



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 3 OF 2026
WITH
CRIMINAL APPLICATION NO. 36 OF 2026

1. Pradip Vitthal Gade
Age: 40 years, Occu.: Agri.,

2. Butty @ Alka Sandip Gade
Age: 35 years, Occu.: Agri.,

All R/o Momin Akhada, Rahuri,
Tq. Rahuri, Dist. Ahmednagar

..APPELLANTS

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. N.B. Narwade, Advocate for appellants
Mrs. M.N. Ghanekar, A.P.P. for respondent - State
....

CORAM : RAJNISH R. VYAS, J.
DATE : 23rd JANUARY, 2026

ORAL JUDGMENT :

. This appeal challenges conviction awarded to the present appellants / original accused nos. 1 and 2 in Sessions Case No. 207 of 2019 passed by the Additional Sessions Judge, Ahmednagar dated 16th December, 2025 by which Appellant No.1 – Pradip was convicted for commission of offence punishable under Section 304 read with Section 34 of the Indian Penal Code (for short, 'I.P.C.') alongwith co-appellant – Alka and both of them were directed to suffer rigorous imprisonment for ten years and pay fine of Rs.200/- each, in default, to suffer simple imprisonment for one month.

2. The criminal law was set in motion on the basis of information supplied by father of the victim of crime, to Rahuri Police Station, which resulted into registration of Crime No. 101 of 2019 dated 09th February, 2019 against the present appellants for commission of offence punishable under Section 302 read with Section 34 of the I.P.C. The F.I.R. was registered since the victim of crime died on 08th February, 2019. The sole eye witness to the incident is minor son – Sarthak, who was examined as PW 4.

3. In short, it is the case of prosecution that Appellant No.1 – Pradip is brother-in-law of Appellant No.2 – Alka and both were residing adjoining houses. Family of Appellant No.1 consisted his wife/victim, son / PW 4 – Sarthak and daughter / Rutuja, whereas family of Appellant No.2 consisted of children and her husband – Sandip. The said Sandip is the real brother of Appellant No.1 – Pradip.

4. On the day of incident i.e. 07th February, 2019, when Appellant No.1 returned home, he was informed that in the morning a quarrel took place between the victim and Appellant No.2. He then enquired from the victim of the crime, who disclosed that in the morning quarrel took place between Appellant No.2 and the victim on the count of throwing of cow-dung. It is for this reason, according to the prosecution, the appellants assaulted the victim by means of kicks and fist blows.

5. Due to the said assault, the victim, in the night hours, vomited, and therefore, she was taken by Appellant No.1 to Swami Vivekanand Nursing Home, Rahuri Factory. At that place, the victim did not receive any medical treatment and thereafter she was taken to Civil Hospital, Ahmednagar. When PW2 / father of victim reached Civil Hospital, Ahmednagar, he shifted the victim to Maxcare Hospital, Ahmednagar where, unfortunately the victim succumbed to the injuries on 08th February, 2019. This resulted into registration of F.I.R. as stated above and consequently carrying of investigation by the police officials.

6. During the course of investigation, the appellants were arrested. After completion of investigation, charge-sheet was filed and charges were framed against the appellants below Exhibit 30. As the appellants did not plead guilty, the prosecution, in order to bring home the charge, examined in all ten witnesses. The appellants were thereafter questioned while conducting enquiry under Section 313 of the Code of Criminal Procedure. Even detailed written submissions were filed below Exh.201. The appellants did not enter the witness box but examined defence witness. The learned trial Court, after hearing the respective parties and considering the evidence on record, convicted the appellants for commission of offence punishable under Section 304 read with Section 34 of the I.P.C.

7. At this juncture, it is necessary to consider the injuries sustained by the victim since for proving offence under Section 304 of the I.P.C., injuries will play vital role. The injury certificate is given by PW 6 / Dr. Prasad Saigaonkar, who was working as Medical Officer at Civil Hospital, Ahmednagar in 01st January, 2018. He started postmortem at 05:00 p.m. on 08th February, 2019 and completed at 06:00 p.m. The injuries are as under :-

“Rigor mortis was marked partially on upper and lower limbs. There were no injuries to external genitals. External injuries are mentioned in column no.17 as follows :-

