

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

CRIMINAL APPEAL NO. 276 OF 2020

Sikandar Baig Amin Baig
V/s.
The State of Maharashtra and Others

...
Advocate for Appellant: Mr. D.S. Ingole h/f. N.S. Ghanekar
APP for Respondent-State: Mrs. V.S. Choudhari

and
APPLICATION FOR LEAVE TO FILE APPEAL BY STATE NO. 131 OF 2020

The State of Maharashtra
V/s.
Shaikh Irshad Shaikh Osman and Others

...
APP for Respondent-Applicant : Mrs. V.S. Choudhari

...
**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**
DATE : 2nd March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. Appeal No.131 of 2020 is filed by the State seeking leave to file appeal under Section 378(1) (b) of the Cr.P.C. against the judgment and order of acquittal dated 09.12.2019 passed by the learned Additional Sessions Judge, Beed in Sessions Case No. 141/2015 for the offences punishable under

Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C. and prayed for taking action under Section 390 of the Cr.P.C. against accused / respondents.

2. Criminal Appeal No.276 of 2020 is instituted by the victim-informant under Section 378 read with Section 372 of the Cr.P.C. challenging the judgment and order of acquittal of the respondents-accused delivered on 09.12.2019 in Sessions Case No.141/2015 by the learned Additional Sessions Judge, Beed, whereby, the learned Additional Sessions Judge acquitted the respondents-accused for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C.

3. Since in both these appeals are challenging order of acquittal, therefore, both these appeals are being decided together at the stage of admission itself.

4. Heard Smt. V.S.Choudhari the learned APP for the State and learned advocate Shri D.S. Ingole h/f. Shri N.S. Ghanekar learned advocate for the appellant/victim-informant at length.

5. With the able assistance of the learned APP for the State as well as the learned advocate appearing for the appellant, we have gone through

the record and the material which was produced before the learned trial Court.

6. It is the prosecution case that one Sikandar Baig - injured/appellant lodged a report alleging that he is residing at Malapuri, Tq. & Dist. Beed along with his family and the accused persons are his relatives. The informant-appellant is having land survey no.222 which was purchased by him in the name of his wife. Towards eastern side of his land, survey no.223 owned by the accused no.12-Shaikh Mahmood Shaikh Rahim and between these two fields bandh exists. There were some disputes about the boundary of fields as well as some encroachment on their land vice versa at the hands of the informant and the accused no.12. Therefore, the appellant Sikandar along with his two sons Nayyar Baig (PW2) and Khamar Baig and one Alam Baig (PW3) went with the accused no.12 to their field but prior to their visit other accused persons were already present at the spot of incident. When the appellant/victim and the accused no.12 started discussing about strengthening of bandh and putting stone for demarcation of bandh but at that time accused no.1 started abusing and obstructed them from putting stones. The appellant-injured tried to give him understanding but at that time accused no.2 caught hold the injured Sikandar and accused no.3 - Shaikh Osman Shaikh Isaq assaulted him with blunt side of the axe over his right eye,

right shoulder, right arm and below the right eye due to which he sustained bleeding injury. Therefore, Khamar Baig and Nayyar Baig rushed towards their father injured-Sikandar Biag but at that time all the accused persons assaulted them with stick and iron rod and due to which both sons of injured also received injuries on their head, hand, leg and back. The villagers brought the injured Sikandar Baig and his both sons to Civil Hospital, Beed and subsequently the injured Sikandar Baig was referred to MGM Hospital, Aurangabad, where he was treated till 16.06.2014. During his hospitalisation on 13.06.2014 statement of injured Sikandar (the appellant) was recorded at hospital by the Police Officer (PW9) Bashu Karim Shah. Thereafter, the statement of injured was referred to Police Station (Rural) Beed on which basis Crime No.81/2014 was registered against the asccused on 14.06.2014 for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C.

