

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

CRIMINAL APPEAL NO.778 OF 2019

Vikas Bhimrao Kamble
Age 30 years, residing at Rethare Harnaksh
Taluka Walva, District Sangli
(presently at Kalamba Central
Prison, Kolhapur) Appellant

versus

State of Maharashtra
Through Islampur Police Station,
District Sangli Respondent

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- Mr. Sushan N. Mhatre, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 25th JANUARY, 2023

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 10/05/2019 passed by the Additional Sessions Judge, Islampur, in Sessions Case No.52/2016.

2. The Appellant was convicted for commission of offence punishable u/s 304-II of the Indian Penal Code and was

sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for six months. He was granted set off u/s 428 of Cr.P.C.

3. Apart from the Appellant, there were four other accused. All of them were acquitted from all of the charges framed against them.

The Appellant had also faced the charges for commission of offence punishable u/s 302, 323, 143, 147, 148 r/w 149 of the Indian Penal Code. But he along with the co-accused was acquitted from these charges.

4. Heard Mr. Sushan N. Mhatre, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.

5. The prosecution case is that, on 17/02/2016, at about 09.30 p.m., at Rethare Harnaksh all the accused formed an

unlawful assembly. One Pratik More was assaulted with a stick and a sharp weapon. According to the prosecution case, the Appellant pierced a sharp weapon in the chest of Pratik because of which he died. He was taken to a hospital, but he was declared dead by the doctor. The FIR was lodged at Islampur police station, vide C.R.No.31/2016 by Dhanaji More. The investigation was carried out. It is alleged that during the course of investigation, the weapon was recovered at the instance of the present Appellant. Statements of witnesses were recorded. Various Panchanamas were recorded. The articles were sent for chemical analysis and at the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Sessions.

6. During trial, the prosecution examined 14 witnesses including the alleged eyewitnesses, the Medical Officer, Panchas and the Police Officers.

7. The defence of the Appellant was of total denial. On

behalf of defence, two defence witnesses were examined. After appreciating the evidence of the prosecution and the defence and after hearing the arguments, learned Trial Judge held that the offence punishable u/s 302 of the IPC was not proved, but he convicted the Appellant u/s 304-II of the IPC.

8. The FIR was lodged by P.W.1 Dhanaji More. The deceased was his nephew. He has deposed that he was residing with his parents, brother, brother's wife and uncle. Pratik was studying in the 11th standard at the time of incident. Accused No.2 Ranjit Bele had purchased a new motorcycle. P.W.1 was taking a ride on that motorcycle. The Appellant was riding his own motorcycle. He intercepted P.W.1's motorcycle. After that, P.W.1 went near Samaj Mandir. The Appellant followed him. The Appellant was talking on a mobile phone and was loudly giving abuses to the person at the other end. The Appellant called Pratik. P.W.1 asked the Appellant to go away. The Appellant got down from his motorcycle and came towards P.W.1. He also got down from the platform where he was sitting. There was a

scuffle between them. At that time, the accused No.2 Ranjit Bele and Viraj Bele went to their houses. They came back with weapons. P.W.1 has further deposed that the Appellant was saying that P.W.1 should not be shown mercy. Ranjit gave a weapon in the hands of the Appellant. P.W.1 then deposed that the Appellant gave a blow of that weapon on Pratik's chest. Vijay More, Prasad More and Pratima More took Pratik to Rajarambapu Hospital. The Medical Officer in that hospital told them to take him to a Government Hospital. He was taken there. But the Doctor declared him dead. P.W.1 then lodged his FIR in Islampur police station. He has further deposed that the accused No.5 Seema Bele and accused No.4 Lata Bele had come on the spot when the incident was going on. Seema had beaten P.W.1 with a stick on his head and Lata had caught his neck. In his further examination-in-chief P.W.1 has given the background. There were two Mandals in the area. One was formed by the Appellant and the P.W.1's committee had formed the other. Both the Mandals used to arrange separate programmes during festivals. There was rivalry between the two groups. There was

also rivalry on account of racing of cars. He produced his FIR on the record at Ex.35. He identified the accused before the Court including the Appellant. He identified the sword (Article-15) and the stick (Article-16) produced in the Court. His statement was recorded u/s 164 of Cr.P.C. He identified his statement which is produced on record at Ex.36. Before concluding his examination-in-chief, he deposed that Prasad had told him that while Pratik was being taken to the hospital, Pratik had told Prasad that the Appellant had stabbed the weapon like Gupti in his chest.

