

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

CRIMINAL APPEAL NO.810 OF 1998

- | | | | |
|----|--|---|---------------|
| 1) | Raju Vilas Waghmode |] | |
| | Age 21 years. |] | |
| | |] | |
| 2) | Vilas Vyankat Waghmode |] | |
| | Age - 45 years |] | |
| | Both R/at.49/82, Hanuman Nagar, |] | |
| | Bhavani Peth, Solapur and |] | |
| | Both at present in Yervada Central Prison, |] | |
| | Pune. |] | .. Appellants |

Versus

State of Maharashtra

.. Respondent

.....

Mr.Satyavrat Joshi i/b. Mr.Jaydeep D. Mane, Advocate for the Appellants.

Mr.Y.Y. Dabake, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 01 SEPTEMBER, 2021.

LISTED FOR DIRECTIONS/HEARING : 29 APRIL 2022

DATE OF PRONOUNCEMENT : 22nd NOVEMBER, 2022.

JUDGMENT :

This Appeal is preferred under Section 374 of Cr.P.C.,
challenging judgment and order dated 17th October, 1998 passed by

Sessions Judge, Solapur, in Sessions Case No.72 of 1998. The appellants were convicted for the offence punishable under Section 304 Part II read with Section 34 of Indian Penal Code ("IPC", for short) and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.2,000/- each. Appellant No.1 was also convicted for the offence under Section 324 of IPC, and, sentenced to suffer imprisonment for one year.

2 The brief facts of the prosecution case are as under:

- (i) Accused nos.2 and 3 are parents of accused no.1. They were residents of Hanuman Nagar, Bhawani Peth Solapur. Deceased Raju Shinde was also resident of Hanuman Nagar, Bhawani Peth, Solapur.
- (ii) P.W.2 Janabai is the mother of P.W.1 Anil Shinge is the son of maternal aunt of deceased. P.W.3 Waman Jadhav and P.W.4 Gourishnkar Jaba are resident of Hanuman Nagar. Deceased was worker of political party. Accused no.1 is conducting grocery shop at his house. Deceased was on visiting terms with accused.

- (iii) One year prior to the incident, there was quarrel between deceased and accused no.1. On 31st December, 1997, the deceased returned to his house at about 11:00 p.m. He went out for buying lemon with the children. P.W.2 Janabai went in search of deceased towards the shop of the accused. Minor children of the deceased returned back and stated that their father is being assaulted by the accused. Janabai and Anil Shinge rushed towards the shop of the accused. They noticed that deceased Raju Shinde was being assaulted by accused in front of their shop by sticks. They also saw that accused no.1 went inside his house and returned back with a knife and gave blow by that knife on left thigh of Raju Shinde. On account of assault, he collapsed on the ground. P.W.1 Anil Shinge rushed to intervene. Accused no.1 inflicted injury by knife on right elbow of P.W.1. P.W.3 and P.W.4 also witnessed the assault.
- (iv) P.W.1 left the spot and went to Samrat Police Chowky. P.W.6 head constable Gaigavali was present at the chowki. P.W.7 PSI Mansawale was incharge of police chowki. He had gone out from the police chowki for patrolling. Anil Shinge appeared before head constable Gaigavali in an injured condition and informed that he was assaulted by accused nos.1 to 3. He also intimated that Raju Shinde was assaulted.

- (v) Head constable Gaigavali prepared memo addressed to the Civil Hospital and referred P.W.1 for treatment. Anil Shinge directly went to the civil hospital. P.W.9 medical officer was present at the hospital. He examined injured and notice incise wound on his forearm.
- (vi) Raju Shinde (deceased) was shifted to civil hospital. He was declared dead. Janabai returned to Samart Chowk police chowki to lodge the complaint with police. FIR was recorded. Accused had ran away from the spot. House hold articles in the house of the accused were found damaged. Mob of people from the area had collected near the house of accused. Postmortem was conducted. Accused were arrested. On completing investigation, charge - sheet was filed.
- (vii) The prosecution examined nine witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. written statement was filed by the accused by way of explanation under Section 313 of Cr.P.C. Defence witness was examined by the accused.
- (viii) Although charge was framed against the accused under Section

302, 323 and 324 read with 34 of IPC, accused nos.1 and 2 were convicted for offence under Section 304 (Part-II) read with Section 34 of IPC. Accused no.1 was also convicted for the offence punishable under Section 324 of IPC for causing injury to P.W.1. Accused no.3 was acquitted of all the charges.