7. Initially, the investigation was conducted by P.I.-Mr. Pandit (PW11) who visited the spot of the incident and drawn panchanama (Exhibit-94) in pursuance of panchas. The Investigating Officer recorded the memorandum statement of the accused no.3-Shaikh Osman on 26.06.2014 and seized axe at his instance under Section 27 of Evidence Act. The Investigating Officer also recorded memorandum statement of accused no.4-

Shaikh Arshad and seized iron rod at his instance and seized articles under separate seizure panchanamas. The Investigating Officer (PW11) recorded statement of witnesses including the injured witnesses but due to his transfer further investigation was carried out by (PW10) PI-Mr. Pradip Wamanrao Tribhuwan who has seized clothes of complainant and witnesses on 16.08.2014 under seizure panchanama (Exhibit-117). The Investigating Officer issued a letter to the Medical Officer for collecting blood samples of injured informant and other injured. The seized weapons i.e. iron rod, axe, clothes, blood samples which were collected by the Medical Officer were sent for chemical analysis. On completion of investigation the charge-sheet came to be filed against the accused persons.

8. The learned trial Court framed the charge at (Exhibit-67) for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C. against the accused persons. The plea of the accused came to be recorded. Albeit, the accused pleaded not guilty and claim for trial. In order to prove the charges the prosecution cross-examined in all total 11 witnesses. The statements of accused recorded under Section 313 of the Cr.P.C. Defence of the accused is that they have been falsely implicated in the crime because of civil dispute and said report is filed against

them at the instance of son of the informant/injured who is journalist by profession.

9. Mr. Ingole the learned advocate appearing for the injured/appellant vehemently canvassed that on 09.12.2019 the learned trial Court passed the impugned judgment and order without considering evidence of the Medical Officers' (PW-7 and 8) who have recorded history of assault as per narration of the injured and described in MLC which proves that 12 to 13 accused persons gathered at the spot of incident by formation of unlawful assembly with the common object to commit the offence, however, the learned trial Court failed to consider the same and recorded perverse finding. The learned advocate appearing for the appellant-injured further submitted that the learned trial Court also failed to consider that the Medical Officer described size of injuries and ages which proves that the injured received the injuries due to assault on him by blunt side of axe, however, the learned trial Court wrongly disbelieved the said testimony only on the ground that the Medical Officer failed to mention size, colour and margin of the injuries in MLC. Therefore, findings recorded by the learned trial Court are perverse and are not sustainable in the eyes of law.

10. It is further canvassed on behalf of appellant that the learned trial Court failed to consider testimony of the PW8-Dr. Sarika Gadekar who medically treated the injured-appellant Sikandar Baig at MGM Hospital, Aurangabad though the PW8 categorically deposed that on 11.06.2014 the injured Sikandar-PW1 was referred to MGM, Hospital and she had examined the injured. Prior to examination the informant-PW1-Sikandar Baig gave history of assault to his right eye and the Medical Officer PW8 found extra ocular movement of right eye of the informant (injured) and diagnosed as "Traumatic Neuropathy". The injured PW1 was admitted in hospital w.e.f. 11.06.2014 to 16.06.2014. So also another Medical Officer Dr. Mantra examined the injured PW1-Sikandar Baig in OPD and issued MLC, wherein, it has been mentioned injuries to eye, clavicle and forearm. The PW1-injured deposed in his evidence that at the time of incident the accused no.1-Shaikh Irshad Shaikh Osman abused him and another accused no.2-Shaikh Isaq Shaikh Karbhari (dead) caught hold of his hands and the accused no.3-Shaikh Osman Shaikh Isaq assaulted him with blunt side of axe and all the other accused persons who were equipped with rod assaulted him and his two sons Nayyar Baig (PW2) and Khamar Baig. Therefore, the prosecution proved that the accused persons formed an unlawful assembly and used violence with common object and caused injuries to the injured-informant and his two sons.

11. The learned advocate for the appellant/injured further canvassed that since the accused no.3 assaulted injured-PW1-Sikandar Baig with blunt side of axe on his forehead near right side eye which is vital part of the body and caused grievous hurt due to which the appellant could have been died and accused no.3-Shaikh Osman and other accused who were members of the unlawful assembly would have been charged with murder of the appellant-accused. So also the recovery of deadly weapons like axe, iron rod are being seized at the instance of the accused no.3-Shaikh Osman and accused no.4-Shaikh Arshad proved and evidence of the prosecution is in corroboration with the medical evidence as well as FSL. Therefore, upon considering the oral as well as documentary evidence available on record, the learned trial Court could have held guilty to the respondents-accused persons guilty for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C. However, the learned trial Court wrongly held that the Medical Officer found four injuries which are different, so also there is delay while lodging the FIR and effecting the recovery. Therefore, prayed for quashing and setting aside impugned judgment and order.

