

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 730 OF 2016

1. Shaikh Javed s/o. Shaikh Lal,
Age 25 years, Occu. Business,

2. Shaikh Asad s/o. Shaikh Lal,
Age 27 years, Occu. Business,

Both R/o. Hussain Colony,
Garkheda Parisar, Aurangabad.

....Appellants.

Versus

The State of Maharashtra,
Through Inspector, Mukundwadi
Police Station, Aurangabad.

....Respondent.

Mr. B.R. Warma, Advocate for appellants.

Mr. R.D. Sanap, APP for respondent/State.

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

DATED : 23/01/2020.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed to challenge the judgment and order of Sessions Case No. 430/2009 which was pending in the Court of learned Additional Sessions Judge, Aurangabad (Special Judge). The Trial Court has convicted both the appellants for the offences punishable under sections 302, 324 r/w. 34 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short) and each of them is sentenced to suffer imprisonment for life and to pay fine amount.

They were charged for the offences punishable under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and also for the offence punishable under section 307 of I.P.C., but they are acquitted of those offences. Along with the present appellants, there were two more accused like accused Nos. 3 and 4 who were tried for aforesaid offences, but they are acquitted of all the offences. The State has not preferred appeal to challenge that decision of acquittal. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

The appellants and informant are residents of Vijaynagar, Garkheda locality of Aurangabad. Deceased Durgesh was a real brother of informant Mangesh (PW 1). Accused persons were living in the vicinity of the residential place of informant and deceased. Those were the days of Ganesh Festival and the club of the informant had kept idol of Ganesh in the pendal for celebrating Ganesh festival. Some dispute was going on between the appellants and other acquitted accused on one side and the boys who had formed the club for such festival. The accused persons belong to Muslim community and the family of the informant belongs to scheduled caste. It is the case of prosecution that the accused persons used to come to the locality of informant and they used to pick up quarrels and they used to give threats.

3) The incident in question took place on 27.8.2009 at about 22.30 hours. At the relevant time, informant, deceased Durgesh and Yogesh, brother of informant on maternal side were chit chatting in front of the residential place of the informant. At that time, all the four accused came there. Accused No. 3 is father of accused Nos. 1, 2 and 4 and his age was more than 48 years at the relevant time. It is the case of prosecution that out of previous quarrel, the accused picked up quarrel with the informant and the two boys who were sitting with him. It is the case of prosecution that during quarrel abuses were given and first informant, Yogesh and deceased were assaulted by slaps by accused. Accused No. 1 Javed assaulted Durgesh by wooden log on the head of Durgesh. Due to that, he sustained bleeding injury to his head. It is the case of prosecution that by using the same wooden log, accused No. 1 Javed then assaulted informant and after that accused No. 2 Shaikh Asad and Shaikh Javed assaulted to Yogesh by wooden handle of spade and wooden log and they caused injuries to him also. Some persons from the vicinity like Anand Dhanedhar rushed to the spot and they separated the quarrel. It is the case of prosecution that the persons who came there for separating quarrel were also assaulted by the accused persons. From the spot, the informant, Yogesh and Durgesh were shifted to hospital. Some primary treatment was given to informant and Yogesh, but Durgesh was admitted in the hospital for

treatment as he had sustained serious injury and he was unconscious. Mangesh approached police on 28.8.2009 and gave report in respect of the incident. The crime came to be registered at C.R. No. 250/2009 in Mukundwadi Police Station, Aurangabad City for offences punishable under sections 324, 323, 504, 506 and 34 of I.P.C. against all the four accused. All the four accused came to be arrested.

4) During treatment Durgesh died in a private hospital on 31.8.2009 and post mortem (P.M.) was conducted on his dead body on 1.9.2009 in the Government Hospital. During the course of investigation, the clothes of the deceased came to be taken over. The injury certificates in respect of the injured witnesses came to be collected. On the basis of statement given by the accused, weapons came to be recovered. Statements of other persons who had rushed to the spot came to be recorded. The blood samples of the accused came to be collected and most of the articles came to be sent to C.A. Office. As Durgesh died, the crime came to be converted to make it for the offence punishable under section 302 of I.P.C. After completion of investigation, chargesheet came to be filed. After committal of the case to Sessions Court (Special Judge), charge was framed for all the aforesaid offences against all the four accused persons. All the accused persons pleaded not guilty. The prosecution examined in all 13 witnesses. All the accused persons took the

defence of total denial. No defence evidence is given.

