



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

CRIMINAL APPEAL NO. 446 OF 2018

1. Datta Manohar Jamadar
Age: 34 years, Occu.: Labour,
R/o Dapka, Tq. Omerga,
Dist. Osmanabad
2. Manohar Sattappa Jamadar
(Abated as per order dt. 20/12/2023)
3. Balaji Manohar Jamadar
Age: 24 years, Occu.: Education,
R/o Dapka, Tq. Omerga,
Dist. Osmanabad
4. Digambar Manohar Jamadar
Age: 32 years, Occu.: Mechanic,
R/o Dapka, Tq. Omerga,
Dist. Osmanabad
5. Vimalbai Manohar Jamadar
Age: 54 years, Occu.: Household,
R/o Dapka, Tq. Omerga,
Dist. Osmanabad
6. Anusaya Datta Ghate
Age: 29 years, Occu.: Household,
R/o Naldurg, Tq. Tuljapur,
Dist. Osmanabad

..APPELLANTS

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.N. Patne, Advocate for appellants
Mr. S.D. Ghayal, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 18th SEPTEMBER, 2024
PRONOUNCED ON : 17th OCTOBER, 2024

JUDGMENT (PER : R.G. AVACHAT,J.) :

1. The appellants before us in this appeal are the members of one and the same family, meaning thereby the parents and their four sons, challenging the judgment and order dated 14th May, 2018 passed by the Court of Additional Session, Omerga ('trial Court') in Sessions Case, No. 25 of 2014, whereby they have been convicted and consequently sentenced, as follows :-

Section (I.P.C.)	Sentence	Fine (Rs.)	In default
302 r/w 149	Life Imprisonment	3,000/- each	S.I. for two months
143	R.I. for six months	1,000/- each	S.I. for one month
147	R.I. for two years	1,000/- each	S.I. for one month
148	R.I. for three years	1,000/- each	S.I. for one month
323 r/w 149	R.I. for one year	1,000/- each	S.I. for one month
506 r/w 149	R.I. for one year	1,000/- each	S.I. for one month

Pending the appeal, Appellant No.2 – Manohar passed away. The appeal, therefore, stood abated against him.

2. Manohar (deceased appellant) was the elder brother-in-law of PW 2 – Laxmibai (informant). Manik (deceased) was Manohar's real brother. They have two more brothers, Ashok and Tukaram. Partition of the ancestral agricultural land had already been effected and each brother was cultivating the land of his share. There was, however a well in common.

On 08th January, 2014, Laxmibai and Manik returned to their house by little past 08:00 p.m. after having worked in their field. Laxmibai

was engaged in cooking. Manik was said to be in the house. Their children were studying. Appellant – Datta came in front of their house and questioned as to why he did not allow him to take water of the well on that day. Manik tried to reason with him and even asked to take water on the next day. Datta did not listen. He entered the house and dragged Manik out of the house. All the appellants came together immediately and started abusing Manik and even beat him up with fist and kick blows. PW 2 – Laxmibai intervened to rescue her husband. She too was not spared. Manohar (deceased appellant) gave a stick blow on her head. Datta assaulted on the stomach of Manik with a knife. While appellant – Digambar inflicted on the head of Manik an axe blow. On hearing the commotion, village Sarpanch and others came. They subsided the quarrel. Both, Manik and Laxmibai were taken first to Sub-District Hospital, Omerga and then shifted to Civil Hospital, Solapur. In the early morning of 09th January, 2014, Manik breath his last.

3. In the Sub-District Hospital, Omerga, Laxmibai gave her statement-cum-F.I.R. (Exh.56). Based on the same, a crime vide C.R. No. 13 of 2014 was registered. On demise of Manik, Section 302 of the I.P.C. came to be invoked. Soon after the quarrel, somebody had informed the concerned police station. Crime scene panchanama (Exh.66) was drawn. Articles like axe handle, axe blade, bamboo stick, blood mixed earth were collected and seized in the presence of panchas. The appellants were arrested. Clothes on their person were seized. Inquest was conducted. The mortal remains of Manik was subjected to autopsy. Clothes on his person

too were taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The seized articles were forwarded to R.F.S.L., Aurangabad for analysis and report. On completion of investigation, charge-sheet was filed.

