

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 740 OF 2007

1. Dhondu Laxman Bagul,
Age : 51 years, Occ :
2. Jagannath Laxman Bagul,
Age : 45 years, Occ :
3. Bhagwan Vishnu Bagul
Age : 32 years, Occ :
All r/o. Thengoda Shivar,
Tal. Satana, Dist. Nashik.

....Appellants
(Orig. Accused Nos.2, 9 and 15)

Versus

1. The State of Maharashtra
(Notice to be served on A.P.P.,
High Court, Appellate Side,
Bombay)

....Respondent

**ALONG WITH
CRIMINAL APPEAL NO. 1170 OF 2007**

1. The State of Maharashtra
(P.I. Satana Police Station)

... Appellant
(Orig. Complainant)

V/s.

1. Dhondu Laxman Bagul,
Age : 51 yrs.
2. Jagannath Laxman Bagul,
Age : 45 yrs.
3. Bhagwan Vishnu Bagul
Age : 32 yrs.
All r/o. Thengoda Shiwar,
Tal. Satana, Dist. Nashik.

.. Respondents
(Orig. Accused Nos.2, 9 and 15)

**ALONG WITH
CRIMINAL REVISION APPLICATION NO. 388 OF 2007**

Shankar Trimbak Bagul

Age : 42 yrs.

R/o. Thengoda Shivar, Landge Bet,
Tal. Satana, Dist. Nashik.

....Appellant

Versus

1. The State of Maharashtra
Through P.I. Satana Police Station.

2. Dhondur Laxman Bagul

3. Jagannath Laxman Bagul

4. Bhagwan Vishnu Bagul

Nos. 2 to 4, All R/o. Satana,
District Nashik.

Nos.2,

....Respondents

(Nos. 2 to 4 -Orig. Accused
9, 15)

**ALONG WITH
CRIMINAL APPEAL NO. 768 OF 2007**

1. Mothabhau Shankar Bagul,
Aged 45 years

2. Ramdas Shankar Bagul,
Aged : 40 years

Both R/o. Thengoda Shivar, Landge Bet,
Taluka Satana, Dist. Nashik.

....Appellants

Versus

The State of Maharashtra

Through P.I. Satana Police Station

....Respondent

Mr.S.M. Sabrad for appellant in APEAL/740/2007, for respondents in
REVN/388/2007 and APEAL/1170/2007.

Ms.Uma Sharma i/b Mr.A.R. Shaikh for applicant in REVN/388/2007.

Ms.Uma Sharma Court appointed Advocate for appellant in
APEAL/768/2007.

Ms.Prajakta P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

Reserved for Judgment on : 8th September 2020.

Judgment Pronounced on : 22nd December 2020.

JUDGMENT (PER N.J. JAMADAR, J.)

1. These appeals and criminal revision arise out of the judgments passed by learned Ad-hoc Additional Sessions Judge, Malegaon, District Nashik on 12th July 2007 in Sessions Cases Nos.36 of 2004 and 35 of 2004, which were a case and cross case in respect of one and the same occurrence. Thus, it is expedient to determine these appeals and revision by a common judgment.

Facts leading to Criminal Appeal Nos. 740 of 2007 and 1170 of 2007 and Revision No. 388 of 2007 :

2. Shankar Bagul (the first informant) resides at Thengoda, Tal. Satana along with his children Rajaram (the deceased), Ramdas and the children of Ramdas. The agricultural land bearing Gat No.690 stands in the name of his son Ramdas. It was purchased by Ramdas prior to 5 to 6 months of the occurrence. It was a fallow land. The informant and his sons cultivated the said land. The accused namely Dhondu (accused No.1), Bhavrao (accused No.3) and Mahadu (accused No.8) are the owners of the adjoining land. The abovenamed accused reside with the rest of the accused and their families in the adjoining field. The accused had claimed a right of way through the land bearing Gat No. 690. As the first informant had declined to provide a

way, the accused had approached Mamlatdar to carve out a way. The accused did not get any relief in the Court of Mamlatdar. Thus, the accused approached the Civil Court, Satana and obtained an injunction. However, the said order of injunction was vacated by the Civil Court on 3rd January 2004.

3. On 5th January 2004, at about 8:00 a.m., the first informant, his son Ramdas (PW 1), Rajaram (the deceased) and Nanaji Barku started to plough the field bearing Gat No.690. Two iron ploughs were employed. The first informant Shankar and Rajaram, the deceased, were on one plough. Ramdas (PW-1) and Nanabhau were on another plough.

4. In between 2.00 to 2.30 p.m., the accused charged upon the first informant and the rest, who were ploughing the field. The accused gave exhortation to ‘assault the informant party, cut their hands and legs, kill them lest the way would not be opened’. The accused pelted stones. The accused were armed with sticks. The accused No.8-Mahadu gave a blow by means of stick on the head of the first informant. The accused No.12 Prakash gave a blow by means of stone on the chest of Nanaji. The accused No.9 Jagannath and accused No.2 Dhondhu assaulted the deceased by means of sticks. Accused No.15 Bhagwan took out iron yoke-pin of the plough and

gave a blow on the head of the deceased. On account of the blows unleashed by the accused, the deceased Rajaram sustained grievous injuries. The informant and the rest of the injured were initially taken to Satana Rural Hospital. As the deceased Rajaram had sustained grievous injuries and was in a critical condition, he was referred to Civil Hospital, Nashik.

5. On 5th January 2014 itself, the first informant lodged report leading to registration of the crime vide C.R. No. 4/2004 for the offences punishable under sections 147, 148, 149, 307, 324, 323, 337, 447, 341 and 506 of the Indian Penal Code, 1860 ('the Penal Code'). During the course of investigation, Mr. Ramesh Shinde (PW-10), the then P.I., Satana Police Station visited the scene of occurrence and drew panchnama (Exh. 67). Stones were seized from the scene of occurrence. The clothes of the injured and the accused were seized. On 9th January 2004, accused No.2-Dhondur made a disclosure statement leading to the recovery of sticks with which the informant and injured were assaulted. On 17th January 2004, accused No. 15 Bhagwan voluntarily made a disclosure statement leading to the recovery of the yoke-pin by means of which the deceased was assaulted. The investigating officer interrogated the witnesses and recorded their statements.

6. In the meanwhile, the deceased succumbed to the injuries on 13th January 2004. Inquest was held. The body was sent to the postmortem examination. Postmortem report was obtained. After completion of the investigation and finding the complicity of the accused, charge-sheet was lodged for the offences punishable under sections 302, 143, 147, 148, 149, 447, 341, 337, 324, 323, 504, 506 of the Penal Code and 135 of the Bombay Police Act, 1951.

7. Charge was framed against the accused for the offences punishable under sections 147, 447, 341, 148: 324, 337 504, 506, 302 read with 149 of the Penal Code and section 135 of the Bombay Police Act, 1951. The accused abjured their guilt and claimed for trial.

8. At the trial, to bring home the guilt to the accused, the prosecution examined 10 witnesses. The material witnesses are : Ramdas Shankar Bagul (PW-1); the injured, Shankar Trimbak Bagul (PW-5); the first informant, Sitaram Kadu Bagul (PW-6); another injured, Tanaji Murlidhar Bacchav (PW-3) and Bapu Waman Gangurde (PW-4), the public witnesses to the discovery allegedly made by accused No.2-Dhondur and accused No.15 Bhagwan, Dr.Prashant Udaram Deore (PW-7), the Medical Officer, who had examined the injured at Rural Hospital, Satana and Dr.Sunil Shamlal Bansi (PW-8);

the Autopsy Surgeon, Civil Hospital, Nashik, and Gopal Nathu Gadhari (PW-9) and Ramesh Vitthal Shinde (PW-10), the investigating officers.

