



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

**CRIMINAL APPEAL NO. 232 OF 2004**

1. Sahebrao s/o Umakant Waghmare  
Age: 40 yrs., Occu.: Teacher.
2. Vijaykumar s/o Ramrao Waghmare  
Age: 40 yrs., Occu.: Agri.,  
R/o. Ashti, Tq.Hadgaon,  
Dist.Nanded.
3. Jagjivan s/o Ramrao Waghmare  
Age: 26 yrs., Occu.: Teacher.
4. Shilratan s/o Ramrao Waghmare  
Age: 33 yrs., Occu.: Labour

All R/o. Ashti, Tq.Hadgaon,  
Dist.Nanded.

..Appellants  
(Orig. Accused  
Nos.7, 9, 10 & 11)

Versus

- . The State of Maharashtra  
Through Police Station, Tamsa,  
Tq.Hadgaon, Dist.Nanded.

..Respondent

....  
**WITH**

**CRIMINAL APPLICATION NO. 4376 OF 2024  
IN APPEAL/232/2004**

1. Sahebrao s/o Umakant Waghmare  
Age: 52 yrs., Occu.: Service as Head Master,  
R/o. At Post. Ashti, Tal. : Hadgaon,  
Dist.Nanded.  
At present : Harsh Nagar, Behind back Kasturba  
Hospital, Nanded, Dist.Nanded.

2. Vijaykumar Ramrao Waghmare  
Age: 65 yrs., Occu.: Agri.,  
R/o. At Post : Ashti, Tal. : Hadgaon,  
Dist.Nanded.
3. Jagjivan s/o Ramrao Waghmare  
Age: 53 yrs., Occu.: Labour,  
R/o. At. Post. Ashti, Tal.Hadgaon,  
Dist.Nanded. ..Applicants

Versus

- . The State of Maharashtra ..Respondent

.....

Advocate for Appellant - Applicants : Mr. Rajendra N.Chavan  
APP for Respondent – State : Mr.K.K.Naik

.....

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 21 OCTOBER, 2024**

**PRONOUNCED ON : 25 OCTOBER, 2024**

**JUDGMENT :-**

1. In this appeal, there is challenge to judgment and order of conviction dated 07-02-2004 passed by 2<sup>nd</sup> Adhoc Additional Sessions Judge, Nanded in Sessions Case No.28 of 2002 recording guilt of the appellants for offence under Section 324 of the Indian Penal Code (IPC).

**FACTS LEADING TO THE TRIAL**

2. On report lodged by PW3 Sanjay, Tamsa Police Station

registered Crime No.25 of 2000 for offence under Sections 147, 148, 323, 324, 326 307 read with 149 of the IPC against in all eleven accused on the premise that on 29-04-2000, there was quarrel between informant PW3 Sanjay and accused persons as an application was tendered with Gram Panchayat for removing debris from a well. Said quarrel had taken place at 07:30 p.m. On next day i.e. on 30-04-2000 at around 06:30 a.m., accused Vijaykumar Waghmare getting armed with sword came in the vicinity of informants' resident and questioned as to who gave application against him in Gram Panchayat. That PW3 Sanjay tried to reason him with. It is alleged that Vijaykumar, Yeshwant Pradhan, Ajay Waghmare, Sahebrao Waghmare, Pratap Pradhan came armed with articles like lathies, axes, sword and kathis and assault was mounted on informant as well as Jalba Vithal Kamble, Madhav Waghmare, Uttam Kishan Kamble, Laxmibai Waghmare, Sakhubai Kachru Waghmare. That injured were taken to hospital where PW3 lodged report exh.35, on the basis of which Police registered crime.

PW14 Kumbhar (PSI), who conducted investigation, after gathering sufficient evidence, chargesheeted accused for above offence.

