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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.441 OF 2016

1. Sandip @ Aabya Kalu Patil APPELLANTS
Age - 32 years, Occ - Agriculture
 2. Vijay @ Bhurya Kalu Patil
Age - 28 years, Occ - Agriculture
- Both R/o Bhamre Khurd
Taluka - Chalisgaon, District - Jalgaon

VERSUS

The State of Maharashtra and Others RESPONDENTS

.....
Mr. V. A. Chavan h/f Mr. D. R. Deshmukh, Advocate for Appellant
Mr. S. J. Salgare, APP for Respondent - State
.....

WITH
CRIMINAL APPEAL NO.469 OF 2016

Anil Adhar Patil APPELLANT
Age - Major, Occ - Agriculture
R/o Bhamre (Khurd)
Taluka - Chalisgaon, District - Jalgaon

VERSUS

1. The State of Maharashtra RESPONDENTS
Through Police Officer,
Police Station, Chalisgaon
Taluka - Chalisgaon, District - Jalgaon
 2. Sandip @ Aabya Kalu Patil
Age - 32 years, Occ - Agriculture
 3. Vijay @ Bhurya Kalu Patil
Age - 28 years, Occ - Agriculture
- Both R/o Bhamre Khurd

Taluka – Chalisgaon, District – Jalgaon

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Mr. Mayur V. Salunke, Advocate for Appellant
Mr. S. J. Salgare, APP for Respondent - State
Mr. V. A. Chavan h/f Mr. D. R. Deshmukh, Advocate for
Respondents No.2 and 3
.....

WITH
CRIMINAL APPEAL NO.497 OF 2016

The State of Maharashtra
Through Chalisgaon Police Station
Taluka – Chalisgaon, District – Jalgaon

APPELLANT

VERSUS

1. Sandip @ Aabya Kalu Patil
Age – 32 years, Occ – Agriculture
2. Vijay @ Bhurya Kalu Patil
Age – 28 years, Occ – Agriculture
- RESPONDENTS

Both R/o Bhamre Khurd
Taluka – Chalisgaon, District – Jalgaon

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Mr. S. J. Salgare, APP for Appellant - State
Mr. V.A.Chavan, h/f Mr.D.R.Deshmukh, Advocate for Respondents
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[CORAM : NITIN B. SURYAWANSHI, &
SANDIPKUMAR C. MORE, J. J.]

DATE : 3rd JULY, 2025

JUDGMENT :

1. Criminal Appeal No.441 of 2016 is filed by the original
Accused Nos.1 and 2 challenging their conviction, for the offence
punishable under section 302, 341 read with 34 of the Indian

Penal Code, in Sessions Case No. 225 of 2013, by learned Additional Sessions Judge, Jalgaon thereby sentencing them imprisonment for life with fine of Rs.5000/- each with default clause.

2. Criminal Appeal No. 497 of 2016 is preferred by the State under section 377 of the Criminal Procedure Code and Criminal Appeal No. 469 of 2016 is filed by the informant under section 372 of the Criminal Procedure Code, for enhancement of sentence.

3. Facts, as are necessary for deciding these Appeals, can be stated thus -

Anil Adhar Patil (PW-1) lodged FIR (Exhibit-42) on 18th July, 2013 alleging that, at about 10.00 a.m., he had gone towards Sarve Dam for grazing cattle. His cousins, Sandip Madhukar Patil, Pradeep Madhukar Patil and Jaywant Madhukar Patil were supplying manure to cotton crop. At about 3.00 p.m., he heard noise of quarrel from the road situated near the field of Kalu Gojar Patil. He saw that, Accused No.1 Sandip Kalu Patil and Accused No.2 Vijay Kalu Patil, were beating his cousin Sandip on hands and legs, by means of iron pipes, therefore, he rushed there. He was followed by other cattle grazers, namely Sanjay Sahebrao Patil, Nimba Devram Patil (PW-2) and Devidas Vithal

