



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 719 OF 2023

- 1) Mayur Keshavrao Thamke,
Age-34 years, Occ: Business,
R/o Gond Plot, Kejaji Chowk. Tah. &
Dist. Wardha.
- 2) Akash Chandrao Ingale,
Age-33 years, Occ: Labour,
R/o-Gond Plot, Subhash Chowk, Wardha,
Tah. & Dist. Wardha.
- 3) Vikas Chandrao Ingale,
Age-31 years, Occ: Service,
R/o Subhash Chowk, Gond Plot, Wardha,
Tah. & Dist. Wardha.
- 4) Ankit Vijayrao Ninave,
Age-21 years, Occ: Business,
R/o Subhash Chowk, Gond Plot, Wardha,
Tah. & Dist. Wardha.

...Appellants

// VERSUS //

State of Maharashtra, Through Police
Station Officer, Police Station, Wardha
(City), Tah. & Dist. Wardha.

... Respondent

Mr. D.R. Bhoyar, Advocate for the appellant.

Ms. Sonia Thakur, Addl.PP for the respondent no.1/State.

CORAM: NIVEDITA P. MEHTA, J.

Reserved on : 10th November, 2025

Pronounced on : 17th November, 2025.

JUDGMENT :

Challenge in this appeal is to the judgment and order of conviction dated 13th September, 2023, passed by the learned Additional Sessions Judge, Wardha, in Sessions Case No. 201/2013, whereby the appellants were convicted for the following offences-

NAME OF THE ACCUSED	OFFENSE CHARGED UNDER IPC	PUNISHMENT/ IMPRISONMENT FOR
Accused No. 1 Mayur Keshavrao Tamke, Accused No. 3 Akash Chandrao Ingale, accused No. 4, Vikas Chandanrao Ingale accused No.5, Ankit Vijayrao Ninave	143 IPC	Simple imprisonment for One month and pay a fine of Rs. 500 each in default, they will suffer from 7 days' simple imprisonment.
Accused No. 1 Mayure Keshavaro Thamke, Accused No. 3 Akash Chandrao Ingale, accused No. 4 Vikas Chandanrao Ingale, accused No.5, Ankit Vijayrao Ninave	148 IPC	Simple imprisonment for six months and pay a fine of Rs. 1000 each in default, they shall suffer simple imprisonment of 1 month.

Accused No. 1 Mayure Keshavaro Thamke, Accused No. 3 Akash Chandrao Ingale, Accused No.4- Vikas chandanrao Ingale & Accused No. 5 Ankit Vijayrao Ninave	307 read with 149 IPC	Rigorous imprisonment for 7 years and pay a fine of Rs. 5000 each in default, they shall suffer rigorous imprisonment of 4 months
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Accused No.2 Amol Yadav Choudhari expired during the trial on 08/02/2020; his Death Certificate was brought on record before the trial Court through Exhibit 120; hence, the appeal against conviction is preferred by the rest of the accused persons.

2. The prosecution's case, in brief, is that informant Sunil Vasantrao Mangekar (hereinafter referred to as 'complainant') lodged a report in Wardha (City) Police Station stating that he is residing at Kejaji Chowk, Gond Plot, Wardha. On 25.04.2013 at about 10.30 p.m., there was a programme of Mahaprasad on the occasion of Hanuman Jayanti in the Hanuman Temple near the complainant's house. At the relevant time, Akash Ingale created a nuisance under the influence of alcohol; therefore, Raju Dhote asked Akash Ingale why he was disturbing the programme. At that time, Akash Ingale started abusing. The complainant intervened in the matter. Then, instruction was given to Akash Ingale to leave the spot.

Akash Ingale left the spot, and within 23 to 30 minutes, Akash Ingale came back in a white Jipsey at the spot where the Mahaprasad programme was conducted, which was 100 feet away from the complaint spot. Akash, along with others, was standing in front of the complainant's house. Vikas Ingale, Ankit Ninawe, and three other unknown persons (the complainant knows them by face, but does not know their names) came along with Akash Ingale. They stepped down from the vehicle. Akash was holding a sword, Vikas Ingale was holding a knife, and Ankit Ninawe was holding an iron rod in their hands. The other three unknown persons were carrying an iron rod and a hockey sticks. The accused persons came near to complainant's house and asked why instruction was given to Akash Ingale to leave the spot. The accused persons got into a quarrel with the complainant. Vikas Ingale assaulted the complainant with a knife below the right eye. Blood was oozing from the injury. His brother Hemant Mangekar came to rescue quarrel. When Akash was intending to assault with a sword, his brother, with a view to save, intervened with his hand, due to which his brother sustained injury to his left thumb.

It is further mentioned in the report that after hearing the noise, Raju Dhote and Vilas came there. Vikas Ingale was assaulted with a knife on the neck of Hemant Mangekar. All the Accused persons assaulted Raju Dhote with a sword, knife, rod and hockey stick and caused him injuries. When wife of Raju Dhote came there, they scuffled with her and assaulted Vilas with a rod.

Raju Dhote was lying unconscious on the spot. Then all the accused left the spot in white colour Jipsy. Complainant, along with the help of others, shifted Raju Dhote to General Hospital and lodged report against the accused persons.

