



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

CRIMINAL APPEAL NO. 222 OF 2005

1. Anil s/o Hanumant Hendale
Age : 34 years, Occu : Agril,
2. Hanmant s/o Sambhaji Hendale
Age : 78 years, Occu : Agril,
Both R/o Gugalgaon,
Taluka Omerga, District Osmanabad. ... Appellants

Versus

- . The State of Maharashtra ... Respondent

....

WITH

CRIMINAL APPLICATION NO. 6095 OF 2016

1. Chimabai w/o Sambhaji Hendale,
Age : 45 years, Occu : Agri.,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad.
2. Jyoti w/o Ram Wakde,
Age : 25 years, Occu : Household,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad.
3. Ganesh s/o Sambhaji Hendale,
Age : 23 years, Occu : Education,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad.
4. Khulas S/o Sambhaji Hendale,
Age : 21 years, Occu : Education,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad. ... Applicants

Versus

1. Anil S/o Hanumant Hendale,

Age : 46 years, Occu : Agri.,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad.

2. Hanmant S/o Sambhaji Hendale,
Age : 90 years, Occu : Nil,
R/o. Gugalgaon, Taluka Omerga,
District Osmanabad.

3. The State of Maharashtra ... Respondents

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Mr. Pradeep V. Ambade, Advocate for the Appellants.

Mrs. Chaitali Chaudhari Kutti, APP for Respondent-State.

Mr. T. M. Venjane, Advocate for the Applicants in Appln/6095/ 2016

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 28 NOVEMBER, 2024

PRONOUNCED ON : 17 DECEMBER, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order dated 22-03-2005 passed by learned Additional Sessions Judge, Omerga in Sessions Case No.80 of 2004 recording guilt of the appellants for offence under Section 304 Part II read with 34 of the Indian Penal Code (IPC).

2. During pendency of appeal, Criminal Application No.6095 of 2016 is filed by the informant, who is wife of deceased, and she seeks permission to intervene in the present appeal. Said application is allowed and disposed of.

BRIEF FACTS OF THE CASE

3. Prosecution was launched against present appellants by wife of deceased Sambhaji at Omerga Police Station alleging commission of murder of her husband by present appellants. She reported that on 17-06-2004, she, her husband and two sons approached appellant father-in-law and her husband sought partition and separate share in the agriculture land. At that time, her brother-in-law was also present. She reported that getting annoyed by the same, brother-in-law Anil gave kicks on the chest of her husband and father-in-law beat him with footwear as a result of which her husband complained of chest pain and was unable to stand and walk and therefore, was taken to hospital, where he was examined and declared brought dead. Therefore, she approached Omerga Police Station and lodged report exh.21, on the basis of which, Crime bearing no.83 of 2004 was registered and it was investigated by PW8 Shaikh (Dy.S.P.).

After gathering sufficient evidence, Investigating Officer chargesheeted appellants for Section 302 read with 34 of the IPC.

After appreciating oral and documentary evidence and on hearing both the sides, learned trial Judge, by its judgment and order dated 22-03-2005 reached to a finding and conclusion that offence under Section 304 Part II read with 34 of the IPC and not under Section 302 of the IPC is made out by prosecution and sentenced

appellants father and his son to suffer rigorous imprisonment for five years each and to pay fine.

Feeling aggrieved by the above judgment and order of conviction, now exception has been taken by way of instant appeal.

SUBMISSIONS

On behalf of appellants :

4. Questioning the above judgment, learned Counsel for appellants would submit that there is no convincing evidence regarding occurrence of the offence. It is submitted that deceased himself went alongwith his family to his own father to sought partition. That some incident allegedly took place. According to learned Counsel, there are allegations that brother-in-law gave kicks on the chest and father-in-law hit with footwear. That thus, there was no intention or knowledge to commit above offence. Learned counsel submitted that medico legal expert opined death due to "*head injury and sub-dural haematoma*". According to learned counsel, alleged manner of beating would not result death and neither of the appellants had any intention to kill nor they had any knowledge that their beating would take away life of deceased. That injuries could be possible on account of fall after leaving the scene of occurrence. Learned Counsel submitted that by no stretch of

imagination, kick or use of footwear in beating would result into death and therefore, accused cannot be connected to death which took later point of time. It is pointed out that deceased was taken by informant to house and given primary treatment and thereafter, later on he was shifted to hospital. That CA report also does not support prosecution, rather it supports accused.