5) The Trial Court has believed the injured eye witnesses. On the basis of injuries described in the P.M. report and the evidence of the doctor who conducted the P.M. examined on the dead body of deceased, the Trial Court held that serious injuries were caused and the head injury was very serious in view of the number of stitches which were required to be given to injury. Accused Nos. 1 and 2 are convicted for the offence of murder and also for causing injuries to the eye witnesses, but the benefit of doubt is given to other two accused. The death of Durgesh took place due to the head injury and the doctor who conducted P.M. examination on the dead body gave evidence that there were 24 stitches and injury was of the length of 27 c.m. The injury was at fronto parieto temporal region. However, there was only one injury on the dead body and no medical record of the Government hospital where the deceased was first taken was produced. In view of the nature of injury described by the Apex Hospital which is also treatment injury and for the treatment incision was probably taken, this Court had sent the matter back to the Trial Court for further cross examination of doctor to see that proper medical evidence is brought on the record. On this new evidence also both the sides were heard.

6) During arguments, the learned counsel for the appellants

submitted that the evidence given as against accused Shaikh Javed shows that only one blow of wooden log was given on the head and incident was not premeditated and considering the age of the youngsters of both the sides, inference was not possible that there was intention or knowledge of Javed as required for the offence of murder. He submitted that as against Shaikh Asad (accused No. 2), there is no substantive evidence that he had even rushed at Durgesh, so conviction could not have been given for offence of murder to Shaikh Asad. He submitted that there was no common intention of murdering anybody of accused Nos. 1 and 2. The learned APP made submissions in support of the decision given by the Trial Court.

7) The prosecution case rests mainly on direct evidence which is in the form of evidence of injured eye witnesses. There is some circumstantial evidence on record for corroboration. Hereinafter this Court is discussing both the direct and circumstantial evidence.

8) Mangesh (PW 1) is a real brother of deceased Durgesh. He has deposed that accused had created terror in that locality and they used to give abuses and threats to him and his relatives. He has deposed that during Ganesh festival accused had questioned as to how they had consecration of idol of God Ganesha. Though not

directly, but indirectly PW 1 has tried to say that the act of informant and his brother was not liked by accused persons as the informant and his family belong to scheduled caste. It needs to be kept in mind that accused persons belong to Muslim community and in F.I.R. which is Exh. 47 and which is proved in the evidence of Mangesh, there is no mention that celebration of Ganesh festival by deceased was the reason for the incident. In the F.I.R., it was mentioned that on petty grounds the accused used to pick up quarrels and they used to give threats. Thus, there is no corroboration to the evidence given in the Court by Mangesh (PW 1) of the F.I.R. at Exh. 47. This circumstance needs to be kept in mind as only one injury of which there is no proper description from prosecution was found on the head of dead body and the death took place due to internal damage caused by that injury. When there was no strong motive, such circumstances do matter as due to such circumstances, it becomes necessary to ascertain as to whether there was really intention of murder.

9) Mangesh, (PW 1) has given evidence that on 27.8.2009 at about 10.30 p.m. he, deceased and Yogesh were sitting near their residential place where there was consecration of idol of Ganpati. He has given evidence that all the four accused came there and they asked permission for sitting there, probably in pendal as they wanted to play by using cards. He has deposed that when he and the

deceased refused to do so, the accused assaulted them by means of wooden handle and handle of spade. Here again it needs to be mentioned that substantive evidence on motive has no corroboration of F.I.R., Exh. 47. It also does not look probable that if the relations were already strained, the accused had come there to sit in the pendal created by the side of the informant and they wanted to play with cards there. This evidence on motive has no corroboration of F.I.R. at Exh. 47. The evidence that accused assaulted with wooden handle and handle of spade is also not supported by F.I.R. No case of prosecution that all the accused were armed with such weapons. Thus, omnibus evidence that accused assaulted with wooden handle and handle of spade cannot be used for conviction of all.