3. On the basis of the report, Crime No.194/2013 (Exhibit 59) was registered on 26-04-2013 at Police Station, Wardha (City), Tah. & Dist Wardha. The investigation was carried out by A.P.I. Gajanan Bhimrao and the accused were arrested. The accused nos. 1, 2, 4 and 5 in police custody, made a memorandum statements and furnished the respective weapons used at the time of the commission of the crime. The weapons recovered were a stick of baseball, a sword, a steel rod, a knife and a hockey stick seized under the memorandum statement under section 27 of the Evidence Act. At the instance of the accused, weapons were seized under the seizure panchanama (Exhibit 54). Police seized a white colour shirt from Hemant which was having blood stains. Seizure panchnama (Exh.66) of said shirt was prepared in his presence. On the same day blood stained blackish-white shirt, blue colour night pant, sando baniyan of the complainant was seized under seizure panchnama (Exh.60). A blue jeans pant and blue T-shirt were seized under seizure panchnama (Exh.67). On 07.05.2013 clothes of Vikas Ingale, Ankit Ninave were also seized under seizure panchnamas (Exh 68 and 69). It is further seen that black colour chappal, pink colour sleeper and one dot-pen were seized in his presence under seizure panchnama (Exh.70). Police seized a bottle of blood

sample under seizure panchnama (Exh.71). Police collected the samples of simple soil, blood mixed soil, blood stained cotton from the spot of incident and prepared seizure panchnama (Exh.72) in the presence of the panch witnesses. Articles those were recovered and forwarded to C.A., brought before the Court through Exhibit 181-188, along with a letter (Exhibit 180). Upon completion of the investigation, a charge-sheet was filed before the learned Trial Court. The learned Trial Court framed a charge under Sections 143, 148 and 307 read with 149 Indian Penal Code (hereinafter referred to as the '*IPC*'), to which the accused pleaded not guilty and claimed to be tried.

4. During the course of the trial, the prosecution examined eight witnesses, including PW1 Rajendra Madhukar Malode (Exhibit 48) (Panch Witness), PW2- Sunil Vasantrao Mangekar (Exhibit 57) (complainant), P.W.3 Swapnil Suereshrao Thakre (Exhibit 65) (Panch witness), P.W.4 Dr Madan Kisan Chafe, (Exhibit 95) (MO), P.W.5 Hemant Vasantrao Mangekar (Exhibit 131), P.W.6 Sangita Rajendra Dhote (Exhibit 165), P.W.7 Rajendra Gulbrao Dhote (Exhibit 174) and P.W.8 Shri. Gajanan Bhimrao Jadhav (Exhibit 175).

5. Upon closure of prosecution evidence, the appellants were examined under Section 313 of the Code of Criminal Procedure (Exhibit Nos 192-195), wherein they denied all incriminating circumstances and claimed false implication.

6. After appreciation of the evidence on record, the learned Additional Sessions Judge concluded that the appellants specifically accused Nos. 1, 3 to 5 and deceased accused No.2 Amol have formed unlawful assembly, armed with deadly weapons and in prosecution of their common object came to the spot and assaulted to the informant and others with such intention or knowledge, and under such circumstances that, act of accused persons would have caused death of informant and others. Therefore, ingredients of offence under sections 143, 148 and 307 read with 149 of the IPC are made out.

7. Considering the nature of the weapons, the manner and location of injuries, and the conduct of the appellants, the Trial Court concluded that the appellants had the requisite intention and knowledge to cause death, and accordingly convicted them for the offence punishable under Sections 143, 148 and 307 read with 149 IPC. The present appeal is thus directed against the conviction and sentence imposed by the learned Trial Court.

I now proceed to consider the present appeal preferred by the appellants, which is directed against the judgment and order of conviction and sentence passed by the learned Trial Court under Sections 143, 148 and 307 read with 149 IPC.

8. Learned Counsel for the appellants contended that the medical evidence on record does not support the prosecution's case of grievous and life-

threatening injuries. In particular, it is submitted that PW.4- Dr. Madan Kisan Chafe, who initially examined the injured, stated that the injuries were not of such a nature to cause death. Thus, section 307 will not be attracted in the case, but the case can be made out under section 324 of the IPC.

9. Learned counsel for the appellants further submitted that the trial Court failed to appreciate that there are discrepancies in the evidence of injured and eye-witnesses. The informant PW-2 Sunil Mangekar deposed contradictorily in respect of the weapons used and injuries sustained to the evidence given by Hemant Mangekar PW-5, Sangita Dhote PW-6 and Rajendra Dhote PW-7, due to which the prosecution failed to prove case beyond reasonable doubts. Appellants' counsel further submitted that the wife of Raju Dhote, namely Sangita Dhote, PW6, in her deposition has not narrated the incident and has given an altogether different version which clearly demonstrates that the case of prosecution creates doubt as regard to the alleged incident.

10. It was further argued by the appellants' counsel that the assault on the date of the incident i.e. on 25/04/2013, a program of Mahaprasad on the occasion of Hanuman Jayanti was going on, and a number of people had gathered near the temple, and suddenly a quarrel broke out between the groups of people. Therefore, under such circumstances, no case under Sections 143, 148 and 307 read with 149 IPC, is made out, since the quarrel was of a

sudden nature and there were a group of people who had gathered for the Mahaprasad occasion; therefore it cannot be said to be an unlawful assembly.