Learned trial Judge, who conducted trial vide Sessions Case

No.28 of 2002, appreciated oral evidence of in all sixteen witnesses examined by prosecution and documentary evidence like medical certificates, FIR, panchanama, recovery panchanama etc. and by judgment and order dated 07-02-2004, all eleven accused were acquitted from offence under Sections 147, 148, 307 read with 149 of the IPC and Section 135 of the Bombay Police Act. However, prosecution case was accepted for commission of offence under Section 324 of the IPC against all accused and they were held guilty and directed them to execute bond of Rs.10,000/- for good behaviour for a period of three years on condition that the accused shall not indulge in deviational conduct and shall keep peace at the village.

It is the above judgment which is now taken exception to, by way of filing instant appeal.

### **SUBMISSIONS**

#### **On behalf of appellants :**

3. Learned Counsel for the appellants pointed out that during pendency of appeal, appellant no.4 - Shilratan Ramrao Waghmare has expired on 29-05-2006. Copy of death certificate of accused no.4 - Shilratan Ramrao Waghmare is placed on record and it is prayed that the appeal be abated against appellant no.4.

4. Learned Counsel for the appellants pointed out that eleven accused were tried and chargesheeted, but prosecution could not define or specify role of appellants. He pointed out that though there are allegations of use of sword, the same is not recovered. He pointed out that even injuries are not proved to be due to iron rod. He pointed out that indiscriminately names are given. That there was previous quarrel and cross cases. Learned Counsel pointed out that appellant no.1 Sahebrao was at his work place, but still he is named. It is pointed out that it has come in the cross-examination of PW2 Madhav that at the relevant time, appellant no.1 Sahebrao was at Nanded, however, still learned trial Court convicted him also. Thus, according to him, there is incorrect appreciation of evidence by the learned trial Court. He pointed out that on one hand, learned trial Court has held that recovery is not proved, but still conviction has been recorded for offence under Section 324 of the IPC. Therefore, according to him, learned trial Court has not considered evidence in its entirety and findings are not in consonance with the evidence and hence, according to him, such judgment cannot be allowed to be sustained.

**On behalf of State :**

5. Opposing the above submissions, learned APP pointed out that

prosecution has established the case by examining eye witnesses as well as injured witnesses. That they all are consistent. That roles of accused are crystalized by each of the witnesses. He pointed out that their evidence has not been disturbed or shaken during cross-examination. He also pointed out that injured were taken to hospital and the PW15 Dr.Venkat Dhage, examining Doctor, who noticed injuries, is also examined by prosecution. Therefore, it is his submission that there is direct witness account and medical witness account. Hence, according to him, learned trial Judge has not committed any error whatsoever in recording guilt of accused for offence under Section 324 of the IPC as both recovery as well as essential ingredients for attracting charges were patently available.

### **PROSECUTION WITNESSES**

6. In support of its case, prosecution has adduced evidence of in all sixteen witnesses. Their status and role is as under :

**PW1** Yeshwant Sonba Kamble is pancha to spot panchanama exh.26.

**PW2** Madhav Sakharam Kamble is pancha to memorandum of disclosure and recovery at the instance of accused Babu Hiranman Waghmare, Yeshwant Gyanoba Pradhan and Umakant Vithoba Waghare vide memorandum of disclosure exh.28, 29, 31 and 33.

