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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.554 OF 2019

1. Gulab s/o Ramchandra Dongare,
aged about 47 years, occupation:
agriculturist (in jail).

2. Sunil s/o Gulab Dongare, aged
about 22 years, occupation:
agriculturist (In jail).

3. Kamal w/o Gulab Dongare, aged
about 37 years, occupation:
agriculturist.

4. Amol s/o Gulab Dongare, aged
about 20 years, occupation:
agriculturist.

5. Durgabai Ramchandra Dongare,
aged about 67 years, occupation:
agriculturist.

The appellants are r/o Takarkhed
Bhagile, tahsil Deulgaon Raja, district
Buldhana.

..... **Appellants.**

:: VERSUS ::

The State of Maharashtra, through
police station officer, police station
Deulgaon Raja, tahsil Deulgaon Raja,
district Buldhana.

..... **Respondent.**

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Shri N.B.Kalwaghe, Counsel for the Appellants.

Shri Nitin Rao, Additional Public Prosecutor for the State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 20/12/2022

PRONOUNCED ON : 16/06/2023

JUDGMENT : (Per Urmila Joshi-Phalke, J.)

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1. By this appeal, the appellants (the accused persons) challenge judgment and order of conviction and sentence passed by learned Additional Sessions Judge, Buldana in Sessions Case No.65/2017 whereby learned Judge of the trial court convicted the accused persons, as follows:

accused No.1 Gulab and accused No.2 Sunil are convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life and to pay fine Rs.3000/- and in default of payment of the fine amount to suffer simple imprisonment for three months;

accused No.4 Kamal is convicted for offence punishable under Section 324 read with Section 34 of the Indian Penal Code and sentenced her to suffer rigorous imprisonment for one year and to pay fine Rs.3000/- and in default of payment of the fine amount to suffer simple imprisonment for three months;

accused No.5 Durgabai is convicted for offence punishable under Section 324 read with Section 34 of the Indian Penal Code and sentenced her to pay fine Rs.3000/-

.....3/-

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and in default of payment of the fine amount to suffer simple imprisonment for three months, and

accused No.3 Amol is convicted for offence punishable under Section 324 read with Section 34 of the Indian Penal Code and released on executing good behaviour bond.

2. Facts of the case in a nutshell are as under:

First informant Parvati Kantilal Dongare, lodged a report on 24.6.2017 on allegations that on 24.6.2017 at about 11:30 when she was working along with her husband Kantilal (the deceased) and son Nikhil in her agricultural field, her brother-in-law Gulab, accused No.1, came in the agricultural field along with accused Nos.2 to 5 and restrained them from cultivating the land. They have started dispute with them on the count that the agricultural land belongs to them. At the relevant time, the adjacent land owners intervened in the quarrel. However, accused No.1 Gulab asked the adjacent land owners to leave the place by saying they should not intervene and, therefore, they left the place. At the relevant time, when the deceased told the accused persons that the

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land is already partitioned, accused No.2 Sunil gave a blow of an axe on the head of the deceased above the ear and accused No.1 Gulab also gave a blow of an axe on the head of the deceased. Due to the said blows, the deceased fell on the ground. Accused No.3 Amol, accused No.4 Kamal, and accused No.5 Durgabai assaulted her and son Nikhil with sticks. As they were scared, they came on the road and informed the police. The accused persons fled away from the spot. The police removed the deceased in hospital, however he was declared dead.

3. On the basis of the report lodged by informant Parvati, an offence was registered against the accused persons. After registration of the crime, the investigating officer visited the alleged spot of the incident and drawn spot panchanama. All the accused persons were arrested. The inquest panchanama was also drawn. During spot panchanama, one axe having blood stains and three sticks thrown at the spot itself were seized. The investigating officer also collected the blood stains from the spot of the incident. The clothes of the deceased and the clothes of the accused persons were also seized during the investigation. Accused

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No.1 Gulab made a memorandum statement in presence of panchas and at his instance the axe was recovered. All the incriminating articles are forwarded to the Chemical Analyzer along with letter. After completion of the investigation, the chargesheet was submitted against the accused persons.

