



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

**CRIMINAL APPEAL NO. 47 OF 2026
WITH
CRIMINAL APPLICATION NO. 317 OF 2026**

Karansingh Rupsingh Jarwal,
Age. 36 years, Occu. Agri,
R/o. Pachpirwadi, Tq. Vaijapur,
Dist. Chh. Sambhajinagar.

...Appellant

Versus

The State of Maharashtra

...Respondent

Advocate for Applicant : Mr. Ladda Somnath G.
APP for Respondent : Mr. V.K. Kotecha

...
**CORAM : RAJNISH R. VYAS, J.
DATE : 23RD FEBRUARY, 2026**

ORAL JUDGMENT :

1. The present Appeal is at the instance of original accused no.4, challenging his conviction awarded in Sessions Case No. 701/2019, dated 31.12.2025, by the Additional Sessions Judge, Aurangabad, by which, the accused was convicted for commission of offence punishable under Section 304 Part I of the Indian Penal Code (hereinafter would be referred to as 'the IPC' for the sake of brevity) and sentenced to suffer rigorous imprisonment for ten years, so also to pay fine of Rs. 1,000/-. In default of payment of the fine, the accused was directed to undergo

simple imprisonment for one month.

2. In Sessions Case No. 701/2019, a total of eight accused were tried and the names of those persons are mentioned below :

Sr. No.	Accused
1.	Vithal Harsingh Sulane
2.	Rahul Ladusingh kakarwal
3.	Ishwar @ Ganesh Ladusingh Kakarwal
4.	Karansingh Rupsingh Jarwal
5.	Santosh Ambarsingh Kakarwal
6.	Chhayabai Sahebsingh Naglot
7.	Karbhai Fakira Kakarwal
8.	Dhawalbai Ladusingh Kakarwal

3. The present appellant / accused no. 4 – Karansingh Rupsingh Jarwal, though convicted for the aforesaid sentence, was acquitted for the commission of offences punishable under Sections 143, 147, 148, 302, 326, 324, 323, 504 read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

4. One more accused, i.e. accused no. 1 by name Vithal Sulane, was convicted for the commission of an offence punishable under Section 324 of the IPC. Provisions of the Probation of offenders act were extended to accused no. 1. So far as other accused, i.e., accused nos. 2, 3,

5 to 8, were acquitted of the offences punishable under Sections 143, 147, 148, 302, 326, 324, 323, 504 read with Section 149 of the IPC and Section 135 of the Maharashtra Police Act.

5. It is the judgment of conviction, which is taken exception to in this appeal.

6. In short, it is the case of prosecution that the deceased by name Sahebsingh was the husband of the original accused no. 6, Chhayabai Sahebsingh Naglot. It was the case of prosecution that since the Accused no. 6 had delivered a child and was residing at her paternal place for six months, she came to enquire from the deceased as to why she was not allowed to stay with him. On 24.09.2019, at about 03:00 to 03:30 p.m., when P.W. 7 – the informant with the deceased, along with his parents - were sitting in the field, the accused persons arrived in a four-wheeler, and accused no. 6 enquired of the deceased as stated above. Even other relatives accompanying the accused, no. 6, also enquired of the deceased about the reason for non-cohabitation.

7. Thereafter, the accused started abusing the informant and his relatives, removed axe and sticks from the Jeep and started beating the deceased and other family members. It was the case that, in the assault,

the brother, parents of the deceased, and the deceased himself received the injuries on their person and, consequently, were taken to the Primary Health Centre at Pishor.

8. Thereafter, the injured were forwarded to the Government Medical College, Aurangabad. In the incident dated 24.04.2019, the husband of accused no. 6 / Sahebsingh sustained injury and on 30.04.2019, he died. In this background, the criminal law was set in motion.

9. At this juncture, it is necessary to mention here that though the present appellant / accused was tried along with other accused persons for the commission of various offences, the principal offence was under section 302 of the IPC. The trial Court convicted the appellant under Section 304 Part I of the IPC. The State has neither challenged the acquittal of other persons nor the findings of the trial Court convicting the appellant/accused of the commission of an offence punishable under Section 304 Part I of the IPC.