5. He submitted that only interested witnesses are examined, who has given exaggerated version and has improvised their stories. That deceased went walking and died later on and as such, it is also not a case of culpable homicide not amounting to murder. That learned trial Court has failed to appreciate evidence of PW7 Dr.Thite, medical expert, more particularly, answers given by him in cross-examination and further law has also not been correctly applied and hence, he urged to allow the appeal.

On behalf of State :

6. In answer to above, learned APP would point out that informant wife and her sons, who were accompanying deceased are eye witnesses. Thus, there is direct eye witness account. She pointed out that their testimonies are consistent and they are lending support to each other. That there was merciless beating to deceased in their

presence by his own father and brother. That these witnesses are narrating about complain of pain in chest. That injury no.3 has been declared by Doctor to be fatal. That there are allegations of repeated hitting on head. That deceased was frequently sitting while returning and was complaining of pain. That he was required to be taken to two hospitals. Learned APP pointed out that PW7 Dr.Thite, Autopsy Surgeon has attributed death due to injury no.3, which was found to be sufficient in ordinary course of nature to cause death. That deceased died on the day of assault itself and therefore, it is her submission that both appellants being solely responsible for the death, learned trial Court has correctly held them guilty and convicted them for offence under Section 304 Part II of the IPC, which according to her, is justified. Consequently, she supports findings of learned trial Court.

On behalf of Intervenor :

7. There is intervention at the hands of informant resisting the appeal and supporting the conviction. Learned counsel for intervenor also supported the findings, reasons and conclusion reached at by the learned trial Court and prays to dismiss the appeal.

EVIDENCE IN TRIAL COURT

8. In support of its case, prosecution has examined in all eight witnesses. Their role and status and the sum and substance of their evidence is as under :

PW1 Niranjan Dhulayya Swami acted as pancha to spot panchanama Exhibit 15.

PW2 Sanjay Yeshwant Yemgar, pancha to recovery of *chappal* [footwear] Exhibit 17, did not support prosecution.

PW3 Sunil Manohar Patil, another pancha to recovery panchanama Exhibit 17, also did not support prosecution.

PW4 Informant Chimabai Sambhaji @ Appasaheb Hendle - wife of deceased, at Exhibit 20, deposed as under :

“Sambhaji was my husband. He is no more. He was driver. Accused Anil is my brother-in-law. Accused Hanmant is my father-in-law. Both of them are present in court.

2. I and my husband were residing at Gugalgaon separate from my father-in-law, as there was conflict between my husband and my brother-in-law, father-in-law.

3. There was land of 9 acres in the name of my father-in-law. I, my husband and my two sons had been to my father-in-law to demand partition and our separate share of 2 acres. It

occurred on 17th June, 2004. It is about 10.00 a.m. we had came to Gugalgaon from Gugalgaon-wadi. After coming to Gugalgaon we went in a square, in a old locality. At that time, accused were there. My husband demanded partition to my father-in-law and asked to give middle 2 acres of land. On this, my brother-in-law Anil asked by husband "I am going to sell middle 2 acres of land, take 2 acres of one side." Then my husband insisted for middle 2 acres of land only. On this, Anil inflicted kick blow on chest of my husband. He was wearing chappal at that time. He said, "I will finish you" and started to give more kick blows in the chest of my husband. At that time, my father-in-law also stood up. Took out his chappal and started to beat my husband over his head. I was standing at some distance at that time. I rushed and came across. At that time, four persons, who were in the square, came and intervened the quarrel. Then I caught hold one hand of my husband, while my sons have caught another hand of my husband, and we proceeded towards Gugalgaon-wadi. During the way, my husband was in painful condition. He was frequently sitting and getting up, and was saying, "then beat me extremely. I am having extreme chest pain". "Kadu Anya". Thereafter, I brought my husband to my house anyhow (basat uthat). I applied Zandu balm to his chest as he had more pains. At that time, my husband was saying, "my chest is paining extremely. I am feeling much problematic what I can do".

4. I had carried my husband in the auto rickshaw at Omerga. First of all I brought him to Dr. Ahankari Compounder examined there and asked us to take him to Govt. hospital.