- 1) Linear abrasion present over the anterior aspect of right cubital fossa region along medial aspect of length 0.5 cm breadth 0.1 cm, brownish scab present.*
 - 2) Therapeutic intravenous centrallined puncture mark present over middle of right subclavicular region, dark red in colour.*
 - 3) I. V. (intravenous) puncture mark at right cubital region, dark red in colour.*
 - 4) Intravenous puncture mark present on left cubital region, medial aspect dark red in colour.*
 - 5) Scratch mark abrasion present over the left cubital fossa, medial aspect below injury No.04, brownish scab present.*
 - 6) Contusion present over the anterior aspect of right knee, above upper margin of patella of size 1.2 x 0.6 cm, dark red in colour.*
 - 7) Abrasion present over dorsal aspect of right hand of size 0.1cm x 0.2 cm., dark red in colour.*
 - 8) Therapeutic old scar mark of previous L.S.C.S. operation seen on lower abdomen horizontally placed, pale in colour.*
- All these injuries were ante-mortem.*

3] On internal examination following injuries are found :

19. Head -

- i) Under scalp hematoma present over the left temporal region over an area of size 07 cm x 04 cm, dark red in colour.*
- ii) Skull - No fracture of vault or base of skull seen.*

20. Thorax -

a) Fracture of sternum body (tranverse fracture seen at level of 4th rib attachment. Underline tissues shows haematoma on posterior surface of sternum over an area of 3 x 2 cm, dark red in colour.

d) Right lung with 400 gm fluid & Left with 300 gm fluid

e) congested edematous postmortem lividity present over the posterior aspect of both lungs. On cut section blood mixed, reddish froth oozes out.

4] I have mentioned internal findings of the abdomen in column no. 21. They are as under:

21. Abdomen -

i) Peritoneum - rupture of superior mesentric arteary with hematoma in right mesentric omentous.

ii) Cavity - intact, contains about 2.5 liters of blood.

iii) Stomach and its contents - intact and empty. No peculiar smell, mucosa congested.

iv) Liver (with weight) and gall bladder - 1.5 kg. gall bladder is intact, contains bile. Contusion present over medial border of left lobe. On anterior surface over area of size 17cm x 5cm, dark red in colour. Confirmed on cut section, liver pale. Contusion present over posterior i.e. inferior surface of middle of liver at upper part near attachment of gall bladder over an area of 5 x 3 cm tissue deep dark red in colour.

v) Pancreas and suprarenals - intact, pale

vi) Spleen with weight (150 gram) intact and pale.

vii) Kidneys with weight right 200 gm and left 200 gm. Right kidney shows contusion on posterior aspect with rupture of renal blood vessels and paranephric hematoma, dark red in colour, bleeding present from rupture blood vessels.

viii) Bladder intact, empty, mucosa present.”

8. In his examination, P W 6 has further stated that from postmortem report and colour of injuries, the age of injuries were about 36 to 48 hours at the time of postmortem. He further stated that the injuries

mentioned in Column Nos. 20 and 21 of the postmortem report were sufficient to cause death of a person in ordinary course.

9. According PW 6, internal injuries, as shown, were possible if a person was assaulted by fist blows and kicks. The cause of death, according to this witness, was hemorrhage and shock due to injury to liver, right kidney and rupture of superior mesenteric blood vessels and right renal blood vessels, due to blunt trauma over abdomen, due to hard and blunt object. It is thus crystal clear that the prosecution has proved that the victim has died homicidal death. The certified copy of the postmortem report was proved by the prosecution and was marked as Exhibit 123.

10. PW 6 was thoroughly cross-examined by the defence. Various medical literature was put to the said witness. In cross-examination this witness has denied that on external examination no marks of assault by hand were seen. He has also denied that injury number 19(1) can be caused due to rupture of blood vessels in high blood pressure. Though this witness was cross-examined at length, but so far as testimony of this witness regarding injuries mentioned in Column Nos. 20 and 21 and the result are concerned, it was not disproved by the defence.

11. According to the Learned Counsl for appellants, it was the case of death by poison, since spot panchanama revealed that in a room where the

incident had taken place and where the deceased was residing with Appellant No.1, smell of poisonous substance was detected. He further contended that initial medical treatment given was also for removing the poisonous substance from the stomach. He submitted that the prosecution had not proved beyond reasonable doubt that death did not occur due to consumption of poison. Learned counsel submitted that possibility cannot be ruled out that victim had consumed poisonous substance and due to it she died.