In the cross-examination he was asked about the details of Rethare Harnaksh village. He admitted that, during sugarcane crushing season for sugar factory, there used to be crowd around the chowk in Islampur and on the way to Rethare Harnaksh. The defence counsel suggested that the people from Islampur used to go to Rethare Harnaksh village and thus the area was crowded. Pratik was residing with his family in Rethare Harnaksh village and was studying in Kundal. He has further

deposed in the cross-examination that there were houses near Samaj Mandir and there was a temple nearby. He further admitted that at some places near the spot, drainage was being repaired and at some places it was not properly done. It was uneven. But he denied the suggestion that the angles of the drainage were open. At the time of incident, the Appellant was working in Takari Water Project. Prior to the incident, there was a quarrel between one Sainath Satre and boys from another Community. Sainath had called some boys from Islampur. Sainath was P.W.1's friend. He admitted that the villagers had resolved the dispute between Sainath and the other community. The place where Pratik had fallen, was in front of the house of one Rajaram More. On the date of incident, accused No.2 Ranjit and P.W.1 were on good terms. On that day, there was no quarrel between the Appellant and P.W.1. On that day, there was a programme arranged in the house of one Sampat More and for that function 100 to 200 people had gathered. The distance between Samaj Mandir and the house of Sampat More was of 15 to 20 ft. At the time of incident, he came at the spot at 09.30

p.m. and he was there for about 10 to 15 minutes. According to him, about 10 to 15 people had gathered at the spot. Pratik's brother Prasad was sitting in a library. He came on the spot, immediately after P.W.1 had come there. After sustaining injury, Pratik had fallen at a distance of 5 ft from the place where he was assaulted. He was lying with his face towards the earth. He had fallen in front of the house of Rajaram More. There was blood at the spot where Pratik had fallen down. He further admitted that, when he gave the complaint, the Appellant and the accused No.2 Ranjit Bele were present in the police station. In his FIR, he had not mentioned that Ranjit had given a weapon to the Appellant. He could not assign any reason for that omission. He had sustained swelling injury on his head and his right hand was fractured. He had taken treatment in the Government Hospital. He further deposed that the police were present in the hospital before Pratik was taken to that hospital. But the police did not make any inquiry with P.W.1 in the hospital. On the next date, the police had called him to the police station and had obtained his signatures.

9. P.W.8 Prasad More was another eyewitness. He was Pratik's brother. He has deposed that, on 17/02/2016, at about 08.30 p.m. he was returning from the library. He reached near Samaj Mandir. He heard some noise. He went towards the mob. He saw that there was a quarrel going on between the accused and P.W.1 and Pratik. The Appellant was saying that P.W.1 and P.W.8 should be finished. P.W.8 has further deposed that the Appellant had a sword in his hand and the co-accused Ranjit was having a stick. The Appellant assaulted Pratik with the sword on his chest. Pratik fell down. P.W.8 went near him. There was from his chest. With the help of others, he took Pratik to the hospital. On the way, Pratik told him that the Appellant had assaulted him with the sword and Ranjit had assaulted him with a stick. When P.W.8 was taking Pratik to the vehicle from the spot, the other accused Seema Bele and Lata Bele assaulted P.W.8 and Pratik. P.W.8 has further deposed that after talking with him, Pratik fell unconscious. He was taken to Rajaram Bapu hospital at Islampur and then to the Government Hospital. He

was declared dead. P.W.8 identified the accused before the Court and he also identified the sword (Article 15) produced in the Court.

In the cross-examination he deposed that the library was on the main road of their locality. Samaj Mandir was on the main road. At the time of the incident about 25 to 30 people might have gathered. The Appellant was not residing in their locality. The Appellant's family was doing labour work. The Appellant was working in a Pump House at village Takari. He did not know how long the quarrel was going on between Pratik and the accused. P.W.8 himself had not seen the incident, in which P.W.1 Dhanaji was assaulted resulting in the fracture of his hand. But he added that he had seen the accused assaulting Dhanaji. He himself was assaulted on the head by Seema Bele. He was examined by the doctor.