Patil. Seeing them, Accused Nos.1 and 2 fled from the spot towards Neri – Bhamre Road, on their motorcycle. Anil, (for short 'informant'), on reaching the spot, noticed that Sandip (for short "deceased") was lying by the side of the road and there were injury marks on his legs and hands caused by iron pipes and blood was oozing from some of the injuries. On asking, the deceased told him that when he was proceeding towards his house for watering cattle, Accused Nos.1 and 2 obstructed his motorcycle and on account of dispute which aroused prior to two years, due to loading sugarcane in a vehicle, beat him (deceased) on hands, legs as well as on stomach, by means of iron pipes. The informant informed the incident to the brothers of the deceased, namely Pradeep (PW-5) and Jaywant on phone and asked them to come with bullock cart. When Sandip (deceased) was carried in the bullock cart, towards village Bhamre, he narrated the incident of assault to PW-5 Pradeep and Jaywant. Then the deceased was taken to Sai Krushna Hospital, Chalisgaon at 4.40 p.m. in Piaggio rickshaw of Dashrath Dadabhau Patil. The doctor, on medical examination, advised to shift him to Dhule for further treatment. Accordingly, they took the deceased to Dhule in an Ambulance. At about 5.45 p.m. the deceased expired at Dhule Square and, therefore, without taking him to Dhule, they brought the deceased back to Chalisgaon and

the informant lodged the FIR to Chalisgaon Police Station, which was registered at Crime No.223 of 2013 for offence punishable under sections 302, 341 read with 34 of the Indian Penal Code, on 18th July, 2023 at 20.15 hours. On completion of the investigation, charge sheet was filed. Charge for offence punishable under sections 302, 341 read with 34 of the Indian Penal Code was framed against the Accused. They pleaded not guilty.

4. In support of its case, the prosecution examined 15 witnesses. The defence of the Accused was of total denial. On appreciation of the evidence, the Trial Court convicted the Accused as above. Hence, the Accused filed Criminal Appeal No. 441 of 2016.

5. Learned Advocate for the Accused assailed the impugned judgment and order of conviction stating that, PW-1 and PW-2, the alleged eye-witnesses, are the got up witnesses. PW-1, being cousin of the deceased, is an interested witness. Both these witnesses were at a distance, so it cannot be said that they have witnessed the incident. Since both these eye-witnesses have not intervened in the incident, to save the deceased, their conduct is against natural human conduct and, therefore, their evidence should be disbelieved. It is submitted that, the Trial Court has

wrongly appreciated the evidence on record and has erred in recording the conviction. The alleged incident, over loading sugarcane in vehicle, had taken place two years before and, therefore, that cannot be said to be a motive for the Accused to commit the murder. It is further submitted that, there are material omissions and contradictions in the statements of prosecution witnesses and, therefore, their evidence is liable to be disbelieved. In the alternate, it is submitted that even if the prosecution case is accepted as it is, the Accused are liable to be punished for lesser offence.

6. Per contra, learned APP supported the impugned judgment of conviction. He submitted that, evidence of PW-1 and PW-2 is consistent and corroborates each other. They both speak about each others' presence. They are consistent on the point of manner in which the incident has taken place and actual weapons used by both the Accused. Medical evidence corroborates the versions of the eye-witnesses. Oral dying declaration made by the deceased to his brother Pradeep (PW-5) is also corroborated by PW-1 and PW-2. Presence of PW-1, PW-2 and other witnesses is also confirmed in the oral dying declaration of the deceased. In the medical certificate, history of assault is given. Human blood is found on the clothes of Accused No.1. He, therefore, submitted that, there is no merit in the

Appeal filed by the Accused and the same is liable to be dismissed.

7. In support of the Appeal filed by the State for enhancement of sentence, he submits that, taking into consideration the manner in which assault has taken place, the Trial Court ought to have awarded death sentence to the Accused.