12. In order to crave leave to file appeal against judgment and order of acquittal of the accused persons, the learned APP submitted that, the

learned trial Court unnecessarily gave weightage to the delay while lodging the report without considering fact that the injured-PW1 was hospitalised for eight days and due to pain in his eyes again he was hospitalised for another four to five days. Further, the injured eye witness-PW2 deposed that he was also hospitalised for around three days with his brother Khamar Baig in Civil Hospital, Beed. Therefore, considering the hospitalisation of all these three injured did not lodge a report promptly with the police station. Therefore, the said delay properly explained by the prosecution and it does not fatal prosecution's case. The learned APP further canvassed that the prosecution examined eye witnesses who were present at the spot at the time of the incident and two injured are the eye witnesses to the incident. Therefore, no question arises for examination of independent eye witnesses and the prosecution discharged sufficient burden about assault on the injured at the hands of the accused persons. However, the learned trial Court recorded perverse findings to that effect. The learned APP further canvassed that PW1 and PW2-injured specified role of the accused nos.1 to 6 and 9 for assault on them and evidence of prosecution witnesses is in corroboration with injury certificate and medical evidence as well as the CA reports. Therefore, the learned trial Court ought to have held that the prosecution proved its case beyond a reasonable doubt and the respondent-accused are liable to be held

guilty for the said offences. However, the learned trial Court failed to appreciate the evidence available on record in prospective manner and recorded perverse finding. Therefore, the prosecution has made out substantial ground to interfere with the findings recorded by the trial Court and it is necessary to file appeal against the judgment and order of acquittal.

13. It is submitted that the respondents-accused were charge-sheeted for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C. In order to bring home guilt to the offence punishable under Section 147 of the I.P.C. it is necessary on part of the prosecution to prove that accused persons form an unlawful assembly of five or more persons with a common object to over weigh by criminal force or show of criminal force with common object. Section 141 of the I.P.C. provides expression of unlawful assembly and if the object of the assembly is not unlawful, such act cannot attract Section 141 of the I.P.C.

14. As per the evidence of the prosecution witness-PW1 and PW2 when they along with the accused no.12 visited the spot of the incident, other accused persons were already present there and when they reached there, all the other accused persons gathered at one place. The PW1 and PW2 went to put stone on the bandh but the accused no.1 did not allow them to put stone

and started abusing. PW1 tried to give understanding but at that time the accused no.3 assaulted him with the blunt side of the axe on his right eye, right shoulder, right arm and below right eye. Therefore, PW1 received bleeding injury and when his both sons i.e. PW2 and Khamar Baig rushed to rescue him all the other accused attacked them stick and iron rod. Thereafter, the villagers brought the PW1 and his two sons at Civil Hospital, Beed. Therefore, it appears that there were sudden attack in pursuance to the quarrel and the evidence by the prosecution does not lead us to draw inference that the accused persons with their common object had premeditated attack.

15. In the case of **Jakir Ibrahim Khan V/s. State of Maharashtra; 1991 Cri.L.J., 527** and in case of **Allauddin Mian V/s. State of Bihar; 1989 Supreme Court 1456; 1989 Cri.L.J. 1466**, wherein it has been held that unless the common object to commit offence is made out, there is no unlawful assembly and conviction with the aid of Section 149 of the I.P.C. does not make out. Further, in case of **Tanaji Govind Misal V/s. State of Maharashtra; 1998 Cri.L.J. 304**, it has been held that when there was sudden premeditated free fight between the two groups in that circumstances the members of such group cannot said to have formed an unlawful assembly. In the case in hand, the evidence of the prosecution does not suggest that the respondent-accused

nos.2 to 12 formed an unlawful assembly with their common intention to use any criminal force and to assault the injured but evidence of the prosecution witness PW1 & PW2 itself suggest the other accused were already present at the spot prior to their visit at the spot. The evidence of PW1 and PW2 does not suggest about formation of unlawful assembly by the other accused to use criminal force against them. Therefore, considering the evidence available on record and the cross-examination conducted on behalf of the respondent-accused persons, in our conscious view, no offence punishable under Section 147 and 148 is constituted.