3 Learned advocate for the appellants submitted as under:

- (i) There is no evidence to convict the appellants for the offence under Section 304 Part II of IPC.
- (ii) The evidence of witnesses is doubtful. There are contradictions in their version.
- (iii) The conduct of P.W.1 is suspicious although he claimed to be injured eye witnesses to the incident, FIR was not lodged immediately at his instance.
- (iv) The accused had examined defence witness. He supports the defence of the accused.
- (v) The witnesses have improved their version by stating that the

mob had entered into the house of the accused. The said version was in the nature of omissions.

- (vi) The defence of the accused that the incident had occurred by way of right of private defence was plausible. The accused had suffered injuries, which were not explained by prosecution. The fact that there was damage to the articles in the house of the accused supports the right to private defence.
- (vii) Although, it is alleged that mob had collected near the residence of accused, no one from the mob was examined.
- (viii) Although, it is the case of prosecution that all the accused had acted in furtherance of the common intention, accused no.3 was acquitted.
- (ix) At the most, appellant no.1 could be convicted for offence punishable under Section 324 of IPC. Appellant no.2 deserves benefit of doubt or at the most, a conviction under Section 323 of IPC.
- (x) The evidence of witnesses suffers from serious discrepancies.

- (xi) According to P.W.1, the distance between the two houses is 50 to 60 feet. The site inspection report contradicts the evidence of P.W.1.
- (xii) The conduct of P.W.1 would show that his evidence may not be relied upon. His conduct is unnatural. He did not make any attempt to lodge FIR against the accused. According to him, he was taken to jail road police station. Although he claim that he had informed about the death of deceased to the police, he did not lodge FIR nor his statement was recorded by police at the police station.
- (xiii) P.W.2 is the mother of deceased. Her version is afterthought. She had improved her version. Her evidence relating to injuries by accused and damage to property is omission.
- (xiv) P.W.3 and P.W.4 are chance witnesses. They had no reason to be there at the place of incident at the relevant time. He had made a false attempt to explain the injury on the body of the accused and damage their property by stating that mob had entered the house of the accused. P.W.3 and P.W.4 have improved their

versions. None of this witness had stated that the mob had entered the house of the accused and caused damage to their property.

(xv) None of the neighbours of accused were examined by prosecution. The prosecution chose to examine those witnesses who resided at the farthest distance from the shop of the accused.

(xvi) None of the witnesses were able to explain genesis of quarrel between the accused and the decease.

4 Learned advocate for the appellants has relied upon the following decisions:

- (i) ***Moti Singh Vs. State of Maharashtra*¹;**
- (ii) ***Lakshmi Singh and Ors. Vs. State of Bihar*²**
- (iii) ***Vidhyasingh Vs. State of Madhya Pradesh*³.**

5 Learned APP submitted that there is sufficient evidence against the appellants. Trial Court has appreciated the evidence. Accused were charged for the offence under Section 302 of IPC. The appellants were rightly convicted for the offence under Section 304

1 (2002) 9 SCC 494

2 (1976) 4 SCC 394

3 1971(3)SCC 244

(part II) of IPC and appellant no.1 is also convicted for the offence under Section 324 of IPC, for causing injury to P.W.1. Right of private defence is not applicable to the accused. The deceased was not carrying any weapon. Accused no.1 went to his house and brought knife and assaulted the deceased. The injuries were corroborated by medical officer. Right of private defence would not exceed to the extent of killing the deceased. There are eye witnesses to the incident. All the witnesses have corroborated overt act of applicants. No interference is required in the impugned judgment of the trial Court.

6 I have scrutinized the evidence of the witnesses examined by the prosecution and the documentary evidence on record. P.W.1 Anil Shinge is the cousin of the deceased. According to him, deceased was social worker. He was resident of Hanuman Nagar. On 31st December, 1997 at about 10:45 p.m., Raju Shinde (deceased) came to his house along with his children and inquired whether he has tomatoes and lemon. Since he was told that the tomatoes and lemon are not available, the deceased with the children went to shop of accused no.1. His mother followed him. Children of deceased returned back and told him that their father is being assaulted by all the accused Nos.1 to 3. At that time, P.W.1 himself, his father-in-law and