8. Learned Advocate for the informant adopted the arguments of the learned APP. He submits that, the deceased was chased and then was assaulted firstly by inflicting blows on his legs so that he should not be able to run away and then in a brutal manner blows were inflicted on his hands and stomach. Due to the assault on the stomach, liver of the deceased got ruptured and he expired due to that. Therefore, intention on the part of the Accused is clear that they wanted to kill the deceased. Hence, the sentence awarded by the Trial Court to the Accused is inadequate and the same is liable to be enhanced.

9. Heard learned Advocate for the Accused, learned APP for the State and learned Advocate for the informant, at length. With their assistance, we have perused the record.

10. Prosecution has examined Dr. Rajput (PW-13) to whom the deceased was taken for treatment, immediately after the assault

on 18th July, 2013 at 4.30 p.m. After examining the deceased and after going through his X-ray reports, he noticed that the deceased had suffered multiple fracture injuries. Since it was case of poly trauma of multiple injuries, he advised the relatives to shift him to higher (tertiary) Hospital, the nearest center was at Dhule. He, therefore, gave primary treatment by applying splinteg and immobilization to the deceased and applied temporary bandage. He gave painkiller and tetanus injections. According to him, from the time the deceased was brought to his hospital till he left, he was well oriented.

In the cross-examination, he has stated that, in case if a painkiller is given to patient, his drowsiness depends upon mechanism of his body. In medical certificate (Exhibit-89), issued by him, word "*maramari*" is mentioned by him upon receipt of information from the relatives of the deceased. He furnished the said information to the police after 5.00 p.m. on 18th July, 2013. Except this, nothing favourable to the Accused is brought in the cross-examination of this witness.

11. Homicidal death of the deceased is proved by the prosecution by examining Dr. Bapu Baviskar (PW-12). He conducted autopsy on the dead body of the deceased, on 19th July, 2013 between 11.00 a.m. and 2.00 p.m. On external

examination, he found following injuries :

- I. Contusion over right knee joint, which was horizontal, having size of 10 X 8 cm
- II. Oblique contusion on right thigh medially over lower third region having size of 8 X 4 cm
- III. There was contusion over right leg having size of 6 X 4 cm. It was oblique.
- IV. There was compound fracture of right tibia and fibula at lower 1/3rd region.
- V. There was CLW over right leg at ankle joint anteriorly having size 2 X 2 cm
- VI. There was contusion swelling over right elbow joint with fracture of right radius and ulna.
- VII. There was superficial abrasion over left arm having 3 cm in length.
- VIII. Left colles fracture (e.g. wrist joint fracture)
- IX. There was superficial abrasion over left shoulder having 3 cm in length.
- X. CLW over right leg anteriorly having size of 2 cm X 2 cm up to bone deep respectively. There were three superficial CLWs over left leg having size of 2 cm X 1 cm respectively.
- XI. There was a contusion over left thigh medially and

obliquely placed having size of 4 X 3 cm

XII. There was oblique contusion over right epichondrieach region having size of 10 cm X 4 cm (epichondrieach region means the region below the right chest of abdomen)

XIII. There was vertical contusion below Injury No. 12 having size of 4 X 2 cm

12. According to him, injury at Serial No. XII was corresponding with the injury of liver tear shown in column No. 21 of the Post Mortem report (Exhibit-83). According to him, injury No. XIII and liver tear mentioned in column No. 21 of the Post Mortem report are sufficient to cause death in ordinary course of nature. Investigating Officer forwarded letter (Exhibit-84) asking his opinion whether the injuries mentioned in column Nos. 17 and 21 of the Post Mortem report can be caused due to the two iron pipes forwarded to him. He has opined that, *"injuries mentioned above, may be caused due to the weapons produced before me"*. He has also proved advance death certificate (Exhibit-85), wherein he has opined that the probable cause of death is *"Cardio Respiratory Failure due to injury to vital organ i.e. liver associated with multiple fracture of major bone"*.

From the evidence of PW-12, it is clear that the prosecution has proved that the deceased died homicidal death.