4. The trial Court framed the charge (Exh.4) for various offences. The appellants pleaded not guilty. Their defence was of false implication. According to them, Manik (deceased) was heavily addicted to liquor. There was raised platform in the nearby of his house. People would gather there to consume liquor. Due to heavy drink, he was not in his senses. He fell from the said platform on a pointed object like broken liquor bottles and suffered injuries to his stomach. He succumbed to the injuries.

5. To bring home the charge, the prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted and consequently sentenced the appellants as stated above.

6. Learned counsel for the appellants would submit that admittedly relations between Manik (deceased) and his brother – Manohar (deceased appellant) were not good. Manik was addicted to liquor. The material witnesses examined in the case are all family members of the deceased. An independent witness – PW 6 - Vishal testified there was quarrel between some of the appellants and family members of Manik (deceased). He was

categorical to state that Manik and Laxmibai were found lying at a bridge near the raised platform nearby their house. PW 9 - Ramhari, Investigating Officer did not draw panchanama of that situs. Appellant – Balaji too suffered injuries on the very day. He was examined on 09:00 p.m. on the same day. Learned counsel then took us through the inconsistency in the medical certificates of both, Manik (deceased) and Laxmibai and the injuries noticed in the postmortem report (Exh.50). He meant to say that with a view to falsely implicate one and all the family members of Manohar (deceased appellant), the medical officer, who conducted the postmortem, added two more injuries in the postmortem report, which the deceased in fact had not suffered. According to learned counsel, two of the appellants, viz. Datta and Digambar are behind the bars for little over ten years. Even the female members have not been spared in falsely implicating in the crime in question. He, therefore, urged for allowing the appeal.

7. Learned Addl.P.P. would, on the other hand, submit that postmortem report (Exh.50) indicates the deceased to have suffered three injuries. One of the three injuries proved fatal. PW 1 – Dr. Rode, Medical Officer ruled out the said injury to have been caused by fall. The F.I.R. (Exh.56) was lodged within an hour of the incident. The informant too was assaulted on her head. She was an injured eye witness. Her evidence carries more weight when no independent witness was available. When the victim herself gave evidence against the appellants, there would be no reason for her to spare the real culprits and falsely implicate the appellants.

He took us through the evidence of each and every witness on record to ultimately urge for dismissal of the appeal. According to him, the injury certificate of appellant - Balaji (Exh.93) was obtained in June 2014 i.e. six months after the incident. The same indicates to have been obtained to make out a false defence. He would further submit that an independent witness was examined. He had witnessed some of the incident. The same fortifies the case of the prosecution. The medical evidence is consistent with the ocular evidence. He, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us now advert thereto and appreciate the same.

9. PW 1 – Dr. Rode was on duty at Civil Hospital, Solapur on 09th January, 2014. His evidence discloses that he conducted postmortem examination of the mortal remains of Manik by 09:00 in the morning on that day. On examination, he noticed following injuries to the deceased :-

External Injuries :-

1. *5 cm. sutured contused incised wound over left aspect of forehead directing antero posteriorly 5 cm away from midline towards left side.*
2. *2x1x1 cm incised wound over center of upper lip directing vertically.*
3. *4x2 cm incised wound of boat shape over left hypochondrium (left side of stomach below ribs) region directing obliquely with lateral end directing upwards. The said injury was oozing of blood. So also, yellowish issue was protecting. All the said three injuries are ante mortem.*

Internal Injuries :-

In the head region, under scalp hamatoma over left aspect of forehead. No damage to the brain. In the abdomen region, penetrating injury to left hydrochloride part of the abdomen and all the muscular layers of abdomen penetrating, cavity deep penetration, intra peritoneal hemorrhage 500 gms blood clots.