10. The question now before this Court for consideration is whether the prosecution has proved that it was the present appellant / original accused no. 4 who was the author of the injuries, which resulted

in the death of Sahebsingh. It will also have to be seen whether the prosecution has proved the offence under Section 304 Part I of the IPC.

11. The registration of the First Information Report on 25.04.2019, was the outcome of the dying declaration recorded below exhibit 209. The prosecution's case is based on the dying declaration and other witnesses. After the FIR stated above was filed, all the accused, including the present appellant, were arrested on 26.04.2019. The accused was behind bars from 26.08.2019 to 20.09.2020. During the course of the investigation, the spot panchnama was conducted, and the sticks and axe/weapons used in the assault were seized. The injured were forwarded for medical examination. The blood-stained clothes were forwarded for chemical examination, along with the blood-stained soil and other articles. The CA report was produced on record. After the investigation was completed, a charge sheet was filed.

12. After committal of the case, the charges were framed against the present appellant and other accused on 16.06.2021, by the Additional Sessions Judge, Court No. 12, Aurangabad, to which the appellant did not plead guilty, nor did the other accused. The prosecution, to bring home the charge, examined a total of eleven witnesses. The accused was questioned under Section 313 of the Code of Criminal Procedure. His

defence was one of false implication and total denial. His specific defence was of alibi. To support his case, though he did not enter the witness box, he examined two witnesses, i.e., Vithalsingh Shamsingh Gusinge and Raju Suklal Bimrot.

13. Considering the material available on record, the trial Court convicted the appellant as stated above and sentenced him by following the mandate of Section 235 of the Code of Criminal Procedure.

14. Learned counsel for the appellant has raised various grounds which will be dealt with immediately after discussing the evidence of the concerned witness. The arguments advanced by the learned APP will also be dealt with in a similar manner.

15. The injured in this crime was one Sahebsingh, deceased, and one of the basic documents is a dying declaration below Exhibit 209. It is necessary to discuss the testimony of P.W. 9 – Dr Sumit Salve, who on 25.04.2019, was attached to the Government Medical College, Aurangabad, as a junior resident and Sahebsingh was admitted to the hospital on 24.04.2019. Sahebsingh had sustained injuries on the left side of his chest and on his left hand and was conscious and able to speak.

On 25.04.2019, P.W. 9 was on duty, at which time, Mr Pawar came to

record the statement of Sahebsingh. Mr Pawar then asked P.W. 9 whether he could record a statement from Sahebsingh, to which P.W. 9 replied that, as the patient was conscious, he could. Thereafter, Mr Pawar recorded Sahebsingh's statement and came to P.W. 9 to obtain the signature. P.W. 9 signed the statement of Sahebsingh, which was below Exhibit 209.

16. P.W. 9 was cross-examined at the instance of the accused persons. In his cross-examination, he admitted that no time was mentioned below his signature on exhibit 207. At this stage, it is necessary to clarify that Exhibit 207 is the signature of P.W. 9 in Exhibit 209 (a statement by Sahebsingh, which ultimately culminated in the dying declaration). P.W. 9 further admitted that there was no mention in the case papers brought by him that a police officer had come to record his statement. He further admitted that there was no mention in those papers that the patient had given any history on his own. He further admitted that the paper on which his signature, below Exhibit 207, was shown to him, was his signature. Still, it is not borne out by any endorsement by him that the patient was conscious when examined by him and that he was able to give a statement. He further admitted that from April 2000 to the date of deposition, he had examined thousands of

patients. He did not remember every patient whom he had examined. He admitted, therefore, it was necessary to take entries about the same.

17. The aforesaid fact clearly reveals that Exhibit 209 nowhere mentions that the patient was fit to give any statement. It can be said that certification is a rule of prudence, but the fact remains that the said dying declaration is full of doubts. The testimony of P.W. 9 that the patient was conscious would not be enough, as the law requires that the patient be fit to give a statement, not merely conscious. Much can be said about the difference between being conscious and being fit to give a statement, but suffice it to say that the testimony of P.W. 9 does not even state what time the recording of the statement started and when it ended. Further, P.W. 9's testimony would show that the statement was recorded and, thereafter, it was brought to him for signature. Thus, exhibit 209 is a weak piece of evidence that cannot be relied upon to secure the conviction of the accused. 4/appellant.