11. It was argued by the appellants' counsel with respect to the injuries that PW. 4 – Dr. Madan Kisan Chafe, Medical Officer pointed out that Sunil Mangekar has the following injuries on his person. Incised injury over face right side below right eye placed obliquely of size 10 cm x 2 cm by bone deep, caused by sharp object, healing period about 7 to 8 days under surgical intervention if no complication occurs. Linear abrasion over the nose at upper septum of size 4 cm, caused by a hard and blunt object, healing period is 4 to 5 days under surgical intervention if no complication occurs. PW 7-Rajendra Dhote suffered an injury of a lacerated wound over the right side of the forehead (10 cm x 1 cm x bone deep) vide Exhibit 100. PW 5-Hemant Mangekar suffered three injuries i.e. injury on two linear abrasions over the neck (8 cm and 6 cm), incised injury over the right side of the neck (6 cm x 0.5 cm) & abrasion over the right cheek (3 cm x 2 cm) vide Exhibit 103. Vilas Kolhe suffered injury of contused swelling over the left side of the forehead (4 cm x 3 cm) vide Exhibit 104. All caused by a hard and blunt object.

The healing period was estimated to be 3 to 4 days, thereby clearly indicating that the injuries were simple in nature and not grievous.

It was argued by the learned counsel for the appellants that no vital organ had been damaged, which clearly shows that there was no intention for murder, nor there were grievous injuries sustained by the injured. Further, it is contended that Dr. Chafe opined, fresh injuries, no cut injuries were suggested; therefore, the injuries were of a simple nature; hence offence under section 307 IPC cannot be attracted over simple injuries.

12. It was lastly argued by the appellants' counsel that the trial Court has failed to take into account the chemical analyser report, whereby the blood on the knife is inconclusive.

13. The appellant has relied on the following case laws (1) *Jage Ram and Others Vs State of Haryana, (2015) 11 SCC 366*, (2) *State Of Maharashtra Vs. Nina Trambak Tadas, [2015(4) Mh.L.J. (Cri.) 522]*.

14. Per contra, it was argued by the learned Additional Public Prosecutor that the assembly was premeditated and the nature of the weapons used were such that it would have caused death.

15. The prosecution argued that Chemical Analysis Report, which revealed that the blood found on the knife recovered from the Akash Ingle (appellant no.3), and the sword (Exhibit 53) recovered, matched the blood group "O", which is also the blood group of PW2- Sunil Vasantrao Mangekar (Exhibit

182). It was submitted that this constitutes clinching forensic evidence connecting the appellants to the offence.

16. The learned Addl.PP further argued that both injured witnesses, PW.2 and PW.5, gave a consistent and cogent account of the incident, which remained unshaken during cross-examination. Their ocular testimonies were further corroborated by the medical evidence adduced by the medical witness (PW.4).

17. As regards the plea of absence of criminal antecedents, the learned Addl.PP submitted that the gravity of the offence and the nature of the injuries inflicted cannot be diluted merely on that ground, particularly when the intention to kill is evident from the use of a deadly weapons and the targeting of vital parts of the body. She further contends that the wife of Raju Dhote arrived on the spot after hearing the noise of her husband and tried to intervene. Therefore, she, being a witness to the earlier scuffle/assault, and she was consistent with her testimony.

18. Before arriving at a final analysis and conclusion, it is necessary to carefully evaluate the depositions of the prosecution witnesses and the evidence led before the trial Court. The credibility, consistency, and reliability of the testimonies must be scrutinised in light of the facts presented. Particular attention must be given to whether the witnesses were able to provide a

coherent and truthful account of the events in question, and whether any documentary or physical evidence corroborated their testimonies. Any contradictions, inconsistencies, or material omissions must also be weighed in assessing the overall strength of the prosecution's case.

19. PW1 Rajendra Madhukar Malode is examined as panch witness vide Exhibit 48. The witness confirms his role in several police procedures, including spot inspections, memorandum recordings, and recoveries of weapons. The witness was first called on April 26, 2013, to act as a panch at the spot of the incident near Maruti Mandir, Kejaji Chowk. The police seized simple clay and clay mixed with blood from the spot, and a Spot Panchanama (Exh. 49) was prepared in his presence. Subsequently, the witness was involved in multiple recovery and memorandum procedures. On April 30, 2013, the witness attended the police station where accused No.1-Mayur Thamke made a confessional statement leading to the recovery of a stick of baseball from behind a grain box at his house (Exh. 50). On the same date, accused No.2-Amol Yadavrao Choudhari made a confessional statement leading to the recovery of a steel rod from below a bed in his room (Exh. 51). On May 8, 2013 the witness was present when accused No.4-Vikas Ingle made a memorandum stating he gave a knife to Akash Ingle (Exh. 52). Accused No.5- Ankit Ninave also made a memorandum stating he gave a hockey stick to Akash Ingle and parked the Gypsy vehicle at the Circus ground (Exh. 53). On

the same day accused No.3-Akash Ingle made a confessional statement and subsequently produced a hockey stick, a sword, and a knife from the loft of his house. He also confirmed parking the Gypsy vehicle at the Circus ground. The recovery panchanama (Exh. 54) was prepared for these seizures.

The witness affirmed that the contents of all the panchanamas and memorandums (Exhs. 49-54) are correct and bear his signature, the signatures of the other panch, and the respective accused. In the cross-examination by the defence counsel, the witness admitted that he was not given written notice to act as a panch and repeatedly stated that he did not remember the exact time consumed for recording confessional statements, preparing panchanamas, or visiting the accused's houses. The witness denied the defence's suggestions that his signatures were obtained in the police station itself (suggesting the searches/recoveries did not happen at the spot), that he signed the documents at the instance of the police, or that the accused never made a confessional statement and nothing was recovered at their instance. He also denied deposing only after reading the panchanamas before the Court. There was no question put to the witness as to whether he knew the accused persons beforehand; this would have meant that the panch witness was an independent witness for investigation.