**PW3** Sanjay Kishanrao Kamble is injured informant.

**PW4** Anil Jalba Waghmare is injured witness.

**PW5** Bapurao Shivram Waghmare is injured witness, but he did not support prosecution.

**PW6** Laxman Limbaji Jadhav is eye witness as well as injured witness.

**PW7** Paresh Ganpatrao Kadam is eye witness.

**PW8** Yeshwant Bhivaji Waghmare is husband of injured.

**PW9** Jalba Punjaji Waghmare is eye witness.

**PW10** Ganpati Deepaji Kadam is eye witness and injured.

**PW11** Jalba Vithal Kamble is eye witness and injured.

**PW12** Datta Khandoji Hulkane is injured witness but he did not support prosecution.

**PW13** Bhagwan Limbaji Jadhav is eye witness.

**PW14** Dattatray Dnyandev Kumbhar and **PW16** Vinayak Bapurao Mahaanwat are Investigating Officers.

**PW15** Dr.Venkat Gangadharrao Dhage is the Medical Officer, who examined injured and issued MLC.

### EVIDENCE IN TRIAL COURT

7. Here Evidence if **PW3** Sanjay, informant, **PW4** Anil, **PW6** Laxman, **PW7** Paresh, **PW8** Yeshwant, **PW9** Jalba, **PW10** Ganpati, **PW11** Jalba and **PW13** Bhagwan and **PW15** Dr.Venkat Dhage is crucial and is of significance.

8. **PW3** Sanjay, who is informant has deposed as under :

*“2. On 30-04-2000 at about 06:30 a.m. Vijaykumar Waghmare returned from his land. He had a sword in his hand. At that time Vijaykumar Waghmare started crying loudly by showing the sword. He had asked as to who gave application against them. We tried to convince Vijaykumar Waghmare by stating that the well belongs to Government and he should not quarrel with us. At that time, accused Yeshwant Pradhan, Ajay Waghmare, Vijay Waghmare, Ashok Waghmare, Sahebrao Waghmare and Pratap Pradhan came at the spot. They were armed with Lathies, axes and swords as well as Kathies. They all started beating myself, Jalba Vithal Kamble, Madhav Waghmare, Uttam Kishan Kamble, Laxmibai Waghmare, Sakhubai Kachru Waghmare. In the incident, accused Vijay beat me by a sword above right arm. Accused Yeshwant Pradhan beat me by a stick on my head right portion. I sustained*

*injuries. Thereafter, we went to dispensary of our village and thereafter we were referred by the Police to Government Hospital, Hadgaon. Before we went to the Government Hospital, Hadgaon. I lodged police complaint against accused persons. The complaint now shown to me bears my signature. Its contents are true and correct. It is at Exh.35.”*

9. **PW4** Anil is injured witness. He deposed as under “

*“1. On 30-04-2000 at about 07:00 a.m. while I was returned after milking from the side of Ambedkar Putala I heard cries of quarrel. Thereon I went towards the spot of incident situated near Ambedkar Putala. At the spot of the incident Vijaykumar Waghmare had in his hand a sword. Accused Umakant Waghmare hit by a stick on left hand. On fingers of left leg by a stone thrown by Ajay Waghmare hit. Yeshwant Pradhan, Shilratan Waghmare, Jagjivan Waghmare and others were present at the spot of the incident. Due to injury sustained by left bone on left leg I left the spot. I was given treatment at Rural Hospital Hadgaon at the instance of the Police. I identify muddemal article no.3 stick. It is not the stick by which accused Umakant hit me. I am now shown muddemal article no.2 Babul stick. I identify by article no.2 stick.”*

10. **PW6** Laxman is eye witness as well as injured witness. He deposed as under :

*1. The incident took place on 30-04-2000 at about 07:00 a.m.*

*near Ambedkar Putala at our village. At the time I cleaning my teeth at my house. On hearing cries of quarrel I went towards the spot of incident. All the accused persons were present at the spot of incident. The accused persons beat Sanjay Kamble and others. Accused Vijay Waghmare gave a stroke by sword on fore-head of Sanjay Kamble. Shilratan Waghmare beat by Kathi to Madhavrao. Yeshwant Pradhan beat Shivram Waghmare by a stick. Thereafter, accused Prakash, Sahebrao, Ajay, Pratap pelted stones on us. I was beaten by accused Jagjivan Waghmare by a stick. The accused Jagjivan beat me because I belongs to the group led by Sanjay Kamble. The incident of quarrel took place because Sanjay Kamble and others had given an application to Gram Panchayat requesting to remove debris from the well.”*

11. **PW7** Paresh is eye witness. He deposed as under :