9. After appraisal of the evidence and material on record, the learned Sessions Judge was persuaded to hold that the occurrence was an outcome of a sudden fight between two groups. The learned Sessions Judge was of the view that the prosecution did not succeed in establishing that the accused caused the death of the deceased and injuries to the rest of the injured in prosecution of the common object of the unlawful assembly. Only accused No.2-Dhondu, accused No.9 Jagannath and accused No.15 Bhagwan were liable to be convicted for the overt acts attributed to them. The learned Sessions Judge held that accused Nos, 2, 9 and 15 did not intend to cause the death of the deceased and, thus, the offence fell within the ambit of section 304 Part II of the Penal Code. Resultantly, the accused Nos. 2, 9 and 15 were sentenced to suffer rigorous imprisonment for three years and pay fine of Rs.3,000/- each. For the offence punishable under section 324 read with 34 of the Penal Code, the accused Nos. 2, 9 and 15 were sentenced to suffer rigorous imprisonment for six months and pay fine of Rs 1000/- each, with default stipulation.

10. Being aggrieved by and dissatisfied with the impugned judgment of conviction and sentence, accused Nos.2, 9 and 15 have preferred

appeal, being Criminal Appeal No. 740 of 2007.

11. The State, feeling aggrieved by inadequacy of the sentence for the offence punishable under section 304 Part II of the Penal Code, has preferred appeal for enhancement of sentence, being Criminal Appeal No. 1170 of 2007.

12. The first informant Shankar Bagul has preferred Criminal Revision Application No. 388 of 2007 assailing the legality, propriety and correctness of the impugned judgment convicting accused Nos.2, 9 and 15 for the offence punishable under section 304 Part-II and the consequent sentence. The revision applicant has prayed that the appellants be convicted for the offence punishable under section 302 of the Penal Code and imposed condign punishment.

Facts in Criminal Appeal No. 768 of 2007

13. A counter version was reported by Antu Shahadu Bagul, the first informant on 5th January 2014. It was reported that the informant party (in C.R. No. 5/2004) owned land bearing Gat No.672. They had their residential houses in the land Gat No. 670. The informant party had a right of way through the land bearing Gat No. 690. Few months prior to the occurrence, the accused No.4 Ramdas Bagul and accused No.12 Shankar Trimbak Bagul had purchased the said agricultural land from one Chhotu Gujrathi. The accused obstructed

the right of way of the informant party. The accused had dug pits to obstruct the access. Dhondu and Mahadu, uncle of the first informant had approached the Civil Court and obtained an order of injunction which was in operation till 13th January 2004. Yet, on 5th January 2004, in between 2.30 to 3.00 p.m., the accused Ramdas, Shankar, Mothabhau, Kadu Digamber and others started to plough the way. Bhavrao, Dondu and Mahadu, the uncles of the first informant, questioned the accused as to why they were ploughing the way despite the injunction order. Thereupon, the accused started to assault Bhavrao, Dhondu and Mahadu by means of sticks and stones. The informant, Devidas, Dinesh and Sunil rushed to their rescue. They were also assaulted by the accused by means of sticks and stones. As the informant and injured sustained injuries, they were taken to Rural Hospital, Satana. Antu Bagul (PW-1) lodged report (Exh.33), while he was still under treatment at Rural Hospital, Satana. The injured were subsequently referred to Civil Hospital Nashik.

14. Pursuant to the said report, crime was registered at C.R.No.5/2004 for the offences punishable under sections 147, 148; 307, 323, 324, 337, and 506 read with section 149 of the Penal Code.

15. During the course of investigation, Ramesh Shinde (PW-10), the investigating officer visited the scene of occurrence and drew the

panchnama. The investigating officer interrogated the witnesses and recorded their statements. Accused No.1 Mothabhau made disclosure leading to the recovery of the weapon of offence, i.e. sticks. The injury certificate of the injured were obtained. After completion of the investigation, charge-sheet was lodged against the accused for the offences punishable under sections 143, 147, 148; 149, 323, 324, 337, 506, read with 149 of the Penal Code and section 135 of the Bombay Police Act, 1951.

16. Upon committal, the learned Sessions Judge framed charge against the accused for the offences punishable under sections 143, 147, 148; 307, 323, 324, 504, 506 : 337 read with section 149 of the Penal Code and section 135 of the Bombay Police Act, 1951. The accused pleaded not guilty and claimed for trial.

17. At the trial, the prosecution examined in all 12 witnesses including Antu Sahadu Bagul (PW-1), Devidas Vishnu Bagul (PW-2), Dhondu Laxman Bagul (PW-3), Dinesh Dhondu Bagul (PW-4), Mahadu Laxman Bagul (PW-5), Sunil Jagannath Bagul (PW-6); the injured witnesses, and Hiranman Ratan Bagul (PW-7); the public witness to the discovery allegedly made by accused No.1 Mothabhau, Dr.Prashant Deore (PW-8); the Medical Officer attached to Satana Rural Hospital, Dr. Pravina Amrutrao Pawar (PW-9) and Dr.Ashok Manikrao Kachare

(PW-11), the Medical Officers attached to Civil Hospital, Nashik, Shri Gopal Nathu Gadhari (PW-10), who had recorded the FIR lodged by Antu Sahadu Bagul (PW-1), and Ramesh Vitthal Shinde (PW-12), who furnished the details of investigation.

18. After evaluation of the evidence and material on record, the learned Sessions Judge returned the finding of guilt for the offences punishable under sections 324 read with 34 of the Penal Code against accused No.1 Mothabhau and accused No.4-Ramdas and sentenced them to suffer rigorous imprisonment for six months and pay fine of Rs.1,000/- each with default stipulation. The learned Sessions Judge was of the view that the prosecution did not succeed in establishing the guilt of the rest of the accused for any of the offences for which they faced the trial.

19. Being aggrieved by and dissatisfied with the impugned judgment of conviction and order of sentence, the accused No.1 Mothabhau and accused No.4 Ramdas have preferred this appeal.

20. The appellant No.1-Mothabhau died during the pendency of this appeal. Thus, the appeal as against accused No.1 Mothabhau stands abated. Consequently, the legality, propriety and correctness of the impugned judgment as against the appellant No.2 Ramdas (accused No.4) warrants consideration.

21. We have heard Mr.S.M.Sabrad, the learned counsel for appellant in Appeal No.740/2007, for the respondent in Revision No.388/2007 and Appeal No. 1170/2007, Ms.Uma Sharma, the learned counsel for the applicant in Revision No.388/2007 and for the appellant No.2 (Court appointed Advocate) in Appeal No.768/2007 and Ms.Prajakta P. Shinde, the learned APP for the State. With the assistance of the learned counsels for the parties, we have carefully perused the evidence and material on record.

22. Since both the sessions cases arise out of one and the same incident, the prosecution case in the respective cases presents, in essence, two versions of the very same occurrence. A brief resume of the evidence in Sessions Cases Nos. 36/2004 and 35/2004 would therefore be in order.