18. This then takes me to the testimony of P.W. 10 by name, Mr Jagdish M. Pawar / Investigating Officer. He stated that on 24.09.2019, he was attached to the police station Pishor, serving as Assistant Police Inspector and as the in-charge of the police station. At the relevant time, on 24.04.2019, he received a medico-legal case in which it was stated

that four persons had sustained injuries. He then visited the Health Centre and Government Hospital at Pishor, where treatment was given to the injured. Since the injuries were serious, the doctor had referred the injured to GHATI. He then stated that the MLC was forwarded from GHATI. At the GHATI hospital, treatment was being given to Sahebsingh.

19. P.W. 10 then enquired of the Medical Officer on duty whether Sahebrao (Sahebsingh) was in a position to give his statement. P.W. 10, then in the presence of the doctor, asked two questions to Sahebsingh, who replied properly. Thereafter, the doctor informed that the patient was in a condition to give the statement. P.W. 10 then deposed that he enquired from Sahebsing about the incident, who narrated that he had married Chhayabai and had a son from the marriage. Chhayabai, for a few years, resided properly and, thereafter, quarrels used to take place between them. Whenever a quarrel happened, she took the child to her parents' place.

20. P.W. 10 stated that Sahebsingh also informed him that the offence under Section 498A was registered against the deceased and his relatives, and since then, Chhayabai has been residing with her parents. P.W. 10 deposed that Sahebsingh informed him that on 24.04.2019, when

the deceased, his brother and his parents were sitting under the tree at about 03:30 noon, a white-coloured Scorpio vehicle came, from which Chhayabai, her parents and other relatives alighted. At that time, the wife of the deceased came near him and said why the deceased was not taking her and his child with him. Thereafter, relatives of the deceased questioned the accused as to how many days they should take care of his wife; they then proceeded to the vehicle and took sticks and an axe.

21. P.W. 10, in his examination-in-chief, then volunteered that the deceased had described the role of every accused as he had stated in the aforesaid statement, and P.W. 10 could describe the role after reading the aforesaid statement. He further stated that those persons started assaulting the deceased and other family members. Vitthal Harsingh Sulane had assaulted the deceased on his left arm by means of an axe. The deceased then caught hold of the axe when a second blow was tried to be given. Karansingh Jarwal / present appellant, assaulted the deceased by means of a stick on his leg and on his ribs and caused injury. Brother of the deceased by name Devchand was then assaulted by Ganesh Kakarwal by means of an axe. Rahul Kakarwal was assaulted by means of a stick and caused injury to his left ear. Karbhari and Dhawalabai were abused and assaulted by means of fists and kicks.

22. It was deposed by P.W. 10 that the deceased had stated that his parents were also beaten by all the accused persons, at which time, they were shouting. One Ambarsingh Singhal, Suppadsingh Naglot, and Sajan Naglot visited the spot after hearing the shouts, and the accused persons drove away in a Jeep. Thereafter, the deceased was taken to the Government Hospital at Pishor in a Jeep owned by one Vilas Gadekar. As he had sustained serious injuries, he was ultimately referred to the Government Hospital at Aurangabad, where he was treated.

23. P.W. 10 also deposed that the deceased had stated to him that he had given the statement as he was conscious. The deceased's statement was taken in writing and read to the deceased, who signed it. The doctor was present, and in his presence, the statement was recorded; thereafter, the doctor put his signature, so also P.W. 10. P.W. 10, then, in his examination-in-chief, identified the doctor's signature, and the statement was marked as Exhibit 209.

24. At this juncture, it is necessary to mention here that according to learned counsel for appellant, this witness, so far as aforesaid testimony is concerned, is not at all reliable. It was stated that if the cross-examination of this witness is pursued, it would reveal that the deceased's recorded statement violated all procedural safeguards. Learned

counsel for the appellant further submitted that, though the doctor, i.e., P.W. 9, had nowhere stated that he was present when the statement was recorded, this witness had stated that the doctor was present throughout the recording of the statement. He thus submitted that the testimony of this witness cannot be relied upon.