10. P.W.10 Shashikala More was Pratik's paternal aunt. She is also an eyewitness. She has deposed that on 17/02/2016 at

about 09.15 p.m., she had gone to Samaj Mandir to call Pratik for dinner. When she reached in front of the house of Rajaram More, she saw that all the accused were assaulting the deceased. She tried to intervene. At that time, the Appellant assaulted the deceased on the chest with a big knife. He fell down on the ground and told PW.10 that the Appellant assaulted him with a sword on his chest. Then she along with others took Pratik to the two hospitals as deposed by the other witnesses. Her statement was recorded u/s 164 of Cr.P.C. which is produced on record at Ex.55. She identified Article 15 - the knife.

In the cross-examination, she deposed that when she was in the hospital, the police had been to the hospital, but they had not inquired with her. On the next day, they made enquiries and her statement was recorded. Before recording her statement u/s 164 of Cr.P.C. she was given her statement recorded by the police for reading.

11. PW.9 Vishal Patole was examined as another eyewitness. He has deposed about the quarrel between P.W.1

Dhanaji and the Appellant. He himself tried to intervene. According to him, the quarrel was over and the Appellant went away from the spot. After about 15 to 20 minutes again the Appellant and the other accused came with weapons i.e. the sword and the stick near the house of Rajaram More. Pratik and Dhanaji went there and then there was fight between them and the accused. P.W.9 has further deposed that Pratik had received injury, but he did not know who had assaulted Pratik. But he admitted that the Appellant was saying that they would not leave Pratik and Dhanaji and would kill them. He specifically deposed that he had not seen the Appellant assaulting Pratik with a sword on his chest. He was then declared hostile; as on some important points, he was not supporting the prosecution case. He was then cross-examined by learned APP and the contrary portion marked from his police statement was shown to him. He could not assign any reason why it was so mentioned by him. He also admitted that he was deposing before the Court after going through his statement.

12. P.W.7 Sunil Ghevade had helped the others in taking Pratik to the hospital.
13. P.W.6 Sani More had reached the spot on hearing the shouts. When he reached there, he saw that Pratik was lying on the ground and Prasad was sitting next to him. This witness is P.W.10 Shashikala More's and hence was the cousin of the deceased Pratik. He has deposed that he had seen all the accused on the spot when the incident had taken place. He identified the accused before the Court. He had seen that the Appellant was having a sword in his hand. He had also helped in taking Pratik to the hospital. He has deposed that because of two separate Mandals, there used to be enmity between the two groups since the year 2015. There used to be frequent quarrels during festivals.

In the cross-examination, he deposed that P.W.8 Prasad More was with him in the library, but Prasad had left 10 minutes before him.

14. P.W.11 Dr. Dhananjay Patil had conducted the post-mortem examination on 18/02/2016 at about 06.00 a.m. He found the following injuries :

- (i) Penetrated incised wound on anterior thorax, reaching and penetrating right ventricle of heart and entry wound – 2 cm long, vertically and 1:4 cm broad and superficial extension of this incised wound on right side from lower edge, oblique about 1.2 cm. Distance of centre of wound from upper border of umbilicus was 19 cm. Distance of centre of wound from right nipple was 13 cm and from left nipple was 12 cm.
- (ii) Abrasion on left forearm ulnar aspect posteriorly vertical 6 cm long 0.5 cm broad dark red superficial.
- (iii) Small abrasion 5 mm x 3 mm, dark red.

15. On internal examination, he found blood clots below the sternum. Entry wound was present between angle of left

side rib cage and xiphisternum. Pericardium punctured on right side, blood was present in pericardium. Right ventricle of heart was punctured, obliquely on right lateral side (Incised wound of 1.5 cm., entering into right ventricle)

16. He has deposed that those injuries were ante-mortem and the deceased had died due to shock caused by the cardiac injury. Thus, there is no doubt that the death was a result of the said injury.

17. P.W.2 Ramchandra Kamble was a Pancha for Spot Panchanama. He has described the scene of offence and has described the surrounding area of the spot. The Spot Panchanama is produced on record at Ex.36.