20. PW2- Sunil Vasantrao Mangekar is the complainant examined at Exhibit 57. The witness stated that the incident began when the accused No.3-Akash Ingle, arrived at the Hanuman Mandir program under the influence of liquor. Akash began abusing the public and thereafter abused Raju Dhote. When Raju Dhote asked Akash to stop, Akash instead initiated a quarrel and continued the abuses. PW2, along with others, intervened, and Akash eventually left the spot. Approximately 30 minutes later, Akash Ingle returned in a Gypsy vehicle with five accomplices, including accused No.4-Vikas Ingle, accused No.5-Ankit Ninave, and Choudhari. All six were heavily armed. Accused No.3-Akash Ingle held a sword. Accused No.4-Vikas Ingle held a knife. Accused No.5-Ankit Ninave held an iron rod. The others held iron rods and hockey sticks. They immediately attacked PW2 near his house. Accused No.4-Vikas Ingle assaulted PW2 with a knife near his right eye, causing a bleeding injury. When PW2's brother, Hemant (PW 5), intervened, he sustained a thumb injury from Akash's sword and a neck injury from Vikas's knife.

When Raju Dhote (PW 7) arrived, all six accused brutally assaulted him with their weapons (sword, knife, iron rod, hockey sticks) on his hands, head, and legs, rendering him unconscious. Raju's wife was pushed when she approached. The six assailants fled in the White Gypsy. PW2 and others took Raju Dhote to the hospital, and PW2 lodged the police report (Exh. 58/59).

Police later seized PW2's blood-stained clothes and the witness identified the weapons used in the attack.

In cross-examination, PW2 admitted to a "hot exchange of words" between Raju Dhote and Akash at the Mandir and that he and his brother "tried to drive them out" when they returned. He consistently denied the defence's suggestions that Raju Dhote or others consumed liquor and caused problems for devotees. He denied that the witness's group had initiated the fight or assaulted the accused. He specifically denied the fact that the accused were unarmed. He also denied the fact that he was instigated to file the report by Sagar Pakhare (a political contender).

21. PW.3 Swapnil Suereshrao Thakre, panch witness is examined at Exhibit 65, who confirmed the preparation of several seizure panchanamas and identified the recovered articles (Arts. F-O). The witness's initial statement claimed that the police "did not do anything else before 01/05/2013" and "after 07/5/2013." This omission of critical seizures led the Assistant Public Prosecutor (APP) to request permission to cross-examine the witness, deeming him hostile as he was resisting or intentionally omitting crucial parts of the prosecution's case. During cross-examination by the A.P.P., the witness was compelled to admit to witnessing several other crucial seizures that he had initially omitted such as seizure of the black chappal, pink slipper, and dot pen

(re-confirmed as Exh. 70/Arts. P, Q, R), seizure of bottles of blood samples of the injured (Exh. 71), seizure of simple mud, blood-stained mud, and a blood-stained cotton swab from the spot (Exh. 72), seizure of the White Maruti Gypsy Car No. MH-12-P-0763 from Akash Ingle near the Circus ground (Exh. 73). The witness confirmed the incident location as Kejaji Chowk, near the Hanuman Temple (2-3 houses from Sunil Mangekar's residence). He confirmed that the police never gave him a written notice to act as a panch.

Regarding the seizures, the witness exhibited a memory lapse, admitting he could not recall how many of Sunil Mangekar's clothes had bloodstains, how many of Ankit's clothes had bloodstains, or whether Akash's clothes were blood-stained at all. He also noted a slight discrepancy in the Gypsy's registration number (stating 0768 instead of 0763) and was unsure if he went to the police station or the Circus ground first for the vehicle seizure.

The witness denied all suggestions of bias from the defence counsel, including the assertion that he was a "well-wisher" of the injured Mangekars or that he went to the police station on his own accord. He insisted that everything happened in his presence, and he was not falsely deposing.

22. PW4- Dr. Madan Kisan Chafe, (Exhibit 95), the Medical Officer was on duty from 8:00 p.m. to 8:00 a.m. and examined four patients based on police requisitions (Exhs. 96-99) starting around 11:15 p.m.

1. Rajendra Dhote (Exh. 100) (PW 7)

Injury: Lacerated wound over the right side of the forehead (10 cm x 1 cm x bone deep). He concluded the cause of injury because of hard and blunt object. Described as a fresh injury, bleeding was present, and the MO opined it may be a fatal injury. Rajendra Dhote was referred to Sewagram Hospital for further examination due to his unconscious condition.

2. Sunil Mangekar (Exh. 102)- suffered two injuries from a blunt object on non non-vital part the i.e. injury over the right side of the face below the right eye, and a linear abrasion over the nose.

3. Hemant Mangekar (Exh. 103)- suffered two injuries: two linear abrasions over the neck, an abrasion over the right cheek and an incised injury over the right side of the neck. Injury was caused by a hard and blunt object.

4. Vilas Kolhe (Exh. 104) contused swelling over the left side of the forehead (4 cm x 3 cm) caused by a hard and blunt object. The MO opined the injury was fatal. He advised X-ray skull; a blood sample was collected from Vilas Kolhe.