5. *From there we brought him to the hospital of Dr. Shendge. He examined and told, he was no more, and why for he was brought. He asked us to take him to Govt. Hospital.*

6. *From there, we came to Govt. Hospital, carrying my husband in the auto rickshaw, keeping my husband in rural hospital, I went to police station Omerga, and stated the event, to the officer. Police reduced it to writing. I read it, I told to the officer that the contents were correct and then I signed it. (FIR is shown to the witness) This bears my signature. It is at Exhibit 21.*

PW5 Khulas s/o Sambhaji @ Appasaheb Hendle is younger son of deceased aged 12 years. After putting general questions to him and getting satisfied as to his competency, his evidence is recorded at Exhibit 22, relevant portion of which reads as under:

“4. Occurrence has taken place at Gugalgaon’s square. I, my brother and parents had been to Gugalgaon, as my grandfather had told that, he would partition the land. After coming to Gugalgaon, we came in square. My father went to my grandfather. I and my brother accompanied my father. My mother was standing behind a wall of temple of Lord Maruti. My grandfather and uncle Anil were sitting on platform of flag pole. My father asked to my grandfather “given me middle 2 acres of land”. My uncle told, “we will not give that land to you, we are going to sell that land”. My father told “give me that

land only". My father insisted for the same. Then my uncle came and kicked my father on chest, wearing chappal. Then my father fell down. He started to beat my father. Father attempted to stand up. Then my grandfather also came. He took out chappal from his foot and beat my father on his head. I started to pull shirt of my grandfather. At that time, my grandfather pushed me by means of left hand. Therefore, I fell down.

5. *Then they both started beat my father extremely. My mother rushed there. My mother and people assembled there, intervened the quarrel. My grandfather and uncle went from there. My father became restless there only. My father kept his palm on his forehead and stated "I am feeling as if I am being rotated". He also said chest is also paining. Thereafter I, my brother and my mother took my father and proceeded towards our house. In a way, my sister came across. Thereafter we all took my father to our house.*

6. *Then my father became more restless. Then my mother applied zandu balm to the chest of my father. My father became more restless. Then mother raised shouts. Then people assembled. Then somebody called rickshaw. Rickshaw means auto rickshaw. I, my brother, my mother, police patil and neighbour Basawraj brought my father to Omerga, and took him to the hospital of Dr. Shendge. The Doctor examined my father and told that my father was dead.*

PW6 Ganesh s/o Sambhaji @ Appasaheb Hendle, another minor son of deceased, also deposed about the occurrence at Exhibit 23.

Para 3 of his examination-in-chief reads as under :

“3. My father died on 17th June, 2004. On that day, I was at my house at Gugalgaonwadi. My mother told me, “we are required to go to Gugalgaon, as my grandfather was going to partition”. Then I, my parents and brother Vilas went to Gugalgaon. We came to the square of flag point. My uncle and grandfather were sitting on the platform of the flag pole. I and my brother Vilas went with my father to the platform of flag pole. My mother was at a distance equal to a distance from witness box to door of court hall. (A distance between witness box and door of court hall is 18 to 20 ft.) My father asked to my grandfather, “give my 2 acres of land out of the agricultural land”. My uncle told “we will sale middle 2 acres of land”. My father asked “give me middle 2 acres of land”. My uncle kicked my father on chest. My father fell down. My grandfather came from there, took out chappal from his right foot and beat my father over his head. I pulled my grandfather catching his shirt. He pushed me. Then my mother rushed there. Some unknown persons staying there, intervened the quarrel. Then uncle and grandfather left that place. My father was laying there only. Then I, my brother and mother took my father to our house. On way, my sister came across. Then we all took my father to our house. After reaching to house, my father became more restless. My mother applied zandu balm to the chest of my father. When my father became more unrest, my mother raised shouts. Then somebody brought autorickshaw. Then I, my mother, brother, police patil and Baswraj Swami took my father to Omerga. We took my father to the hospital of Dr. Shendge. He examined

and told that my father is no more.