In the cross-examination, he admitted that there was drainage constructed of cement on both sides of the road. There were houses around that road. The police had noticed the iron rods on the drainage. The blood was seen on the road adjacent to the Gutter.

18. P.W.3 Mohan More was a Pancha, in whose presence, the clothes of the deceased were seized on 18/02/2016. This witness was the father of P.W.1 and the deceased was his grandson.

In the cross-examination, he admitted that there were steel bars over the gutter near the house of Rajaram More. There used to be darkness in that locality, but he denied that Pratik had suffered injury because he had fallen on the open steel bars.

19. P.W.4 Madhukar Desai, was a Pancha in whose presence the Appellant had made a statement about the concealment of the weapons and his willingness to show the place where they were concealed. Initially he denied that the Appellant had made any such statement, but in further examination-in-chief he deposed about it. During the further procedure of the Panchanama, the Appellant led Panchas and the police near a Nala and the weapons were taken out from the waste material.

Those were the stick and the sword. Both were stained with blood. The memorandum Panchanama and the recovery Panchanama are produced on record at Ex.42 and 43.

20. P.W.5 Shalmon Tiwade was a Pancha in whose presence clothes of the accused including the Appellant were seized on 19/03/2016. That Panchanama is produced on record at Ex.45.

21. P.W.12 PSI Pratap Mankar, was the PSO at Islampur Police station. He has deposed that on 17/02/2016 at about 10.00 p.m., they received an information about the incident in the village. He then sent some police officers to the spot of incident and some to the hospital. P.W.1 Dhanaji More had gone to the police station in the night hours. His report was taken. The offence was registered vide C.R. No.31/2016. The FIR which is at Ex.35, mentions that it was recorded at 02.47 a.m. on 18/02/2016. On that very day, the Appellant was arrested. On 19/02/2016, P.W.12 had taken over the investigation. He recorded statements of the witnesses. The weapons were

recovered at the instance of the Appellant. He seized clothes of the accused. He seized the motorcycle of the Appellant. The Articles were sent for C.A. examination. Various Panchanamas were drawn and then he has filed the charge-sheet.

In the cross-examination, he deposed that the distance between Islampur Police Station and the spot of incident was about 13 kms. In his cross-examination he proved the omission from the police statement of P.W.9 Vishal Patole.

22. P.W.13 PSI Ganesh Shinde had carried out the investigation on 18/02/2016, had prepared the Inquest Panchanama and had sent the body for post-mortem examination. He had arrested the accused including the Appellant. At the time of conducting the Inquest Panchanama, approximately 100 villagers were present. He had not enquired with Prasad who was present in the hospital.

23. P.S.I. Jivan Rajguru was examined as P.W.14. He had

been to the spot of incident and had collected the blood stained earth.

24. Besides this ocular evidence, the prosecution produced the C.A. reports by way of documentary evidence. The C.A. report at Ex.47 shows that the clothes of the deceased were stained with blood of 'A' group. The C.A. report at Ex.67 shows presence of 'A' group blood on the clothes of the Appellant. There was blood on the sword but the blood group was inconclusive. Similarly, there was blood on the stick, but the blood group was inconclusive.

This, in short, is the evidence led by the prosecution.

25. The defence of the Appellant was of total denial. According to him, the witnesses were deposing against him because of the dispute between their communities. He has given his written statement u/s 313 of Cr.P.C. In that statement he has stated that the spot of incident was a dark area. As per his information when Pratik suffered injuries, there was some

quarrel in his community and there was an incident involving 50 to 60 people. In that incident, Pratik fell on the Gutter in front of Rajaram More's house. There were open iron rods and angles. Pratik fell on them and sustained injuries causing his death. The Appellant was not involved in the offence. He was present at Islampur police station. The informant Dhanaji and others came to the police station and the police arrested the Appellant and others. He had not taken out any weapons. P.W.1 Dhanaji and P.W.8 Prasad had not suffered any injuries and they were deposing falsely in the Court.