Sessions Case No. 36/2004

23. The prosecution case was unfolded by Ramdas Bagul (PW-1). He deposed that the land bearing Gat No.690 was fallow. It was purchased by him six months prior to the occurrence. Since the land was fallow, the accused Dhondu (accused No.2) and Mahadu (accused No.8) were using the said land for ingress and egress to their fields. Dispute arose once the informant party started cultivation of the said land. The accused party was not successful in a proceeding before the

Mamlatdar and, thus, they approached Civil Court, Satana for injunctive relief. Initially, injunction was granted by the Civil Court. However, by an order dated 3rd January 2004, the injunction came to be vacated.

24. After apprising the court about the cause of and the circumstances associated with, the dispute, Ramdas (PW-1) wants the Court to believe that on 5th January 2004, they were ploughing the said land. Two ploughs were employed. Ramdas (PW-1) and Nanaji Barku, who cultivated the said land on crop share basis, were on one plough. His father Shankar (PW-5) and deceased Rajaram were on another plough. In between 2.00 to 2.30 p.m. all the accused came thereat. They were armed with sticks (Articles 2 to 6) and stones. They gave exhortations to beat Ramdas and his associates, break their hands and legs and kill them otherwise the way would not be opened.

25. Attributing specific roles, Ramdas (PW-1) affirmed that accused No.9 Jagannath and accused No.2-Dhondu gave stick blows on the head of the deceased Rajaram. He sustained head injuries. Accused No.15 Bhagwan took out yoke-pin (Article 1) of the plough and gave a blow on the head of the deceased Rajaram. Accused No.8 Mahadu assaulted Shankar (PW-4) by means of stick. Accused No.12 Prakash pelted a stone on the chest of Nanaji Barku. Ramdas (PW-1)

endeavoured to impress upon the Court that all the accused assaulted him as well. They raised alarm. Thereupon, his neighbours and relatives namely Kadu Shankar, Mothabhau, Raghunath, Sitaram, Narayan, Dilip and Yogesh came at the spot and took them to their house and therefrom they were taken to Rural Hospital, Satana. The deceased Rajaram was shifted to Suyash Hospital, Nashik.

26. Shankar Bagul (PW 5), the first informant, lends support to the claim of Ramdas (PW 1). On the core of occurrence, Shankar (PW 5) deposed that accused No.8 Mahadu and accused No.2 Dhondu assaulted the deceased by means of sticks (Articles 2 to 6). Accused No. 14 Bhagwan removed the yoke-pin (Article 1) from the plough and gave a blow thereof on the backside of head of Rajaram. The deceased fell down and did not speak thereafter. Accused No.12 Prakash gave a stone blow on the chest of Nanabhau Barku. The rest of the accused assaulted them with kick and fist blows. Shankar (PW 5) claimed to have lodged report (Exh.48) in between 7.00 to 7.30 p.m. while he was under treatment at Rural Hospital, Satana.

27. Sitaram Bagul (PW 6) testified to the fact that on the day of occurrence, while the above-named four persons were ploughing the land bearing Gat No. 690, he was working in his adjoining field. He heard the exhortations given by the accused to assault and kill those

persons. Thus, he rushed towards Gat No. 690. He noticed that the accused were assaulting Ramdas (PW1) and the deceased Rajaram with sticks. They also assaulted Shankar (PW5) and Nanabhau. Sitaram (PW6) ventured to ascribe specific roles to few of the accused. According to Sitaram (PW6), accused No.8 Mahadu gave stone blow at the chin of Ramdas. Accused No.5 Sanjay gave a stick blow on the left hand of Ramdas (PW1). Accused No.9 Jagannath and accused No.2 Dhondur gave stick blows on the head of the deceased Rajaram. Accused No.15 Bhagwan took out a yoke-pin (Article 1) of the plough of Rajaram and caused grievous hurt to the deceased on head. Accused No.12 Prakash pelted a stone at the chest of Nanabhau Barku. Accused No.8 Mahadu assaulted Shankar on his head (PW 5) by means of stick. Sitaram (PW-6) further affirmed that accused No.10-Antu assaulted him by means of stick on his right hand resulting in fracture of little finger. They were rescued by Kadu, Dilip and Narayan. They were taken to their houses and Mothabhau took them to Rural Hospital, Satana.

28. In the light of the aforesaid ocular account, it may be apposite to note the medical evidence at this juncture. Dr. Prashant Udaram Deore (PW 7), who was attached to Rural Hospital, Satana, initially examined the injured.

29. Dr. Prashant (PW-7) found a blunt trauma over right parietal region on the head of the deceased Rajaram which was a grievous injury. Since the deceased was in a serious condition, and was gasping, Dr. Prashant (PW7) claimed to have immediately referred the deceased to Civil Hospital, Nashik for further treatment. In the opinion of Dr. Prashant (PW7), the injury was caused by a blunt object. It was further opined that the said injury was possible by the yoke-pin (Article 1) and sticks (Article 2 to 6).

30. Dr. Prashant (PW 7) claimed to have noted the following injuries on the person of Nanaji Barku Bagul :

- (1) Linear abrasion over right side of chest.
- (2) Blunt trauma on right scapular region.

In his opinion, both the injuries were simple and caused by a blunt object.

31. On examination of Shankar Bagul (PW 5), the first informant, Dr. Prashant (PW 7) found following injuries :

- (1) Abrasion on parietal region.
- (2) Contusion on left arm, size 10x5 cm.
- (3) Blunt trauma to left hand dorsal aspect.

All the injuries were simple and caused by blunt object.

32. It would be contextually relevant to note the evidence of Dr. Sunil Shamlal Bansi (PW8), the Autopsy Surgeon. On the body of the

deceased Rajaram, Dr. Sunil (PW 8) found following external injuries :

- (1) Abrasion with black scab of size 6 cm x 2 cm on the right temporo-parietal region on head with contusion over the right temporo-parietal region on head with contusion over the right temporo-parietal region of size 7 cm x 5 cm.
- (2) Abrasion on the occipital region with black scab of size 1 cm in diameter with diffuse contusion over the occipital parietal region on the left side of 6 cm in diameter.
- (3) Diffused contusion with bluish black discolouration on the left arm size 8 cm x 4 cm.
- (4) Diffused contusion on the right arm with bluish black discolouration of size 4 cm x 2 cm.
- (5) Abrasion with black scab on the right leg above the ankle joint anteriorly of size 1 cm x 0.5 cm.
- (6) Abrasion with black scab on the left wrist joint dorsum, size 0.25 cm. x 0.5 cm.
- (7) Abrasion with black scab four in number, linear of size 2 cm x 0.25 cm of size each above ankle joint over the lower 1/3rd region of the left leg.
- (8) Tracheostom wound for artificial ventilation over the neck anterior region.
- (9) Multiple venae puncture wound with diffused swelling of the hand and forearm present.

33. On internal examination, Dr. Sunil (PW8) found the following injuries :

(Column No. 19 – (i)

- (1) Haematoma under the scalp corresponding to injury no.1 of column No. 17 over the right temporo-parietal region of size 7 cm. x 5 cm.

(2) Diffused thin haematoma under the scalp corresponding to injury no.2 of column no. 17 of size 7 cm x 7 cm extending over the occipito parietal region on the left side.

(column no. 19 – (ii) : injuries :

(1) Fracture of the right temporal bone present.

(Column No. 19 (iii)) :-

(1) Diffuse haematoma over the right temporo parietal region of the brain present.

(2) Diffuse haematoma over the left occipito parietal region of the brain present.

(3) Sub arachnoid hemorrhage on both side present.

(4) Brain and meninges congested.