4. Learned Judge of the trial court framed charge vide Exhibit-24 after the case was committed to the court of sessions. The accused persons pleaded not guilty and claimed to be tried. To substantiate the charge, the prosecution has examined in all 9 witnesses, as follows:

PW1 Parvati Kantilal Dongare, vide Exhibit-39, the informant and the eyewitness;

PW2 Bhushan Vinod Panhale, vide Exhibit-42, acted as a pancha on inquest panchanama, spot panchanama, panchanama on seizure of the clothes of accused Nos.1 to 3, memorandum statement of accused No.3 and discovery of axe;

PW3 Nikhil Kantilal Dongare, vide Exhibit-45, the son of the deceased and the eyewitness;

PW4 Ashwini Sahebrao Jadhav, vide Exhibit-47, LPC carrier;

PW5 Sunil Haribhau Dongare, vide Exhibit-52, the eyewitness;

PW6 Manjeba Shamrao Mogal, vide Exhibit-55, the circle inspector;

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PW7 Akiloddin Kalimoddin Quazi, vide Exhibit-58, ASI;

PW8 Dr.Subhash Limbaji Shingne, vide Exhibit-60, the medical officer;

PW9 Sarang Wasudeo Nawalkar, vide Exhibit-75, the investigating officer.

5. Besides the oral evidence, the prosecution further placed reliance on following documents:

1. report Exh.40
2. inquest panchanama Exh.43
3. spot panchanama, Exh.44
4. letter to Chemical Analyzer Exh.48
5. report by LPC Exh.49
6. letter to circle tahsildar Exh.56
7. map Exh.57
8. postmortem report Exh.61
9. medical certificates of Parvati and Nikhil Exhs.62 and 63
10. letter to the medical officer Exh.64
11. query report Exh.65
12. clothes seizure panchanama of accused Nos.1 to 3 Exhs.-67 to 69
13. memorandum of accused No.1 Exh.70
14. discovery panchanama Exh.71
15. First Information Report Exh.76
16. letter to the medical officer Exhs.82 and 83
17. arrest panchanamas Exhs.-84 to 87 and 94
18. letter to the Chemical Analyzer Exh.90
19. the Chemical Analyzer's Reports Exhs.98 to 100 and
20. DNA Reports Exh.-103.

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6. All the incriminating evidence is put to the accused persons by recording their statements under Section 313 of the Code of Criminal Procedure. The defence of the accused persons is of total denial and of false implication.

7. Heard learned counsel Shri N.B.Kalwaghe for the accused persons and learned Additional Public Prosecutor Shri Nitin Rao for the respondent/State.

8. Learned counsel Shri N.B.Kalwaghe for the accused persons submitted that admittedly there was previous dispute on account of partition. The cross complaints were filed against each other. The deceased has sustained only one injury which shows that the accused persons have not acted with an intention to kill the deceased. Whatever happened is during sudden fight and sudden quarrel. PW1 Parvati and PW3 Nikhil received the injuries during the scuffle. The cross complaints are filed as they have assaulted accused No.5 Durgabai. Even if the incident is taken into consideration as it is, the only role attributed is to accused No.2 Sunil. Admittedly, the weapon axe recovered at the instance of accused No.1 Gulab is not having blood stains on it. In fact,

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narration of PW1 Parvati, that accused No.1 Gulab also gave a blow of the axe on the head of the deceased, is not supported either by the medical evidence or by the Chemical Analyzer's Reports as no blood stain is found on the said weapon axe. He submitted that considering the circumstances under which the alleged incident has occurred, the case covers under Exception 4 to Section 300 of the Indian Penal Code for which accused No.2 Sunil can be held guilty. Rest of the accused persons have not played any role and, therefore, they are entitled for acquittal. There is no evidence on record to show that the accused persons formed a common object and assaulted the deceased. In view of that, accused No.1 Gulab, accused No.3 Amol, accused No.4 Kamal, and accused No.5 Durgabai deserve to be acquitted.

9. *Per contra*, learned Additional Public Prosecutor Shri Nitin Rao for the State supported the judgment and order of conviction and sentence passed by learned Judge of the trial court and submitted that the evidence adduced by the prosecution sufficiently shows that accused persons in furtherance of their common object arrived at the spot and assaulted the deceased with weapons like axe and sticks. The

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accused persons are convicted on the basis of the evidence on record and no interference is called for.