mother rushed towards the shop of accused no.1. He saw that Raju was being assaulted by all the three accused by stick. He rushed to intervene. Accused no.1 throw away stick with him and went inside the house and returned with knife in his hand. He gave blow of knife on the left thigh of Raju Shinde. As a result of blow, Raju Shinde collapsed. Accused no.1 rushed towards P.W.1, and, gave a blow on right hand elbow. He was about to give another blow, it was avoided by him and he ran away from the spot. Accused no.1 was chasing him. He went to Sarmrat police chowki. Accused no.1 retruned back. He reported the incident orally to the police. It was not reduced into writing. Since there was injury on the hand of the said witness, he was taken to general hospital, Solapur. He was admitted in hospital. Wound was bandaged. After some time, he was taken to jail road police station from the hospital. He came to know that Raju Shinde had expired. On 1st January, 1998, police recorded his statement. In the cross-examination he stated that he saw all the accused giving stick blows to deceased. The deceased was caught by accused no.3 and accused nos.1 and 2 were giving stick blows to him. When the accused no.1 gave blow by knife, the deceased was standing, and, thereafter, collapsed. He did not personally go to Samart chowk police chowki after returning form the jail road police station. He denied the suggestion that deceased along with his companion had gone to the house of accused persons to

attack them and they assaulted all the three accused and caused damage to the property in the house of the accused. He also denied that due to attack by Raju Shinde and his companion, there was danger to the property and life of the accused persons.

7 P.W.2 Janabai Shinde is the mother of the deceased. She deposed that the accused was jealous of her son Raju Shinde since he was recognized as social worker by people from locality. On 31st December, 1997, the deceased went out with children to buy lemon. He went towards the house of her sister. She left towards the house of sister. Since deceased was not there and after learning that he had gone to the shop of accused no.1 for purchasing lemon, she followed him. When she reached the spot, she saw that Raju (deceased) was being assaulted by accused in the courtyard of the house. The accused no.3 caught hold of the deceased and accused nos.1 and 2 were giving stick blows. The accused no.1 went inside the house and returned with knife. He gave blow of the knife on left thigh of the deceased. He collapsed. P.W.1 tried to intervene. He was assaulted by accused no.1. He ran away from the spot. Accused gave another blow to deceased. Mob had assembled near the house of the accused and they were assaulted by mob. All of them ran away from the house. Deceased was shifted to hospital. He was declared dead. She went to

Samrat police chowki and reported the incident to police. Complaint was recorded. She admitted the contents of the complaint. It was marked as Exhibit-44. She identified the weapon used by the accused who assaulted the deceased. She identified her clothes seized during investigation. There was quarrel between the deceased and accused no.1 six months prior to the present incident. The deceased was appointed as President of Ganesh Mandal. Accused no.1 had questioned his appointment. In the cross-examination, she stated that she did not state before the police the cause of quarrel between accused no.1 and the deceased. She denied that deceased was habitual offender. She stated that her son was never arrested by police. She could not assign reason why it is not appearing in her statement that after the assault on her son, the mob had entered the house of the accused and they were assaulted by mob. The deceased was shifted to the hospital from the spot. She met P.W.1 on the next day. Police met her on 3rd or 4th January.

8 P.W.3 Waman Dhondiba Jadhav has deposed that accused no.1 conducts shop at Hanuman Nagar. He noticed that accused nos.1 to 3 were assaulting the deceased with bamboo sticks in front of the shop of accused. Two minor children were present at the spot. Deceased was being assaulted by the accused. P.W.1 and others came

to the spot. Accused no.1 entered his house and returned back with knife and gave blow of knife on the thigh of Raju. P.W.1 tried to intervene. He was assaulted by accused no.1 with knife on his right hand. Accused no.1 wanted to give another blow on P.W.1, which was avoided by him and he ran away. The injured was taken to hospital. Some people had gathered at the spot. Members of mob assembled. Injured was taken to hospital. Some of them entered the house of the deceased and caused damage to the property. In the cross-examination, he stated that he did not disclose to the police that some members of the mob entered into the house and started damaging the property. He did not go to the police chowki immediately. On the next day, police came to their lane. His statement was recorded by the police.

9 P.W.4 Gaourishankar Mallikarjun Jaba has deposed that on 31st December, 1997, he saw accused nos.1 to 3 assaulting Raju Shinde. His mother and P.W.1 were present at the spot. He tried to intervene. Accused no.1 went inside his house and returned back with knife and gave blow of knife to the left thigh of Raju Shinde. He fell down. P.W.1 rushed to save Raju Shinde. Accused no.1 gave knife blow on the right elbow of Anil. Accused no.1 wanted to give another blow to Anil, but Anil ran away from the spot. When the incident had

occurred, mob had assembled. They entered the house of the accused. Accused managed to ran away from the spot. In the cross - examination, he stated that he did not intervene in the incident. He did not disclose the incident to police till his statement was recorded. On the next day morning the police visited the spot. The police was present at the spot for whole day. He did not disclose name of the person who carried the deceased to hospital. But their names are not recorded. In his statement, he cannot assign any reason why the police did not record that the mob had entered the house of the accused and started assaulting them. He did not state about the quarrel between the deceased and the accused.