On May 29, 2013, the Medical Officer (MO) received a query letter and two sealed weapons: a Knife (Art. E) (23.5 cm total length, 10 cm blade) and a Sword (Art. A) (79 cm total length, 66 cm blade). The MO described both as sharp, pointed, and dangerous, noting reddish-brown spots (suspected blood)

on the blade/edges, and advised chemical analysis. In cross-examination, he admitted that he did not find a skull fracture or brain damage, nor did he use the term "fatal injury" in the original certificates for Rajendra or Vilas. He clarified his opinion on fatality was based on healing time and hospitalisation, though this correlation was not explicitly stated in the certificates. He admitted to using a probe and measuring tape, but did not mention the depth of deep injuries. He used the word "incised" instead of "cut." He agreed that the injuries could be possible if a person fell on a hard surface or during a scuffle between two parties. He initially said the sword handle was fixed, but later admitted they were not fixed and he couldn't explain its separation. He agreed the weapons shown in court were rusted, suggesting this could account for the brown spots he observed.

23. PW-5 Hemant Vasantrao Mangekar, brother of the complainant is examined at Exh.131. The incident occurred on April 25, 2013, at 10:00 p.m. near the Hanuman Temple. According to the witness, the confrontation began when his younger brother, Sunil, asked Akash Ingle to leave for creating a nuisance. Approximately 25-30 minutes later, Akash returned in a white Gypsy with four other named accused: Mayur Thamke, Ankit Ninawe, Amol Choudhari, and Vikas Ingle. They immediately began assaulting Sunil. Hemant positively identified the specific weapons held by each attacker: Akash Ingle:

Sword (Art-A), Ankit Ninawe: Iron Rod (Art-B),Vikas Ingle: Knife (Art-E), Mayur Thamke: Hockey Stick (Art-C), Amol Choudhari: Stick (Art-F)

Hemant intervened and sustained an injury to his left hand thumb. He noted that Sunil was injured near the ear and forehead, and Raju Dhote sustained a head injury and was taken immediately to the hospital. He identified all the corresponding weapons shown in court (Art-A, B, C, E, and F).

The witness confirmed the Hanuman Jayanti program and Mahaprasad, which was funded by contributions, but denied knowing if the accused contributed or if the dispute was related to program expenses. The defence suggested a dispute existed between the accused and Sagar Pakhade, a politician for whom Hemant admitted working during an election. Hemant denied any knowledge of this alleged dispute.

The defence also repeatedly questioned him about illegal liquor sales near the temple and Kejaji Chowk (which he corrected the distance to 70 feet). Hemant consistently denied any knowledge of liquor sales, associated nuisance, or that this atmosphere led to the dispute. Hemant denied seeing the weapons for the first time in court or failing to mention the hockey stick to the police. He confirmed a large gathering (500-1000 people) but firmly denied that Raju Dhote and his associates created a nuisance, that the injuries

were sustained during a simple scuffle, or that he was lying due to his relationship with the complainant.

P.W.6 Sangita Rajendra Dhote is examined at Exhibit 165. The witness confirmed the time and place of the incident is April 2013, between 10:00 p.m. and 10:30 p.m., near the Hanuman Temple in Gond Plot, Wardha, during the Hanuman Jayanti program. She testified that she was inside her house and came out after hearing her husband, Rajendra Dhote's shout. She saw her husband lying injured on the ground, having sustained a head injury and fainted. She stated that the accused persons were present and quarrelling with her husband and stopping him, and that the accused assaulted him with an iron rod. Rajendra Dhote was subsequently taken to the General Hospital, Wardha. She confirmed in cross-examination that the location was Kejaji Chowk and admitted there was constant nuisance due to illicit liquor shops run by Jaiswal and Dashrath Vaidya. She also confirmed a large crowd of over 1,000 persons and that the quarrel started during the Mahaprasad. She was unable to say who picked up the quarrel or exactly how the incident took place at the mahaprasad. She admitted that she had not seen the accused because of the rush of people at the time of mahaprasad. She stated that the information that the nuisance caused at the time of mahaprasad and was told to her by persons gathered on the spot. Critically, she stated that she was seeing the

accused before the Court for the first time, directly contradicting her earlier testimony where she identified them.

24. PW.7 Rajendra Gulbrao Dhote is examined at Exhibit 174 and deposed that accused Akash Ingle came to the Mahaprasad program for Hanuman Jayanti and started making noise while under the influence of liquor and abusing people. Sunil Mangekar and others intervened, and Akash left the spot. Akash Ingle returned in a white Gypsy along with four named accused (Vikas Ingle, Ankit Ninawe, Mayur Thamke, and Amol Choudhari). The witness specified the weapons held by the named accused: Akash Ingle: Sword, Vikas Ingle: Knife, Ankit Ninawe: Iron Rod, Mayur Thamke and Amol Choudhari: Iron rod and hockey sticks

The group went to the house of Sunil and started beating Sunil and Hemant Mangekar. When the witness reached the spot (in front of the temple), they assaulted him with an iron rod and hockey stick on his head.

The witness sustained a head injury and immediately became unconscious. He was shifted to General Hospital, then Sewagram Hospital, and finally to Nagpur for further treatment. He identified the accused present in the Court, the weapons shown (Art. A to F), and his seized blood-stained shirt and baniyan.

The cross-examination focused on the location, the initial dispute, and the witness's lack of awareness following his injury. The witness confirmed the incident occurred in Kejaji Chowk, Wardha, during the Hanuman Jayanti program, where over 100 people gathered. He agreed that there was an initial dispute in the program and that some people intervened. The witness provided several spatial details, noting his house is 20-25 feet from the temple, and the distance from the temple to Kejaji Chowk is about 300-400 feet. He also mentioned nearby broken cement pipes and exposed rods, potentially suggesting alternative sources for injuries. He confirmed that he was discharged from Nagpur Hospital on May 1, 2013, and stayed home for a month thereafter. Crucially, he admitted that police did not question him in the hospital.