*“1. ....At the time of the incident I was drinking tea at my house. I heard cries of quarrel. Thereon I rushed to the spot of the incident. When I reached the spot of incident I heard and saw accused Vijaykumar Waghmare was loudly asking who gave application for removing debris from the well. Accused Yeshwant Pradhan, Umakant Waghmare alongwith the mob were present at the spot of incident. Vijaykumar Waghmare was armed with sword and the others were armed with stick. Accused Vijaykumar Waghmare struck on the upper portion of left hand of Sanjay Kamble by a sword. Sanjay Kamble also sustained injuries on his head.”*

12. **PW8** Yeshwant is husband of injured. He deposed as under :

*“1. The incident took place on 30-04-2000 at about 7.30 a.m. to 8.00 a.m. in front of Babasaheb Ambedkar Putala at our village. At the time of the incident I was sitting on Oatha of my house situated near the statue of Dr.Babasaheb Ambedkar. At that time accused Vijaykumar came to the spot. Vijaykumar was armed with a sword. He was loudly asked the residents to come forward by further asking who gave application for removing debris from the well. Thereon all the accused came the spot. Accused Shilratan was armed with a Kathi. Umakant Waghmare armed with a stick, Yeshwant Pradhan was also armed with stick, Babu Hiranman was armed with iron rod. The rest of the accused were armed with stone. Thereon I went to the spot from my house. Thereon my wife Laxmibai was beaten by Katti on her forehead by accused Shilratan. I tried to convince the accused that the well does not belong to us and they should not quarrel. They did not listen and went on beating the others. Police referred my wife for treatment at Rural Hospital, Hadgaon from where my wife was referred for treatment at the Government Hospital, Nanded.”*

13. **PW9** Jalba is eye witness. He deposed as under :

*“1. The incident took place before about two years in the early morning near the Ambedkar Putala. At that time I had come to my house from my Gotha and then I heard cries of quarrel. Thereon I rushed towards the spot of incident. I saw accused Vijaykumar was armed with sword. Accused Shilratan*

*was armed with a Kathi. Jagjivan was armed with a stick. Yeshwant Pradhan was armed with stick. Pratap Pradhan was armed with stick. Yeshwant Pradhan beat Sanjay Kamble. Yeshwant Pradhan also beat me by stick on my waist. Madhav sustained head injury and injury to his left ear (pinna). Shilratan gave a stroke by Katti on head of Jalba. Thereafter all the injured were taken to the Police Station. The quarrel ensued in connection with the removal of debris from the well in our locality.”*

14. **PW10** Ganpati is eye witness and injured. He deposed as under :

*“1. The incident took place on 30-04-2000 at about 07.00 a.m. near Ambedkar Putala at our village Ashti. The incident took place in connection with the dispute over removing debris from a well in our locality. At the time of the incident I was proceeding from my house to provision shop. I saw the incident. At the time of the incident, accused Vijaykumar was armed with sword, Shilratan was armed with Katti, accused Babu was armed with iron rod. Umakant was armed with a stick. Kishan Kamble, Maroti Kamble, Madhav Waghmare beat Sanjay Kamble and others. I was hit by a stone pelted by accused Umakant.”*

15. **PW11** Jalba is eye witness and injured. He deposed as under :

*“1. The incident took place before about two years. At the time of the incident at about 7.00 a.m. I was returning after*

*attending call of nature. When I had reached at the spot of accused Shilratan Waghmare beat me by Katti on my right portion of head. Vijaykumar Waghmare was present at the spot and he was armed with a sword. Yeshwant Pradhan was armed with a stick. Accused Babu Hiranman Waghmare was armed with a iron rod. After I received stroke by Katti I did not understood what happened. I regain my conscious after about 3-4 days.”*

16. **PW13** Bhagwan is eye witness. He deposed as under :