10 P.W.5 Dr.Achut Shriniwas Deshpande is the medical officer. He stated that body of Raju Shinde was referred for postmortem, which was conducted by him. He noticed incised wound on left thigh anterior 2" x 2" x 1"; CLW over left quated region laterally 1/2" x 1/2", CLW over skull extending both parietal bones mid parietal area horizontal 2 x 1/2". According to him, all the injuries were ante-mortem. On internal examination, there was no fracture of skull bone. He noticed subdural haematoma over right parietal areas. On examination of stomach, it was found containing liquid with no smell. Cause of death is head injury with subdural haematoma with stab

injury over left thigh with injury to blood vessels. He prepared Postmortem note and also issued cause of death certificate. Injuries were sufficient to cause death in ordinary course of nature. Injury nos.2 and 3 were possible by stick and injury no.1 is possible by article 6. Injury no.1 is incised wound on left thigh was more serious as major blood vessels were found cut. In the cross - examination, he stated that the patient was brought to OPD. Injury no.3 is not possible by fall. Injury no.2 was a minor injury. Injury no.1 is fatal, as major blood vessels were cut.

11 P.W6 Huchanna B. Gaiygavali was head constable attached to Samrat Nagar police chowki. According to him, on 31st December, 1997, he was at the police chowki. At about 11:00 p.m. Anil Shinge (P.W.1) came to police chowki in injured condition. Blood was oozing from the injuries. He disclosed that he was assaulted by accused nos.1 to 3, and, that they assaulted Raju Shinde. He ran away from the spot and came to police chowki. He was referred to civil hospital along with police constable with Yadi addressed to hospital. He identified the Yadi. It was marked as Exhibit - 51. He informed PSI Mansawale that he had referred Anil Shinge for medical examination and gave information about the incident reported by Anil Shinge. Mother of Raju Shinde and her brother came to police chowki. Her

complaint was recorded. It was forwarded to jail road police station. On the next day, he went to Mangalwar Peth police station. They met one person who told that he would hand over accused nos.2 and 3. The accused nos.2 and 3 were taken in custody. They were brought to police station. In the cross-examination, he stated that on 31st December, 1998, there was no occurrence book at police chowki. He denied the suggestion of false implication of accused.

12 P.W.7 Ganedra Makhuram Mansawale is the PSI attached to Samrat police chowky. He stated that on 31st December, 1997, he was on patrolling duty. He was informed by head constable that P.W.1 had been to the police chowky in an injured condition. There was maramari between two groups. Raju Shinde was being assaulted at Hanuman Nagar and Anil Shinge was assaulted. He was also informed that Anil Shinge was being referred to hospital with Yadi. Raju Shinde died. When he reached the spot, he noticed mob of about 100 to 150 persons gathered in front of the house of the accused. He made inquiry from the mob and came to know that after assault on Raju Shinde accused had entered their house and the mob had rushed behind them to assault them. The accused ran away. He also noticed that mob had caused damage to the articles in the house of the accused. He saw blood at the spot. Tube lights and bulbs in the shop

were burning. Street lights were burning. In the cross - examination he stated that his statement was recorded during investigation. There is no writing to show that Anil Shinge gave intimation to them about assault by accused nos.1 to 3 and that P.W.1 was assaulted.

13 P.W.8 Dilip Shepal was attached to jail road police station. He stated that he was informed that Raju Shinde was assaulted. Mob of 150 persons gathered at the spot. They noticed pool of blood and broken pieces of Bamboo sticks in front of the shop of the accused no.1. He noticed shop as well as house of accused open and lights in the house were burning and articles in the house were found scattered. He came to know that Raju Shinde was taken to hospital. Anil Shinge was assaulted and he was referred to hospital. Mother of deceased has filed a complaint. Additional force was called. Investigation proceeded. Spot panchanama was recorded. Knife was found in the house. It was seized. It was used for stabbing the deceased. Accused were arrested. Statements of witnesses were recorded. In the cross - examination, he stated that it is not true that he falsely deposed that mob committed offence of house trespass entering house of accused no.1.