34. Dr. Sunil (PW8) opined that all the injuries were antemortem. Probable cause of death was cardio respiratory arrest due to head injury. Those injuries were caused by hard and blunt object. Those injuries were possible by stick (Article 2 to 6) and iron yoke pin (Article 1).

35. Despite a searching cross examination, nothing significant could be brought out to throw a cloud of doubt over the nature of the death, which deceased Rajaram met. In contrast, it was suggested to Dr. Sunil that injury Nos. 1 and 2 were possible due to blow by means of iron yoke pin (Article 1) with force. It may or may not lead

to bleeding. It may cause fracture. On external examination, fracture to right temporal bone was not visible. However, Dr. Sunil (PW8) affirmed that on internal examination, fracture of right temporal bone was noticed. The suggestion that injury Nos. 1 and 2 were possible due to multiple fall on hard and blunt object, in the backdrop of the evidence on record, does not carry the matter any further. Such a gratuitous suggestion, without any foundation for the same in the evidence, is of no consequence. We are, thus, persuaded to hold that the deceased Rajaram met death on account of injuries sustained in the occurrence.

36. The circumstantial evidence is formed by the seizure of the stones (Articles 7 to 11) under seizure panchnama (Exh.39), evidenced by Babulal Bagul (PW2). The nexus between the offence and the alleged weapons of offence, i.e., sticks (Articles 2 to 6) was sought to be established on the strength of the discovery made by accused No.2 Dhondu. Tanaji Bacchav (PW3) the public witness affirmed that the accused No.2 Dhondu had volunteered to show the place where the sticks were kept and produce the same. The accused No.2 Dhondu led the police party to his house at Thengoda and produced the sticks (Articles 2 to 6) which were seized under Seizure Memo (Exh.43). The discovery is fraught with infirmities as Tanaji Bachhav (PW3)

conceded in the cross examination that the sticks were at the police station and he had put signatures on the panchnama at the behest of the police.

37. Another discovery leading to the recovery of the iron yoke-pin (Article 1), was sought to be established by examining Bapu Gangurde (PW4), the public witness. Bapu (PW4) affirmed that the accused No.15 Bhagwan made a disclosure statement to show the place in his farm where the yoke-pin was kept and produce the same. However, Bapu (PW4) also did not support the prosecution earnestly. Thus, the fate of the discovery rests on the evidence of Ramesh Shinde (PW12), the investigating officer who testified to the fact that the accused No.2 Dhondu made discovery leading to the recovery of sticks (Articles 2 to6) and accused No. 15 Bhagwan made discovery leading to the recovery of the yoke-pin (Article 1) from his house at Thengoda.

Sessions Case No. 35 of 2004

38. Antu Shahadu Bagul (PW1) unfurled the cross case. He affirmed that the field bearing Gat No. 672 is owned by him. His house is located in Gat No. 670. There was a customary way through Gat No. 690. The accused obstructed the said way after they purchased Gat No. 690 from Mr. Chhotu Gujarathi. His uncles Dhondu (PW3) and

Mahadu (PW5) had obtained an injunction and it was in operation till 13th January 2004. Antu (PW1) wants the court to believe that on the day of occurrence, the accused started to plough the said way. Thus, his uncles Bhavrao, Dhondur (PW3) and Mahadu (PW5) questioned the accused as to why they were ploughing the field. Thereupon, the accused mounted assault upon Bhavrao, Dhondur (PW3), and Mahadu (PW5). Antu (PW1) claimed to have rushed to their rescue along with Devidas (PW2), Dinesh (PW4), Sunil (PW6). The accused assaulted them as well by means of sticks (Articles 1 to 3) and stones. Antu (PW1) affirmed that he, Devidas (PW2), Dinesh (PW4), Mahadu (PW5) and Sunil (PW6) sustained injuries by stone. After being shifted to Rural Hospital, Satana, he lodged the report (Exh.33).

39. This version of Antu (PW1) was, by and large, reiterated by Devidas (PW2), Dhondur (PW3), Dinesh (PW2), Mahadu (PW5). These witnesses have, however, endeavoured to ascribe specific roles to the accused, including their respective assailant(s). For Devidas (PW2), Accused No.9 Vithoba, Accused No.10 Narayan assaulted him by means of stick. Accused No.12 Shankar assaulted him by means of a stone. He claimed to have sustained injury due to stick blow on his left hand and stone blow on left shoulder.

40. Dhondur (PW3) deposed that when he, Mahadu (PW5), Laxman,

Antu Sahadu (PW3), Devidas (PW2), Dinesh (PW4) and Sunil (PW6) had gone to Gat No. 690 to request the accused not to plough the way, the accused assaulted them by means of stones and sticks. Accused No.11 Kadu Shankar gave blows by means of stone on his thigh and hand.

41. Dinesh (PW4) claimed that he was assaulted by accused No.4 Ramdas and accused No.3 Nana by means of sticks and stones resulting in injuries on his head, left arm and left leg.

42. Mahadu (PW3) endeavoured to impress upon the court that he was assaulted by the deceased Rajaram with stick resulting in fracture of left hand. The accused No.6 Dilip Narayan gave a stone blow on his head.

43. Sunil Bagul (PW6) asserted that accused No.2 Digamber gave a stone blow on his head. Accused No.5-Bapu gave a stick blow on his right elbow and accused No.7 Sitaram and accused No.8 Raghunath beat him with stones.

44. Recourse to the medical evidence would be apposite. Dr. Prashant Deore (PW8), Medical Officer attached to Rural Hospital, Satana claimed to have examined all the injured. Dr. Prashant (PW8) found following injuries on the person of Antu Bagul (PW1) :

(1) Contusion with C.L.W on left temporo parietal region.

(2) Blunt trauma on left side of back.

(3) Abrasion below left knee.

In the opinion of Dr. Prashant (PW8) the injury No.1 was partly grievous and remaining injuries were simple in nature. The probable cause was blunt object.

45. On examination of Devidas Vishnu Bagul (PW2), Dr. Prashant found following injuries :

- (1) C.L.W. on right palm 4 cm x 0.5 cm.
- (2) Blunt trauma on left shoulder with posterior dislocation of left shoulder.
- (3) Contusion on left temporo parietal region.

Dr. Prashant (PW8) opined that injury Nos.1 and 3 were simple. They were caused by blunt object.

46. Dr. Pravina Pawar (PW9) who was attached to Civil Hospital, Nashik, where injured were later on shifted, claimed to have examined Devidas (PW2) and found sutured wound on right palm with swelling on shoulder. On radiological examination, posterior dislocation of left shoulder was noticed. She conceded in the cross examination that the dislocation was temporary.

47. Dr. Prashant (PW8) claimed to have found following injuries on Dhondu (PW3) :

- (1) Imprint abrasion on right arm.
- (2) Blunt trauma on left thigh.

The injuries were simple in nature and the probable cause was blunt object.

48. Dr.Prashant (PW8) noticed following injures on the person of Dinesh (PW4) :

- (1) C.L.W. on head on right temporo parietal region.
- (2) Contusion on left forearm with swelling.
- (3) Abrasion on left knee.
- (4) Contusion on left elbow.

Dr.Prashant (PW8) opined that all the injuries were simple in nature and probable cause was blunt object.

49. On examination of Mahadu (PW5), Dr. Prashant (PW8) noted the following injuries :

- (1) C.L.W. on right parietal region.
- (2) C.L.W. on left maxillary region.
- (3) Imprint abrasion on right side of back.
- (4) Contusion on left forearm with swelling.
- (5) Abrasion on left thigh.