*“1. The incident took place at about 07:00 a.m. before about three years. It was Sunday. I was returning from Medical Stores and I saw the incident. I saw accused Vijay Kumar Waghmare while inflicting a stroke of sword on the head of Madhav. I saw accused Shilratan while inflicting stroke by Katti on the head of Jalba Vithal Kamble. Jagjivan Waghmare, Sahebrao Waghmare, Ajay Waghmare, Ashok Waghmare, Babusha Waghmare, Pratap Pradhan were armed with stones which they pelted stones. On receiving injuries Madhav Ramji and Jalba Vithal fell to the ground. Thereon I ran away due to frightening.”*

17. **PW15** Dr.Venkat Dhage is Medical Officer, who has examined injured and issued MLC. On examination of **Sanjay Kamble**, he found following injuries :

01. CLW on right side of occipital region of scalp 3x1x1/2cm.

02. Abrasion on forehead at centre – 1 x 1/2cm.
03. Contused abrasion on right shoulder anteriorly – 4x3 cm.
04. Contused lacerated wound on right little finger on terminal phalyns on polmor aspect 1x1x1/2 cm.
05. Abrasion on right leg anteriorly at upper third.
06. Contusion on left forearm at lower third and posteriorly 5x4 cm.

On examination of **Shriram Ranji Waghmare**, he found following injuries :

01. CLW on right ring finger on palmar aspect terminal phalynx – 2 x 1 x 1 ½ cm.
02. Contusion on left elbow posteriorily – 7 x 4 cm.
03. Contusion on forehead left side 4 x 3 cm.

On examination of **Jalba Vithal Kamble**, he found following injuries :

01. Sharp edge injury fracture on left occipital parietal region of scalp – 7 x 4 cm. X bone deep.

On examination of **Madhav Ramji Waghmare**, he found following injuries :

01. Linear abrasion on back of neck – 12 cm length horizontal.
02. Contusion on back of neck and inter scapular area – 11 x 3 cm.
03. Linear abrasion on right forearm , ant middle third – 5 cm length oblique.
04. Contusion on right forearm.
05. CLW left side of frontal and parietal region of scalp 7 x 2 x bone deep.
06. CLW right parietal occipital region of scalp – 4 x 3 cm. X bone deep.
07. CLW let side of neck posterior to ear pinna – 4 x 3 x 1 cm.
08. Contusion on left hand dorsum 5 x 4 x 1 cm.
09. Contusion on left arm anterior and laterally at middle and lower third part – 7 x 5 cm.

On examination of **Laxmibai Yeshwant Waghmare**, he found following injuries :

01. CLW left side of forehead  $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$  cm.
02. Contusion right scapular region of back 5 x 4 cm.

On examination of **Arun Kachru Waghmare**, he found following injuries :

01. CLW on right side of forehead and frontal region of scalp 3 x 1 x  $\frac{1}{2}$  cm.
02. Contusion right side of forehead – 5 x 4 cm.

On examination of **Sakhubai Kachru Waghmare**, he found following injuries :

01. Contusion on right forearm anterior third and laterally at upper third 7 x 4 cm.
02. Contusion on right infrascapular region of back and lumber region 7 x 4 cm.

On examination of **Uttam Laxman Kamble**, he found following injuries :

01. CLW on forehead at centre 2 x 1 x  $\frac{1}{2}$  cm.
02. Stab wound on left infrascapular region of back – 2 x 1 x 1 cm.
03. Contusion on right side of back at scapular region – 5 x 4 cm.
04. Contusion on left leg, anterrorily at middle third – 6 x 3 cm.

On examination of **Bapurao Sonba Waghmare**, he found following injuries :

01. CLW left side of back at interscapular region 2 cm away spine – 4 x 1 x ½ cm.

On examination of **Anil Jalba Waghmare**, he found following injuries :

01. Abrasion left elbow posteriorly – 2 x 1 cm.

02. CLW on left leg anteriorly lower third – 2 x 1 x 1 cm.

On examination of **Maroti Kamble**, he found following injuries :

01. Contusion on left side of occipital region of scalp – 4 x 3 cm.

On examination of **Raju Kishan Kamble**, he found following injuries :

01. Contusion on right thigh, anterior laterally at lower third– 7x4cm.

02. Contusion on right buttuck – 7 x 4 cm.

03. Contusion on left wrist dorsum – 2 x 1 cm.

### ANALYSIS

18. At the outset, it is noted that during pendency of this appeal, appellant no.4 - Shilratan Ramrao Waghmare expired. Learned Counsel for appellants has also placed copy of death certificate on record. In view of the same, appeal as against appellant no.4 - Shilratan Ramrao Waghmare stands abated and only appeal of appellant nos.1 to 3 is considered.