Cavity – congested. In the cavity, free blood clots 400 gms.

Kidenys – Left kidney incised wound, vertically 10 cm oedematous pale, 120 gms. Right kidney congested 110 gms.

10. He had preserved viscera. He placed on record viscera report during his evidence. The said report indicates the viscera contains 103 ml. ethyl alcohol per 100 gms. The blood group of the deceased was 'O'. In his opinion, Injury No.3 was sufficient in the ordinary course of nature to cause death. Injury No.1 was possible by sharp as well as blunt side of the sharp weapon like an axe. Injury No.2 was also possible by sharp object like knife, but was not possible by blunt side of sharp object like an axe.

11. His evidence further discloses that on 25th January, 2014 i.e. after sixteen days of the incident, the investigating officer had forwarded to him the seized articles viz. knife, axe, sweater, banian for examination and to solicit his opinion whether the injuries were possible by weapons therein such as knife and axe.

12. During his cross-examination, it was categorically suggested to him that he added two more injuries in the postmortem report (Exh.50), when the deceased in fact had not suffered those injuries (Injury Nos. 1 and 2).

According to him, the deceased would have survived, had he received the treatment immediately, provided there was not loss of much blood.

13. PW 4 – Dr. Yashwant is a Medical Officer at Sub-District Hospital, Omerga. He testified that on 08th January, 2014 he was on emergency duty. By 08:30 p.m on the said day, a patient by name Manik Koli was brought by his family members. There was history of stab injury on the very day by 07:45 p.m. at village Dapka. He examined the said patient. The patient was in shock. Stab injuries on the abdomen, at left lumbar region. The same might have been caused by a sharp pointed weapon like knife. The injury was fresh. The same was life threatening injury. He, therefore, referred the patient to Civil Hospital, Solapur. He had brought with him MLC register before the trial Court. He issued the MLC certificate (Exh.79).

14. He further testified that at the same time he examined one lady patient, Laxmibai. She had given history of assault with a stick by 07:35 p.m. He examined her and found following injuries :-

“Abrasion/laceration/contusion towards left side femoral region calf adm. 1.5 cm. by 0.5 cm.”

The injury was fresh and simple and might have caused by blunt object. He issued medical certificate (Exh.80).

15. During his cross-examination, he testified that at the same time he examined appellant – Balaji and found the following injuries on his person :-

“CLW left forearm 4 x 1.5 cm., muscle tone.”

The said injury might have been caused due to a sharp object. It was fresh injury. He issued medical certificate (Exh.93). He denied the defence suggestion that injury suffered by Manik might have been possible by fall on sharp object.

16. PW 3 – Subhash was a witness to the crime scene panchanama (Exh.66). According to him, the panchanama was drawn in his presence on the following day. The place was in front of the house of PW 2 – Laxmibai (informant). The police seized bangle pieces, a blade of axe, a wooden handle of axe, blood mixed soil, etc.

17. The very person appears to be a panch to other various panchanamas, such as arrest panchanamas of appellants – Datta, Manohar, Balaji and Digambar (Exh.117 to 120). According to him, police seized clothes on the persons of those four in his presence.

18. He was again a witness to a disclosure statement made by appellant – Datta on the following day i.e. on 10th January, 2014. According to him, Datta gave a disclosure statement that he would take out the knife hidden in a trashed leaves wall of his hut. His statement was recorded vide Exhibit 71. He then took the police and panchas to his hut and took out the knife. The police seized the same under panchanama Exhibit 72.

19. During his cross-examination he testified that there was small bridge at a distance of fifty feet from the house of Manik (deceased). No panchanama of the place nearby the said bridge was drawn. He made a vital statement to the effect that the police disclosed to the accused that he should state the truth, otherwise he would obtain his police custody remand.

