed by the informant against accused no.1-Dattarao. But that cannot be a ground to disbelieve him unless it is shown that this witness is interested in securing the conviction of the accused. Nothing has been brought on record to show that this witness has any axe to grind against accused no.1. Therefore, testimony of this witness is worthy of acceptance . Therefore, the learned trial Court was not right in disbelieving the testimony

of this witness. Nothing has been brought on record to show that this witness was not present at the spot of the incident.

30. Another eye witness is PW5-Nirmalabai Vinayak Ambhore. She has stated that she was sitting in front of her house which was at a distance of 15 feet from the place of occurrence. On hearing the cry of distress, she went there and saw that Abasaheb and Bhimrao were in the bullock cart. Accused nos.1 and 3 got into the bullock cart. Accused no.1 gave a blow of axe on the head of Abasaheb. Accused no.3 assaulted by stick. Therefore, Abasaheb sustained bleeding injury and fell down in the bullock cart. Accused no.2-Ghanshyam pulled Bhimrao from the bullock cart and caught the hands of Bhimrao and accused no.4-Manchak assaulted Bhimrao by means of stick and stone in which he sustained injury on hand, chest and nose.

31. This witness has made an improvement to the extent of delivering a blow of axe on the head of Bhimrao. She did not state in her statement that accused no.1 delivered a blow of axe on the head of the deceased. She has stated in the evidence that accused nos.1 and 3 were delivering blows of stick to the deceased-Abasaheb. Therefore evidence of this witness to the extent of delivering a blow to Abasaheb cannot be believed. However, she has stated about presence of accused nos.2, 3 and 4. Her evidence is consistent with the

evidence of PW1-Bhimrao so far as assault on Bhimrao, the informant, by accused nos.2 and 4 is concerned.

32. So far as recovery of weapon i.e. axe is concerned. PW-6 Kishanrao Ambhore had been examined by the prosecution. He has stated that accused no.1 gave memorandum (Exhibit-79) that he (accused no.1) is ready to produce the weapon. Accordingly, the memorandum was recorded in his presence and in the presence of another Panch Tate. He further stated that as led by accused no 1, they went to the house of accused no.1. accused no 1 asked the jeep to be stopped in front of his house. Accused no.1 went inside the house and he took out an axe from under the wooden cot. There were blood stains on the blade of the axe. Accordingly, police prepared the recovery panchanama of the said axe. He signed the said panchanama (Exhibit-18).

33. The testimony of this witness was attacked on the ground that the Chemical Analysers report does not indicate that the axe had blood stains. On perusal of the recovery panchanama (Exhibit-18), it is seen that the panchanama does not mention that the axe had blood stains. Therefore, when this panchanama does not indicate presence of blood stains on the axe, the question of finding blood stains on the axe in the chemical analysis

examination does not arise. It was also argued that this witness is an interested witness and therefore much importance cannot be attached to it as he is the relative of PW1-informant. This submission does not have any relevance as nothing has been brought on record to show that this witness has any reason to depose against the accused. It is not brought on record to show that he had any particular reason to implicate the accused falsely in a serious offence like murder. Therefore, simply because he is the relative cannot be a ground to discard his testimony altogether. It is settled principle of law that testimony of an interested witness or related witness cannot be discarded solely on this ground but his evidence will have to be scrutinized with caution. Moreover, this witness is not a relative of PW1 informant. He has stated in the cross-examination that he and the informant are brethrens i.e. related by Bhavki. This clearly shows that this witness is not the relative of the informant PW1.

34. It was further argued that this witness cannot be believed as he did not inform the police about the incident. Nothing has been brought on record to show that this witness had any knowledge of the incident. Therefore, on this sole ground the testimony of this witness cannot be thrown overboard. Thus, having regard to the entire evidence produced by the prosecution, it is evident that accused no.1 delivered a blow of axe on the

head of the deceased-Abasaheb, accused no.3 delivered a blow of stick to the deceased. Therefore, the evidence in this respect adduced by the prosecution is cogent.

35. The next question is whether Bhimrao sustained injuries during the incident. PW9-Dr. Ranjan Dase is the witness who examined PW1-Bhimrao. He has stated that on 11.10.2011 PW1-Bhimrao was admitted in Aadhar Hospital with a history of assault on his chest and body. At that time there was no visible injury on his person. He was having tenderness on chest and contusion, it was a simple injury caused by hard and blunt object. It is true that medical certificate shows the tenderness on chest and contusion, it was a simple injury caused by hard and blunt object. It is pertinent to note that PW3 and PW5 have also corroborated the testimony of the informant that accused nos.2 and 4 pulled the informant down and beat him with stones. Therefore, presence of these witnesses has been adequately proved by the prosecution.

36. Now the question is of motive. Accused no.1 had the motive to commit the murder of the deceased. As stated earlier, PW1-Bhimrao had filed civil suit against accused no.1-Dattarao in respect of land survey no. 295. The said suit was decreed. Dattarao-accused no.1 was laying ownership claim

over this land survey no.295. According to the prosecution case PW1 and the deceased had harvested the crop of Soyabean. This was the motive for the accused no.1 to assault the deceased.

37. Now the question is of common intention. Accused no.3 did not deliver a blow of stick on the vital part of the body of the deceased he delivered a blow of stick on thigh. Similarly accused nos.2 and 4 also did not beat the deceased. It was accused no.1 alone who had the intention to kill the deceased. The relation between accused no.1 with accused nos.2 to 4 is not brought on record by the prosecution. Therefore accused nos.2 and 3 did not seem to have any intention to kill the deceased. In this view of the matter, we are inclined to take lenient view against accused nos.2 and 3.