10. As regards the homicidal death of the deceased is concerned, the material evidence adduced by the prosecution is the evidence of PW8 Dr.Subhash Limbaji Shingne who deposed vide Exhibit-60 that on 24.6.2017 he has conducted the postmortem examination. On examination, he found there was bleeding from right nostril. Scalp and neck were stained with blood. He found external injury that is incised wound on the posterior aspect of right temporal region, incised v-shaped, 1.5 inches x 1 inch x 0.5 inches. Deep wound on palpation temporal region skull bone fracture fragments felt and brain parenchyma felt probably caused due to the hard object. He further observed bruises on right temporal mastoid and upper neck region. There was abrasion on right shoulder, right thumb, one inciser teeth was missing having blood at the said place and fracture of right temporal region skull bone. All the injuries were antemortem.

On internal examination, he observed the corresponding injury under the scalp inverse v-shaped, incised

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wound, fracture of right temporal region on skull bone around 1x1 inch, bleeding on the brain. Temporal low brain was ruptured. Parenchyma was ruptured. Meninges on temporal region was also ruptured. He collected the blood samples. On the basis of the examination, he opined that the death was due to injuries leading to brain damage, fatal organ damaged. Accordingly, he issued the postmortem note Exhibit-61. During his cross examination, the injuries sustained by the deceased are confirmed. Regarding the occurrence of the injuries, nothing incriminating is brought on record. He admitted that bruises can be caused by stone and abrasion can be caused by thorny bushes. Thus, the evidence regarding injuries sustained by the deceased on the head which is the cause of death is established by the prosecution on the basis of the evidence of PW8 Dr.Subhash Shingne.

11. PW2 Bhushan Panhale, who acted as a pancha on inquest panchanama, also deposed that during inquest panchanama, he has seen the injury on the person of the deceased on upper part of right ear. It was bleeding injury. Recitals of the inquest panchanama are proved by him. Thus, the evidence of the medical officer that he witnessed the

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injury on the right posterior region of right temporal region is corroborated by PW2 Bhushan Panhale also. No adverse evidence is brought on record to show that there was any other reason for causing such injury.

12. Now, it is well settled that the evidence of PW8 Dr.Subhash Shingne is not only an opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see the injuries on the person of the deceased.

13. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of **Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another**, reported at **1960 SCR (3) 1** wherein the Honourable Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite

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apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

14. In the recent judgment also, the Honourable Apex Court in the case of Anuj Singh @ Ramanuj Singh @ Seth Singh vs. The State of Bihar, reported in 2022 Live Law (SC) 402 dealt with the evidentiary value of the medical evidence and observed that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

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15. Thus, the prosecution has succeeded in proving that the death of the deceased is homicidal one.

16. To prove the charges against the accused persons, that the they were the members of unlawful assembly and in furtherance of their common object they assaulted the deceased, the prosecution mainly relied upon the direct evidence of PW1 Parvati and PW3 Nikhil, who are the wife and the son of the deceased. The evidence of both these witnesses shows that accused No.1 Gulab is the brother of the deceased, accused Nos.2 and 3 are sons, accused No.4 is wife, and accused No.5 is the mother of accused No.1 Gulab. Their evidence further discloses that there was dispute between them and the accused persons on account of agricultural land situated in Mehuna Shiwar. On the day of the incident also, there was quarrel between them as the deceased along with PW1 Parvati and PW3 Nikhil were cultivating the land which resulted into the assault on each other. They assaulted on accused No.5 Durgabai, is the allegation by the accused persons. PW1 Parvati and PW3 Nikhil admitted that the crime was registered against them regarding the incident which took

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place on 24.6.2017 on allegation that they have assaulted accused No.5 Durgabai.

17. Thus, the presence of the accused persons is established by the fact that accused No.5 Durgabai has lodged the report against PW1 Parvati and PW3 Nikhil regarding the incident which took place at the same time. Thus, the evidence of PW1 Parvati and PW5 Nikhil shows that as there was the quarrel between them and the accused persons, accused No.2 Sunil gave a blow of axe on the head of the deceased and the deceased succumbed to the injuries. Their evidence further shows that accused No.1 Gulab also gave a blow of axe on the head of the deceased. Admittedly, as per the medical evidence, only one injury was seen by the medical officer while conducting the postmortem examination. The defence of the accused is that the land was allotted to the accused No.5 Durgabai which is denied by the witnesses. The further defence put was that PW5 Durgabai was assaulted by the deceased along with PW1 Parvati and PW3 Nikhil. It further reveals from the evidence that gat No.330 is the ancestral land of the deceased and accused No.1 Gulab. The

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said land was partitioned by their father and 6 acres of land was given to accused No.1 Gulab.