20. PW 2 – Laxmibai lodged the F.I.R. (Exh.56). She testified that on 08th January, 2014, she and Manik returned to their house by little past 08:00 p.m. after having worked in their field. She was engaged in cooking. Her husband, Manik was in the house. Their children were studying. Appellant – Datta came in front of their house and questioned Manik as to why he did not allow him to take water of the well on that day. Manik tried to reason with him and even asked to take water on the next day. However, Datta did not listen. He entered the house and dragged Manik out of the house. All the appellants came together immediately and started abusing Manik and even beat him up with fist and kick blows. She intervened to rescue Manik. She too was not spared. Manohar (deceased appellant) gave a stick blow on her head. Datta assaulted on the stomach of Manik with a knife. While appellant – Digambar inflicted on the head of Manik an axe blow. On hearing the commotion, village Sarpanch and others came. They subsided the quarrel. She herself and Manik were taken first to Sub-District Hospital, Omerga and then shifted to Civil Hospital, Solapur. She further testified that police had come to her in the hospital and recorded her statement. She referred thereto, F.I.R. (Exh.56).

21. She was subjected to a searching cross-examination. She admitted that she is an accused in Sessions Case No. 31 of 2015 instituted at the instance of appellant – Balaji. She denied Balaji to have suffered injuries on that day. She denied that her husband – Manik (deceased) was addicted to liquor. She even denied that on the given day he was under influence of liquor. Her brother-in-law – Ashok, Tukaram and Manohar (deceased appellant) would reside adjacent to each other. She could not state names of the persons gathered at the spot of the incident on hearing commotion. According to her, her son, PW 5 – Santosh intervened in the quarrel. Others did not. According to her, Santosh too suffered muffle injuries. Santosh too visited Sub-District Hospital, Omerga. He was examined there. It was she herself, Santosh and her brother-in-law – Tukaram, who took Manik to the hospital in an auto-rickshaw. She was confronted with her F.I.R. (Exh.56) to bring on record omission therein that she did not state to police, appellant – Datta to have entered her house. According to her, she had stated accordingly. The police officer, who recorded the same, however testified that it was not so stated. As such, omission amounting to contradiction has been brought on record. She was suggested that Manik (deceased) had attempted to assault appellant – Balaji with an axe. Manik was under the influence of liquor. He went at the bridge and fell down. As a result, he suffered injury. She denied these suggestions.

22. PW 7 – Vilas was the Assistant Police Inspector attached to Omerga Police Station at the relevant time. On receiving information about

the incident and particularly admission of two injured in the Sub-District Hospital, Omerga, he went there. On examination of Laxmibai by the medical officer there, he recorded her statement-cum-F.I.R. (Exh.56).

23. PW 5 – Santosh testified in consonance with the evidence of her mother, PW 2 – Laxmibai (informant). According to him, appellant – Datta came in front of his house and asked his father as to why he (Datta) was not allowed to take water of the common well. Datta dragged his father out of the house. Thereafter other appellants immediately arrived there. All of them beat up his father with fist and kick blows. He was in the house that time. He alongwith his mother and sister, therefore, came out of the house to save his father. All the appellants abused them. According to him, Manohar (deceased appellant), Datta and Anusaya beat him with stick, fist and kick blows. Appellant – Vimalbai caught hairs of his sister – Pooja and slapped on her face. While appellants – Digambar, Balaji and Anusaya beat up Pooja with stick. Thereafter, all the appellants beat up his mother. Then all of them caught hold of his father. The male appellants said, “आज यला मारलाय कउ” (Let us kill him today). Thereafter, appellant – Digambar assaulted on the head of Manik with an axe. Appellant – Datta stabbed on the stomach of Manik with a knife. On hearing commotion, other persons gathered there. His father and mother were rushed to Sub-District Hospital, Omerga. He had accompanied them. He identified the articles shown to him before the Court.