PW7 Dr. Dattatraya Sambhajirao Thite is the Medical Officer, who conducted postmortem on 17-06-2004. On external examination, he claims to have noticed three injuries i.e., (1) contusion over chest on left side at infra clavicular region, measuring 7 x 5 cm oblique red colour, (2) abrasion over neck at supra sternal region measuring 1½ x ½ cm oblique red colour and (3) contusion over scalp on superior aspect, anteriorly measuring 7 x 5 cm oblique red colour. According to this medical expert, injuries were *antemortem* and injury no.3 to be sufficient to cause death in ordinary course. He deposed that injury no.3 is possible in case of forceful blow on head by means of handmade footwear i.e. chappal having sole of tyre and nails to the sole at front side, and that injury no.1 is possible in case of kick blow on chest wearing footwear i.e. chappal. He deposed that abrasion on neck is possible in a struggle. That the injury no.3 in column no.17 of post mortem notes was corresponding to injury no.3 noted in column no.19.

PW8 PI Mohmad Yunus Ismail Shaikh is the Investigating Officer.

ANALYSIS

9. Incident in question seems to have taken place between deceased, his father and brother. It is emerging that deceased himself went to his father and brother to seek partition and there, when he insisted middle share of the land, the same was objected by his

brother and the episode of brother giving kicks on chest followed by father using footwear to beat deceased took place. Therefore, incident has erupted all of a sudden. PW4 Chimabai, informant (wife of deceased and PW5 Khulas and PW6 Ganesh, two minor children of deceased are claiming to be eye witnesses. Their testimonies are already reproduced above. Both wife and children are consistent about appellant no.1 giving kick and appellant no.2 using footwear to beat. They are all consistent about deceased complaining of chest pain while they were returning to their house. Though above witnesses are cross-examined, their above version about deceased being kicked and being hit with footwear has remained intact.

10. Deceased was initially taken to home by PW4 Chimabai and given primary aid and then taken to hospital, where he was declared to be brought dead. This was followed by performing autopsy.

11. PW7 Dr.Thite, Medical Officer, who conducted *post mortem* has noticed above quoted three injuries and this medico legal expert is categorical that injuries are *ante mortem* whereas injury no.3 was sufficient to cause death in ordinary course of nature. He also deposed that said injury no.3 is possible due to forceful blow on head by hand-made footwear. Injury no.3 is contusion over scalp.

12. Learned trial Judge has, on complete appreciation of evidence, held offence of 304 Part II of the IPC and not 302 of the IPC to be made out.

Very recently the Hon'ble Apex Court in the case of *Anbazhagan v. The State, Represented by the Inspector of Police [2023 LiveLaw (SC) 550]* while deciding *Criminal Appeal No.2043 of 2023* has elucidated the entire judicial precedent on the point of culpable homicide not amounting to murder i.e. as to when offence of 304 Part I or Part II would get attracted and where and when to apply Part I and where to apply Part II. Thus above ruling of Hon'ble Apex Court is looked upon as an instructive judgment. Paragraph 60 deals with important principles, which are carved out as regards to applicability of culpable homicide not amounting to murder. The same read thus :

“60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though

only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section

304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death. To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge

that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

13. Here on complete re-appreciation and on recapitulating the events, there is neither premeditation nor “**intention**” to kill or even “**knowledge**” so as to invoke either parts of 304 of the IPC.

Incident seems to have taken place when deceased himself went towards his father and asserted share. Neither of the appellants were aware that deceased would come and demand particular side of the land by way of his share. Thus, incident has taken place all of a

sudden. Apparently, there is no use of any deadly weapon or article in assault. Appellant no.1 gave kick and appellant no.2 allegedly used footwear. Both appellants were not aware that result would turn out to be so fatal. Moreover, after the incident, deceased seems to have walked back with his wife and children to his house. Hence, for such reasons neither “intention” nor “knowledge” could be attributed to either of the appellants as incident had happened on the spur of the moment.

In the considered opinion of this Court, this is a case which would attract offence under Section 325 of the IPC i.e. voluntarily causing grievous hurt and case won't travel beyond it. Therefore, learned trial Court's findings about offence under Section 304 Part II to be made out, are required to be interfered with.

14. Here as stated above, the incident has erupted all of a sudden. Deceased was brother of appellant no.1 and son of appellant no.2. Incident in question had taken place on 17-06-2004. Appeal is heard almost after more than two decades. At the time of conviction, recorded by learned trial Judge, appellant no.1 was shown to be of 34 years old whereas appellant no.2 father was shown to be of 78 years old. Appeal is preferred in 2005.