18. Thus, it is crystal clear that there was a dispute between the parties on account of partition of the land and, therefore, the alleged incident has occurred.

19. Regarding the injuries sustained by the deceased, it was suggested that the deceased fell down on the ground and sustained the injuries and died. Obviously, the said suggestions are denied by PW1 Parvati and PW3 Nikhil.

20. Besides the direct evidence of PW1 Parvati and PW3 Nikhil, though the prosecution placed reliance on the evidence of PW5 Sunil Dongare, he has not supported the prosecution case.

21. The prosecution has adduced the evidence which is circumstantial in nature. PW2 Bhushan Panhale, acted as a pancha on various panchanamas. As per his evidence, the police called him to act as a pancha and in his presence, inquest panchanama was drawn. He witnessed the injury on the person of the deceased on upper part of right ear. He also

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acted as a pancha on the spot panchanama. The alleged spot of incident was in agricultural land gat No.330. From the spot, three sticks and one axe having blood stains were seized. The police have also seized simple soil and the blood stained soil. The sticks are at Articles-A1 to A3 and the axe is at Article-A5. During his examination, he admitted that the weapon like axe is generally available with the farmers. Except this cross examination, nothing is brought on record regarding the alleged spot of incident.

His further evidence shows that in his presence, the clothes of accused No.2 Sunil, namely pink colour shirt and black colour pant having blood stains, were seized. The clothes of accused No.1 Gulab, namely pink colour Nehru kurta having blood stains and white pant, were seized. The black colour shirt of accused No.3 Amol was also seized in his presence. The clothes are at Articles-A7 to A12. Regarding the seizure of the clothes also, effective cross examination is not taken and the evidence was not shattered. PW2 Bhushan Panhale also acted as a pancha on memorandum statement of accused No.1 Gulab. PW2 Bhushan Panhale deposed that accused No.1 Gulab made a voluntary statement in his

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presence and disclosed that he will show the place where he kept the article. Accordingly, he led them at his house and took out the axe kept beneath the cot and handed over to the police. The statement is at Exhibit-70 and discovery panchanama is at Exhibit-71. Regarding the voluntary statement and seizure of the axe, only cross examination is taken to the effect that the weapon like axe is always available with agriculturists. The evidence of PW2 Bhushan Panhale, regarding the various panchanamas, is also corroborated by the evidence of investigating officer PW9 Sarang Nawalkar who has also categorically narrated about the drawing of various panchanamas and seizure of the articles. During his cross examination also, nothing is brought on record to disbelieve the version of PW2 Bhushan Panhale as well as investigating officer PW9 Sarang Nawalkar.

22. Besides the evidence of PW2 Bhushan Panhale, PW4 Ashvini Jadhav is a formal witness who has carried the viscera of the deceased to the office of the Chemical Analyzer. PW6 Manjeba Shamrao Mogal, is the circle inspector who has drawn the map of the spot of the incident. His evidence shows that he received the letter from the tahsildar of

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Deulgaon Raja requesting to draw a map. Accordingly, he visited the agricultural field gat No.330 and drawn the map. He shown his inability regarding the fact that whether gat No.330 belongs to accused No.5 Durgabai. PW7 Akiloddin Kalimoddin Quazi, who was working at Deulgaon Mahi outpost at the relevant time, deposed that on 24.6.2017 he received a phone call from Parvati, informant PW1, informing that her husband, she and her son were assaulted by the accused persons. Accordingly, he went there and saw that the deceased was lying in an injured condition. He shifted him to the hospital. Thus, his evidence is only to the extent that he received the information of the alleged incident. His evidence further reveals that it is obligatory on his part to take an entry after receipt of the information of the cognizable offence.

23. Investigating officer PW9 Sarang Nawalkar, has carried out the investigation of the alleged crime. His evidence further reveals that gat No.330 is the agricultural land of the deceased Kantilal, accused Gulab and accused Durgabai as per the 7/12 extract Exhibit-105. He further admits that Durgabai had lodged report in the police station vide Crime No.174/2017 as the deceased and PW1 Parvati and

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PW3 Nikhil assaulted her and the crime was registered against PW1 Parvati and PW3 Nikhil.