26. The defence also examined D.W.1 Vijay More and D.W.2 Rahul Bele. D.W.1 Vijay More has deposed that, at 09.30 p.m. on 17/02/2016, he had reached in front of the house of Rajaram More. He saw some chaos. There was no electricity. He could identify Pratik and P.W.1 Dhanaji More. D.W.1 himself pacified the quarrel. Then, he had seen Pratik lying on the ground near the house of Rajaram More. He had not seen any weapon during the entire incident.

In the cross-examination conducted by learned APP, he denied the suggestion that he was deposing falsely to help the accused.

27. D.W.2 Rahul Bele was working in MIDC, Palus. At the time of incident, he reached the village at about 09.00 p.m. He knew the accused and the deceased. He had reached his house at around 09.15 p.m. He was taking dinner. He heard noise on the main road. He came out. He saw many people had gathered on the spot. He saw the scuffle. There were no lights. He had seen the incident, but because of the darkness he could not identify the people who were quarreling. After that, he had seen the deceased Pratik lying in front of Rajaram More's house. Dhanaji had taken Pratik to the hospital. Then he went home.

28. Through the evidence of the defence witness, the defence wanted to suggest that the incident had taken place in the darkness and it was not possible to identify the quarreling

people including the assailants. Both the defence witnesses claimed to know both the parties. But they could not see the faces of the people who were quarreling.

29. Learned counsel for the Appellant submitted that it was a crowded locality and the evidence does show that many people had gathered. However, the prosecution has examined only the interested witnesses i.e. the relatives of the deceased and a friend of P.W.1. Therefore adverse inference needs to be drawn against the prosecution case. The evidence indicates that there was darkness at the spot and therefore it was not possible that the alleged eyewitnesses could have seen the incident and the assailants.

30. P.W.1 and P.W.8 have deposed that they themselves had suffered injuries during the incident, for which they had to take treatment and yet no medical papers were produced on record showing that they had suffered any injuries. This indicates that both of them were not telling the truth and therefore they are

not reliable witnesses. On the basis of the same evidence, the other accused are acquitted and therefore the same benefit of doubt should have been given to the present Appellant. The oral Dying Declaration uttered before P.W.8 and P.W.10, was not believable, because looking at the nature of the injury, it was quite clear that the deceased had died on the spot and he would not be in a position to make any statement in the nature of oral Dying Declaration.

31. Learned APP on the other hand submitted that the evidence of the eyewitnesses is consistent. Their evidence is supported by the medical evidence. Besides the direct evidence, there is evidence of oral Dying Declaration which is also consistent and is corroborative in nature. There is recovery of blood stained weapons at the instance of the Appellant. The blood stains on the clothes of the Appellant are that of the deceased. All these are corroborative circumstances and thus the prosecution has proved its case beyond reasonable doubt.

32. I have considered these submissions and I have perused the impugned judgment as well.

33. There is direct evidence against the Appellant in the form of the deposition of the eyewitnesses viz. P.W.1 Dhanaji More, P.W.8 Prasad More and P.W.10 Shashikala More. Apart from that, there is evidence of P.W.9 Vishal Patole, who has partly supported the prosecution case. As far as the main eyewitness i.e. P.W.1, P.W.8 and P.W.10 are concerned, their evidence is consistent. They are natural witnesses. P.W.1 was the person with whom, the Appellant had picked up the quarrel at the first instance. It escalated into further incident resulting in death of the deceased. P.W.1 has deposed about the genesis of the incident. He has deposed as to how the incident started and how the Appellant was becoming aggressive in the quarrel. P.W.8, brother of the deceased, came at the spot and witnessed the incident. Both of them, as also P.W.10, have described the main incident of stabbing the deceased with the sword. All of them have consistently stated that the Appellant has stabbed the

deceased on his chest. All of them have deposed in the same manner that it was a sharp weapon though it is described as 'knife' and at some place as a 'sword'. The weapon which is produced in the Court, was identified by this witness. It also had blood stains as is evident from the C.A. report. There is absolutely no reason to disbelieve these witnesses only because they were relatives and a friend of the deceased. P.W.1 and P.W.8 have candidly disclosed the history of strained relations between the two groups. Even P.W.9 has supported their evidence to a large extent. Though he had not deposed about the actual stabbing by the Appellant, he had deposed that the Appellant was present at the spot. He was saying that the deceased and others should not be left alive.