15. The Hon'ble Apex Court in *Suo-Motu Writ Petition (C) No.3 of 2023* in the case of *Right to Privacy of adolescents with Criminal Appeal No.1451 of 2024*, has made following observations in paragraph 13 as regards to judgment of appellate court and for ready reference, the observations are borrowed and reproduced as under :

*“13. When a Court deals with an appeal against an order of conviction, the judgment must contain (i) a concise statement of the facts of the case, (ii) the nature of the evidence adduced by the prosecution and the defence, if any, (iii) the submissions made by the parties, (iv) the analysis based on the reappraisal of evidence, and (v) the reasons for either confirming the guilt of the accused or for acquitting the accused. The appellate court must scan through the evidence, both oral and documentary, and reappraise it. After reappraising the evidence, the appellate court must record reasons for either accepting the evidence of the prosecution or for disbelieving the evidence of the prosecution. The Court must record reasons for deciding whether the charges against the accused have been proved. **In a given case, if the conviction is confirmed, the Court will have to deal with the legality and adequacy of the sentence. In such a case, there must be a finding recorded on the legality and adequacy of the sentence with reasons.** The ultimate object of writing a judgment is to ensure that the parties before the Court know why the case is decided in their favour or against them. Therefore, judgment must be in a simple language. Then conclusions recorded by the Court in the judgment on legal or factual issues must be supported by cogent reasons.*

16. Thus, appellate Court is not only expected to appreciate evidence on merits but has also to ponder as to whether sentencing policy has been adhered to by the learned trial Court and whether

sentence awarded is in consonance with the offence proved. Similar view was expressed by Hon'ble Apex Court in the case of *Jameel v. State of U.P.*, (2010) 12 SCC 532 "punishment, held, must be appropriate and proportional to the gravity of the offence committed".

Taking this mandate into consideration, in view of above factual aspects, sentence part of the judgment of learned trial Court is also required to be interfered and modified as it is disproportionate to the act proved by prosecution. Sentence of one year to appellant no.1, who was at the time of incident said to be a young man, for giving kick on the chest, commensurates with his act. Considering the age of appellant no.2 - father at the time of filing of appeal to be 78 years and currently reported to be over 95 years, leniency is required to be extended to him and he can be set at liberty for the sentence already undergone by him.

Learned trial Court seems to have only awarded fine of Rs.5,000/- each, which apparently seems to be meager. Apparently no distinct compensation has been awarded by the trial Court. The Hon'ble Apex Court in the cases of *Jitendra Singh v. State of U.P.*, (2013) 11 SCC 193 and *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC, 770 held that, consideration of grant of compensation to the victim of crime is mandatory. In view of above

discussion, following order is passed :

ORDER

(I) Criminal Appeal No.222 of 2005 is partly allowed.

(II) The conviction awarded to appellant nos.(1) – Anil s/o. Hanumant Hendale and (2) Hanmant s/o. Sambhaji Hendale in Sessions Case No.80 of 2004 by the learned Additional Sessions Judge, Omerga on 22-03-2005 for the offence punishable under Section 304 Part-II read with 34 of the Indian Penal Code, stands quashed and set aside.

(III) **Instead**, appellant nos.(1) Anil s/o. Hanumant Hendale and (2) Hanmant s/o. Sambhaji Hendale are hereby convicted for commission of offence under Section 325 of the Indian Penal Code and Appellant No.1 - Anil s/o. Hanumant Hendale is sentenced to suffer rigorous imprisonment for one year with fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one month. Appellant No.2 - Hanmant s/o. Sambhaji Hendale is sentenced to suffer imprisonment for the period already undergone by him.

(VI) Bail bonds of appellant No.2 stand cancelled.

(V) It is clarified that rest of the operative order passed by the trial Court is maintained.

(VI) Compensation to the tune of Rs.50,000/- is awarded to the wife of deceased. The District Legal Services Authority, Osmanabad to take effective steps for arranging payment of compensation to wife of deceased i.e. PW4 Chimabai Sambhaji @ Appasaheb Hendle.

[ABHAY S. WAGHWASE, J.]