24. During his cross-examination he admitted that a criminal case is pending against him before the Juvenile Justice Board, for assaulting

appellant – Balaji. It was Balaji's case that he (Santosh) and his parents assaulted him. Balaji suffered left forearm injury. He denied that his father was under influence of liquor. He denied that his father was addict thereof. He further denied that Manik tried to assault Balaji with an axe. He further denied that Manik being heavily drunk, fell on his own near the bridge. According to him, his mother did not suffer any bleeding injury. Nobody from the neighbourhood was present while the incident was on. He intervened in the quarrel. The rest of the questions were in the nature of defence of the appellants.

25. PW 6 – Vishal was the resident of the village, Dapka. He deposed that the incident took place little past 08:00 p.m. on 08th January, 2014. On hearing commotion, he came out of his house. He saw quarrel between PW 2 – Laxmibai, PW 5 – Santosh and Pooja on one hand and appellants – Datta, Digambar, Manohar and Digambar's mother on the other. They were abusing and beating Santosh and Pooja. He intervened to settle the quarrel. People gathered. He went on to testify that about twenty feet away from that place there was a bridge whereat Manik, husband of Laxmibai, was lying injured. According to him, the injured were rushed to the hospital.

During his cross-examination he denied that it was not possible for him to state who abused who.

26. PW 8 - Ghuge, was the Police Officer, who conducted inquest (Exh.108). It is he, who delivered the dead body of Manik to his widow – Laxmibai. His evidence does not further the prosecution case.

27. PW 9 – Ramhari, did investigation of the crime. According to him, he drew the crime scene panchanama (Exh.66), arrested the appellants, seized clothes on their person, obtained opinion of the Medical Officer by forwarding articles seized, etc. Since the evidence of this witness was in the nature of steps to be taken during investigation and the same has already been reflected in the evidence of all other witnesses referred to herein above, we do not propose to refer to his further evidence in extenso. He was suggested to have threatened appellant - Datta to obtain his thumb impression or signature on the false memorandum and seizure panchanama.

28. The appellants examined a defence witness. He is DW 1 – Tukaram, brother of Manik (deceased) and Manohar (deceased appellant) as well. He testified that his brother – Manik was addicted to liquor. The incident took place by 08:30 p.m. on 08th January, 2014. His grandson informed him that Manik was lying by the side of the bridge. He, therefore, went there. The crowd had already gathered. He brought Manik to his house.

He was subjected to cross-examination by learned A.P.P. The prosecution version was put to him in the cross-examination. He denied the same.

Appreciation :-

29. Aforesaid is the evidence in the case. The postmortem report (Exh.50) indicates Manik died of stab injury (single injury). The same was said to have been caused by appellant – Datta. Two more injuries were said to have been noticed during postmortem examination. It was specifically suggested to PW 1 – Dr. Rode that he added those two injuries at the instance of family members of the deceased. He was bound to deny the said suggestion. The fact, however is that within minutes of the incident both, PW 2 – Laxmibai and Manik (deceased) were brought to Sub-District Hospital, Omerga. It was PW 4 – Dr. Yashwant, who examined both of them and issued medical certificates. The injury certificate of the deceased issued by him on the very day of the incident finds place at Exhibit 79. He noticed only one injury in the nature of stab to abdomen (left lumbar region). He, therefore, referred the injured to Civil Hospital, Solapur. It is surprising as to how the first two injuries shown in the postmortem report went unnoticed by this medical officer, who too is an independent and uninterested witness. There is injury certificate of PW 2 – Laxmibai. According to her, Manohar (deceased appellant) had hit on her head with a stick. The injury certificate of PW 2 – Laxmibai issued by PW 4 – Dr. Yashwant is on record at Exhibit 80. The said injury is in the nature of abrasion/laceration on left side temporal region. It was simple in nature and caused with blunt object.

30. PW 4 – Dr. Yashwant had examined appellant – Balaji at the same time by which he examined Manik (deceased) and PW 2 – Laxmibai.