34. P.W.6 Sani More is another witness who had seen all the accused including the present Appellant near the spot of incident. He had seen that the Appellant was having a sword in his hand.

35. Thus, this ocular evidence of the eyewitnesses is consistent. It shows that the incident had taken place and in that incident, the Appellant had stabbed the deceased.

36. The deceased had told about the incident to two witnesses i.e. P.W.8 and P.W.10. The deceased was saying that the Appellant had stabbed him. This is an additional incriminating corroborative piece of evidence. Both these witnesses had reached the spot immediately. They had witnessed the incident and when they went near the deceased, at that time, he uttered those words.

37. The other corroborative piece of evidence is in the nature of recovery of the weapons. P.W.4 Madhukar Desai is a Pancha for such recovery. The weapons were taken out by the Appellant after giving his memorandum statement. The weapons were concealed below waste material in a Nala. Only the Appellant knew about this place. The weapons also showed presence of blood as per the C.A. report.

38. The next incriminating circumstance is about finding of blood of 'A' group on the clothes of the Appellant. It was the same blood group, that was on the clothes of the deceased. This is also an incriminating piece of evidence. Thus, there is sufficiently strong evidence against the Appellant to show that he had inflicted the injury on the chest of the deceased. The prosecution has proved its case beyond reasonable doubt to the effect that the Appellant had stabbed the deceased on the chest.

39. Learned Judge has described as to how the offence would not be the one u/s 302 of the IPC, but would be u/s 304-II of the IPC. According to him, the prosecution has failed to prove that the Appellant was carrying that sword. The incident had taken place in a quarrel. There was no intention to commit the murder. He had given one blow. He had opportunity to inflict more blows. Learned Judge considered these aspects and held that the offence u/s 304-II of IPC is proved. There is no challenge to this finding and in any case in the facts of this case,

there is no reason to take a different view. Hence, the prosecution has proved its case that the Appellant has committed an offence punishable u/s 304-II of the IPC.

40. The next question would be regarding the sentence.

Learned Judge has sentenced the Appellant to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for six months. While considering the quantum of sentence, learned Judge noted the submissions on behalf of the Appellant that he had old parents. There was no one to look after them. It is was his only offence and therefore leniency was required to be shown to him.

41. Learned counsel for Appellant submitted that the sentence of 10 years is on the higher side for offence punishable u/s 304-II of the IPC. He submitted that the sentence be reduced to a reasonable extent. He relied on the judgment of Hon'ble Supreme Court in the case of *Hem Raj Vs. The State (Delhi*

Administration) as reported in *AIR 1990 Supreme Court Cases 2252*. In that case also there was a stab wound inflicted below left nipple just inside the mid-clavicular line on the left side from the chest. The injury was found going medially upwards, first below the skin in subcutaneous tissue, then entering the chest cavity from the angle below costasternal junction near xiphoid process – cutting the rib near it, then going in the chest cavity below the sternum, cutting the recess of the left lung and then the right border of the heart. In that case, the conviction was recorded u/s 304-II of the IPC and the accused was sentenced to suffer rigorous imprisonment for 7 years. Learned counsel therefore submitted that the same consideration be applied in this case.

42. Learned APP left the sentencing part to the discretion of this Court.

43. I have considered these submissions. There is substance in the submissions of learned counsel for the Appellant relying

on the observations in Hem Raj's case (supra). In that case also the injury was on the chest and the sentence imposed was for 7 years. In the present case, the injury is also on the chest but it has pierced the heart. The Appellant is continuously in custody in since 17/02/2016. The sentence of 10 years for commission of offence punishable u/s 304-II of IPC can be reduced on the facts of the case to 8 years.

44. Hence, the following order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Appellant for commission of offence punishable u/s 304-II of the Indian Penal Code, is maintained. However, instead of rigorous imprisonment for 10 years, the Appellant is sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for six months.

- (iii) The Appellant is entitled for set off u/s 428 of Cr.P.C.
- (iv) Rest of the clauses in the operative part of the order, which are not inconsistent with this operative part, as far as present Appellant is concerned, are maintained.
- (v) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)