16. In order to prove the offence under Section 307, 326, 323, 504 and 506, the prosecution examined PW1-injured Sikandar Baig at Exhibit-85. The PW1 deposed that on 11.06.2014 at about 7.00 to 7.30 am, the accused no.12-Shaikh Mahmood visited at his home and asked him to accompany him at the field to settle the dispute about the measurement to be carried out in the presence of panchas. His wife is owner of land survey no.222 and the accused no.12 is owner of survey no.223. When he purchased the land there was a bandh between his land and the land of the accused no.12 but as the said bandh was not straight, therefore, there was a dispute and it was agreed to get the bandh straight in presence of panchas and some portion of the land was coming to his share and some portion of land the share of accused no.12-

Shaikh Mahmood was to be decided. His two sons Nayyar Baig (PW2) and Khamar Baig along with other villagers Alam Baig went with the accused no.12-Shaikh Mahmood at the spot and when they visited there, at that time 10 to 12 persons were already present near the bandh. When he started talking about strengthening of bandh and to put stone on the bandh, the accused no.1 did not allow him to put the stone and started abusing. Therefore, he tried to give him understanding but at that time the accused no.2-Shaikh Isaq (dead) caught him from backside and at that time accused no.3-Shaikh Osman assaulted him with the blunt side of the axe on his right eye, right shoulder, right arm and below right eye due to which he started bleeding. Therefore, his both the sons i.e. PW2-Nayyar and Khamar Baig came to rescue him but all the accused with their sticks iron rod attacked them. The villagers brought them to Civil Hospital, Beed and subsequently PW1 was shifted to MGM Hospital, Aurangabad where he was admitted on 2nd and 3rd day of the incident. During the course of his hospitalisation the police recorded his statement (Exhibit-86).

17. PW2-Nayyar Baig deposed at Exhibit-19 about the incident that when his father-PW1 was discussing at that time the accused no.1 started abusing and when his father was giving understanding at that time accused no.2 hold his father and the accused no.3 assaulted his father-PW1 with blunt

side of axe on his right eye, so also the accused no.4-Arshad assaulted his father with iron rod on his chest, neck and right eye and the accused nos.5, 9 and other accused attacked them with stick, iron rod and blunt side of axe. He further deposed that he sustained injuries on his head, back, leg and the villagers brought him, his father who was unconscious condition in an auto at Civil Hospital, Beed. During the course of evidence the PW2 identified articles F & G, axe and iron rod. However, in cross-examination both the witnesses stated that some portion of their land was in possession of accused no.12 and some portion of land was owned by accused no.2. The PW1 admitted in his cross-examination that the land was not measured prior to purchase and the same was in possession of the accused.

18. The spot panchanama Exhibit-94 proves that towards southern side of the spot of incident there is a temple and house of one Deshmukh and 7 to 8 houses towards southern side of the spot of the incident and towards west of the spot there is Malapuri - Hirapur road and the incident had occurred in the day light when usually the villagers always remain present in their fields or proceed towards their fields. As per the evidence of PW1 and PW2 itself, it shows that many villagers were gathered at the spot of the incident besides the accused persons and some of the villagers brought the injured at Civil Hospital, Beed. However, the Investigating Officer has not

recorded statement of any witnesses and no eye witnesses have been examined, the spot of incident is open and surrounded by houses. It is not the case of the prosecution that no independent eye witnesses were present at the spot when the incident occurred. The PW1-Sikandar and PW2-Nayyar Baig deposed about gathering of villagers after raising hue and cry. Though the PW1 and PW2 deposed that the accused no.3 assaulted with blunt side of axe and the accused no.5-Shaikh Arshad assaulted with iron rod on the chest, neck and right hand of his father and so also the accused nos.5 to 9 and other accused attacked them with stick, iron rod. However, the specific role of other accused has not been described in their evidence. It is submitted that if there could have been information of the accused to take life of the PW1-injured in such circumstances, the accused no.3-Shaikh Osman would have assaulted by sharpened side of the axe and not by blunt side. Nonetheless, as per evidence of the PW1 & PW2 other villagers were present at the spot of incident but no independent witnesses are examined. Therefore, non examination of independent witnesses itself creates cloud of doubt about prosecution story.

19. On perusal of evidence of the prosecution witnesses which suggest that prior to one day of the incident there were meetings over the dispute pertaining to the bandh and the injured-PW1-Sikandar had brought

JCB machine to remove babool tree from the bandh but the accused no.1 was objecting, therefore, JCB machine was taken back and while removing the trees the accused no.12 restrained the injured-PW1 along with his sons who assaulted them but said complaint was not registered by the police due to influence of Nayyar Baig-PW2.