14 P.W.9 Dr.Omprakash Gurlawar is the medical officer. He deposed that he was attached to General Hospital Solapur as Medical

Officer. Anil Shinge came to the hospital with police Yadi. He recorded history of assault. He did not disclose the name of the assailant. The injured had suffer incised wound over right forearm upper 1/3rd region 8 c.m. x 2 c.m. U shape muscle deep. The injury is caused by weapon like the sharp object. He issued certificate. The injury is possible by weapon article no.6 (knife). Certificate was exhibited in evidence. In the cross-examination, he denied that he is deposing falsely that the injury over P.W.1 is possible by weapon article 6.

15 D.W.1 Gajendra Makkanna Mansawale is the defence witness examined by the accused. According to him, he was attached to Samrat Police Chowky as PSI. He brought the record from the police station. He stated that C.R.No.116 of 91 was registered against deceased and others. He produced the FIR. He also produced NC complaints recorded against the deceased. In the cross-examination, he admitted that in C.R.No.116 of 1991, name of deceased is not appearing as accused. The case against whom charge-sheet was filed were acquitted.

16 Written statements filed by the appellant urged that they were innocent. They are falsely implicated. The injuries on the person of the accused were not explained.

17 The prosecution has relied upon the evidence of P.W.1, P.W.2, P.W.3 and P.W.4. All these persons are eye witnesses to the incident. Their version is consistent about role played by accused. According to defence, the version of witnesses that mob had collected at the spot and accused were assaulted by them is omission and afterthought. Assuming that the said facts are reflected in the statement of eye witnesses, P.W.7 has categorically stated that after the incident he visited the spot and noticed that the mob had gathered and it was also noted that they had entered into the house of the accused. The members of the mob had informed him that the accused were assaulted by mob and they managed to run away from the spot. The right to private defence has not been established by the accused. In any case, assuming that accused were assaulted, the right of private defence cannot exceed to the extent of causing injury to the deceased, which has resulted in his death. The incident had occurred outside shop/house of the accused. There were blood stains at the spot. It is difficult to accept that the accused had exercised right of private defence while they were assaulted in the house or damage was caused to the property from the house.

18 Sections 96 to 106 of IPC deal with right of private defence. There is no cross case by accused. Spot panchanama Exhibit

11 is admitted by defense. The spot is on the road in front of house of accused which is at distance of 20 feet from house of accused. Pool of blood is lying on the road. There are not traces of blood anywhere. Certain articles like cycle, bamboo etc., were seized from the spot, which is on the road. The panchanama of house of accused is Exhibit 12. The said document indicates that, there is no damage to grocery shop and utensils from the house of accused. TV and mirror were broken. Blood stained knife was recovered from the house of accused. Clothes of deceased Raju Shinde were seized by panchanama (Exhibit 17). They were blood stained. The arrest panchanama of accused is Exhibits 14 and 15. These documents show that, there were injuries – abrasions on person of accused no.1 and age of injuries was beyond 48 hours. On the person of accused no.2 there were contusion and abrasion. There were contusion and abrasion on person of accused no.3. All were simple injuries. It is not the case of defense that they were assaulted by any weapon by deceased. Article bamboo is seized in this case and the injuries to the accused noticed at the time of their arrest cannot be caused by bamboo. It is also not the case of defense that they were assaulted by bamboo. According to defense accused was terror. In their written statement, the accused claimed that there was danger to their life and property. If the defense is accepted, the incident could have occurred in house. As per panchanama Exhibit 11,

the place of incident is at the distance of 20 feet away from house of accused and it is on public road. If it is assumed that, deceased had committed tress-pass and caused damage to the property of accused, than the accused could have attacked the deceased in the house and not on the road. The right of private defense continued till apprehension exists. The defense of accused is not probable. In any case, version of eye witnesses falsify the defense of accused. The defense has not urged through cross examination by which weapon/instrument they were assaulted. The accused ran away from spot. They did not approach police. There was no complaint from them.