19. Pleading innocence and pointing out to the above evidence as well as observations and conclusion drawn by the learned trial Judge, principle grounds raised by learned Counsel for the appellants are that *firstly* due to previous quarrel, there is false implication; *secondly* out of alleged eleven witnesses, only three injured are examined; *fourthly* material witnesses are not examined and *fifthly* when learned trial Court disbelieved recovery evidence, conviction under Section 324 of the IPC does not sustain.

On above lines, evidence of prosecution witnesses is put to minute scrutiny and it is emerging that genesis of the incident is some application tendered with Government authorities for extracting debris from a well. Evidence of **PW3** Sanjay, informant shows that on 29-04-2000 evening there was some quarrel between informant and accused in said backdrop. Informant has specifically deposed that at around 06:30 a.m. on the next day morning i.e. 30-04-2000, accused Vijaykumar came armed with a sword and started loudly questioning as to who tendered application with the Government authorities. PW3 Informant, in his evidence at exh.34, stated that after being questioned, while he was trying to reason out and convince accused Vijaykumar, other accused, whose names are given in testimony, also came at the spot and informant has stated

that they were armed with articles like lathies, axes, swords. He deposed about he being hit by sword on right arm by accused Vijaykumar and by stick by Yeshwant. He has also stated that all accused started beating him as well as others namely Jalba Vithal Kamble, Madhav Waghmare, Uttam Kishan Kamble, Laxmibai Waghmare, Sakhubai Kachru Waghmare, who came to intervene.

On visiting his **cross-examination**, only omission brought is regarding article kathi. Infact suggestion is given that article was not a kathi but a bambu stick. The manner of cross-examination suggests that occurrence is not seriously disputed rather it is got confirmed as timing of the occurrence and previous quarrel dated 29-04-2000 are brought on record in paragraph no.2 of the cross-examination. In paragraph no.3 some elections, political rivalry and previous criminal cases are brought on record. In paragraph no.4 questions are put regarding location of house of informant, its surroundings and scene of occurrence. Again in paragraph no.5 omission is brought as to accused Vijaykumar questioning who gave the application. Then there are questions about medical experts, treatment etc.

Likewise **PW4** Anil named accused Vijaykumar to be armed with sword, Umakant hitting him with a stick on his left leg whereas he has marked presence of Shilratan, Jagjivan.

Even paragraph nos.2 and 3 of the **cross-examination** shows that there is no serious dispute over the occurrence.

**PW6** Laxman also is a star witness as he has also in his evidence deposed about accused being present at the spot and beating to Sanjay Kamble. According to him, accused Vijay gave stroke of sword on forehead to Sanjay Kamble while Shilratan beat Madhavrao by means of Kathi. He himself was beaten by Jagjivan by a stick and he has also testified about background of the occurrence.

As like others, even paragraph no.2 of his **cross-examination** shows that there is no challenge to the occurrence.

**PW7** Paresh and **PW8** Yeshwant are independent eye witnesses and they have also narrated about the occurrence.

In **cross-examination** of these witnesses also nothing adverse has been brought on record, rather occurrence itself got confirmed and proved.

Again **PW9** Jalba Waghmare also testified about the occurrence and he himself being hit by accused Yeshwant with stick.

Likewise **PW10** Ganpati and **PW11** Jalba Kamble are both deposing about seeing the occurrence and stones being pelted towards PW10 Ganpati by accused Umakant and PW11 Jalba being hit by Kathi by accused Shilratan.