All the injuries were simple in nature and caused by blunt object.

50. On examination of Sunil (PW6), Dr. Prashant (PW8) noted the following injuries :

- (1) C.L.W. left Temporo parietal region.
- (2) Contusion of right elbow.
- (3) Abrasion on left knee joint.

All injuries were simple in nature and caused by blunt object.

51. Dr. Ashok Manikrao Kachare (PW11) who was attached to Civil Hospital, Nashik claimed to have examined Antu (PW1), Dinesh (PW4), Mahadu (PW5) and Sunil (PW6) and noticed the injuries as noted by Dr. Prashant (PW8) at Rural Hospital, Satana. In addition, according to Dr. Ashok Kachare (PW11), on radiological examination of Mahadu (PW5), fracture of left forearm was noticed. In the cross examination, Dr. Ashok Kachare (PW11) conceded that the injuries noted on the above-named persons were not dangerous to life except the fracture of left forearm of Mahadu (PW5).

52. The circumstantial evidence consists of discovery allegedly made by accused No.1 Mothabhau. Hiranman Bagul (PW7), the public witness, informed the court that on 9.1.2004, the accused No.1 Mothabhau made a disclosure statement to produce sticks which were kept at his residence. After memorandum (Exh.55), the accused No.1 Mothabhau led the police party to his farmhouse and produced three sticks (Articles 1 to 3) from the cattle shed which were seized under Seizure Memo (Exh.56).

53. We have noted the evidence in both the cases, in a little detail, as the learned Sessions Judge was of the view that it was a case of free fight between two groups which broke out suddenly. And the members of both the groups sustained injuries. We are mindful of the

proposition that the evidence recorded in one case cannot be taken into account in another case to arrive at a legitimate conclusion. The case and cross cases are to be determined on the basis of the evidence adduced in the respective cases, without considering the evidence led in the cross case, unless the said evidence is also tendered before the court in a legally permissible manner. The enumeration of the evidence in both the cases is thus to appreciate the evidence in the respective cases keeping in view the broad counter version.

Consideration in Criminal Appeal No. 740 of 2007 @ Sessions Case No. 36/2004.

54. There is not much controversy over the fact that the informant party has purchased Gat No. 690 few months prior to the occurrence. Indisputably, it was a fallow land before the informant party acquired the same. The houses and fields of the accused are located in the vicinity of Gat No.690. In this context, the genesis of dispute between the parties assumes significance. The existence of the way through land Gat No. 690 was the bone of contention. The accused have claimed that the said way was in existence and was in use on the day of occurrence, and there was an injunction restraining the informant party from causing obstruction to their access.

55. There is a serious dispute as to whether the said injunction was

in force on the day of occurrence. The manner in which Ramdas (PW1), Shankar (PW5) and Sitaram (PW6) fared in the cross examination provides a legitimate answer. Ramdas (PW1) conceded that RCS No. 139/2003 was instituted by the wife of accused No.8 Mahadu in the month of January 2003 against him and the deceased Rajaram. In the said suit, injunction was granted against them. Though Ramdas (PW1) feigned ignorance as to whether on 3rd January 2004, after the said order of injunction was vacated, the court had continued the injunctive relief till 13th January 2004 to facilitate the plaintiffs (accused party) to seek the relief from the appellate court, yet Ramdas (PW1) conceded that when he meet Kadu Shankar on 5th January 2004, he learnt that the said injunction was continued till 13th January 2004.

56. Shankar (PW5), the first informant, did not in terms admit that the Court had extended the injunction till 13th January 2004. Yet, he went on to admit that had the stay order been operative till 13th January 2004, they would not have ploughed the way. He conceded in no uncertain terms that the accused were using the way while the injunction order was in force. He candidly conceded that the accused were using the way even on the date his evidence was recorded pursuant to the order of the appellate court.

57. The aforesaid admissions lead to a legitimate inference that the informant party was aware that though the injunction was vacated by order dated 3rd January 2004, yet the Civil Court had continued the injunction till 13th January 2004. The witnesses have conceded in no uncertain terms that there was a way through Gat No. 690 and the accused were, in fact, using the said way, albeit pursuant to the order of injunction restraining the informant party from causing obstruction to their access. This leads to the question as to whether on the day of occurrence the informant party was ploughing the way?

58. To begin with, it is imperative to note that in the first information report (Exh.48) itself, Shankar (PW5) had reported that while they were ploughing the land over which there was a way, the incident occurred. However, Ramdas (PW1) Shankar (PW5), Sitaram (PW6) steadfastly refused to concede that they were ploughing the way. In the cross examination of Sitaram (PW6), a contradiction was elicited to the effect that he had stated before the police that the informant party was ploughing the field and “the way”. The contradiction was duly proved in the evidence of Ramesh Shinde (PW10).

59. The evidence is required to be appreciated in the light of the fact that not only the existence of the way, whilst Gat No. 690 was a

fallow land, is indisputable, but the use of the way by the accused party is also incontrovertible. The witnesses have candidly conceded that in pursuance of the order of injunction, the accused party was using the way. Indeed the Civil Court vacated the order of injunction on 3rd January 2004. However, the injunctive relief was further continued till 13th January 2004.

60. In the aforesaid view of the matter, there would have been no cause for the occurrence unless informant party ploughed the way, apparently on the strength of the order dated 3rd January 2004. It is not the case of the informant party that the accused were obstructing their possession and enjoyment over the land Gat No. 690, excluding the way. Thus, an inference becomes irresistible that the informant party, emboldened by the order dated 3rd January 2004 ploughed the way, though the injunction was continued till 13th January 2004. This inference bears upon the questions as to whether the accused had the right of private defence and who were the aggressors?

61. The gravamen of indictment against the accused is that they formed an unlawful assembly and in prosecution of common object of the said assembly caused the death of the deceased Rajaram and injuries to the members of the informant party. If it is found that the accused were exercising their right of private defence, and in the

process, questioned the unlawful act of the informant party of ploughing the way, which the accused were using pursuant to the order of the court, the assembly cannot be designated as an unlawful assembly. It would be an act of confronting the informant party which was taking the law in its hand and aggressively destroying the evidence nay existence of the way. Thus, the presence of he accused to protect their right of way in the field of the informant would not make them the members of an unlawful assembly.

62. A useful reference in this context can be made to the judgment of the Supreme Court in the case of *Kashiram and Ors. Vs. State of M.P.*¹, wherein the question of complicity under section 149 of the Penal Code, where the accused were exercising the right of private defence, was considered. The observations in para No. 30 are instructive. They read as under :

“30 Could any of the accused persons have been held guilty of any offence for causing hurt with the aid of Section 149 IPC? We have already held that the accused persons had right of private defence of person of accused Prabhu available to them. The right of private defence need not necessarily be exercised for the defence of one's own person; it can be exercised for the defence of the person of another one. So long as an assembly of persons is acting in exercise of the right of private defence it cannot be an unlawful assembly. An assembly though lawful to begin with may in the course of events become unlawful. So long

1 (2002)1 SCC 71

as the accused persons were acting in exercise of right of private defence, there object was not unlawful and so there was no unlawful assembly but once they exceeded the right, the assembly ceased to be lawful and became an unlawful assembly. There too only such of the members of the assembly who shared the object of doing anything in excess of the exercise of right of private defence, alone would be liable to be punished for the acts committed in prosecution of the common object or for their individual unlawful acts. The assemblage of accused persons, five or more in number, cannot wholly be held liable to conviction with the aid of Section 149 IPC unless the whole assembly shared the common object of doing anything in excess of the exercise of the right of private defence.....”