38. The learned APP placed reliance on the case of **Majju** cited (supra) in which it has been held as under:

“5. The counsel for the appellants contended that the evidence adduced by the prosecution was interested and therefore, it cannot be relied upon. It is important to note that the witnesses examined on the side of the prosecution were all injured in the incident. PW-6 Ramchandra sustained a grievous injury, in the sense that he lost one of his teeth. The other witnesses also sustained injuries. That is proved by the various medical certificates issued by the doctor who examined them. Therefore, the presence of these witnesses at the place of occurrence cannot be suspected. All these witnesses

gave evidence to the effect that when they along with deceased Bihari Lal were going from the temple after performing some ceremony, the accused surrounded and attacked them. We do not find any infirmity in the evidence of these witnesses.

6. *The counsel for the appellants contended that the doctor, who conducted the post mortem examination deposed that there were no incised injuries as stated earlier by another doctor who first examined the deceased Bihari Lal. In our opinion, it is not a serious mistake as there are four eye-witnesses in this case who deposed that appellants Majju alias Nasir and Irshad were having Farsi with them and they inflicted cut injuries on Bihari Lal. PW-8 Dr. Vijay Agrawal conducted the post-mortem and described the injuries in a hap-hazard manner without proper description of the wounds as to whether these were incised injuries or lacerated injuries. But the doctor who examined the injured immediately after the occurrence of the incident, described the nature of injuries and that is fully in conformity with the oral evidence given by the witnesses. The Sessions Judge as well as the High Court has rightly relied on the evidence of the doctor who prepared the wound certificate of the deceased.”*

39. In the case at hand also medical evidence does not show that the informant-Bhimrao had injuries. However, witnesses have stated that Bhimrao had the injuries. In the case of **Makan Jivan** cited (supra) it has been held as under:

“5. According to that witness the external injury No.2 could have been caused by a sharp cutting instrument and that injury was sufficient in the ordinary course of nature to cause death. He further opined that the rupture of the lobe of the liver was due to beating. There were no external marks over the liver. He also opined that the external injury No.1 on the deceased could have been caused with a blow by a hard and blunt substance. The evidence of the Doctor (P.W.10) who examined the deceased at the first instance at Rander hospital does not fully accord with the evidence of P.W.11. He noticed only one external injury on Thakore. But we are of opinion that P.W.10 had not carefully examined the injured. Hence we are not inclined to attach much value to his testimony. As between P.W.10 and P.W.11. P.W.11 necessarily had better opportunity of observing the injuries on the deceased.”

40. The Medical Officer in Aadhar Hospital might have missed the injury on the thigh of the deceased as what was of utmost importance was saving the life of the deceased-Abashaeb. The doctors would have focused their attention on giving the treatment rather than observing the injuries on the person of the deceased. Therefore simply because the injury on thigh as noticed by Medical Officer was not noticed by the doctor in Aadhar Hospital does not indicate that accused no.3-Sudharshan did not beat the deceased by means of a stick.

41. In view of this conviction of accused no.1 for the offence punishable under Section 302 is maintained. Accused nos.2 and 3 are convicted for the offence punishable under Section 323 read with Section 34 of the I.P.C.

42. So far as offences punishable under Section 504 is concerned, no evidence has been adduced by the prosecution even then the trial Court held the accused guilty of these offences. Section 504 of the I.P.C. requires that there should be intentional insult and there should be provocation intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence. Expression 'intentional insult' requires that specific abuses have to be mentioned. If these abuses are not mentioned one cannot conclude that it was intended to insult the person. Merely saying that abuses were hurled is not enough to bring the act within the purview of this section. In the case of **Vikram Johar V/s. The State of Uttar Pradesh and Anr.** (Criminal Appeal No.759 of 2019 arising out of SLP (Cri.) No.4820/2017) in para 13 of the judgment it is observed that:

“13. Twice the I.O. have conducted the investigation and submitted a closure report, on which protest petition was filed. On the protest petition, ultimately, the Judicial Magistrate by Order dated 21.12.2012 decided to treat the case as a complaint

case. The complainant as well as its witnesses appeared in the witness box and supported the incident dated 02.10.2011.”

43. In the case at hand nothing has been brought on record to show specific abuses were hurled therefore Section 504 of the I.P.C. cannot be invoked and conviction under this Section has been incorrectly recorded. In view of the above appeal will have to be partly allowed. Hence, following order is passed:

ORDER

- i) Appeal is partly allowed.
- ii) Appeal against accused no.1 for the offence punishable under Section 302 is dismissed. Appeal of accused nos.2 and 3 is allowed. Accused nos.2 and 3 are acquitted of the offence punishable under Section 302 read with Section 34 of the I.P.C.
- iii) Conviction under Section 323 and 506 read with Section 34 against accused nos.1 to 3 is maintained.
- iv) Accused nos.1 to 3 are acquitted for the offence punishable under Section 504 read with Section 34 of the I.P.C.
- v) Amount of fine if paid for the offence punishable under Section 302 and 504 read with Section 34 of the I.P.C. be refunded after appeal period is over.
- vi) Accused no.3 be set at liberty forthwith, if not required in any other case.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]