The witness affirmed that when police recorded his statement, he told them there were three unknown persons in addition to the accused. He admitted that the unknown persons were also possessing weapons (an iron rod, a knife, and a sword) and that an unknown person assaulted him on the head. He confirmed that, as he was unconscious, he was unaware of what happened thereafter.

25. PW.8 Shri. Gajanan Bhimrao Jadhav is examined at Exhibit 175. He was attached to the Wardha (City) Police Station in 2013. The Police Sub-Inspector (PSI) detailed the investigation steps following the lodging of the complaint

and the registration of Crime No. 194/2013 (Exhibit 59) on April 26, 2013. The accused were arrested under panchanamas (Exh. 176 and 177). Crucially, the PSI oversaw the discovery of two weapons based on the accused's custodial statements. Accused Mayur Thamke furnished a memorandum (Exh. 50) and led the police to the second room of his house at Gond Plot, producing and facilitating the seizure of a black coloured baseball stick (Exh. 178). And Accused Amol Choudhari furnished a memorandum (Exh. 51) and led the police to his rented house at Gond Plot, producing and facilitating the seizure of a steel rod (Exh. 179). The investigation also included the seizure of clothes from the injured parties, complainant Sunil Mangekar: used shirt, night pant, and baniyan (Exh. 60 / Art. F, G, H) and Hemant Mangekar: Produced his clothes (Exh. 66 / Art. I, J, K).

Additionally, various samples were recovered from the spot, including soil, blood-stained soil, cotton swabs, a chappal, and a dot pen. These were sent to the Chemical Analyser (C.A.) for analysis (Exh. 180), and the resulting C.A. reports (Exhs. 181 to 188) were placed on record. A query letter (Exh. 105) was also sent to the Medical Officer regarding the weapons. During cross-examination, the PSI confirmed recording the statements of multiple key witnesses. However, he admitted that he did not record the statement of a witness named Sunil Mangekar.

26. The evidence of the informant – Sunil Vasantrao Mangekar (PW 2) and that of the injured witnesses namely Hemant Vasantrao Mangekar (PW 5) and Rajendra Gulabrao Dhote (PW 7) have brought on record that on 25-04-2013, around 10:30 pm, initially, the accused No.3-Akash Ingale had created nuisance under intoxication during the Mahaprasad Programme on the occasion of Hanuman Jayanti at the Hanuman Temple situated near the house of complainant. Altercations took place between Raju Dhote and Akash Ingale and accused Akash Ingale had started furling abuses. Akash Ingale was asked to leave the spot. The complainant intervened into the matter.

After around 1/2 an hour, Akash Ingale came back in White Jipsey alongwith 5-6 co-accused persons on spot. They came infront of the complainant's house and quarrelled with the complainant. The accused No.3-Akash Ingale was holding a Sword and accused No.4- Vikas Ingale was holding a Knife and Accused No.5- Ankit Ninawe was holding an Iron Rod and other co-accused were carrying Iron Rod and Hockey Sticks into their hand.

The accused No.4- Vikas Ingale assaulted the complainant Sunil (PW-2) with Knife below the right eye. The accused No.3-Akash Ingale assaulted the complainant's brother Hemant (PW-5) with Sword on his left thumb and Accused No.4-Vikas Ingale assaulted Hemant (PW-5) with Knife on his neck. Further, Raju Dhote (PW-7) was assaulted with Sword, Knife, Rod and Hockey

Sticks by all the accused due to which he felt unconscious on spot. The wife of Raju Dhote who intervened was manhandled by the accused. The ocular testimonies of these injured witnesses are corroborated with medical evidence on record. The weapons were recovered at the instance of the accused and were identified by PW-5 & PW-7. The panch witnesses have supported prosecution on respective panchanamas.

Significantly, the evidence would reveal that, after creating nuisance and hurling abuses, the accused No.3- Akash Ingale left the spot and then again came back after 1/2 an hour in a white colour Jipsey alongwith 5-6 co-accused persons, only with an intent to assault the injured witnesses and thereby, to kill them. The accused had in fact seriously injured them with dangerous weapons. Thus, evidence would show that, the accused were present on spot in prosecution of their common object and they were armed with deadly weapons and by forming an unlawfully assembly, they also assaulted the witnesses on spot and attempted to kill them. Therefore, each one of them is equally responsible for the acts of other member of their unlawful assembly. Hence, the prosecution has proved the ingredients of the alleged offences against the accused beyond reasonable doubt.

27. In a case involving charges of attempt to murder and voluntarily causing hurt with a dangerous weapon, the burden lies squarely on the prosecution to

prove the guilt of the accused beyond a reasonable doubt, primarily through credible eyewitnesses, medical and forensic evidence, and a lawful investigation process. In the present case, the prosecution has examined eight witnesses, each of whom plays a significant role in building a consistent and reliable narrative. On the ground of medical evidence on record supports the prosecution's case of grievous and life-threatening injuries. In particular, it was submitted that PW.4- Dr. Madan Kisan Chafe, who initially examined the victim, stated that the injuries were not of such a nature to cause death and that section 307 would not be attracted in the case, is denied in toto. This Court finds this argument to be without any merit, as it is a settled position of the law that in cases of 307 attempted murder, the nature of the injuries is secondary to the intention of the accused. Further, it is duly noted by the prosecution that the injuries caused to the victims were of such a nature that they would be cured only if medical intervention were provided to them. Further, during the recovery period, medical observation is necessary to ensure infection does not occur in the injury. Thus, such injuries cannot be said to be of a simple nature. The Hon'ble Apex Court has settled the position of law that the nature of injuries is secondary the intention of the accused should be given paramount consideration in cases of attempt of murder. The relevant case and the said paragraph are referred below, ***S.K. Khaja v. The State of Maharashtra***,

2023 LiveLaw (SC) 715, the Honourable Apex Court expressly observed in para 8 as follows—

“8. As rightly submitted by the learned counsel appearing on behalf of the respondent – State, merely because the injuries sustained by the complainant – Mohammad Khan Pathan (PW-2) were very simple in nature, that would not absolve the appellant/accused from being convicted for the offence under Section 307 of the IPC. What is important is an intention coupled with the overt act committed by the appellant/accused...”