24. From the evidence on record, it is crystal clear that the alleged incident has taken place on account of the dispute between the parties on partition. It reveals from the evidence that the deceased as well as accused No.1 Gulab and accused No.5 Durgabai had their shares in the agricultural land gat No.330.

25. In the background of the above factual aspect, it is to be seen whether the accused persons were the members of unlawful assembly and in furtherance of their common object, they assaulted the deceased.

26. It is well settled that inference of common object has to be drawn from the various factors, such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result.

27. The evidence adduced by the prosecution nowhere shows that the accused persons with their common object

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arrived at the spot with the weapons. In fact, accused No.1 Gulab and accused No.5 Durgabai are having their shares in gat No.330. The agricultural land of accused No.1 Gulab is adjacent to the spot of the incident. Admittedly, the alleged incident has taken place in the month of June when the agricultural operations are in progress. The presence of the accused persons in the agricultural field is natural as they were also having shares in the said agricultural field. To prove the common object, the prosecution has to prove that the act was in furtherance of the common object.

28. The Honourable Apex Court in the case of **Jasdeep Singh @ Jassu vs. State of Punjab (2022)2 SCC 545** interpreted the word "furtherance" and held that, The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

29. Admittedly, in the present case, there is absolutely no evidence to show that the accused persons formed the unlawful assembly and in furtherance of their common object they have assaulted the deceased.

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30. The entire prosecution case is relied upon the evidence of PW1 Parvati and PW3 Nikhil. As already observed that filing of the cross complaint itself is sufficient to show the presence of the accused persons. Moreover, the presence of the accused persons at the spot is not unnatural. Admittedly, the alleged incident occurred on account of dispute between parties on partition. Now, it has to be seen whether the evidence of PW1 Parvati and PW3 Nikhil is cogent and reliable and acceptable. As per the evidence of both these witnesses, accused No.1 Gulab and accused No.2 Sunil gave blows of the axe on the head of the deceased. Admittedly, one axe having blood stains was seized from the spot itself. The Chemical Analyzer's Report Exhibit-99 shows that Exhibit-3 the axe, which is marked as Exhibit-C in the referral letter addressed to the Chemical Analyzer, is seized from the spot. As per Exhibit-99, the blood stains are found on the Article axe Exhibit-3. The blood group of the blood stains was not determined, but it was determined that the blood stains are of human blood. The said axe was referred for DNA examination. As per Exhibit-104, the DNA report, the DNA extracted from the blood detected on Exhibit-3 axe, Exhibit-5

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sando banian of the deceased, Exhibit-7 underwear of the deceased, Exhibit-8 Nehru kurta of accused No.1 Gulab are identical and from one and the same source of unknown male origin. Thus, it reveals that the blood stains found on the clothes of the deceased and the blood stains found on the axe are seized from the spot having blood stains of the deceased.

31. In the light of the above circumstantial evidence, the evidence of PW1 Parvati and PW3 Nikhil is appreciated. It reveals that they have exaggerated the version. It is apparent that the deceased has sustained only one injury which proved to be fatal. The said injury was attributed to accused No.2 Sunil. PW1 Parvati and PW3 Nikhil also deposed that it was accused No.2 Sunil who gave the blow of the axe on the head of the deceased. The allegations of the prosecution witnesses that accused No.1 Gulab also gave a blow of the axe on the head of the deceased is not corroborated either by the medical evidence or by the circumstantial evidence like Chemical Analyzer's Reports. Admittedly, the axe was recovered on the basis of the memorandum statement of accused No.1 Gulab. The said memorandum statement of discovery was proved by the

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prosecution by adducing the evidence of PW2 Bhushan Panhale. The said incriminating article was forwarded to the Chemical Analyzer by the investigating officer vide letter Exhibit-90. As per the letter Exhibit-90, the said article was mentioned as Exhibit-D. As per the Chemical Analyzer's Report Exhibit99, it is Exhibit-4. No blood stains are found on Exhibit-4 that is the axe which was seized at the instance of accused No.1 Gulab.

32. Thus, the evidence on record sufficiently shows that it was accused No.2 Sunil who gave a blow of the axe on the head of the deceased which is proved to be fatal. The said fact is also corroborated by the medical evidence which shows that the deceased has sustained the injury on the posterior aspect of right temporal region. The blood stains of the blood group of the same origin which found on the clothes of the deceased was found on the axe. It is apparent that PW1 Parvati and PW3 Nikhil exaggerated their versions by assigning the act of the assault to accused No.1 Gulab.