Even **PW13** Bhagwan has deposed about witnessing incident.

Therefore, all above witnesses have remained steadfast as regards to occurrence is concerned.

**PW15** Dr.Venkat Dhage, medical expert, who has also stepped in the witness box has deposed about examining above witnesses and he has identified injury certificates issued by him. Consequently, here there is injured witness account, injured eye witness account supported by medical account.

20. Learned Counsel for the appellants would specifically agitate that appellant no.1 Sahebrao Umakant Waghmare is falsely implication. He pointed out that infact appellant no.1 Sahebrao was at his workplace and there is documentary evidence to that extent. Unfortunately because of ignorance defence to that extent was not taken in the trial Court. However, by virtue of Criminal Application No.4376 of 2024, document to that extent is sought to be brought on record by way of additional evidence. It is submitted that Section 391 of the Code of Criminal Procedure permits additional evidence being adduced.

Criminal Application No.4376 of 2024 is allowed. After allowing the application and noting the objection of the prosecution,

such documents were taken on record and on going through the same, it seems that appellant no.1 Sahebrao Umakant Waghmare was at Nanded on 30-04-2000 since morning 07:00 a.m. i.e. on the date of occurrence. Even PW2 Madhav, while under cross-examination admitted and answered that appellant no.1 Sahebrao was at Nanded. Therefore, it is doubtful whether he was present at the time of incident, which took place after 06:30 a.m. on 30-04-2000. It is settled law that defence is expected to merely probabilize its case and need not to prove the defence with equal burden as lies on prosecution and accused is merely expected to probabilize the defence. Here appellant no.1 Sahebrao has gone beyond probabilizing his defence by placing documents on record and therefore, as regards to appellant no.1 Sahebrao is concerned, benefit deserves to be extended.

### **CONCLUSION**

21. Perused the judgment under challenge, more particularly, in the light of above objections. It does appear that learned trial Judge in paragraph 15 onwards dealt with evidence of PW8 and has noted that Laxmibai is not examined and that testimony of PW15 is not in consonance with evidence of PW8. However, merely out of multiple witnesses, evidence of one witness i.e. PW8, if is not consistent with

prosecution version, the other evidence cannot be doubted or gets wiped out.

Learned trial Judge has correctly observed that initially accused Vijaykumar came followed by other accused and they came armed. Therefore, the incident was a planned and concerted. Though charge was for Section 307 of the IPC, learned trial Court accepted prosecution version as regards to offence under Section 324 of the IPC because essential ingredients for Section 307 of the IPC are patently missing. On re-appreciation also this Court is of the considered view that the view taken by the learned trial Judge of scaling down the charge from Section 307 of the IPC to Section 324 of the IPC is the possible view which could emerge even after re-appreciation. No case is made out on merits to disturb the findings. Objections raised by appellant nos.2 and 3 in appeal do not warrant merit. Accordingly, I proceed to pass following order :

### **ORDER**

- I) Criminal Appeal No.232 of 2004 is partly allowed.
- II) The conviction awarded to appellant no.1 – Sahebrao Umakant Waghmare in Sessions Case No.28 of 2002 by the learned 2<sup>nd</sup> Adhoc Additional Sessions Judge, Nanded on 07-02-2004 for the offence punishable under Section 324 of the Indian Penal Code, stands quashed and set aside.

III) The appellant no.1 – Sahebrao Umakant Waghmare stands acquitted of the offence punishable under Section 324 of the Indian Penal Code.

IV) The fine amount deposited, if any, be refunded to appellant no.1 after the statutory period.

V) Conviction and sentence awarded to appellant nos.(2) Vijaykumar Ramrao Waghmare and (3) Jagjivan Ramrao Waghmare is maintained and kept intact.

VI) Appeal against appellant no.4 Shilratan Ramrao Waghmare stands abated.

VII) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

VIII) Criminal Application No.4376 of 2024 is disposed of.

**( ABHAY S. WAGHWASE )**  
**JUDGE**