As observed above, the nature and the extent of injury caused are such that it was life-threatening and enough to bring home the guilt of the accused. Thus, this argument of the appellant is rejected.

28. On the ground the learned trial Court failed to take into consideration the chemical analysis report and failed to consider the contradiction in the deposition of the witness about the use of the weapons by the accused, this Court is of the opinion that the contradiction should be such that it totally invalidates the previous statement of the witness. A mere small contradiction cannot be a ground to impeach the creditworthiness of the witness. In the present factual matrix, the appellant has raised the ground that the witnesses, specifically PW2 and PW5, have a contrary stand with regard to the use of weapons. This Court finds this argument faulty as the minor changes in the witness cannot impeach the creditworthiness. The medical examination

(Exhibits 97-99) proves that the injury caused was due to the hard and blunt objects, which was duly corroborated by the statement of the witness. Any contradiction on the use of the weapons and the nature of injury sustained would be a minor contradiction as per the present factual matrix. This observation was made by the Hon'ble Apex Court in the case of *Alauddin & Ors. Vs The State Of Assam & Anr. Criminal Appeal No. 1637 OF 2021* in para 9 as follows-

“9...It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each case”.

On the contradiction by PW 6, she was consistent with her testimony that she did not see the exact incident occurred earlier in time; she clearly admitted that she did not see the incident unfolding; she came out after hearing the noise of her husband. She clearly admitted that she did not see the exact weapon used. Hence, there was no contradiction. As far as her contradiction with regard to the identity of the accused is concerned, there were five accused in question. In her cross-examination, she did not specify

that she was seeing all the accused persons for the first time in the Court. Hence, this argument of the learned Counsel is rejected.

So far as the Chemical Analyser Report is concerned, it clearly specifies that the sword, which was covered with blood stains, has 'O' positive blood on it, and the knife used also had traces of human blood. It is inconclusive as to which type of blood it has, but at the same time CA report (Exhibit 181) of the blood sample revealed that it is 'O' positive and is of Sunil Vasantrao Mangekar. This corroborates the further testimony and evidence, which further proves the guilt of the accused.

29. It was further argued by the appellants that the weapons used were not deadly. It was specifically pointed out by the appellants' Counsel that a hockey stick was used, and hence it is not of such a nature that would cause a life-threatening injury. It is to be noted here that the accused were part of an unlawful assembly. They have committed an offence in furtherance of the common intention. When an act is done in an unlawful assembly, the act of the individual is not considered; rather, it is overt by the act of the unlawful assembly. It is true that the hockey stick is not a deadly weapon unless it is used with the intention to cause such injury to cause death of the person; however, in this case, where another accused was using the sword and knife, the intention of the unlawful assembly was such to cause the bodily injury

which would take the life of the person. In this regard, the Hon'ble Apex Court has clarified the law in the case of ***State of Uttar Pradesh vs Subhash Alias Pappu, (2022) 6 SCC 508***. The Hon'ble Apex Court the in paras 24 & 25, observed –

“24. It is the submission on behalf of the accused that the weapons alleged to have been used by the respondent-accused were said to be a hockey stick, which cannot be said to be a deadly weapon, and therefore, the respondent-accused cannot be punished for the offence under Section 148 also has no substance. As per Section 148 IPC, whoever is guilty of rioting, being armed with a deadly weapons or with anything which used as a weapons of offence, is likely to cause death, can be punished under that Section. The term "rioting" is defined under Section 146 IPC. As per Section 146, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

25. In the present case, six to seven persons were part of the unlawful assembly and they used force or violence and one of them used a deadly weapons, namely, knife and therefore, being a part of the unlawful assembly, the respondent-accused can be held to be guilty for the offence of rioting and for the use of force/violence as a member of such an unlawful assembly. Therefore, the respondent was rightly convicted by the trial court for the offence under Section 148 the IPC”.

30. Lastly, it was argued that it nature of the assembly was not such that it could turn into an unlawful assembly because everyone was gathered for the occasion of Mahaprasad; however, this Court does not find any merit in this argument it is well established fact that Akash was asked to leave because he

was causing a nuisance and he returned with all the accused persons after 25-30 minutes which shows that the plan was premeditated. They had all the weapons, and their intention was to cause such bodily injury as may cause death of the complainant.

31. Each material prosecution witness remained steadfast during cross-examination. There is no evidence of previous enmity that could have motivated false implication. The depositions of the injured witnesses are natural and credible, supported by prompt FIR lodging, forensic recoveries, consistent medical records, and corroborative testimonies from family members, panch witnesses, and medical professionals. No significant omissions or contradictions were elicited during the trial to discredit the prosecution's case. The defence has not led any substantive evidence to rebut the prosecution's claims, nor has it provided any plausible alternative explanation for the injuries suffered or the presence of blood at the scene.