13. Anil Patil (PW-1) is the informant. He has deposed in terms of the contents of the FIR (Exhibit-42). The printed form of the FIR is at Exhibit-42-A. He has deposed that the incident took place on 18th July, 2013 at about 3.00 p.m. On that day, he had gone near Sarve Dam situated near farmland belonging to Kalu Gojar Patil, father of the Accused, for grazing cattle. Deceased Sandip and his two brothers had gone to their agricultural land for giving fertilizer to the crops. At about 3.00 p.m. he heard noise of quarrel from a road situated near the agricultural land of Kalu Gojar Patil. He looked there and saw that both the Accused had stopped motorcycle of deceased Sandip and they were assaulting him on his hands and legs, by means of iron pipes. Deceased Sandip moved ahead in order to save himself and the Accused assaulted on his hands and abdomen by means of the iron pipes. At that time, Nimba Devram Patil, Devidas Vithal Patil and Sanjay Sahebrao Patil were grazing their cattle near Neri Bhamre Road. They rushed at the spot. He also came there. On seeing them, the Accused ran away towards Neri Bhamre Road on their motor cycle. Since Sandip was lying, they made him sit. Blood was oozing from his hands and legs. There were injury marks on his stomach. On their asking, deceased told that, when he was going to his house on motorcycle for watering his cattle, both the Accused assaulted him on hands, legs and stomach, by

means of iron pipes, on account of previous quarrel over loading sugarcane in vehicle. Then he called PW-5 Pradeep, brother of the deceased on mobile and told him about the assault and asked him to bring bullock cart at the spot. Pradeep (PW-5) and Jaywant, brothers of the deceased, brought bullock cart on the spot and Sandip was placed in the bullock cart. When they were proceeding to the house along with the deceased and his brothers, in the bullock cart, the deceased narrated the incident to his brothers saying that, when he was proceeding on his motorcycle, he was assaulted by the Accused on hands, legs and stomach with iron pipes. Then they brought Sandip to Sai Krushna Hospital, Chalisgaon in Piaggio rickshaw owned by Dashrath Dadabhau Patil, at about 4.40 p.m. On examination, the doctor told them that Sandip had sustained serious injuries and advised them to take him to hospital at Dhule. Then they started proceeding towards Dhule, by arranging Ambulance. While proceedings towards Dhule, at about 5.45 p.m. Sandip expired. Therefore, they returned and brought the deceased back to Government Hospital, Chalisgaon. Then he went and lodged the FIR. He has stated that green iron pipe (Article - H) was in the hands of Accused Sandip and Yellow iron pipe (Article - I) was in the hands of Accused Vijay. He also identified the clothes (Articles - "D", "E", "F" and "G") of the Accused and white shirt

(Article - B) of the deceased. He showed the spot of incident to the police.

In the cross examination, he admitted that the dispute between the Accused and the deceased was solved prior to the occurrence of the incident. Though this witness is subjected to lengthy and searching cross-examination, nothing favourable to the Accused could be elicited in his cross-examination.

14. Nimba Devram Patil (PW-2) is another eye-witness to the incident. He deposed that, once there was a quarrel between the deceased and Kalu Gojar Patil, on account of loading sugarcane in vehicle. Since then, they were not talking with each other. There was terror of Kalu Gojar Patil in the village, since he had assaulted one to two persons in the village. Due to the terror, no one in the village was daring to lodge complaint against Kalu Gojar Patil. The incident took place on 18th July, 2013. On that day, he had gone to graze his cattle on Neri-Bhamre road. Devidas Utta Patil and Sanjay Sahebrao Patil were also grazing their cattle along with him. Anil Adhar Patil (PW-1) was grazing his cattle near Sarve Dam, adjoining the farmland owned by Kalu Gojar Patil. At about 3.00 p.m., deceased Sandip was proceeding to his house, on motorcycle. At that moment, they heard hue and cry from the direction of agricultural field of Kalu Patil. They saw