(emphasis supplied)

63. At this stage, the aspect of non-explanation of the injuries on the person of the accused warrants consideration. Mr.Sabrad, the learned counsel for the appellants in Appeal No. 740 of 2007 urged with a degree of vehemence that the prosecution witnesses have categorically declined that the members of the accused party sustained injuries despite the fact that the members of the informant party and the accused party were admitted and examined almost simultaneously at Rural Hospital, Satana. Such a blatant denial of the injuries on the person of the accused, according to Mr. Sabrad, leads to no other inference than the one that the prosecution witnesses’ suppressed the genesis of the occurrence as they were the aggressors.

64. To this end, attention of the Court was invited to the testimony

of Dr.Prashant Deore (PW7). Dr. Prashant (PW7) conceded that on the day of occurrence, he had examined in all 12 patients who had allegedly suffered injuries in the said occurrence. The investigating officer Mr. Ramesh Shinde (PW10) admitted in clear and explicit terms that on the day of occurrence at the instance of Antu Bagul (Accused No.10), C.R. No.5/2004 was registered. He went on to admit that six persons amongst the accused had suffered injuries in the said occurrence. We have noted that six of the accused were not only examined at Rural Hospital, Satana but they were sent to Civil Hospital, Nashik and they were examined and treated thereat as well. The evidence on record, thus, indicates that six of the accused persons had sustained injuries. Yet, Ramdas (PW1), Shankar (PW5) and Sitaram (PW6) categorically denied that the accused persons were also assaulted and sustained injuries in the said occurrence.

65. The legal position as regards the consequences which emanate from the non-explanation of the injuries on the person of the accused is well settled. It is not an inviolable rule that the prosecution is obliged to explain each injury on an accused which might have been caused in the course of occurrence, if the injuries are minor and superficial. However, if the injuries are grievous and the prosecution witnesses deny that the accused sustained injuries in the very same

occurrence, then different considerations come into play. The non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. However, the non-explanation of the injuries on the person of the accused cannot be adopted as a ritualistic formula to throw the prosecution case overboard. If the evidence is clear, cogent and credible, the non-explanation of the injuries may not dent the prosecution case.

66. In the case of *Takhaji Hiraji Vs. Thakore Kubersingh Chamansingh & Ors.*², a three Judge bench of the Supreme Court considered the question as to what is the effect of non-explanation of injuries sustained by the accused persons. The Supreme Court expounded the position as under :

“17 The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajendra Singh & Ors. Vs. State of Bihar, (2000) 4 SCC 298, Ram Sunder Yadav & Ors. Vs. State of Bihar, (1998) 7 SCC 365 and Vijayee Singh & Ors. Vs. State of U.P., (1990) 3 SCC 190, all 3-Judges Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-

² (2001) 6 SCC 145),

explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear cogent and credit worthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”

(emphasis supplied)

67. In the case at hand, however, the context cannot be lost sight of. The evidence on record indicates that the informant party was in the process of ploughing the way, the existence and use of which by the accused, were not in contest. Moreover, in this context, the presence of the accused at the scene of occurrence to protect the right of way could not be construed as an act of aggression, by any stretch of imagination. The material on record indicates that as many as six of the accused had sustained injuries. Two of them, Antu (Accused No.10) and Mahadu (Accused No.8) suffered fracture. There were multiple injuries on each of the six injured accused.

68. The denial of the fact that the accused had also sustained

injuries in the very same occurrence, in the aforesaid factual backdrop, cannot be said to be inconsequential. To add to this, the evidence of Ramdas (PW1), Shankar (PW5) and Sitaram (PW6), the brother, father and nephew of the deceased Rajaram cannot be said to be of disinterested nature. An inference, thus, becomes justifiable that the prosecution has suppressed the genesis of the occurrence and had not presented a true version. The witnesses are not stating the truth on a vital aspect and this affects their reliability and credibility. To add to this, there is a counter version which competes in improbability with that of the prosecution.

69. The situation which is borne out by the record unmistakably indicates that the members of the informant party and accused party had a pitched battle. None of them was armed with a deadly weapon. As many as six of the accused were injured and the endeavour of the prosecution witnesses that they did not resist or retaliate does not appeal to human credulity. Since, both the existence and the use of the way through Gat No.690 have been established, the assembly of the accused party in Gat No. 690 to resist the way from being ploughed was cause of the sudden fight. In this setting of the matter, the learned Sessions Judge, in our opinion, was justified in drawing an inference that injuries were caused on the members of

the rival group by the informant and accused party in the sudden fight. No element of constructive criminality was discernible. The learned Sessions Judge thus proceeded to fasten the liability for the individual acts.

70. A profitable reference in this context can be made to the judgment in the case of *Mohd Khalil Chisti Vs. State of Rajasthan & Anr.*³ wherein, in the light of the two versions of the prosecution, in the case and the cross case, which worked out each others retribution, the Supreme Court held that in such cases, accused can be fastened with individual liability taking into consideration specific role or part attributed to each of the accused. The observations of the Supreme Court in paragraph 42 are significant. They read as under :-

“42. The analysis of the materials clearly show that two versions of the incident adduced by the prosecution are discrepant with each other. In such a situation where the prosecution leads two sets of evidence each one which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the Court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Though the accused would have the benefit of such situation and the counsel appearing for the appellants prayed for acquittal of the appellants of all the charges, in view of the principles which we have already discussed, we are of the view that each accused can be fastened with individual liability taking into consideration the specific role or part attributed to each of the

3 (2013) 2 SCC 541

accused. In other words, both sides can be convicted for their individual acts and normally no right of private defence is available to either party and they will be guilty of their respective acts.”
(emphasis supplied)

71. In the backdrop of the aforesaid legal position, the pivotal question that wrenches to the fore is whether the guilt of the appellants, accused Nos.2, 9 and 15, can be sustained, even on the premise that there was a free fight between two groups and the accused were liable for their individual acts.

72. The accused Nos.2, 9 and 15 allegedly caused head injuries to the deceased Rajaram. The accused Nos. 2 and 9 by means of sticks (Article 2 to 6) and accused No. 15 by means of yoke-pin (Article 1). The recourse to the evidence of Ramdas (PW1), Shankar (PW5), Sitaram (PW6), eye witnesses to the said occurrence, becomes necessary. Ramdas (PW1) informed the court that the accused No.2-Dhondhu and accused No.9 Jagannath gave blows by means of stick on the head of the deceased Rajaram. For Shankar (PW5), the stick blows were unleashed by accused No.2-Dhondhu and accused No.8 Mahadu. Sitaram (PW6) again attributed the role of unleashing blows by means of sticks to accused No.2 Dhondhu and accused No.9 Jagannath.

73. In the cross examination Ramdas (PW1), asserted that accused No.2 Dhondhu and accused No.9 Jagannath gave two blows each by

means of sticks on the head of Rajaram, the deceased. Those blows were unleashed with force. Yet, neither there were injuries on the head of the deceased nor bleeding due to the stick blows. Shankar (PW5) also asserted that the accused No.2 Dhondu and accused No.8 Mahadu gave stick blows on the head of Rajaram with force, yet there was no bleeding.