He noticed CLW. He issued injury certificate (Exh.93) indicating Balaji to have suffered injury on the same day.

31. The prosecution witnesses viz. PW 2 – Laxmibai and PW 5 – Santosh are the relations of the deceased and claimed to be victims as well. It is true that evidence of injured witness carries much weight. They are, however relations of the deceased. It is also true that victims do not implicate innocent persons sparing real culprits. The tendency is, however to give exaggerated version and implicate one and all the members of family. In the case in hand, the appellants are none other than the parents and their four children. No one of their family has been spared. When PW 5 – Santosh claimed to have suffered injury and visited hospital, his injury certificate is not on record. His sister – Pooja too was said to have suffered beating. She was not examined nor her injury certificate has been produced in evidence. Had all the appellants really assaulted PW 2 – Laxmibai with fist and kick blows, there would have been number of injuries on her person. Both, PW 2 – Laxmibai and PW 5 – Santosh have also gave a false evidence as regards Manik (deceased) to have been teetotaler.

32. PW 1 – Dr. Rode, had preserved viscera. He tendered in evidence viscera report indicating 103 ml of ethyl alcohol per 100 gm was found in the blood of the deceased. The same falsifies the claim of the witnesses, who deposed that the deceased was not addicted to liquor. On the same day appellant – Balaji suffered injury, might not be serious one.

His injury certificate (Exh.93) is on record. PW 2- Laxmibai, PW 5 – Santosh and Manik (deceased) were, therefore, charged with an offence of attempt to commit murder. What has happened with the said case is not known. Same suggests the prosecution has not disclosed either genesis of the case or exaggerated version. It is said, “When war breaks out, truth is the first casualty”. Evidence of PW 6 - Vishal is not of much importance since he did not witness appellant – Datta to have stabbed on the stomach of the deceased with a knife and appellant – Digambar assaulted on the head of the deceased with an axe. His evidence simply indicates that there was quarrel between the members of two families, wherein Manik (deceased) was not present. According to him, Manik (deceased) was lying near a bridge which was small distance away from the place of quarrel. The prosecution did not declare this witness to have not been supporting it.

33. When the prosecution comes with a case of appellant – Digambar to have assaulted on the head of the deceased with an axe, it is generally presumed that the assault is made with the sharp side of the blade of the axe. The injury noticed on the head of the deceased was said to have been caused by hard and blunt object like handle of the axe. True, during the crime scene panchanama (Exh.66), axe handle, stick and blade of the axe were separately seized. The injury is simple in nature. It is, however not known as to why PW 9 - Ramhari, Investigating Officer, kept these articles with the police station until 28th January, 2014 i.e. for twenty (20) days and not sent immediately to R.F.S.L. The evidence of PW 1 – Dr. Rode indicates

that those articles were sent to him by PW 9 - Ramhari, Investigating Officer on 25th January, 2014 to solicit his opinion as to whether the injuries suffered by the deceased were possible with those articles. The evidence of PW 1 – Dr.Rode is silent to state that while those articles were sent to him, those were in sealed condition. There is no evidence at all to indicate who carried those articles in sealed condition to PW 1 - Dr.Rode, who opened the seal, if any, and again packed and sealed them. Had appellants – Datta and Digambar intended to eliminate Manik, they would have rained further blows of knife and axe or axe handle on him. The evidence on record indicates that a quarrel took place between some of the family members of both the brothers, wherein appellant – Datta stabbed Manik (deceased), as a result of which Manik breath his last. Same time appellant – Balaji suffered injuries. We have already observed that the prosecution witnesses were interested and economical with truth as well. Two of the appellants, viz. Datta and Digambar are behind the bars for little over ten years. We are conscious of the fact that one person has lost his life. The fact is, however that the deceased, his wife – PW 2 Laxmibai and son – PW 5 Santosh are also being prosecuted for attempting to commit murder of appellant – Balaji. It is reiterated that what has happened with the said case is not known. PW 6 - Vishal's evidence only indicates that female appellants had a quarrel with PW 2 – Laxmibai and PW 5 – Santosh. Possibility of manhandling each other could not be ruled out. The one, who assaulted PW 2 – Laxmibai on her head with a stick, is passed away pending the appeal.