in that direction and saw that, Accused Sandip and Vijay were assaulting deceased on his hands and legs, by means of iron pipes. He, along with Anil Patil, Devidas Patil and Sanjay Patil, rushed towards the spot, where the assault was going on. While running towards the spot, they saw that the Accused was assaulting deceased Sandip on his hands, legs and stomach, by means of iron pipes. When they reached near the spot, the Accused persons ran away from the spot towards village, by Neri-Bhamre road. When they reached near the deceased, on inquiry, he told them that he was assaulted on hands, legs and stomach, by means of iron pipes, by Accused Sandip and Accused Vijay, on the count of loading sugarcane in the vehicle. Anil (PW-1) made a phone call to brother of the deceased and asked him to bring bullock cart at the spot. There were blood stains on the hands and legs of the deceased and injury marks of assault by means of iron pipes on the stomach. Thereafter, Pradeep (PW-5) and Jaywant came there with bullock cart. They then placed the deceased in the bullock cart, Pradeep and Jaywant took him away and they went away for grazing cattle. They saw slippers and motorcycle belonging to the deceased, at the spot. He identified yellow colour iron pipe (Article-I) which was in the hands of Accused Vijay and green colour iron pipe (Article-H) which was in the hands of accused Sandip. At the time of the

incident, Accused Sandip was wearing pant and shirt and Accused Vijay was wearing half "T" shirt and pant. He also identified clothes of the deceased i.e. white colour shirt (Article-B) and sando baniyan (Article-C) and pant. His statement was recorded on the next day of the incident. In spite of lengthy and searching cross-examination, nothing favourable to the Accused could be elicited from him.

He admitted that, the dispute between Kalu Patil and the deceased was settled. However, he stated that at that moment, Kalu Patil had told deceased Sandip that he would see him (deceased). He stated that Sarve Dam is adjacent to the farmland of the Accused. At the time of occurrence of the incident, his cattle and cattle of Devidas Patil and Sanjay Patil were grazing adjacent to the road and Sanjay Patil and Devidas Patil were standing along with him at that moment. At the time of the incident, Accused assaulted deceased Sandip on his both legs and the deceased fell down on the bank of the road. The deceased was again assaulted, after he fell down. To a specific question, *"whether both the Accused were assaulting on the entire body of the deceased?"*, he answered that, *"the Accused were assaulting on stomach, both hands and legs of the deceased"*. Both brothers of the deceased had asked the deceased about the incident, after they arrived at the spot. At

that moment, the deceased was in a condition to speak. Following omissions from his police statement are brought on record:

- I. *"On 18-07-2013 in the morning, I had gone to graze my cattle towards Bhamre Neri Road".*
(Omission is only to the extent of Bhatai Road).
- II. *"On the day of incident, I along with Devidas Vithal Patil and Sanjay Sahebrao Patil had gone to graze the cattle"*
- III. *"Anil Adhar Patil was grazing cattle near to Sarwe Dam, close to the Farmland belongs to the Accused persons".*
- IV. *"Upon hearing hue and cry of the quarrel, we saw towards the Farmland belongs to Kalu Gojar Patil."* (Omission is only to the extent of "we saw towards farmland")
- V. *"While running towards the spot, we again saw that both the accused persons were assaulting deceased Sandip on his hands, legs and stomach by means of iron pipes"* (omission appears to be only to the extent of word "again").

15. The above omissions do not affect reliability of this witness. Presence of this witness at the scene of the incident is natural and his evidence corroborates the evidence of PW-1. He has narrated the incident in the same manner in which it is narrated

by PW-1. Nothing is brought on record by the defence to doubt testimony of this witness.

16. Both, PW-1 and PW-2 are consistent on the point of assault by both the Accused on the deceased and they both stated that Accused Sandip assaulted the deceased by green iron pipe and Accused Vijay assaulted the deceased by yellow iron pipe. Evidence of the eye-witnesses is further corroborated by the medical evidence of PW-13 Dr. Rajput, who examined the deceased and PW-12 Dr. Baviskar, who has conducted postmortem on the dead body of the deceased.