74. Apparently, there is an inconsistency in the evidence of Ramdas (PW1) and Shankar (PW5) as regards the person who assaulted Rajaram by means of stick, apart from accused No.2 Dhondu. For Ramdas (PW1), it was Jagannath. For Shankar (PW5), it was accused No.8 Mahadu. Though Sitaram (PW7) professed to lend support to the claim of Ramdas (PW1) that the second assailant was accused No.9 Jagannath. Yet the testimony of Sitaram (PW7) does not allure confidence.

75. Whether Sitaram (PW7) had the opportunity to witness the entire occurrence? Sitaram (PW7) claimed to have rushed to Gat No. 690 from his field, after hearing the commotion. It was elicited in the cross examination by Sitaram (PW7) that his field is to the south of canal. He claimed to have rushed to the scene of occurrence under 2 to 5 minutes of hearing the commotion. He further claimed to have seen Rajaram, the deceased on his feet. In the cross examination of

Sitaram (PW7), a number of omissions were elicited as regards the role attributed to the accused No.12 Prakash and accused No.8 Mahadu. He went to admit that he had not stated that his little finger was fractured. No injury certificate could be placed on record to substantiate the claim of Sitaram (PW7) of having sustained injuries while rescuing the deceased and injured. It would be pertinent to note that Shankar (PW5) was forthright in asserting that Sitaram (PW7) came at the scene of occurrence after Rajaram fell down. Thus, it would be hazardous to place implicit reliance on the testimony of Sitaram (PW7).

76. The nature of the injuries noted on the person of the deceased Rajaram assumes critical salience. As indicate above, Dr. Prashant (PW7) noted only one blunt trauma on right parietal region, as recorded in the injury certificate (Exh.53). Dr. Sunil Bansi (PW8) had noted :

(1) abrasion with black scab of size 6 cm x 2 cm on the right temperoparietal region on head with contusion over the right tempoero parietal region of size 7 cm x 5 cm.

(2) Abrasion on the occipital region with black scab of size 1 cm in diameter with diffuse contusion over the occipito parietal region on the left side of 6 cm in diameter.

In the light of the aforesaid medical evidence, the claim of

Ramdas (PW1) and Shankar (PW5) that multiple blows were unleashed by the accused No.2 Dhondu, accused No.9 Jagannath and accused No.8 Mahadu with force, does not get substantiated. The witnesses were in unison that accused No.15 Bhagwan also caused injury on the head of the deceased by means of an iron yoke-pin (Article A). Evidently, no bleeding injury was noticed by Dr. Prashant (PW7) when the deceased was first examined at Rural Hospital, Satana. The inconsistencies in the evidence of Ramdas (PW1) and Shankar (PW5) as regards the identity of the assailants who gave stick blows coupled with the medical evidence render it very unsafe to accept the claim that the accused No.2 Dhondu and accused No.9 Jagannath assaulted the deceased by means of sticks.

77. As regards the role attributed to Bhagwan, accused No.15, the prosecution witnesses have deposed consistently that the accused No.15 Bhagwan took the iron yoke-pin from the plough of Rajaram and gave a blow thereof on the head of Rajaram. An effort was made in the cross examination of Ramdas (PW1) and Shankar (PW5) that the iron yoke-pin (Article A) was of the plough, then being used by the informant party, and it was picked up at the scene of occurrence, apparently to show that the accused were unarmed. Furthermore, it

was suggested to Dr. Sunil Bansi (PW8) that the injury nos. 1 and 2 were possible due to blow by the iron yoke-pin (Article 1). There is evidence to indicate that the deceased Rajaram fell down after he sustained the injury inflicted by accused No.15 Bhagwan by means of the yoke-pin. We are thus persuaded to hold that the complicity of accused No.15 Bhagwan for having caused injury on the head of the deceased Rajaram, by means of iron yoke-pin (Article A) can be said to have been established beyond reasonable doubt. The fact that the discovery leading to the recovery of iron yoke-pin (Article 1) at the instance of accused No.15 Bhagwan could not be established to the hilt is of no significance as the fact that the said yoke-pin was picked up from the scene of occurrence by accused No.15 Bhagwan was not assailed.

78. The conviction of the accused Nos. 2, 9 and 15 for the offence punishable under section 324 of the Penal Code does not seem to have been borne out by the evidence. Ramdas (PW1) made an omnibus statement that all the accused assaulted him. In the cross examination, Ramdas (PW1) affirmed that he had sustained a bleeding injury on his chin and blood was oozing therefrom. Ramdas (PW1) did not disclose the identity of the assailants who caused injury to him. Nor, any injury certificate of Ramdas (PW1) was placed on record to

substantiate his claim that in the said occurrence, he had sustained the injury. Thus, neither the factum of hurt to Ramdas (PW1) nor authorship thereof can be said to have been satisfactorily established.

79. Shankar (PW5), the first informant, claimed that the acquitted accused Mahadu (accused No.8) had assaulted him by means of stick, on head. The rest of the accused assaulted him and other injured with kick and fist blows. An omission was elicited in the cross examination of Shankar (PW5) that he had not stated before the police that all the accused had assaulted him and the other injured with kick and fist blows. This part of the evidence thus becomes suspect. There is no other material to indicate that any of the appellants (accused Nos.2, 9 and 15) had caused injury to Shankar (PW5). Thus, the accused Nos.2, 9 and 15 cannot be convicted for the offence punishable under section 324 of the Penal code for having caused hurt by a dangerous weapon to any of the injured.

80. This propels us to the question as to whether the act of the accused No.15-Bhagwan falls within the ambit of any of the four clauses of the definition of murder contained in section 300 of the Penal Code. The learned Sessions Judge was of the view that the accused No.15-Bhagwan had no intention to cause the death of the deceased. The facts that the accused was unarmed; the accused picked

up the iron yoke-pin from the plough, at the spot; the accused gave a single blow on the head of the deceased and the occurrence was the result of a sudden fight between the informant and accused party on account of the dispute over the right of way, weighed with the learned Sessions Judge to record a finding that the accused can only be attributed with the knowledge that the said act was likely to cause death. Thus, the accused came to be convicted under section 304 Part II of the Penal Code.

81. It was urged by the learned APP and the learned counsel for the revision applicant in Revision Application No. 388 of 2007 that the learned Sessions Judge committed a manifest error in recording a finding that the accused did not intend to cause the death of the deceased. The medical evidence indicates that the injury Nos.1 and 2, as noted by Dr. Sunil Bansi (PW8), the Autopsy Surgeon, were sufficient in the ordinary course of nature to cause death. The learned Sessions Judge could not have held that the accused No.15-Bhagwan had no intention to cause death or, in the least, the injury sufficient in the ordinary course of nature to cause death.

82. In our view, the factors taken into account by the learned Sessions Judge are germane for determination of the complicity of the accused. There is no evidence to indicate that accused No.15-Bhagwan

was armed when he arrived at the scene of occurrence. Indisputably, the accused No.15 picked up the iron yoke-pin from the spot itself. The number of injured, on both the sides, leads to a legitimate inference that there was a pitched battle. The prosecution witnesses do not claim that initially there was a discussion followed by altercation, lasting for a few minutes, and, thereafter, the accused assaulted them. In contrast, the material on record suggests that upon being questioned by the accused, as to why the way was being ploughed, despite there being an injunction in operation, the fight ensued. The spontaneity and suddenness of the fight between the parties are thus evident. Viewed through this prism, the act of accused No.15-Bhagwan of giving a single blow by means of the instrument which was a part of the plough does not betray the intention either to cause death or such bodily injury as was sufficient in the ordinary course of nature to cause death. The learned Sessions Judge was thus justified in drawing an inference that accused No.15 had the knowledge that the said act of assaulting the deceased by means of iron yoke-pin on head was likely to cause death. We do not find any infirmity in the view taken by the learned Sessions Judge.