20. It is further submitted that as per the evidence of panch witness PW-4 to the spot panchanama, the land of injured PW1-Sikandar Baig is situated on the one side of the bandh, whereas land of Osman Baig is situated on the other side and land of accused no.12-Shaikh Mahmood is not situated on the other side. The PW4 stated in his evidence that spot was shown by the Police Inspector but the panchanama Exhibit-94 reveals that the spot was shown by PW2-Nayyar Baig. Therefore, there is material contradictions which goes to the root of the matter. On the face of record, it can be seen that the injured PW1-Sikandar Baig and his son PW2-Nayyar Baig and Khamar Baig were firstly taken to Civil Hospital, Beed where the Medical Officer PW7 examined them. The PW7 proved MLC report exhibit-103 to 105. As per the MLC reports the PW1-Sikandar Baig sustained one contusion over his shoulder, right eye was black with swelling, whereas, injured PW2-Nayyar Baig sustained contusion on head and back. Another injured Khamar Baig sustained CLW on head and right eye, however, the PW7 Medical Officer

described all the injuries of simple nature. The Medical Officer PW7 admitted in her cross-examination about not mentioning size of the injury, colour and margin and MLC certificates.

21. The prosecution examined PW8-Dr. Sarika Gadekar at Exhibit-108 who medically treated the injured-PW1 at MGM Hospital, Aurangabad on 11.06.2014. The PW8 deposed that PW1-Sikandar Baig narrated the history of the assault to his right eye and she found extra ocular movement restricted in all directions and the injured PW1 was diagnosed with "Traumatic Neuropathy" and was hospitalised w.e.f. 11.06.2014 to 16.06.2014. As per the evidence of PW8 at the time of admission injured PW1-Sikandar, one Medical Officer Dr. Mantra in OPD examined and noted four injuries i.e. 1) contusion on right eye, 2) abrasion on right clavicle 4x1 c.m., 3) abrasion on right clavicle 3x1 c.m. and 4) contusion on right forearm. However, the prosecution has not examined Dr. Mantra who initially examined the injured in MGM, Hospital so also no any X-ray, report of CT scan is produced on record to support the MLC certificate and only contusion injury was found on shoulder and black eye. So also the injuries which have been noticed by Dr. Mantra are different to the injuries which have been found by the Medical Officer PW7 who had firstly examined the injured. As per the evidence of PW1, he was unconscious soon after the incident and he was taken to MGM

Hospital, Aurangabad, however, the discharge summary card of the injured-PW1 does not disclose history of unconsciousness of the injured PW1. Therefore, it appears that there is variance in the oral as well as MLC certificates.

22. It is further submitted that as per the injured-PW1 soon after incident he and his both sons were immediately taken to Civil Hospital, Beed where the Medical Officer PW7 examined and issued MLC certificates (Exhibit-103 to 105). It is routine that a Police Chowki is always situated at every Civil Hospital, however, the Medical Officer had not informed to the Police Chowki about admission of the injured due to assault. Though, as per MLC report the condition of PW1 was not so serious. Even if it is assumed that PW1 injured was shifted at MGM Hospital, Aurangabad but the physical condition of the PW2 and injured-Khamar Baig was not so serious. Therefore, either the injured PW2-Nayyar Baig or Khamar Baig could have visited the Police Chowki situated at Civil Hospital, Beed and could have lodged the report about the incident but no any report lodged for four days from the incident. The prosecution has not brought any explanation about not lodging the report with Police Chowki attached with Civil Hospital, Beed on the same day. Nonetheless, as per the evidence of PW9, the injured PW1-Sikandar Baig was hospitalised at MGM Hospital, Aurangabad and on 11.06.2014 he

received MLC report of injured PW1-Sikandar at Exhibit-110. Thereafter, he issued a letter to the Medical Officer inquiring about fitness of injured to give his statement and on 13.06.2014 he recorded the statement of the injured PW1-Sikandar (Exhibit-86). On perusal of Exhibit-86 and the statement of injured PW1-Sikandar, the endorsement of the Medical Officer does not appear on it, who examined the injured PW1 to evaluate his condition of fitness to give his statement. There is no endorsement either at the beginning or at the end of statement (Exhibit-86). So also there is no seal or rubber stamp of the hospital to prove that at the time of recording statement Exhibit-86, the injured PW1-Sikandar was admitted in MGM Hospital and was fit to give his statement. As per the evidence of PW1, he was hospitalised in MGM Hospital, Aurangabad and the PW2 deposed that he and his brother Khamar Baig were admitted in Civil Hospital, Beed for three days, however, neither PW2- Nayyar Baig or the injured Khamar Baig gave any complaint nor asked their family members to lodge a report. It is not the case of the prosecution that the PW2 or injured-Khamar Baig was became unconscious and they were not able to move anywhere. The statement of injured PW2-Nayyar Baig was recorded on 15.06.2014 after four days of the incident and said delay has not been explained by the prosecution which certainly is fatal to the case of the prosecution.