10) Mangesh (PW 1) has given evidence that accused No. 1 Javed assaulted him and Durgesh by using wooden handle and accused No. 2 Shaikh Asad assaulted to Yogesh by means of handle of spade. He has deposed that due to this assault, he, Yogesh and Durgesh sustained injuries. He has deposed that other accused then gave fist blows and kick blows to them. He has given evidence that accused then gave abuses by taking the name of their caste, which is scheduled caste and they questioned as to how they had done the consecration of idol of Lord Ganesh. He has given evidence that the accused knew that the informant belongs to scheduled caste as they are residents of adjoining Moholla. He has tried to say that one more

person was in the company of accused, but he did not know that accused. He has given evidence that he went to Mukundwadi police and police referred them to GHATI Hospital and Durgesh was shifted from GHATI Hospital to Apex Hospital.

11) In the F.I.R., there is no mention that there was any other assailant in the company of accused Nos. 1 to 4. There is also no mention about the caste of the informant or religion of the accused persons. No mention in F.I.R. that caste of informant was the reason for the quarrel. As two accused are acquitted and one more person who was first time named in the substantive evidence, who was not shown as accused in the case, the evidence given against them need not be considered.

12) The evidence of Mangesh (PW 1) shows that he received treatment in GHATI Hospital and his clothes were taken over by police as there were blood stains on his clothes. He identified wooden log and wooden handle which were seized by police during investigation.

13) In the cross examination, it is suggested to Mangesh (PW 1) that he was not present on the spot of offence at the relevant time. It is also suggested that on that night, he had consumed liquor and he got dashed against the pillar of Ganpati shed and he

sustained injuries. Both the suggestions are denied by him. In any case, it can be said that the defence is not disputing that on that night PW 1 had sustained injuries. One Dr. Mohammad (PW 5) is examined by the prosecution to prove that Mangesh had sustained injuries. The evidence of Dr. Mohammad (PW 5) shows that on 27.8.2009 itself he had examined Mangesh and he had found one contusion over occipital region, one contusion over right hand wrist and one contusion over right ear. He has given evidence that due to injury which was sustained on right ear, Mangesh was referred to ENT, Orthopedic Surgery Department. The injury certificate is duly proved as Exh. 73. No evidence is given by the prosecution to show that more examination of Mangesh revealed that he had sustained grievous injury. Thus, on the basis of evidence of PW Nos. 5, 6 and 7, it can be said that Mangesh has sustained simple injuries. It also shows that injuries were caused by hard and blunt object and the age of the injuries was within 24 hours. He was examined at 11.30 p.m. of 27.8.2009. Thus, the medical evidence is consistent with the direct evidence given by Mangesh.

14) Baburao Rathod (PW 13), who was working as P.S.I. in Mukundwadi Police Station has given evidence that he took over the investigation of the case on 28.8.2009 after registration of the crime and he recorded statements of injured witnesses. He arrested accused persons and arrest panchanamas were prepared. He seized

the clothes of the injured and also of the deceased under panchanamas and he recovered the weapons like wooden log from Javed and spade from Asad. The seizure panchanamas are proved as Exhs. 67 and 69. Pandharinath Pawar (PW 12) was working as Assistant Police Commissioner and his evidence shows that he made some investigation as there were allegations that offences were committed under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The evidence of these two witnesses show that articles except weapons seized during investigation were forwarded to C.A. Office and C.A. reports produced in the case pertain to those articles. The C.A. report at Exh. 109 shows that human blood was found on the shirt of Mangesh (PW 1) and human blood was found on the shirt of accused Asad. C.A. report at Exh. 142 shows that the group of blood of Durgesh was 'O' and blood of the same group was found on the clothes of PW 1 Mangesh. But the blood group of Mangesh was also 'O'.

15) Yogesh (PW 2), other real brother of deceased has given evidence which is similar to the evidence given by PW 1 on material points. He has given the reason for incident that accused persons wanted to play cards in front of idol of Lord Ganesh and as such permission was refused, the assault was made. He has given evidence that accused No. 1 had given blow of wooden handle of spade on the head of deceased Durgesh. His evidence with regard to

involvement of Shaikh Lal is little bit different and he has tried to say that Shaikh Lal assaulted him with fist blows and kicks. At one place he described Shaikh Lal as Irfan and he has given evidence that Irfan assaulted Mangesh and Durgesh. He identified Shaikh Lal in the Court as said Irfan. There is clear possibility that he did not know Irfan or Shaikh Lal prior to the day of incident. Though there is little bit inconsistency between the evidence of PW 1 and PW 2, there is evidence to show that PW 2 also sustained injury in the same incident. His evidence given as against accused No. 1 that accused No. 1 assaulted deceased with wooden handle is as per the case of prosecution. His evidence against Shaikh Asad is also there to show that Asad assaulted him with handle of spade. The defence has brought on the record during cross examination that the accused had come to the spot with the weapons like wooden handles.