83. The conspectus of the aforesaid consideration is that Appeal No. 740 of 2007 deserves to be partly allowed. The conviction of appellant

Nos.1 and 2 (accused No.2-Dhondú and accused No.9-Jagannath) for the offence punishable under section 304 Part II of the Penal Code, being legally unsustainable, deserves to be quashed and set aside. Likewise, the conviction of the appellants for the offence punishable under section 324 of the Penal Code deserves to be quashed and set aside. Only appellant No.3-Bhagwan is liable to be convicted for the offence punishable under section 304 Part II of the Penal Code.

Criminal Appeal No. 1170 of 2007 and Criminal Revision No. 388 of 2007:

84. The learned Sessions Judge has imposed a sentence of rigorous imprisonment for three years and fine of Rs.3,000/- for the offence punishable under section 304 Part II of the Penal Code. The learned APP would urge that the said sentence is disproportionately lenient. Elaborating the submission, it was urged that a young life was lost in the rage of the accused. A sentence of three years rigorous imprisonment, in the factual backdrop, can be said to err on the side of leniency, urged the learned APP.

85. In opposition to this, Mr. Sabrad, the learned counsel for the appellants laid emphasis on the time which has elapsed since the date of occurrence. After such a long time, when the parties have moved in life, according to Mr. Sabrad, it would be in the interest of justice

to take a lenient view of the matter.

86. The Courts generally make an endeavour to adhere to the principle of proportionality of the punishment to the gravity of the offence. This is called the principle of just desert. Undoubtedly, the offence was found to fall within the ambit of section 304 Part II of the Penal Code. However, the sentence for the offence cannot be so lenient as to lose the element of proportionality. We do not find that there were any mitigating circumstances peculiar to accused No.15 Bhagwan which prevailed upon the learned Sessions Judge to impose a sentence of rigorous imprisonment for three years.

87. In our considered view, the sentence needs to be appropriately enhanced to subserve the dictates of justice. Having regard to the entire gamut of the circumstances, including the gravity of the offence, the age of the accused No.15-Bhagwan, his situation in life, in our view, a sentence of rigorous imprisonment for five years would meet the ends of justice. We are thus persuaded to interfere with the impugned judgment by enhancing the sentence. Resultantly, Appeal No. 1170 of 2007 deserves to be partly allowed. Conversely, Criminal Revision Application No. 388 of 2007 is liable to be dismissed.

Criminal Appeal No. 768 of 2007

88. As indicated above, with the abatement of the appeal preferred

by appellant-accused No.1, Mothabhau, the instant appeal is restricted to the consideration of legality, propriety and correctness of the impugned judgment qua the appellant No.2-Ramdas (Accused No.4). The learned Sessions Judge, in the context of the nature of the evidence especially the interested nature of the testimony was not prepared to place reliance on the deposition of a single witness about the role played by an accused unless it was corroborated by another witness. On the said premise, the accused No.4-Ramdas came to be convicted for having caused hurt to Dinesh (PW4), by means of a dangerous weapon. It was found that the testimony of Dinesh (PW4), the injured, finds support in the evidence of Antu (PW1), the first informant, and the medical evidence.

89. Dinesh (PW4) informed the Court that on the day of occurrence, the accused No.4 Ramdas and accused No.3 Nana assaulted him by means of sticks and stones. He claimed to have sustained injuries on his head, left arm and left leg. In the cross-examination of Dinesh (PW4), an omission was elicited to the effect that the previous statement does not find mention of the fact that he had sustained injuries on “left” hand and leg, specifically. In our view the omission does not detract materially from the claim of Dinesh (PW4).

90. We have extracted above, the nature of injuries noted by the

medical officers. Dr. Prashant (PW7) found C.L.W. on head on right temporo parietal region, contusions on left forearm with swelling and left elbow, and abrasion on left knee. Dr. Ashok Kachare (PW11) affirmed that on examination of Dinesh (PW4) he had found a sutured wound over the vertex, contusion to elbow and left forearm. The medical evidence thus lend necessary corroboration to the claim of Dinesh (PW4).

91. The presence of accused No.4 Ramdas at the scene of occurrence is rather incontrovertible. Antu (PW1) has specifically deposed that the accused No.4 was one of the assailants and Dinesh (PW4) was one of the injured who sustained injuries on account of blow of sticks unleashed by the accused. In a free fight where a number of persons participate from the rival groups, it is not expected that the witnesses would be able to observe the part played by each member of the rival group. The testimony of Dinesh (PW4) to the extent he identified his assailant, with the role played by him, in the light of the medical evidence, appears nearer to the truth. Thus, we do not find any justifiable reason to interfere with the finding recorded by the learned Sessions Judge qua accused No.4 Ramdas. Nor there is any reason to interfere with the order of sentence of imprisonment for six months and fine of Rs. 1,000/-. Consequently,

Criminal Appeal No. 768 of 2007 is liable to be dismissed.

92. The upshot of the aforesaid consideration is that Appeal No.740 of 2007 and Appeal No. 1170 of 2007 deserves to be partly allowed. And Appeal No. 768 of 2007 and Criminal Revision No.388 of 2007 are liable to be dismissed. Hence, the following order :

O R D E R

1 Criminal Appeal No. 740 of 2007 stands partly allowed.

1.1. The impugned judgment of conviction for the offence punishable under section 304 Part II of the Penal Code and the sentence of rigorous imprisonment for three years and fine of Rs.3,000/- qua the appellant No.1 Dhondu Laxman Bagul (accused No.2) and appellant No.2 Jagannath Laxman Bagul (accused No.9) stands quashed and set aside.

1.2 Appellants Nos.1 and 2 stand acquitted of the offence punishable under section 304 Part II of the Penal Code.

1.3 The impugned judgment of conviction for the offence punishable under section 324 of the Penal Code and the order of sentence imposed upon the appellant No.1 Dhondu Laxman Bagul and appellant No.2 Jagannath Laxman Bagul and appellant No.3 Bhagwan Vishnu Bagul (accused No.15) stand quashed and set aside.

1.4 The appellants Nos.1 to 3 are acquitted of the

offence punishable under section 324 of the Penal Code.

1.5 The conviction of appellant No.3-Bhagwan Vishnu Bagul (accused No.15) for the offence punishable under section 304 Part II of the Penal Code stands confirmed.

1.6 The sentence qua appellant No.3 Bhagwan Vishnu Bagul stands enhanced as under :

(i) Appellant No.3 Bhagwan Vishnu Bagul is sentenced to suffer rigorous imprisonment for five years instead of rigorous imprisonment for three years, as imposed by the learned Sessions Judge.

(ii) The sentence of fine stands maintained.

(iii) Appellant No.3 Bhagwan Vishnu Bagul shall surrender before the learned Sessions Judge to undergo the rest of the sentence as enhanced by this order on or before 22nd January 2021.

(iv) Rest of the order stands confirmed.

2 Criminal Appeal No. 1170 of 2007 (for enhancement of sentence) stands allowed to the aforesaid extent.

3 Criminal Revision No. 388 of 2007 stands dismissed.

4 Criminal Appeal No. 768 of 2007 stands dismissed.

The appellant No.2-Ramdas Shankar Bagul (accused no.2) shall surrender before the learned Sessions Judge to undergo the rest of the sentence on or before 22nd January 2021.

[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]