17. Pradeep Patil (PW-5) is brother of the deceased, who was informed about the incident by PW-1 and was asked to bring bullock cart. He accordingly rushed to the spot of incident along with brother Jaywant. The deceased made oral dying declaration to them narrating the incident of assault by the Accused. He has stated about the quarrel between deceased Sandip and Kalu Patil, prior to two years of the date of the incident, on the count of loading sugarcane in vehicle. He had settled the quarrel, however, since then Kalu Patil was not talking with them. He also stated that Kalu Patil had assaulted 2 to 3 persons of their village, which created terror in the villagers. Due to his terror, no one was daring to lodge complaint against Kalu Patil.

18. He deposed that the incident had taken place on 18th July, 2013. On that day, they all the three brothers had gone to their field to give fertilizer to the cotton crop. At about 2.45 p.m. Sandip left the field towards house on motorcycle for giving water to cattle. At that time, he and Jaywant were supplying fertilizer to the cotton crop. At about 3.15 p.m. he received a phone call from Anil Patil (PW-1) informing that, when deceased Sandip was proceeding towards his house on motorcycle. On the count of previous dispute, Sandip was obstructed by Accused Sandip and Vijay at the spot situated near the farmland of Kalu Patil and was assaulted on hands, legs and stomach, by means of iron pipes. He was asked to bring bullock cart at the spot. Accordingly, he and brother Jaywant went to the spot in a bullock cart. The spot was near the farmland of Kalu Patil. Nimba Patil, Devidas Patil, Sanjay Patil, Anil Patil and the deceased were present there. He found marks of injury on hands, legs and stomach of the deceased. Then they lifted Sandip and kept him in the bullock cart. When they were proceeding towards village Bhamre, they asked Sandip as to what happened. Sandip had told them that, when he was proceeding towards his house on motorcycle, so as to offer water to cattle and when he reached the spot situated near the field of Kalu Patil, on the count of previous dispute, he was assaulted by Accused Sandip @ Abaya

and Vijay @ Bhurya, on his hands, legs and stomach, by means of iron pipes. He further told that on seeing Nimba, Devidas, Sanjay and Anil, coming towards the spot, Accused Sandip and Vijay ran away on their motorcycle. Then they brought Sandip to village Bhamre. Anil brought piaggio rickshaw of Dashrath Patil. In that they took Sandip to Sai krishna Hospital, Chalisgoan. On examining Sandip, doctor instructed them to take him to Dhule for treatment. Anil Adhar Patil, Dipak Adhar Patil, Ashok Maharu Patil, his mother and wife of Sandip took Sandip in an Ambulance towards Dhule. He and Jaywant came back to the house. At 5.45 p.m. he was informed by brother Deepak Patil that Sandip died on the way to Dhule and they were returning to Chalisgaon. Then he reached rural hospital and saw dead body of Sandip. Police recorded his statement. He identified the Accused.

19. Though he was grilled in lengthy cross-examination, nothing favourable to the Accused could be brought on record by the defence.

20. Evidence of PW-1 and PW-2 is corroborated by evidence of PW-5. Making of the oral dying declaration by the deceased is stated by PW-1, PW-2 and PW-5. Evidence of these three witnesses is cogent, reliable and proves that both the Accused have assaulted the deceased with iron pipes on his hands, legs

and stomach. Forensic evidence further supports the prosecution case in as much as, human blood is found on the clothes of Accused Sandip.

21. Memorandum statement of Accused Sandip (Exhibit-64) is proved by panch Dinesh Patil (PW-7). Accused Sandip agreed to produce both the iron pipes and led the panchas and the Investigating Officer to the spot where he had kept the iron pipes. He had kept the iron pipes under a bridge on the canal at Patonda - Borkheda road. Thereafter, Accused Sandip led them to Patonda - Borkheda road and asked to stop the vehicle at the bridge. Then he went under the bridge. A heap of garbage was there. Accused Sandip took out two iron pipes, which were kept under the heap of garbage. Those were seized vide Panchanama (Exhibit-65). PW-7 is also Pancha to the seizure of clothes of the Accused (Exhibit-63).