34. On appreciation of the evidence, we are unable to agree with the conclusion of the trial Court that all the appellants had formed an unlawful assemble, common object of which was to commit murder of Manik and cause grievous injuries to his family members, PW 2 – Laxmibai and others. On re-appreciation of the evidence on record, we find that there was quarrel between the two brothers and their family members as well. The appellants, therefore, could be said to have formed unlawful assembly with the common object to cause hurt. There is nothing to indicate that all the appellants, except Datta, were in the know that Datta was going to inflict a knife blow to the deceased, which ultimately proved fatal. It was a single blow. The same was inflicted during the quarrel. Appellant – Digambar was said to have assaulted on the head of the deceased with an axe. But the said injury was said to have been caused with a hard and blunt object. We take it that it was caused with a stick. Although it was a vital part of body of the deceased, there is nothing further to indicate appellant – Digambar to have given him further blows to translate his intention into action i.e. committing murder.

35. For all the aforesaid reasons, we are not at one with the conclusion recorded by the trial Court regarding convicting the appellants for the offence punishable under Section 302 read with Section 149 of the I.P.C. In our view, appellant – Datta, due to whose assault the deceased died, could be said to have committed culpable homicide not amounting to murder falling under Part I of Section 304 of the I.P.C. Exception 4 of Section 300 of the I.P.C. comes to his rescue, which reads thus :-

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

36. Appellant – Digambar could be said to have voluntarily caused hurt to the deceased with a dangerous weapon like handle of an axe. He would, therefore, be said to have committed an offence punishable under Section 324 read with Section 149 of the I.P.C. So far as assault on PW 2 – Laxmibai is concerned, the concerned appellant (Manohar) is no more. Her evidence is not wholly reliable. Had rest of the appellants beaten her up with fist and kick blows, number of injuries would have been noticed on her person.

37. In view of above, we are inclined to partly allow the appeal setting aside the entire impugned order of conviction and consequential sentences and substituted it in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned judgment and order dated 14th May, 2018 passed by the Court Addition Session, Omerga in Sessions Case No. 25 of 2014 thereby convicting the appellants for the offences punishable under Sections 302, 323 and 506 r/w 149 of the Indian Penal Code, is hereby set aside.
- (III) All the appellants are acquitted thereof.

- (IV) Appellant – Datta Manohar Jamadar is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code, and therefore, sentenced to suffer imprisonment for ten years and pay fine of Rs.1,000/- (Rupees One Thousand), in default of payment of fine, to undergo rigorous imprisonment for six months.
- (V) Appellant - Digambar Manohar Jamadar is convicted for the offence punishable under Section 324 of the Indian Penal Code, and therefore, sentenced to suffer rigorous imprisonment for three year and pay fine of Rs.500/- (Rupees Five Hundred).
- (VI) All the appellants are convicted for the offence punishable under Section 143 of the Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for six months with fine of Rs.500/- (Rupees Five Hundred) each.
- (VII) All the appellants are convicted for the offences punishable under Sections 147 and 148 of the Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for nine months with fine of Rs.500/- (Rupees Five Hundred) each.
- (VIII) All the substantive sentences to run concurrently.
- (IX) It appears that appellants Datta Manohar Jamadar and Digambar Manohar Jamadar have been behind the bars for little over ten years and as such have served the entire sentence. They, therefore, be released forthwith, if not required in any other case.

- (X) So far as appellants Balaji Manohar Jamadar, Vimalbai Manohar Jamadar and Anusaya Datta Ghate are concerned, they are on bail. They found to have served the entire sentence, and therefore, need not surrender back to jail. Their bail bonds stand cancelled.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)