33. It is a well settled that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) is neither a

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sound rule of law nor a sound rule of practice. It is not applicable in criminal cases in India, as witnesses may be partly truthful and partly false in their evidence. The experience shows that the evidence of many witnesses contains a grain of untruth a some exaggeration or embellishment. This many a times happens perhaps due to fear in the mind of the witnesses that their testimony may not be accepted. Discrepancies in deposition of witnesses are always there due to normal error of observation, normal error of memory due to lapse of time, due to mental disposition etc. which needs to be ignored. The prosecution would fail only wherein inconsistency goes to the root of the case, otherwise it becomes the duty of the Court to shift truth from falsehood from the evidence of witnesses examined by the prosecution. At the most, inconsistent part of the version of the witnesses may be discarded and rest of his testimony is to be accepted.

34. Thus, only because PW1 Parvati and PW3 Nikhil exaggerated their versions is not sufficient to discard their entire evidence. Their evidence is sufficient to show that accused No.2 Sunil gave a blow of the axe on the person of the deceased.

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35. Learned counsel Shri N.B.Kalwaghe submitted that the alleged incident has occurred suddenly and therefore, Exception 4 to Section 300 of the Indian Penal Code is attracted. There is absence of premeditation and, therefore, the act of accused No.2 Sunil is covered under Section 304 Part-I. He submitted that as far as the injuries sustained by PW1 Parvati and PW3 Nikhil are concerned, same are simple injuries. Admittedly the scuffle took place between the two parties and possibility of sustaining the injuries in the said scuffle cannot be ruled out. In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **Mahesh vs. State of M.P. reported in (1996)10 SCC 668** and **Pardeshiram vs. State of Madhya Pradesh reported in (2021)3 SCC 238** wherein it has been held that sudden fight after the deceased objected to the grazing cattle, the appellant gave a single blow with a pharsa on the head of the deceased, no other injury is caused to the deceased or the witnesses who had also requested not to graze cattle in the field indicating that the appellant did not act in any cruel or unusual manner. Held, in circumstances of the case,

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Exception-4 is attracted and the trial court rightly convicted under Section 304 Part-I.

36. The submissions of learned counsel Shri N.B.Kalwaghe if are taken into consideration in the light of the evidence appreciated by learned Judge of the trial court, admittedly, the weapon used is the instrument of agriculturists. The sticks are the lethal weapons. The only one injury is sustained by the deceased. We find substance in the submissions of learned counsel for the accused persons. Whether the offence is culpable homicide or murder, it can be seen that the offence of culpable homicide does not provide any punishment.

37. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie. Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms; one is a graver offence which amounts to 'murder' and lesser

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one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act of homicide falls within the definition of culpable homicide under Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of

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the Indian Penal Code. Once, it is held that the offence falls under Section 304 of the Indian Penal Code, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

38. As far as the intention to cause death is concerned, it can be gathered generally from a combination of a few or a several circumstances like nature of the weapon used, whether the weapon was carried by the accused persons or was picked up from the spot, whether the blow is aimed at the vital part of the body, the amount of force employed in causing injury, whether the act was in course of sudden quarrel or sudden fight, whether the incident occurs by chance, or whether there was any premeditation, whether there was any prior enmity or the deceased was the stranger, whether there was any grave or sudden provocation, or whether the incident was in the hit of passion.

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39. By applying these facts, if the evidence on record in the present case is assessed, the weapon used was the axe. The injuries sustained by the deceased was a single injury. The accused persons have not acted in a cruel manner. Whatever happened is in a sudden fight and in a sudden quarrel. Accused No.2 Sunil has given a blow on the head of the deceased and, therefore, the intention can be gathered from the said circumstance as well as he is having knowledge that the said act of assaulting on head can be proved fatal. The case of accused No.2 Sunil covers under Exception 4 of Section 300 of the Indian Penal Code. A sudden fight and a sudden quarrel is to be seen from the circumstances. Admittedly, there was quarrel between the accused persons and the deceased on account of partition. The said Exception 4 deals with a case of the prosecution not covered by first Exception. Exception 4 to Section 300 of the Indian Penal Code deals only if there is heat of passion and the person acts while losing his self control. It deals with cases in which a blow may have been struck or some provocation given in the origin of the dispute. A sudden fight implies a mutual provocation. The help of the said Exception 4 can be invoked

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if the death is caused without premeditation, in a sudden fight without the offender having taken undue advantage or acted in a cruel or unusual manner etc..