32. The accused has qualified the equivocality test for attempt. The said testimony and the evidence point out the unequivocal intention of the accused to commit murder. It is merely by chance that the accused has failed in his commission.

33. This Court has carefully perused the entire record of the case, including the depositions of all prosecution witnesses, medical reports, documentary

evidence, and the findings of the learned trial Court. Upon thorough consideration, it is evident that the prosecution has successfully established the guilt of the accused beyond a reasonable doubt.

34. The testimonies of PW1 & PW2, the panch eyewitness and injured victim, are direct, consistent, and reliable. Their version of events is fully corroborated by medical evidence furnished by PW4. The sequence of events, as narrated by these witnesses, is not only coherent but also supported by independent witnesses such as PW1 and the Panch witnesses. No material contradiction or omission could be elicited during cross-examination of any of the material witnesses.

35. The recovery of a stick of baseball, a Sword, a steel rod, a Knife and a Hockey stick seized, and bloodstained clothes at the instance of the accused, under Section 27 of the Indian Evidence Act (Exhibit 51- 54), has been duly proved through the testimony of PW3 and the Investigating Officer, PW8. The seized articles were identified in Court and found to be consistent with the injuries inflicted. The procedural compliance in the conduct of spot panchnamas, recovery, seizure, and forwarding of forensic samples is evident from the record.

36. The defence failed to rebut the prosecution's case. No plausible explanation was offered for the presence of bloodstains at the scene, or for the

recovery of the weapons from the place indicated by the accused. The suggestions put to the witnesses during cross-examination were vague, unsubstantiated, and did not shake the credibility of the prosecution witnesses. Further, no evidence of prior enmity or motive for false implication was brought on record.

37. This Court would now like to briefly discuss the cases cited by the appellants' Counsel -*Jage Ram and Others Vs State of Haryana (2015) 11 SCC 366*. This Court finds this case applicable to the present factual matrix, the Hon'ble Apex Court held that the intention of the accused is to be gathered from the circumstances like the nature of the weapons used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given. In present factual matrix all the accused return after 30 minutes with such weapons which can cause such bodily injury, which can cause death of the person. Hence, from the intention and the nature of the weapons used, it can be said that the accused was guilty of attempted murder. This Court finds this case law in support of the prosecution. The relevant paragraph is reproduced below-

“12 For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the

prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances, like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of the injury and severity of the blows given, etc.”

This Court finds the second case is also in favour of the prosecution. The appellant has cited the case of ***State of Maharashtra Vs. Nina Trambak Tadas [2015(4) Mh.L.J. (Cri.) 522]***. This case held that the nature of the injury can be of assistance while deciding the cases of attempt to murder; however, it cannot be a sole basis for convicting the accused. The relevant para is reproduced below-

“44. Now, let us examine whether the prosecution has proved commission of offence punishable under section 307 of Indian Penal Code by the respondent/accused Nina Tadas. The prosecution has proved by its cogent and consistent evidence that the respondent/accused Nina Tadas had inflicted blow of knife on the ring finger of left palm of PW-5 Vijay Khadse, causing bleeding injury of size 4 inch x 14 inch x ½ 4 inch on his ring finger of left palm. Evidence of injured witnesses PW-5 Vijay goes to show that this injury was suffered by him when he tried to control the respondent/accused Nina Tadas in the process of saving deceased Gajanan Tadas. Evidence of PW-5 Vijay shows that his attempt to save Gajanan caused annoyance to the accused and, therefore, the accused gave blow of knife which landed on his ring finger of his

left palm. As such, it becomes clear that the respondent/accused Nina Tadas had not assaulted PW-5 Vijay with the requisite intention of causing his death. Section 307 of the Indian Penal Code requires the presence of intent coupled with some overt act for execution thereof. For holding an accused guilty of the offence punishable under section 307 of the Indian Penal Code, it is not essential that the actual injury capable of causing death should have been inflicted, though the nature of the actual injury caused may give considerable assistance in gathering the intention of the accused. In the case in hand, evidence of the injured witness PW-5 Vijay does not show that the respondent/accused Nina Tadas was intending to cause his death. However, it is proved that the respondent/accused Nina Tadas had voluntarily caused hurt to PW-5 by a dangerous weapon, i.e. Muddemal Article No. 8 knife, an instrument for stabbing or cutting. As such, the guilt of the respondent/accused, Nina Tadas, for the offence punishable under section 324 of the Indian Penal Code is established. In the result, we have no alternative but to quash and set aside the impugned judgment and order dated 9-5-1995 passed by the 3rd Additional Sessions Judge, Jalgaon, in Sessions Case No. 338 of 1994, thereby acquitting the respondent/accused Nina Tadas, for the offence punishable under sections 302 and 307 of the Indian Penal Code”.

In view of the above, this Court finds no infirmity in the conviction recorded by the learned Additional Sessions Court. The conviction of the accused under Section 307 read with Section 149 of the IPC, for attempting to commit murder read with every member of an unlawful assembly responsible for any offense committed by one member in pursuit of the assembly's common object, and under Section 143, punishment for being a member of an unlawful assembly and 148 of the Indian Penal Code for rioting armed with a deadly weapon, is upheld. The sentence of rigorous imprisonment for 7 years under Section 307 IPC, read with 149 IPC, 6 months under Section 148 IPC, and one

month under Section 143 of IPC, as imposed by the trial Court, is found to be proportionate to the gravity of the offence and is therefore confirmed.

Accordingly, the appeal stands dismissed and the conviction granted by the trial Court is upheld.

[NIVEDITA P. MEHTA, J.]

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