19 Accused nos.2 and 3 were attributed the role of assaulting the deceased by sticks. Accused no.1 was attributed role of assault with stick initially, and, thereafter by knife. The cause of death referred to by the medical officer in his opinion and in his postmortem note that head injury and injury caused to the thigh. Accused no.1 is the author of injury to the thigh. According to medical officer, it is a serious injury. The medical officer stated that the injuries are sufficient to cause death in ordinary course of nature. Injury no.1 i.e. incised wound on left thigh was more serious as major blood vessels were found cut. Injury no.1 was caused by accused no.1. The knife

used in causing the said injury was recovered from the spot. Accused no.1 went inside the house and brought knife and assaulted the deceased. Although the accused nos.1 and 2 were tried for the offence under Section 302 of IPC, the trial Court has convicted accused no.1 and 2 for offence under Section 304 Part II of IPC. The evidence of the medical officer supports the charge under Section 304 Part-II qua accused no.1. Although statement of some of the witnesses were not recorded on the same day, they were recorded within a reasonable time. P.W.1 had approached police in an injured condition, merely on the ground that on the basis of his statement FIR was not recorded would not absolve the accused from the crime. P.W.1 was examined by P.W.9. Injury was caused to him with the knife used by accused no.1. The medical officer has stated that the injuries suffered by P.W.1 is possible by knife recovered during investigation. The evidence on record indicate that P.W.1 had reported to the police that he had suffered injuries and the accused are assaulting the deceased. Subsequently, it was disclosed that Raju Shinde had expired. P.W.1 was referred for medical examination. Medical Yadi had been proved in evidence. Mother of deceased rushed to the police station after the incident. Her statement was recorded. It was stated as FIR. Thus, there is no falsity in the version of P.W.1 and P.W.2. There are two other eye witnesses viz. P.W.3 and P.W.4. However, the version of the

witnesses qua role attributed to accused no.2 is vague. Prime role is attributed to accused no.1 which has been established beyond doubt. The evidence of P.W.7 is sufficient to explain the damage caused in the house and the injury found on the person of the accused no.1. only on the ground that some injuries were found on person of accused, the case of prosecution cannot be disbelieved.

20 In the facts of the case of ***Moti Singh Vs. State of Maharashtra*** (Supra), it was observed that the appellant did not adopt the right of private defence in the plea recorded under Section 313 of Cr.P.C., the co-accused put forward a case that the prosecution witnesses and the deceased marched towards their house in retaliation of the earlier incident and launched an attack on the inmates including him. It was held that benefit of right of private defense can be given to the accused even in the absence of plea in that regard if evidence shows that accused persons were put under a situation where they could reasonably have an apprehension of danger to the body of even one of them. In the case of ***Lakshmi Singh and Ors. Vs. State of Bihar*** (Supra), it was observed that the prosecution has to explain the injuries on the person of the accused. In the facts of the present case, there is an explanation and the injuries found there on the person of the accused or damage to the

property are not fatal to the prosecution case. In the case of ***Vidhya Singh (Supra)***, it was held that right of private defense cannot be construed narrowly. The trial Court has rightly convicted appellant no.1 for offence under Section 304 Part-II and 324 of IPC. There is sufficient evidence to establish offence against accused no.1 having assaulted deceased Raju Sinde and P.W.1 Anil Shinge with the weapon.

21 The incident in question had occurred on 31st December, 1997. Appellant no.1 is on bail in accordance with the order passed by this Court on 18th November, 1998. Prior to grant of bail, appellant no.1 appears to be in custody and he has undergone some sentence of imprisonment. The trial Court has awarded the sentence of 10 years for the conviction under Section 304 Part-II of IPC and one year conviction under Section 324 of IPC. In the light of nature of evidence, benefit of doubt is given to appellant no.2. However, there is no reason to set aside the conviction of accused no.1 (appellant No.1) for the offence under Section 304 Part-II of IPC, and, Section 324 of IPC. However, considering the fact that the incident is of 1997 and the other factual aspects, the sentence of 10 years awarded to the conviction under Section 304 Part-II *qua* appellant no.1, can be reduced to three years. The sentence awarded to conviction under Section 324 is maintained.

22 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal 810 of 1998, is partly allowed;
- (ii) The conviction of appellant no.1 for the offence punishable under Sections 304 Part-II and 324 of IPC, passed by Sessions Judge, Solapur in Sessions Case No.72 of 1998, *vide* order dated 17th October, 1998, is confirmed;
- (iii) The sentence of imprisonment awarded to appellant no.1 for conviction under Section 304 Part-II, is reduced to three years imprisonment with fine of Rs.2,000/-;
- (iv) He is entitled for set off;
- (v) The sentence of imprisonment and fine awarded for conviction under Section 324 of IPC against appellant no.1 is maintained;
- (vi) Both the sentences to run concurrently;
- (vii) Appellant no.2 is acquitted of the offence punishable under Section 304 Part - II of IPC;

(viii) The appellant No.1 is granted 12 weeks time to surrender before the trial Court for undergoing the sentence.

(ix) Criminal Appeal No.810 of 1998, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)