22. We find no force in the argument of the Accused that since the recovery is from the open space, the same should be disbelieved. There is sufficient evidence on record to attribute concealment of the weapons used in the crime by the Accused Sandip, as both the iron pipes were kept by him under heap of garbage from where he has taken them out. Therefore, merely because the heap of garbage was in open space, that is not

sufficient to hold that recovery is from open space.

23. Tatyasaheb Patil (PW-6) is Panch to the seizure of clothes of the deceased (Exhibit-56) and Pancha of seizure of motorcycle of the Accused Vijay (Exhibit-57).

24. Nimbadas Hylinge (PW-4) has proved spot Panchanama (Exhibit-51).

25. Inquest Panchanama (Exhibit-49) is proved by PW-3 Ashok Patil.

26. Lukdu Koli (PW-10) has carried letter (Exhibit-76) to Forensic Science Laboratory.

27. Dilip Dhobi (PW-11) is the carrier of letter (Exhibit-79) to FSL along with Muddemal Articles.

28. Vikas Devre (PW-14) is an Investigating Officer, who conducted the investigation and proved investigation papers (Exhibits-98 to 115) and CA reports (Exhibit-116).

29. From the aforesaid discussion it is clear that the prosecution has proved that both the Accused have assaulted deceased Sandip with iron pipes on his hands, legs and stomach and due to the said assault, Sandip expired on 18th July, 2013. The FIR is also promptly lodged in this case. From the evidence of

the prosecution witnesses, it is clear that, the prosecution has proved beyond reasonable doubt that the Accused assaulted the deceased Sandip due to which he expired.

30. Now, question before us is whether the Accused are liable to be punished under section 302 of the Indian Penal Code or for a lesser offence.

31. Perusal of the medical evidence shows that the Accused have assaulted on hands, legs and stomach of the deceased with iron pipes. The assault is on such parts of the body of the deceased which are not vital parts. According to Dr. Baviskar (PW-12), the cause of death is "*Cardio Respiratory Failure due to injury to vital organ i.e. liver associated with multiple fracture of major bone*". He has admitted in the cross that, "*it is not possible in all cases that due to tear of liver a person may die*". He has further admitted that, if a person is assaulted with iron pipes on his stomach, then the person may sustain serious injury, such type of injury was not noticed by him while conducting postmortem of the deceased. He has also admitted that, except injury No. XII, other injuries were not on vital parts. Injury No. XII is oblique contusion over right epichondriac region i.e. the region below the right chest of abdomen. If at all the Accused had intention to kill Sandip, then they would have assaulted him on vital part i.e. head. Intention

of the Accused in assaulting the deceased appears to be to cause him grievous hurt and to teach him a lesson. From the nature of the injuries found on the dead body of the deceased, no intention to cause death can be attributed to the Accused. However, the Accused had knowledge that any injury on stomach would cause death.

32. Taking into consideration the medical evidence, we are of the considered view that the Accused have assaulted the deceased with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death. Therefore, the Accused are liable to be punished for the offence punishable under section 304-II of the Indian Penal Code.

33. Record indicates that Accused No.1 Sandip is arrested on 21st July, 2013 and since then he is in jail and Accused No.2 Vijay was arrested on 24th February, 2015 and he is released on medical bail in the month of April, 2025. Thus far, Accused No.1 has undergone more than 12 years' imprisonment and Accused No.2 has undergone more than 10 years' imprisonment, which according to us, is sufficient punishment for the offence punishable under section 304-II of the Indian Penal Code.

34. In the result, following order:

ORDER

1. Criminal Appeal No. 441 of 2016 is partly allowed.
2. Conviction of the appellants recorded under Section 302 of the Indian Penal Code is converted into Section 304-II of the Indian Penal Code and the appellants are sentenced for the period already undergone.
3. The appellants be released forthwith, if not required in any other case.
4. The appellants to execute bonds in terms of Section 436-A of the Code of Criminal Procedure.
5. Criminal Appeal No. 469 of 2016 and Criminal Appeal No. 497 of 2016 are disposed of, in terms of this order.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE