



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

CRIMINAL APPEAL NO.288 OF 2015

1. Gulab Rayappa Birajdar (Bhosale)
Age 53 years,
R/o Kothali, Tal. Omerga,
District Osmanabad
2. [Deepak Gulab Birajdar (Bhosale) Appellant Nos.2 & 4
Age 25 years, have filed separate
R/o Kothali, Tal. Omerga, Criminal Appeal
District Osmanabad] No.719/2022
3. [Kannaya Basanna Mandale,
Age 25 years,
R/o Kothali, Tal. Omerga,
District Osmanabad]
4. [Hari Alias Hariprasad Amruta Mandale,
Age 27 years,
R/o Kothali, Tal. Omerga,
District Osmanabad]
5. [Dattatraya Tulshiram Firange, Appellant Nos.3, 5 & 7
Age 25 years, have filed separate
R/o Kothali, Tal. Omerga, Criminal Appeal
District Osmanabad] No.841/2018
6. [Uma Alias Opmprakash Manik Mandale
Age 30 years,
R/o Kothali, Tal. Omerga, Appellant Nos.6, 9 & 10
District Osmanabad] have filed separate
Criminal Appeal
No.849/2022
7. [Shrikrishan Bajirao Mandale,
Age 22 years,
R/o Kothali, Tal. Omerga,
District Osmanabad]
8. Avinash Mallinath Bhangе,
Age 27 years,
R/o Kothali, Tal. Omerga,
District Osmanabad

9. [Dayanand Manik Mandale,
Age 33 years,
R/o Kothali, Tal. Omerga,
District Osmanabad]

10. [Vitthal Hanmantraya Bora,
Age 28 years,
R/o Kothali, Tal. Omerga,
District Osmanabad]

... **APPELLANTS**
(Orig. Accused Nos.1 to 10)

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Pradip Bhanudas Babar
S.D.P.O., Omerga Sub-Division

(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Vijay s/o Vishwanath Kamble, Respondent No.2
Deceased, through his L.Rs. added as per
Court's order

2-1) Kantabai w/o Vishwanath Kamble, dated 13/2/2023
Age 70 years, Occu. Housewife,
R/o Kothali, Tal. Omerga,
District Osmananabad

2-2) Amol s/o Kernath Kamble
Age 36 years, Occu. Labour,
R/o as above.

... **RESPONDENTS**

.....
Mr. V.D. Sapkal, Senior Counsel with
Mr. O.R. Waghule, Advocate for appellants No.1 & 8
Mr. S.D. Ghayal, Addl. P.P. for respondent No.1.
Mr. S.S. Birajdar, Advocate for respondent No.2-1 & 2-2
.....

WITH

**CRIMINAL APPEAL NO.719 OF 2022 WITH
CRIMINAL APPLICATION NO.3769 OF 2022**

1) Deepak s/o Gulab Birajdar (Bhosale)
Age 25 years, Occu. Nil,

R/o Kothali, Tal. Omerga,
District Osmanabad.

- 2) Hari @ Hariprasad s/o Amruta Mandale,
Age 27 years,
R/o Kothali, Tal. Omerga,
District Osmanabad. ... APPELLANTS

VERSUS

1. The State of Maharashtra
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
2. Kantabai w/o Vishwanath Kamble, (Respondent Nos.2 &
Age 60 years, Occu. Housewife, 3 added as per order
R/o Kothali, Tal. Omerga, dated 13/2/2023)
District Osmananabad
3. Amol s/o Kernath Kamble
Age 36 years, Occu. Labour,
R/o as above. ... RESPONDENTS

.....
Mr. N.S. Ghankear, Advocate for appellants
Mr. S.D. Ghayal, Addl. P.P. for respondent No.1.
Mr. S.S. Birajdar, Advocate for respondent No.2-1 & 2-2
.....

WITH

CRIMINAL APPEAL NO.849 OF 2022

- 1) Uma Alias Omprakash Manik Mandale,
Age 37 years,
R/o Kothali, Tal. Omerga,
District Osmanabad
- 2) Dayanand Manik Mandale,
age 40 years,
R/o Kothali, Tal. Omerga,
District Osmanabad
- 3) Vitthal Hanmantraya Bora
Age 35 years,
R/o Kothali, Tal. Omerga,

District Osmanabad ... **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Pradip Bhanudas Babar
S.D.P.O., Omerga Sub-Division

(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
2. Kantabai w/o Vishwanath Kamble, (Respondent Nos.2 &
Age 60 years, Occu. Housewife, 3 added as per order
R/o Kothali, Tal. Omerga, dated 13/2/2023)
District Osmananabad
3. Amol s/o Kernath Kamble
Age 36 years, Occu. Labour,
R/o as above.

... **RESPONDENTS**

.....
Mr. S.S. Thombre, Advocate for appellants
Mr. S.D. Ghayal, Addl. P.P. for respondent No.1.
Mr. S.S. Birajdar, Advocate for respondent No.2-1 & 2-2
.....

WITH

CRIMINAL APPEAL NO.841 OF 2018

- 1) Kannaya Basanna Mandale,
Age 27 years, Occu. Tailor,
R/o Village Kothali, Tal. Omerga,
District Osmanabad
- 2) Dattatraya Tulshiram Firange,
Age 27 years, Occu. Service as
Driver, R/o as above.
- 3) Shrikrishan Bajirao Mandale,
Age 25 years, Occu. Education,
R/o as above.

(At present the appellants are in
Nashik Road Central Prison, Nashik,

Taluka and District Nashik) ... **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Pradip Bhanudas Babar

(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Kantabai w/o Vishwanath Kamble, (Respondent Nos.2 &
Age 60 years, Occu. Housewife, 3 added as per order
R/o Kothali, Tal. Omerga, dated 13/2/2023)
District Osmananabad
3. Amol s/o Kashinath Kamble
Age 36 years, Occu. Labour,
R/o as above.

... **RESPONDENTS**

.....
Mr. Rajendra Deshmukh, Senior Counsel with
Mr. V.A. Chavan & D.R. Deshmukh, Advocates for appellants
Mr. S.D. Ghayal, Addl. P.P. for respondent No.1.
Mr. S.S. Birajdar, Advocate for respondent No.2 and 3
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 17th January, 2024

Date of pronouncing judgment : 25th January, 2024

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

These appeals from conviction are being decided by this common judgment since challenge therein is to one and the same order of conviction and consequential sentence, passed by learned Additional Sessions Judge, Omerga in Sessions Case No.20/2012, dated 4/3/2015. The details of conviction and

consequential sentence imposed against the appellants is given in the tabular form below :

Sr. No.	Sections	Sentence of imprisonment	Fine
1.	302 r/w 149 IPC	Imprisonment for life	Rs.10,000/- each, i.d. R.I. for 1 year
2.	307 r/w 149 IPC	R.I. for 7 years	Rs.5000/- each, i.d. R.I. for 6 months
3.	143 IPC	R.I. for six months	---
4.	148 r/w 147 IPC	R.I. for one year	---
All the substantive sentences have been directed to run concurrently.			

Initially Criminal Appeal No.288/2015 was filed by all the 10 appellants. However, subsequently, appellant Nos.2 and 4 filed separate Criminal Appeal, No.719/2022, appellant Nos.3, 5 and 7 filed separate Criminal Appeal No.841/2018 and appellant Nos.6, 9 and 10 filed Criminal Appeal No.849/2022. Therefore, Criminal Appeal No.288/2015 remains of appellant No.1 Gulab Rayappa Birajdar (Bhosale) and appellant No.8 Avinash Mallinath Bhange.

FACTS :-

2. Kothali is a small village in Taluka Omerga, District Osmanabad. Most of the residents of this village belong to

Scheduled Castes (S.C.) community. Others belong to either Lingayat or Berad community. Relations between members of the S.C. and Berad community in the village were not good. A dispute between the members of these two groups had ensued over water didpuyr.

3. It so happened that, on 14/10/2011, P.W.2 Amol (informant) along with his friend Vijay (deceased) was on his way back to village from, "Vitthal-Sai Sugar Factory", Murum. While they were passing by Sharanbasappa Temple, 10 to 12 persons belonging to Berad community were present on either side of the road. They were armed with articles like sticks, iron rods and hunters. All of them started beating up both Amol and Vijay on account of a dispute that took place six months before. The assailants were none other than the appellants before this Court. Four others (acquitted accused Nos.11 to 14) were instigating the appellants from the nearby field. Both Vijay and Amol were first rushed to Rural Hospital, Murum. P.W.2 Amol lodged the F.I.R. (Exh.48). Initially crime vide C.R. No.14/2011 was registered for offence punishable under Sections 326, 325, 324, 341, 147, 148, 149, 504 of the Indian Penal Code. Vijay succumbed to the injuries. Sections 302 and 307 of the Indian Penal Code came to be invoked. The appellants were arrested. Weapons allegedly used in the commission of the crime were recovered pursuant to

disclosure statements made by them. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellants and others were proceeded against by filing a charge sheet before the Court of Judicial Magistrate, First Class. Learned Magistrate committed the case to the Court of Additional Sessions Judge, Omerga for trial in accordance with law.

4. Learned Additional Sessions Judge (Trial Court) framed the Charge (Exh.21). The appellants and others pleaded not guilty. Their defence was of false implication on account of village politics. It was their case that, both Amol and Vijay met with a motorcycle accident and thereby suffered multiple injuries.

5. The prosecution examined 30 witnesses and produced in evidence various documents to establish the charge. The trial Court, on appreciation of the evidence, convicted the appellants and consequentially sentenced them as stated above. The original accused Nos.11 to 14 were acquitted. The State has not preferred appeal against acquittal.

6. Heard. Learned counsel appearing on behalf of the respective appellants would submit that, no independent witness has been examined. There was a political rivalry between the two

groups in the village. The injured and the deceased met with motorcycle accident. Our attention was adverted to their injury certificates and the cross-examination of the Medical Officer to submit, such injuries could only be possible if one meets with an accident involving two-wheeler vehicle. According to them, if the injuries suffered by both of them are taken individually, almost all of them were simple in nature. According to learned counsel, if at all the appellants are held to be guilty, they should only have been convicted for the offence punishable under Section 325 of the Indian Penal Code. The articles allegedly used in commission of the crime and recovered pursuant to the disclosure statements made by the appellants did not bear any blood stains. It, therefore, could not be said that, those articles were used in the commission of the crime. P.W.3 Shishupal did not stand by the prosecution. P.W.4 Sunil who was in the company of P.W.3 Shishupal, was a chance witness. Both of them belong to the community of the injured and the deceased. One of them even happened to be their relative. Our attention then was adverted to the testimony of a defence witness – D.W.1 Khalil who carried the injured and the deceased to the hospital in his jeep. According to him, one Kedarnath Kamble, at whose instance he took both the injured to the hospital in his jeep, had informed that both had met with motorcycle accident. According to the learned counsel, the prosecution failed to bring home the charge beyond reasonable

doubt. They, therefore, urged for allowing the appeals.

7. The learned Addl. P.P. would, on the other hand, submit that, the case is based on injured eye witness account. Names of the appellants figure in the F.I.R. The F.I.R. was lodged immediately. Medical evidence reinforces the prosecution case besides the evidence of an independent eye witness. Learned A.P.P., therefore, urged for dismissal of the appeals.

8. Considered the submissions advanced. Perused the evidence relied on. Although 30 witness have been examined, evidence of a few witnesses was only rightly referred to since the evidence of other witnesses pertain to recovery of the articles allegedly used in commission of the crime. The C.A. reports pertaining to these articles indicate none of them borne blood stains. Let us advert to the evidence referred to and relied on in these appeals.

9. P.W.1 Dr. Prashant was a Medical Officer at Rural Hospital, Murum on the given day. It is in his evidence that, Amol and Vijay Kamble were brought by their relatives to the hospital by 5.20 p.m. He examined both of them. Since Amol had suffered head injury, he examined Amol first. According to P.W.1 Dr. Prashant, they were admitted with the history of assault by 4.00

p.m. He noticed following injuries on the person of Amol and Vijay :

Amol :-

- (1) Lacerated open wound 5 cm. x 0.2 mm, over left posterior parietal occipital region.
- (2) Lacerated open wound of same size, over left fronto temporal region.
- (3) Laceration of 4 cm. x 0.2 mm, over left temporal region.
- (4) Blunt injury which was diffuse, over left upper eye-lid.
- (5) Lacerated open wound of 1 cm. x 0.3 mm., on left second finger-tip.
- (6) Blunt injury diffusely over right forearm, right arm, right leg, right thigh, left leg and over back region.
- (7) Abrasion of 0.5 mm. x 1 mm., over left middle finger tip.

The age of all above injuries was within 24 hours. Injuries No.1 to 6 were caused by blunt weapons, whereas injury No.6 abrasion was caused by sharp weapon. The opinion regarding nature of injuries No.1, 2 and 4 was reserved, whereas other injuries were simple in nature. The opinion was reserved because patient was advised NCCT brain regarding head injury and other injuries were simple injuries. The patient was advised X-ray of left leg, left arm, left fore-arm, left thigh at GMCH Solapur and for that purpose opinion was reserved.

Vijay Kamble :-

- 1) Blunt injury, diffuse, over mid-left arm below left mid-arm.
- 2) Blunt injury, diffuse, over right hand on dorsal surface.
- 3) Lacerated open wound of 1 cm x 0.5 mm, 1 cm x 0.2 mm over right anterior upper side of leg.
- 4) Blunt injury, diffuse, over both calf region.
- 5) Blunt injury, diffuse, over right forearm and right arm.
- 6) Blunt injury, diffuse, on both thighs and both legs.
- 7) Minor abrasion of 0.4 mm in diameter and 0.6 mm in diameter over left mid-arm.
- 8) Blunt injury, diffuse and extensive over whole back region.

All injuries were of less than 24 hours of age, injuries No.3 and 7 were caused by sharp weapon, others were by blunt object. Regarding nature – blunt injury over left mid-arm suggested fracture of humerus i.e. why it was called grievous injury and remaining all injuries would provoke haemo-dynamic shock that's why opinion was reserved regarding the blunt injuries. The patient was advised X-ray left arm and X-ray right hand and was referred to GMCH Solapur for further treatment.

10. P.W.23 Dr. Vijay Joshi testified that he was serving as Neuro Surgeon with Ashwini Hospital at Solapur. Amol Kamble was brought to the hospital on 15/10/2011 with a history of assault. He

examined Amol and noticed the following injuries :

- (1) CLW over left parietal region, left eye brow about 3 cm already sutured in Civil Hospital.

He had right upper limb and lower limb pain which was further examined by Orthopedic Surgeon on C.T.S scan of brain. He had cerebral oedema with scalp haematoma in left parietal and fronto orbital region as well as surgical emphysema.

11. P.W.8 Dr. Naim Akatar conducted autopsy on the deceased Amol. He noticed following injuries on the person of the deceased :-

- (1) Abrasion over right arm at lateral aspect 6 in number 0.5 x 0.5 cm. each over lower 1/3rd of arm. Brown in colour.
- (2) Multiple abrasion over right forearm dorsal aspect of varying size over upper 1/3rd of forearm, brown in colour.
- (3) Abrasion over right forearm over middle 1/3rd of forearm at dorsal aspect 1 x 0.5 cm. brown oblique in directed downward.
- (4) Abrasion over index finger 1 x 0.5 cm. dorsal aspect. Brown.
- (5) Abrasion over right knee at anterior aspect 3 in number. Brown in colour.
- (6) Sutured wound over right leg anteriorly over upper 1/3rd of

leg 2 x 1 cm, black, caving deep after removal of suture.

- (7) Another sutured wound over right leg anterior 2 cm below wound No.6, at upper 1/3rd of leg 2 x 1 cm, black, caving deep after removal of sutures.
- (8) Abrasion over tip of left shoulder 2 x 1 cm obliquely downward and medially, brown in colour.
- (9) Abrasion over left shoulder 3 cm lateral below to wound No.8 1 x 1 cm, brown in colour.
- (10) Abrasion of tip of left shoulder linear, obliquely directed downward and 2 cm medial to wound No.8.
- (11) Sutured wound over middle of left arm anteriorly 1 x 1 cm caving deep after removal of sutures.
- (12) Abrasion over mid of left arm anterior 0.5 cm medial to wound No.11 0.5 x 0.5 cm brown in colour.
- (13) Another abrasion of 0.5 x 0.5 cm over middle of left arm at lateral aspect, brown in colour.
- (14) Abrasion over left index finger proximal to palm. 0.5 x 0.5 cm. Brown in colour.
- (15) Abrasion over left arm, laterally, 4 cm, above elbow 3 x 2 cm, brown in colour.
- (16) Abrasion over left forearm, dorsally over upper 1/3rd, 2 cm below elbow 4 x 2 cm brown.
- (17) Punctured wound over left forearm, dorsally 1.5 x 1 cm. Margin black, 8 cm, below elbow.

- (18) Contused abrasion over left arm dorsally 10 cm below elbow 6 cm medial to wound no.17, 4 x 1 cm margin black wound brown.
- (19) Punctured wound over left elbow dorsally 2 x 2 cm, caving deep.
- (20) Abrasion over left pelvic region 1 x 1 cm, brown in colour.
- (21) Contusion over left leg medially over middle 1/3rd 12 x 5 cm, black in colour.
- (22) Abrasion over left back of shoulder 4 in number of varying size. Brown in colour.
- (23) Multiple contused abrasion over back, of varying size. Randomly directed over whole back.

After external examination of palpation, he found following injuries :-

- (i) Fracture of left humerus.
- (ii) Fracture of left tibia.
- (iii) Fracture of 2nd metacarpal bone.
- (iv) Fracture of right index finger.

All above injuries were antemortem.

On examination of head, there was no injury on scalp. Skull bone were intact. After removing body of scalp, meninges

was congested. Brain was congested.

On examination of thorax – walls, ribs and cartilages were found intact. Pleura was congested. Larynx, trachea and bronchi were found intact, mucosa congested. Both lungs congested and consolidated. Pericardium was congested. Heart and weight was congested, blood and clots were present. Large vessels were intact, blood and clots were present. There was no any additional remark. On abdomen examination, walls were found intact. On internal examination of abdomen, peritoneum was found congested. No any evidence of free fluid and no any evidence of foreign body.

Oesophagus was congested. Stomach and its contents were empty, mucosa congested.

Small intestine, large intestine its contents – gases and faeces present. Liver and gall bladder was congested. Pancreas and Suprarenals was congested. Spleen with weight was congested. Both kidney was found congested, perinephric haematoma over left kidney. Bladder was empty, mucosa congested. Organs of generations were pale.

On external examination, there was evidence of perinephric haematoma over left kidney. After dissection of kidneys, they found congested. Organs of generations was

congested. Additional remark was nil.

In the opinion of the doctor, the cause of death was shock and haemorrhage. However, viscera was preserved.

12. These doctors were subjected to a searching cross-examination. Our attention was drawn to the evidence of P.W.1 Dr. Prashant and P.W.23 Dr. Vijay Joshi to suggest that, P.W.23 Dr. Vijay Joshi noticed only one injury on the person of Amol while P.W.1 Dr. Prashant noticed 7 injuries. Needless to mention that, Amol was rushed to Solapur for emergent treatment and for C.T. Scan. P.W.23 Dr. Vijay Joshi was a Neuro Surgeon. He examined Amol as regards Amol's head injury and, therefore, difference between the evidence of these two witnesses is appearing. It was also argued that, some of the injuries are found to have been caused with sharp weapon while it is not the case of the prosecution that the injured and the deceased were assaulted with any sharp weapon. None of the articles seized borne blood stains. It was also pointed out that, most of the injuries are in the nature of graze abrasion which occur when a person meets with a motorcycle accident and body of a victim is brushed with hard surface. Here the appellants have come with a defence that it was a motorcycle accident and the injured and deceased had a multiple fall from motorbike. The defence itself is unimaginable. True, the Medical Officers at one stage admitted that the injuries noticed on the

person of the injured and the deceased may also occur due to accident. In view of the same, the evidence of the Medical Officers referred to above do not lead us to find whether it is a case of homicide and a bid on the life of Amol.

13. Let us now turn to the other evidence referred to and relied on. P.W.2 Amol's evidence suggests that he belongs to S.C. He was serving with Vitthal-Sai Sugar Factory as a Wireman. On the fateful day, he had been to his work place along with Vijay (deceased). While they were on their way back to village, the appellants assaulted them with articles like iron rods, hunter and wooden stick near Sharanbasappa Temple. It is also in his evidence that, one Mallinath Bhange and Pandit Mandale were instigating them from the nearby field. It is further in his evidence that, both of them were rushed to Civil Hospital, Murum. His statement-cum-F.I.R. (Exh.48) was recorded there.

P.W.2 Amol categorically denied the appellants to have been falsely implicated in view of local politics. Although he admitted to have had no personal enmity with the appellants, he was categorical to state that about six months before the incident in question, there was quarrel with members of Berad community on account of water issue. He categorically denied to have met with a motorcycle accident. While he was confronted with his F.I.R.

(Exh.48), some omissions amounting to contradictions have been brought on record. Those pertain to the acquitted accused Mallinath Bhange and Pandit Mandale. The F.I.R. is silent to state that both these acquitted accused were instigating the other accused to assault both of them. It has also been brought on record that, P.W.2 Amol did not state the names of appellant Hari Mandale and Dattatraya Firange in the F.I.R., as assailants. As such, attributing these two persons with overt acts, by P.W.2 Amol before the Trial Court for the first time would lead us to infer that it was a material omission amounting to contradiction. Had these two really been the assailants, their names would have been figured in the F.I.R.

14. P.W.3 Shishupal is said to be another eye witness. It is in his evidence that, he would ply an autorickshaw to earn his living. On the given day, he parked his rickshaw at the bus stand and started to proceed to his village on a Scooty. He met P.W.4 Sunil. P.W.4 Sunil too wanted to visit the village. He, therefore, joined P.W.3 Shishupal.

P.W.3 Shishupal, however, did not stand by the prosecution. In one breath he stated to have had seen the appellant assaulted P.W.2 Amol and deceased Vijay, whereas in the second breath he stated that he could not identify the assailant

since he was about 200 metres away from the spot of the incident. It was suggested during his cross-examination that, since he had seen the incident from long distance, he could not tell who were the assailants. This suggestion goes a long way to indicate the defence to have admitted it to be an incident of assault and not an accident. True, the motorcycle on which P.W.2 Amol and the deceased were returning too was damaged. The damage might have been as a result of indiscriminate assault on both the victims. P.W.3 Shishupal was declared to have not been supporting the prosecution and learned A.P.P. was, therefore, permitted to cross-examine him.

15. P.W.4 Sunil claimed to have been in the company of P.W.3 Shishupal. It is in the evidence of P.W.4 Sunil that, he met P.W.3 Shishupal at the bus stand. Since he too wanted to visit his village, P.W.3 Shishupal agreed to take him along. This witness (P.W.4 Sunil) gave eye witness account as to how the appellants had assaulted both the victims.

His cross-examination, however, indicates that it was by chance he met with P.W.3 Shishupal at the Murum Bus Stand. His evidence further indicates that, wife of P.W.3 Shishupal was serving as a Teacher with a school at Naiknagar. It was she who would use the Scooty. His cross-examination further suggests that,

neither P.W.3 Shishupal nor P.W.4 Sunil informed the incident to the police on the very day. P.W.4 Sunil was present at the hospital and even at funeral of Vijay. Police personnel were there at both the places. He still did not relate them the incident. He was then categorical to admit that Amol and Vijay (victims) were his relations. The evidence of both P.W.3 Shishupal and P.W.4 Sunil, therefore, appears to be unreliable. P.W.3 Shishupal has already not supported the prosecution.

16. Although the MLC and other medical papers were not tendered in evidence, the Medical Officers have categorically stated that the history recorded in the medical papers was of "assault". The injury certificate placed on record records history of assault. The defence version that number of injuries suffered by the victims would be possible by multiple fall from motorbike does not appeal to conscience. Vijay died of shock and haemorrhage while P.W.2 Amol suffered a serious head injury. It was an assault made by not less than 8 persons (appellants). Injuries on the person of the victims and indiscriminate assault mounted by them goes a long way to lead us to infer that it was a bid on the life of both of them. One fortunately survived.

17. We are, however, inclined to give benefit of doubt to appellant Hari @ Hariprasad s/o Amruta Mandale (appellant No.2 in

Criminal Appeal No.719/2022) and appellant Dattatraya Tulshiram Firange (appellant No.2 in Criminal Appeal No.841/2018) since their names do not figure in the F.I.R. The other offences for which the appellants have also been convicted are the lesser offences committed in the course of the same transaction. The substantive sentences have already been directed to run concurrently. We, therefore, do not propose to interfere with the conviction and consequential sentences imposed in respect of those offences as well.

18. For the reasons given hereinabove, we pass the following order :

ORDER

(i) Criminal Appeal Nos.719/2022 and 841/2018 are allowed to the extent of the appellants - Hari @ Hariprasad s/o Amruta Mandale and Dattatraya Tulshiram Firange.

(ii) The order of conviction and sentence passed against **appellant No.2 in Criminal Appeal No.719/2022 - Hari @ Hariprasad s/o Amruta Mandale** and **appellant No.2 in Criminal Appeal No.841/2018 - Dattatraya Tulshiram Firange** for the offences punishable under Sections 302, 307, 143, 148, 147 r/w. 149 of Indian Penal Code, by learned Additional Sessions Judge, Omerga in Sessions Case No.20/2012, dated 4/3/2015 is hereby

set aside.

They are acquitted of the offences punishable under Sections 302, 307, 143, 148, 147 r/w. 149 of Indian Penal Code.

They be set at liberty forthwith, if not required in any other case.

Fine amount, if paid, be refunded to them.

(iii) Criminal Appeal No.719/2022 filed by appellant No.1 - Deepak s/o Gulab Birajdar (Bhosale) and 841/2018 filed by appellant No.1 - Kannaya Basanna Mandale and appellant No.3 - Shrikrishan Bajirao Mandale stand dismissed.

(iv) Criminal Appeal No.288/2015 filed by appellant No.1 - Gulab Rayappa Birajdar (Bhosale) and appellant No.8 - Avinash Mallinath Bhangre is dismissed.

(v) Criminal Appeal No.849/2022 is dismissed.

(vi) All the Criminal Appeals are disposed of.

(vii) Criminal Application No.3769/2022 in Criminal Appeal No.719/2022 stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-