16) Anand (PW 3) is uncle of the deceased. He has given evidence that his house is situated in the vicinity of spot of offence and he rushed to the spot after hearing shouts and abuses. He has tried to say that the entire incident took place in his presence. On most of the points his evidence is similar to the evidence of PW 1. He has tried to say that he was also assaulted by kick blows and fist blows by the accused. But there is no record to show that he sustained injuries in the incident. His name is, however, mentioned in the F.I.R. as a witness and there is substantive evidence of PW 1

and PW 2 on his presence on the spot of offence at the relevant time.

17) The accused persons have taken the defence of total denial. Suggestions are given to aforesaid witnesses that they sustained injuries when they were quarreling with each other. The suggestions are denied and there is no support of any circumstances to create such probability. There was no reason for these boys of complainant's side to quarrel with each other. Though the witnesses have given different reasons for the incident, from the evidence it can be said that there was some dispute between the youngsters of the complainant's side and the youngsters of the accused side.

18) The evidence of Dr. Mohammad (PW 5) shows that he examined PW 1 and PW 2 on 27.8.2009. His evidence shows that he found three injuries on the person of PW 1 and one injury on the person of PW 2. The injury certificates, Exhs. 73 and 74 issued in respect of PW 1 and PW 2 are proved in his evidence and these documents are consistent with the oral evidence of doctor. Considering the age of the injuries mentioned in the record and the weapon which can cause such injuries, it can be said that the medical evidence is consistent with the evidence given by PW 1 and PW 2.

19) Dr. Takalkar (PW 11) was working in Apex Hospital and

she has given evidence that Durgesh was admitted in that hospital on 28.8.2009 and he received treatment till the death. The evidence of PW 1 and the contents of F.I.R. show that only after admission of deceased in the Apex Hospital, F.I.R. was given. The evidence of Dr. Takalkar shows that Durgesh was brought to Apex Hospital from GHATI Hospital, Government Hospital, Aurangabad. His M.L.C. must have been prepared in Government Hospital, but that M.L.C. is not produced by the prosecution. The M.L.C. prepared by Apex Hospital is at Exh. 98 and this document is consistent with the evidence of Dr. Takalkar. The documents show that two injuries were noted on the Bed Head Ticket like (i) parital heamotoma with evacuation and (ii) parital 'U' shaped incision for craniectomy. The Bed Head Ticket is at Exh. 99. The evidence of doctor and the record of Apex Hospital show that there was large extra dural heamotoma. Durgesh died in this hospital on 31.8.2009. No reason is given as to why the record which must have been created by Government Hospital with regard to injuries found on the person of Durgesh is not produced. This is a lacuna in the case of prosecution.

20) The evidence of Dr. Girish (PW 9), who conducted the P.M. examination on the dead body shows that one injury which was covered by 24 stitches and which was having length of 27 c.m. was found on left fronto parietal temporal region. Inside of this injury there was bony defects and contusion. There was sub dural

haemorrhage at different places inside of the skull and there were contusions over left parietal lobe and left frontal lobe. This head injury caused the death as per the medical evidence.

21) Due to description of the injury which was noted in P.M. report at Exh. 90, there was some confusion and even the Trial Court had formed opinion that the aforesaid injury was caused by the assailants. Considering the possibility that the injury described of such length was due to the treatment, operation, the matter was sent back to the Trial Court for further cross examination of Dr. Girish (PW 9). In the further cross examination, it is brought on the record that the aforesaid injury, incision was probably created at the time of operation and so it is surgical injury. Admittedly, the skull was also opened during the treatment and that can be seen from the record and from the evidence of Dr. Takalkar. There was fracture of skull which is noted in the P.M. report. Dr. Girish (PW 9) has denied that such fracture can be caused during treatment or during conducting of the P.M. examination. If the medical evidence of Dr. Girish and Dr. Takalkar is considered together, it can be said that one probability is created that there was one head injury and treatment was given in respect of head injury in Apex Hospital like performing operation. Durgesh survived till 31.8.2009. Thus, one injury was inflicted to Durgesh and it caused the death of Durgesh.