12. Suffice it to say that, the testimony of PW 6 clearly shows that it is due to the injuries which were possible by kick and fist blows, the victim had died. It is further necessary to mention here that the incident had taken place on 07th February, 2019, whereas the victim has died on 08th February, 2019 i.e. within one day only.

13. At this juncture the testimony of minor witness PW 4 / Sarthak is required to be seen. His testimony was recorded in question answer form, since at the relevant time he was only twelve years old. If his testimony is perused, it would reveal that he was residing with Appellant No.1 and the victim, whereas Appellant No.2 was residing adjoining to their house.

14. In answer to Question Nos.15 and 16, he had stated that on the day of incident at about 5:30 p.m. he along with his mother / victim was cleaning cow-shade, at which time his mother put the cow-dung on the

garbage. Appellant No.2, at that time, started shouting as to why the cow-dung was put there. The mother then denied putting of cow-dung, but Appellant No.2 started quarreling with her. He further deposed that Appellant No.2, who was referred as “Butty Kaku” by PW 4, asked for phone from Sandip Kaka, husband of Appellant No.2 and called Appellant No.1 and told him that victim was quarreling with her. At about 10:30 p.m. Appellant No.1 came home at which time Appellant No.2 also came to his house.

15. This witness stated that the victim then told her husband (father of PW 4) about the incident, on which Appellant No.1 / father of PW4 asked the victim as to why she had not called him at that time. According to this witness, Appellant No.2 started assaulting his mother, so also Appellant No.1. Thereafter both the appellants assaulted the victim with kicks and fist blows. When PW4 went to rescue his mother, Appellant no. 1 pushed her aside and then PW4 went in Kitchen. This witness stated that thereafter he heard the noise of assault “*Phatak Phatak*” and then he went to sleep.

16. In the midnight this witness was awoken by Appellant No.1, who told that mother was required to be taken to the hospital. The victim was unable to move, and therefore, Appellant No.1 took her in the car to the hospital at Rahuri.

17. In cross-examination this witness had stated that his father / Appellant No.1 used to work in a medical store and there were several houses

situated adjoining the house of Appellant No.1. It was also admitted by this witness that the victim used to restrain Appellant No.1 from talking his parents and to the husband of Appellant No.2. He admitted that her mother used to carry mobile with her and also used to drive a scooty vehicle.

18. In this background an attempt was made by learned counsel for the appellants to buttress his submission that the victim could have very well called her parents immediately or she could have reached the police station or relative's place with the help of scooty vehicle.

19. In cross-examination, PW 4 / star witness had admitted that a day earlier to incident, his mother / victim was suffering from stomach ache, and therefore, had visited Dr. Nalkar.

20. By relying upon the said testimony, learned counsel for the appellants submitted that the victim was already suffering from stomach ache, and therefore, possibility cannot be ruled out that it was due to some earlier injuries she might have succumbed on the next day.

21. Learned counsel for the appellants have invited my attention to the answer given to Question Nos.94, 95 and 96 to contend that when the victim was taken at Rahuri hospital after the incident at night, she was in a position to walk, so also talk with the doctor. He submitted that if that was the condition of the victim, she would have narrated entire incident to the

medical officer at Rahuri, but prosecution did not bring a single piece of evidence on record to show that on what line the victim was treated at health center at Rahuri. Thus, according to him, genesis of crime was suppressed.

22. It is necessary to mention here that PW4, though in cross-examination, has admitted that earlier to the date of incident his mother / victim was suffering from stomach ache, and therefore, had gone to visit Dr. Nalkar, the fact remains that PW 6 has category stated that the injuries sustained by the victim were 36 to 48 hours old on the date of examination. Thus, it can be said that it was on the day of incident the victim sustained injuries and not earlier to it. Further, PW4 had stated that his mother / victim was beaten with kicks and fist blows by both the appellants.

23. The testimony of this child witness cannot be brushed aside lightly since the manner in which the questions were put to him and he answered, clearly reveals that this witness is an intelligent boy. There is one more factor to rely upon testimony of PW4 as he is not only his son of the victim but also of Appellant No.1 and there was no reason for him to depose against his father. Nothing has been brought on a record to show that the testimony of this witness cannot be relied upon. In fact, presence of this witness was a natural at the time of incident on the spot.

24. PW 8 is Dr. Kishor Waghmare, who was working as Medical Officer at Swami Vivekananda Nursing Home, Rahuri Factory since 2015-16.

On 06th February, 2019 his duty hours were from 8:00 p.m. to 8:00 a.m. of 07th February, 2019. At about 03:30 a.m. one lady accompanied by three male persons and a small child came to the hospital. She was examined by the said witness. The lady disclosed her name as Jyoti(victim) and she had verbal altercation with one of the male person. On being enquired, the lady informed that the said person was her husband. When this witness enquired from the husband, he disclosed that the victim had consumed certain poisonous substance.

25. PW 8 further stated that when she started examining the lady, she disclosed to him that she did not want to get treatment in the said hospital. Therefore, PW 8 advised them to take her to bigger hospital at Ahmednagar. Thereafter, the lady was taken by her husband. Thus it can be said that, it is in this background, the prosecution could not produce any material in the form of documentary evidence relating to treatment given at Swami Vivekanand Nursing Home, Rahuri.

26. PW 8 in his cross-examination has admitted that the lady had come to the hospital on her own, but he volunteered that the male persons were accompanying her and helping her. He further stated that he had not examined her. Thus it is crystal clear that no documentary evidence was available on record to show what was the medical condition of the victim at Rahuri.

27. From Vivekanand Nursing Home, the victim was taken to the Civil Hospital, Ahmednagar, where she was examined by PW 9 /Dr. Krishna Wankhede. PW 9 had deposed that he was attached as Medical Officer to Civil Hospital in February 2019. A patient by name Jyoti was brought in the hospital on 07th February, 2019 at about 04:55 a.m. Since it was medico-legal case, it was registered and numbered as MLC Case No. 884 and the victim was treated under him. The said victim was referred from Rahuri Ayurvedic Mahavidyalaya and she was brought by her relatives with the history of consumption of poisonous substance. He stated that stomach wash was given and as her condition was serious, her relatives were informed about the same and their consent was obtained. At about 07:20 a.m., the relatives of the patient took her to another hospital against the advise.

28. PW 9 was subjected to cross-examination, in which he admitted that when he examined the victim, she was conscious, oriented and was in position of talk. He further stated that substance of stomach wash was preserved and was given in custody of police. He admitted that sample of stomach wash was take to know if any poisonous substance was consumed. He further admitted that he had obtained acknowledgment for giving the sample in custody of police.

29. Relying upon the testimony of the aforesaid witness, learned counsel for the appellants submitted that it was a case of consumption of

poison by the victim, and the prosecution had not proved that it is due to injury caused by fist blows and kicks, the victim had died.

30. It is required to be noted that CA report Exh . 127 shows that genral and clinical testing does not reveal any poison. Even surrounding circumstances clearly show that it was not the death by poison .

31. At this juncture, it is necessary to mention here that from the record it is clear that from the very beginning Appellant No.1 was trying to create a picture that the victim had consumed poison and due to which she had died. The spot panchanama shows that nothing incriminating was seized showing that the victim had consumed poison. Even the star witness, PW 4 / Sarthak has nowhere stated that his mother has taken poison. Therefore, I come to the conclusion that the victim has not died due to consumption of poisonous substance.

32. As PW 9 had stated that against the advise, the relatives had taken the victim to another hospital, it is necessary to see testimony of father of the victim. Father of the victim was examined by the prosecution below Exhibit 96, as PW2. He stated that the victim was his daughter and his grand-daughter was deaf and dumb. He submitted that marriage of his daughter – Jyoti / victim was performed with Appellant No.1 on 01st May, 2007. According to him, Appellant No.1 was having extra marital relationship with Appellant No.2, which fact was informed to him by the victim.

33. He also deposed that the victim had told that Appellant No.1 used to assault the victim under the influence of liquor. On that ground quarrel used to take place between the victim and Appellant No.1. On 07th February, 2019 at about 06:00 a.m. he received a telephone call from Vijay, friend of Appellant No.1, who informed that victim was admitted in Civil Hospital, Ahmednagar. He then alongwith his son, Ravindra went to Civil Hospital and found condition of the victim serious, and therefore, shifted her to Maxcare Hospital, Ahmednagar. He stated that he found marks of assault on her body, both hands, cheek, neck and abrasions on hands. He submitted that the incident was narrated to him by PW 4 and on the next day i.e. 09th February, 2019 he lodged the complaint with police. Same was proved and marked as Exhibit 99.

34. In cross-examination PW2 had admitted that Appellant No.1 was working with a medical distributor and his daughter – Jyoti was looking after all the affairs of the agricultural land. He further admitted that the house in which the victim was residing was partition and on the other side Appellant No.2 used to reside with her husband and in-laws. He denied the suggestion that Jyoti was short tempered and used to quarrel with others on trifle matters. He admitted that after birth of Rutuja, daughter of Appellant No.1 and the victim, he took Rutuja to his house to take care. He also admitted that due to physical condition of Rutuja, Jyoti was concerned about her.

35. PW 2 had further admitted that when he met Jyoti in Civil Hospital, Ahmednagar, she was conscious and able to talk. This witness denied the suggestion that there were no marks of assault on the body of Jyoti and he asked the police to write the same as per his say. He further admitted that funeral of Jyoti was conducted in the house of Appellant No.1.

36. Pointing out the aforesaid part of testimony, learned counsel for the appellants contended that the victim had consumed poison which fact was known to the father of the victim, and therefore, he allowed to conduct the funeral of deceased Jyoti at the house of Appellant No.1. He submitted that had it been the case of assault by Appellant No.1 on the victim, the father would not have allowed to perform the last rites at the hands of Appellant No.1.

37. Counsel for appellant submitted that the victim was conscious and her statement could have been recorded by police authorities. He further submitted that non examination of victim by police clearly shows that the investigation was not conducted in fair and proper manner. He submitted that there was absolutely no reason advanced by the prosecution for non examination of the victim and the said fact goes to the root of the matter. He submitted that fundamental principle of criminal law is proving a case beyond reasonable doubt and since genesis of the crime is not proved, the appellants be acquitted.

38. With regard to the aforesaid contention, it must be stated that PW2 i.e. father of victim is not an eye witness. He is a witness to the medical treatment, which is given to the victim. In cross-examination this witness had stated that the victim was conscious, but whether she was in a position to narrate the incident or not was not brought on record by the defence. Suffice it to say that PW 4 has already stated in detail about the incident and there is absolutely no reason to disbelieve the same. Just because funeral had taken place from the house of Appellant No.1, it does not mean that the appellants are innocent. Human emotion acts in different manner at different time and different place.

39. Now, coming to the testimony of PW 5 / Balwant @ Ravindra, brother of the victim, suffice it to say that he has also deposed on the line of PW 2.

40. Learned counsel for the appellants has invited my attention to the testimony of defence witness no.1 – Vijay, who had informed father of the victim telephonically about medical condition of the victim. This witness had stated in his examination that Accused No.1 was his cousin brother and Accused No.2 was his sister-in-law. On 07th February, 2019, he received a phone call from Appellant No.1, who told that the victim was vomiting in house. Hence, he called his brother Abasaheb. When this witness reached the house of Appellant No.1 at about 02:00 a.m., the victim was in the

courtyard and vomiting. They took Jyoti to a Nursing Home at Rahuri Factory in a vehicle. Jyoti vomited in vehicle also. He could smell poisonous substance. Jyoti went inside the hospital on foot and they followed her. He further stated that when the doctor asked Jyoti, she stated that she consumed certain medicine at 02:00 a.m and Doctor gave requisition for taking her to Vikhe patil hospital. Then they came back to Rahuri and changed the vehicle and came to Vikhe Patil hospital but there ICU facility was not available. Jyoti was vomiting in vehicle also. Thereafter she was taken to Civil hospital Ahmednagar, where tubes were inserted in her body.

41. DW 1 was subjected to cross-examination. He admitted that he had cordial relation with Pradip prior to the incident and thereafter also. He submitted that his statement was not recorded by police as per his say, but subsequently he had stated that police had enquired orally and it was not written. This witness was put a question whether while recording his statement, he had told police that in the hospital at Rahuri, the doctor asked Jyoti what had happened and she told that she had consumed certain medicine at 02:00 a.m. This part was objected by the defence as question about previous statement recorded by police, according to defence counsel, could not be put. The court observed that objection taken would be decided at the time of judgment. The witness then answered that he had told so to the police. He then deposed that he cannot assign any reason why the portion which was put to him in question-answer form was not written in his

statement. He submitted that he had also told police that when they came to Civil Hospital, Ahmednagar, Jyoti was admitted and tubes were inserted in her body and some water was taken out (gastric suctioning). So also, told police that when her father arrived at the hospital, she had talked with him.

42. Be that as it may. This witness would not be of help to the defence since he is not an eye witness to the incident, but to the subsequent development. As already discussed, just because the victim had not narrated the incident or narrated some different incident, it cannot be said that the story of prosecution is false.

43. Admittedly, the victim's statement was not recorded since according to the doctor she was not in a position to narrate the incident. That being so, though the defence witness and prosecution witnesses are required to be treated at par, testimony of this witness cannot be taken into consideration. There is one more reason. This witness is relative of both the appellants, and therefore, his testimony will have to be tested with great caution. As there is no corroboration to the testimony of this witness, relying upon his testimony would not be in the interest of justice.

44. Coming to the testimony of PW 10 / investigating officer, this witness had stated that he conducted investigation, prepared the inquest panchanama, obtained the documents about cause of death and handed over the dead body. He further submitted that he had collected the chemical

analysis reports, which are filed at Exhibit 193 and 194. He submitted that during the course of investigation it revealed that both the accused/appellants had assaulted the deceased with kicks and fist blows, but made a scene that the victim had consumed certain poisonous substance. Hence charge-sheet was filed.

45. At this juncture the query report below Exhibit 126 forwarded by Mr. P.L. Saigaonkar is required to be taken into consideration. He, in reply to the query had submitted that Injury Nos. 1 and 5 caused by sharp pointed object and Injury Nos. 6 and 7 caused by hard and blunt object. Injury mentioned in column no. 20 in sub-column (1) to sternum fracture and injury in column no. 21 is relating to injury to peritoneum are grievous in nature. He submitted that internal abdominal visceral injury in column no.21 are sufficient in ordinary course of nature to cause death of a person and can be caused by blow of fist or kick by other person. In answer to Question No.2, he has stated that he has already given in point no.3 answer to question no.1 and further stated that injuries mentioned in column no.21 and not column no.17 are sufficient in ordinary course of nature to cause death of a person.

46. Thus it is clear that the injuries which were caused to the victim was sufficient to cause her death, and therefore, the appellants were rightly convicted for commission of offence punishable under Section 304 of the I.P.C.

47. Section 304 of the I.P.C. speaks about culpable homicide not amounting to murder. It states that whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

48. So far as contention of learned counsel for the appellants that the ingredients of Section 34 of the I.P.C. are not proved, suffice it to say that PW 4 has categorically stated that it was Appellant No.2, who initially telephoned Appellant No.1 and when Appellant No.1 came to the house, Appellant No.2 also reached there and thereafter both of them assaulted the victim. It is necessary to mention here that Section 34 of the I.P.C. is based on principle of “joint liability” and in order to bring home charge, the prosecution has to establish, by evidence, that there was a plan or meeting of minds, be a prearranged or spur of moment to commit the crime. In that view of the matter, and in the light of testimony of PW 4, it can be said that there was common intention which was shared by the appellants. At this juncture it is necessary to discuss what the Apex Court has stated in case of *Jasdeep Sing Vs. State of Punjab*, reported in *2022 (2) SCC 545*, more particularly paragraph nos. 20, 23, 25, 26 and 27, which read thus :-

“20. Before we deal further with Section 34 Indian Penal Code, a peep at Section 33 of Indian Penal Code may give a better understanding. Section 33 of Indian Penal Code brings into its fold a series of acts as that of a single one. Therefore, in order to attract Sections 34 to 39 Indian Penal Code, a series of acts done by several persons would be related to a single act which constitutes a criminal offense. A similar meaning is also given to the word 'omission', meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

23. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 Indian Penal Code which creates shared liability on those who shared the common intention to commit the crime.

25. Normally, in an offense committed physically, the presence of an Accused charged Under Section 34 Indian Penal Code is required, especially in a case where the act attributed to the Accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offense consists of diverse acts done at different times and places. Therefore, it has to be seen on a case to case basis.

26. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

27. There may be cases where all acts, in general, would not come under the purview of Section 34 Indian Penal Code, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid."

49. In the light of aforesaid discussion, I come to the conclusion that the bodily injury which was caused by the appellants was likely to cause death of the victim. Learned counsel for the appellants, contended that if the bodily injury is caused with a knowledge, sentence may extend to ten years. He further submitted that maximum punishment should not have been awarded to the appellants. He then relied upon the judgment in case of Jaswinder Singh (Dead) Through L.Rs. Vs. Navjot Singh Sidhu & Ors. in Review Petition (Crl.) No. 477 of 2018 in Crl.A. No. 60 of 2007, more particularly paragraph no.37, which reads thus :-

"37. In a nutshell, the aspects of sentencing and victimology are reflected in the following ancient wisdom :

यथावयो यथाकालं यथा प्राणं च ब्राह्मणे ।
प्रायश्चित्तं प्रदातव्यं ब्राह्मणैर्धर्म पाठकैः ।
येन शुद्धिमवाप्नोति न च प्राणैर्वियुज्यते ।
आर्तिं वा महर्तुं यति न चैतद् व्रतमा दिशेत् ॥"

It means : The person dispensing justice as per Dharmashastra should prescribe a penance appropriate to the age, the time and strength of the sinner, the penance being such that he may not lose his life and yet he may be purified. A penance causing distress should not be prescribed.”

He contended that the punishment imposed should be just and proportionate punishment.

50. He stated that in the case in hand, the sentence imposed is of maximum term and the Court could have awarded just punishment since previous and subsequent conduct of Appellant No.1 also shows that Appellant No.1 had taken the victim to hospital and all throughout her treatment had remained in hospital. He further stated that he had conducted the funeral as he was under moral obligation, which shows that he had attachment towards the victim. He submitted that unfortunately the incident had taken place due to trifle reason, which is crystal clear from the testimony of PW 4. He submitted that no weapon was used and only kicks and fist blows were given. He, therefore, requested this Court to reduce the punishment.

51. Learned A.P.P. submitted that there is absolutely no reason which is advanced by learned counsel for the appellants which requires reduction of punishment. She submitted that in fact Appellant No.1 misled the investigating agency, so also the medical officer by giving false history. She submitted that the accused are required to be punished with iron hand. It is

also contended by learned A.P.P. that had immediate treatment been provided by Appellant No.1 by narrating correct medical history, life of the victim could have been saved. She further submitted that there was absolutely no instigation on the part of victim, still she was beaten mercilessly, and therefore, maximum punishment be awarded.

52. I have pondered over the aforesaid contention. In the facts and circumstances of the case, it can be seen that Appellant No.1 has taken the victim to hospital immediately and had remained in hospital all throughout her treatment. Funeral was also taken from his house, which fact is admitted by father of the victim. The manner in which the incident has taken place and fist blows were used, imposition of punishment of ten years would be harsh. Middle path will have to be followed. In this case neither retributive theory nor reformatory theory can take recourse to, but balance will have to be maintained by sentencing the accused.

53. So far as Appellant No.2 is concerned, from the evidence on record it is clear that she is a lady and at the time of hearing of sentence, it was argued before the Court that she was having small children. In answer to Question No.36 put to PW 4 as to how many children Butti Kaki has, he has replied that she has one son and one daughter. It is thus crystal clear that when the incident had taken place, Appellant No.2 was having children.

54. It is necessary to mention here that it is said that if the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentence is Cinderella's illegitimate baby. It is further pertinent to mention that it is not even the case of prosecution that Appellant No.2 is having any criminal antecedent. The socio-economic background, which is clear from the evidence on record, suggests that Appellant No.2 is a housewife and residing in a small village. Considering the fact that she is a mother of two children, imposition of sentence of ten years would not be in the interest of justice. The fact that no weapon was used while committing the offence is also one of the factors which is required to be taken into consideration. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions. The balance will have to be strike down between deterring the offender from committing offence on one hand and to assist the accused in rehabilitation. In that view of the matter, I am of the opinion that sentence imposed upon Appellant No.2 of ten years is required to be reduced at five years. Thus, following order is passed :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) The judgment passed by the Additional Sessions Judge, Ahmednagar dated 16th December, 2025 in Sessions Case No. 207 of 2019, so far as convicting the appellants for commission of offence punishable under Section 304 read with Section 34 of the Indian Penal Code is maintained.

- (III) The sentence imposed upon Appellant No.1 - Pradip Vitthal Gade is reduced from ten years to seven years.
- (IV) The sentence imposed upon Appellant No.2 - Butty @ Alka Sandip Gade is reduced from ten years to five years.
- (IV) Criminal application, pending if any, also stands disposed of.

(RAJNISH R. VYAS, J.)

SSD