40. Here, in the present case, the facts on record show that there was a sudden quarrel with no premeditation. The injury sustained by the deceased was a single injury. The weapon like axe was used. Accused No.2 Sunil has not taken any undue advantage or acted in a cruel manner.

41. The culpable homicide is defined in Section 299 of the Indian Penal Code. Whereas, the murder is defined in Section 300 of the Indian Penal Code. The every act of homicide falls within the definition of culpable homicide in Section 299 of the Indian Penal Code. As per Section 300 of the Indian Penal Code, homicide is murder, however there are five exceptions and in those exceptions if the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code and, therefore, it has to be seen whether there was intention or knowledge with which the act was done.

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42. Admittedly, in the present case, the quarrel took place on a simple reason on account of partition. Accused No.2 Sunil lost his control and gave a blow of the axe on the person of the deceased. Admittedly, the blood stains are found on the clothes of accused Nos.1 and 2, Gulab and Nikhil, and their presence at the spot is not disputed. Admittedly, they have not explained the blood stains appearing on their clothes. But, the evidence on record sufficiently shows that they were present at the spot of the incident. The law is settled while appreciating the evidence of witnesses, though witnesses have exaggerated their versions, the same are not sufficient to discard their entire evidence. The cumulative effect of the evidence shows that in a sudden fight and a sudden quarrel, accused No.2 Sunil gave a blow of axe on the person of the deceased. Witnesses PW1 Parvati and PW3 Nikhil sustained the injuries in the scuffle. The axe used by accused No.2 Sunil was seized from the spot of the incident. As per the Chemical Analyzer's Reports, the blood stains found on the axe, seized from the spot, are of the same origin which are found on the clothes of the deceased. The blood stains found on Nehru Kurta of accused No.1 Gulab is

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also from the same origin. The blood stains are not found on the axe recovered at the instance of accused No.1 Gulab.

43. From the above all circumstances, irresistible conclusion can be drawn is that as accused No.1 Gulab was present at the spot and the blood stains are appearing on his clothes. The evidence of the witnesses, that accused No.2 Sunil gave a blow of the axe on the head of the deceased, corroborated by the medical evidence and the Chemical Analyzer's Reports, sufficiently establishes that it was the act of accused No.2 Sunil which resulted into the death of the deceased. The act of accused No.2 Sunil falls under Section 304 Part-I of the Indian Penal Code.

44. Insofar as the role of accused Nos.1 and 3 to 5 is concerned, the same is not proved by the prosecution. There is no evidence that the accused have acted in furtherance of their common object. The allegation, that accused Nos.3 to 5 assaulted PW1 Parvati and PW3 Nikhil, is not supported. The inference can be drawn that they have sustained the injuries during the scuffle. Considering the factual scenario in the background of the position of law, inevitable conclusion is that

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the act of accused No.2 Sunil would cover under Exception 4 to Section 300 of the Indian Penal Code and, therefore, the case of accused No.2 Sunil would cover under Section 304 Part-I of the Indian Penal Code.

45. In view of the discussion above, the appeal deserves to be allowed partly. Accused No.1 Gulab, accused No.3 Amol, accused No.4 Kamal, and accused No.5 Durgabai deserve to be acquitted of the offence for which they were convicted and sentenced and the sentence of accused No.2 Sunil deserves to be modified by sentencing him for rigorous imprisonment for ten years. Hence, we pass following order:

ORDER

(1) The criminal appeal is **allowed partly**.

(2) The judgment and order of conviction and sentence passed by learned Additional Sessions Judge, Buldana in Sessions Case No.65/2017 is modified.

(3) Accused No.2 Sunil s/o Gulab Dongare is held to be guilty for offence punishable under Section 304 Part-I of the Indian

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Penal Code and he is sentenced to suffer rigorous imprisonment for ten years. The fine amount is maintained.

(4) Accused No.1 Gulab, accused No.3 Amol, accused No.4 Kamal, and accused No.5 Durgabai are acquitted of the offence for which they were convicted and sentenced.

(5) The Bail Bonds of accused No.1 Gulab, accused No.3 Amol, accused No.4 Kamal, and accused No.5 Durgabai stand cancelled.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!