22) The aforesaid medical evidence and direct evidence show that wooden log, hard and blunt object was used for inflicting the injury which was found on the head of Durgesh. There is evidence of the eye witnesses that the blow was given on the head by accused No. 1. At the time of consideration of such evidence, the Court is required to keep in mind various circumstances like number of persons involved in the incident. The evidence on the record shows that there were atleast four male persons on the side of the complainant. Even if it is believed that accused Nos. 3 and 4 had also come there, there were at the most four persons on the side of the accused and they had come to the locality of the complainant. There is no evidence to show the distance between the two localities. The injuries which were sustained by the three persons of complainant's side were caused by hard and blunt object. At the cost of repetition, this Court is mentioning that only one injury was found on the head of Durgesh and it was also caused by hard and blunt object.

23) The evidence of two eye witnesses who were involved in the incident is consistent with each other in respect of the role played by accused No. 1 that he assaulted on the head of the deceased. There is the evidence that accused No. 2 used hard and blunt object and he assaulted PW 1 and PW 2. The names of accused Nos. 1 and 2 were mentioned in the F.I.R. and the names of accused

Nos. 3 and 4 were also mentioned in the F.I.R. Though the F.I.R. was given on the next day, the aforesaid evidence and circumstances need to be kept in mind. PW 1 and PW 2 were not admitted in the hospital, but they were referred to Government Hospital by police before recording F.I.R. and they must have rushed to the Apex Hospital from Government Hospital where Durgesh was admitted. PW 1 and 2 are the real brothers of the deceased. There is possibility that initially they did not think that the condition of Durgesh was serious. There was only one injury on the head and as it had caused internal damage, nobody must have anticipated that the injury would cause the death of Durgesh. It is already observed that from GHATI Hospital Durgesh was shifted to Apex Hospital immediately and there is the record to show that from 28th August 2009 Durgesh received treatment in Apex Hospital. Apex Hospital also gave information about this admission to police and there is such record of Apex Hospital. Thus, only after admission of Durgesh in Apex Hospital, PW 1 approached police and he gave report. The crime was registered on the basis of this F.I.R. at 11.30 a.m. of 28.8.2009. Due to the aforesaid circumstances, this Court holds that it cannot be said that there was unreasonable delay caused in giving the F.I.R. Whatever delay is appearing on the record is not sufficient to create suspicion against the evidence of aforesaid witnesses. There is sufficient corroboration to their versions which is already discussed. Ordinarily, the persons of complainant's side do not spare the assailants, who

had caused major injuries and so, there is no reason to disbelieve PW 1 and PW 2 so far as their evidence given as against accused No. 1 is concerned. Thus, the delay in giving of F.I.R. has not gone to root of the prosecution case. There is circumstantial check in respect of the evidence given as against accused No. 2. It is already observed that human blood was found on his person. It is not his case that he had sustained injuries.

24) The question arises, as to what offence is committed by accused Nos. 1 and 2. The evidence on the record shows that it is accused No. 1 who only assaulted deceased by hard and blunt object, though the blow was given on the head. The evidence on the record does not show that accused No. 2 had rushed or done anything as against the deceased. The evidence shows that accused No. 2 had assaulted PW 1 and PW 2 by using hard and blunt object. He caused in all four injuries in the incident. There is no evidence to make out the case that the accused persons had come to the spot with the intention to finish any of aforesaid three boys of complainant's side. Though it is omission in the F.I.R., these witnesses have stated in the Court that accused persons wanted to play cards at the site of the function and over that there was dispute. This kind of case creates a probability that accused had not come there with the weapons like wooden log etc. If there was pendal which is generally a structure of shed, such articles must have been

available there. The evidence of prosecution shows that the two weapons like wooden log and wooden handle are shown to be recovered from these two accused were not sent to C.A. Office. The panchanamas of seizure of these articles do not show that blood was found on these articles. Thus, the case of prosecution that the weapons were brought to the spot or during incident the weapons were fetched does not appear to be probable in nature. Similarly, there is no evidence to make out the case of common intention for use of provision of section 34 of I.P.C. Such common intention can be gathered only on the basis of surrounding circumstances and in view of the aforesaid circumstances, this Court holds that there is clear probability that incident took place all of a sudden and there was no time for forming common intention. In view of these circumstances, this Court holds that each accused can be convicted for his own act and he cannot be convicted for the act of others. As the only injury which was inflicted by accused No. 1 caused the death, this Court holds that provision of section 304, Part II of I.P.C. is attracted for this offence. When there is possibility of sudden quarrel and the evidence on the record does not show that there was premeditation and when the prosecution has not made out case that undue advantage was taken by accused No. 1, in such a case, the Court cannot infer that there was intention of murder or there was intention of inflicting such bodily injury which would be sufficient to cause death in ordinary course of nature. Only one blow of hard and blunt object was given