23. No doubt as per the evidence of prosecution witnesses the accused nos.3 and 4 gave their memorandum statement while they were in custody and their memorandum statement Exhibit-96 and 97 recorded and on their disclosure the articles i.e. stick, axe, iron rod were seized. However, in cross-examination PW5 admitted that he was called by police for performing panchanama of axe and iron rod from the accused nos.3 and 4 but in cross-examination the panch to the seizure panchanama admitted that the house of accused nos.3 and 4 were south facing but as per the seizure panchanama Exhibit-98 and 99 house of both the accused nos.3 and 4 were west facing. The Investigating Officer-PW11 Dy.S.P. Maroti Shankar Pandit admitted about not obtaining signature of members who were present in the house at the time of seizure panchanama nor he collected documents about ownership of house where seizure panchanama was effected. The PW11 further admitted that first memorandum statement of both the accused were recorded together and later seizure panchanama of articles were prepared.

24. In the case of **State of Himachal Pradesh V/s. Jeet Singh; 1999 SCC (Cri.) 539**, wherein it has been held that the discovery of fact referred to in Section 27 is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it.

In case in hand, it appears that the incident occurred on 11.06.2014 and the recovery of articles F & G were made on 24.06.2014 i.e. after lapse of 15 days and said articles were sent for chemical analysis on 18.03.2015 after lapse of 9 months. The chemical analysis report shows that blood stains were found on article FX but said blood group has not been detected. The clothes of injured were seized on 16.08.2014 after lapse of two months from the incident. The Investigating Officer has not explained the delay to effect the seizure of the clothes of the victim injured. Further, the PW10 admitted in his cross-examination that though he seized clothes of injured under seizure panchanama on 16.08.2014 but those clothes are sent for chemical analysis on 17.03.2015 after lapse of seven months and no any reason for delay has been explained. Therefore, the evidence of the prosecution witnesses, particularly injured PW1-Sikandar, his son PW2-Nayyar Baig does not inspire confidence and the prosecution failed to prove motive behind the offences. So also, there is delay in lodging of report and non examination of the eye witnesses and the history of assault which has been given by the injured to the Medical Officer does not disclose assault to his eye by axe. Therefore, considering the material evidence available on record, the prosecution failed to prove its case and the accused are entitled for benefits of doubt.

25. In the case of **State of Maharashtra V/s. Deepak Parshuram Patil; 2017 Cri.L.J. 819**, wherein the accused persons formed an unlawful assembly in furtherance of their common object launched an indiscriminate assault on the two injured. The coordinate bench of this Court held that there is no cogent and conclusive evidence to prove that the respondents were the aggressors or they had assembled at the place of incident with a premeditated plan to inflict injuries on PW1, 2, 3, 4. This being the case of free fight the accused cannot be held guilty for offence punishable under Section 143, 147, 148 of the I.P.C. and further they cannot be convicted of substantive offence with the aid of Section 149 and Section 34 of the I.P.C. and no constructive liability can be imposed against the accused and at the most they can be held responsible for their individual acts.

26. The learned trial Court passed the impugned judgment and order acquitting the accused-respondents in Crime No.141/2015 for the offences punishable under Section 147, 148, 307, 326, 323, 504, 506 read with Section 149 of the I.P.C., which itself justifiable and no substantial grounds are made to interfere with findings recorded by the learned trial Court.

27. In view of the above discussion, we do not find merit in the present appeal and the prayer made by the State-prosecution. Therefore, the

application to seek leave to file appeal as well as the appeal against the acquittal under Section 372 of the Cr.P.C. filed by the injured-informant deserves to be dismissed at the stage of admission. Accordingly, Criminal Appeal No.276/2020 and Criminal Appeal No.131/2020 are hereby rejected.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]