on the head and that too probably in a sudden quarrel. This Court holds that in view of the facts and circumstances of the present matter, the offence committed by accused No. 1 falls under exception No. 4 of section 300 of I.P.C. Due to the site of the body where the blow was given only knowledge can be inferred as against accused No. 1 that by such act, he was likely to cause the death. There is no evidence to make out intention of accused No. 1 to cause death of anybody including that of Durgesh. So, this Court holds that accused No. 1 can be convicted only for the offence punishable under section 304 Part II of I.P.C. For coming to this conclusion, this Court is relying on the ratio of the the case of **Randhir Singh Vs. State of Punjab reported as AIR 1982 SUPREME COURT 55.**

25) The evidence on the record shows that accused No. 2 assaulted PW 1 and PW 2 by hard and blunt object. They sustained simple injuries in the incident. In view of the nature of evidence, the Trial Court has also convicted accused No. 2 for the offence punishable under section 324 of I.P.C. The imprisonment of three years is given by the Trial Court. As the prosecution has failed to prove the common intention of this accused to assault the deceased, this accused needs to be acquitted of the offence committed as against Durgesh.

26) The other evidence of prosecution like recovery of

weapons on the basis of statements given by accused Nos. 1 and 2 under section 27 of Evidence Act needs no more consideration in view of the aforesaid circumstances. The spot panchanama at Exh. 78 is proved in the evidence of Santosh (PW 7). But spot panchanama shows that there was no sign of incident like presence of blood on the spot. The prosecution evidence does not show that attempt was made to prepare the map of scene of offence. It is already observed that the prosecution has virtually avoided to produce the injury certificate which must have been created in respect of Durgesh by Government Hospital. The benefit of this circumstance atleast to some extent goes to accused. This Court has already discussed the discrepancies in the evidence on motive given by all the witnesses examined by the prosecution. When there is doubt about the intention of the accused to cause death or to inflict such injury which would be sufficient in ordinary course of nature to cause death, motive plays important role. From that angle in the present matter, this Court holds that there was no sufficient motive to infer the intention of murder against accused No. 1. For this reason also, accused No. 1 can be convicted for the offence punishable under section 304 Part II of I.P.C. and not for the offence of murder. In the result, following order.

ORDER

1. Appeal is partly allowed.
2. Judgment and order of the trial Court convicting appellant No.

2 Shaikh Asad s/o. Shaikh Lal for offence punishable under Section 302 r/w Section 34 of the Indian Penal Code and sentencing him with imprisonment for life and fine of Rs.1,000/- is hereby quashed and set aside. Accused stands acquitted of that offence.

3. Fine amount, if any, deposited by him for this offence needs to be returned to him.

4. Accused No. 2 Shaikh Asad S/o. Shaikh Lal however stands convicted for offence punishable under Section 324 r/w Section 34 of the Indian Penal Code. Sentence given by the trial Court for this offence is maintained. As he is behind bars for a period of more than three years, he be released forthwith after obtaining bond under Section 437-A of the Code of Criminal Procedure from him of the amount of Rs.15,000/-.

5. Accused No. 1 Shaikh Javed S/o. Shaikh Lal stands acquitted of offence under Section 302 r/w Section 34 of the Indian Penal Code. He stands convicted for offence punishable under Section 304-II of the Indian Penal Code. He is sentenced to suffer Rigorous Imprisonment for 7 years and to pay fine of Rs.1,000/-. He is entitled to set off in respect of the period for which he is behind bar as under trial prisoner or as convict.

6. Accused No. 1 Shaikh Javed S/o. Shaikh Lal also stands convicted for offence punishable under Section 324 r/w Section 34 of the Indian Penal Code and the sentence given for this offence by the trial Court is confirmed.

7. Writ is to be sent to jail forthwith so that accused No. 2 Shaikh Asad s/o. Shaikh Lal is released forthwith from the jail.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/