25. Per contra, learned APP Mr Kotecha, contended that the testimony of the doctor and investigating officer rightly proves, therefore, cannot be ignored.

26. As already stated, the testimonies of P.W. 9 and P.W. 10 are contradictory. The doctor – P.W. 9 stated that the patient was conscious and his signature was taken thereafter, whereas the Investigating Officer – P.W. 10 stated that the Medical Officer was present throughout the recording of the statement. Thus, the recording of the statement by P.W. 10 creates doubt and, therefore, the same cannot be relied upon.

27. Learned APP then submitted that even if dying declaration is ignored, the case of prosecution can stand on the basis of testimony of P.W. 7. P.W. 7 is Devchand Vithal Naglot, the elder brother of the deceased.

28. P.W. 7, in his examination-in-chief, had stated that he, along with his wife and children, resides in Gut No. 43, and the deceased was his own younger brother who had married the accused Chhayabai. About a year before the incident, Chhayabai had lodged a complaint under Section 498 of the IPC with the Pishor police station. P.W. 7 stated that on 24.04.2019, an incident occurred, when which he, along with his brother and parents, was collecting drip irrigation tubes in the field. As they were sitting and drinking water, a car arrived, from which four people alighted: Chayabai, Dhawalabai, Karbhari Kakarwal, and Santosh Kakarwal. They came near the tree, at which time, accused Chhayabai asked the deceased as to how many days she should reside at her parents' place and why Sahebsingh is not taking her with him. Thereafter, four other persons alighted from the Jeep, namely Vithalsingh Sulane, Karansingh Jarwal, Ishwar @ Ganesh Kakarwal, and Rahul Kakarwal, i.e., accused nos. 1, 4, 3, and 2, respectively.

29. P.W. 7 further deposed that at first Vithal had assaulted Sahebsing (deceased) on his left arm by means of an axe. Karansingh / present appellant, assaulted Sahebsingh on his leg by means of a stick, and then Sahebsingh fell. Karansingh assaulted Sahebsing on his ribs with force by means of a stick. Ganesh and Rahul came behind him,

carrying an axe and a stick. Ganesh then assaulted P.W. 7 on his left ear by means of an axe. Rahul was assaulted with a stick on the right hand. All the accused, after assaulting P.W. 7, the deceased and his parents, sat in a Jeep and went away. Axe and sticks were also put in a Jeep and taken with them. Ambarsingh and Sachin heard the injured's shouts and came to the spot; thereafter, all the injured were taken to Pishor hospital in a Jeep driven by Vilas Gadekar. They were admitted to a hospital in Pishor. Since Sahebsingh had sustained grievous injuries, he was referred to the hospital at Aurangabad, whereas P.W. 7 was admitted to the hospital at Pishor for the entire night.

30. P.W. 7 deposed that he had sustained injuries on his left leg and hand. He further stated that the bone in his right hand was broken. He stated that his brother Sahebsingh died on 30.04.2019. He identified the accused persons who were present in the Court.

31. P.W. 7 was subjected to cross-examination. In which he admitted that he had sustained injury to his ear, and blood was oozing from it, due to which his clothes were stained with blood. The police have seized the shirt. In cross-examination, several omissions were put to this witness, and he had deposed that the incident had occurred on 24.04.2019, not on 24.09.2019. In cross-examination, he admitted that

the date 24.09.2019 is incorrect.

32. It was suggested to P.W. 7 that on 24.04.2019, the accused Chhayabai had never visited the field. He denied that Sahebsingh and he himself were in a conscious condition. He stated that stitches were given to the wound he had sustained. He admitted that some of the accused had sustained the injuries, and they had reached the hospital at Pishor much before P.W. 7 had reached. He admitted that even the accused had sustained injuries, and when the scuffle was going on, no third person came. He admitted that he did not state to the police how the accused person sustained injuries, and that the accused person too had sustained injuries. He had denied the offence under Section 307 of the IPC, and the case is registered against them and is pending in Court. He denied suggestions that the other accused, Karbhari, had sustained injury to the head, accused Dhawalabai had fractured her hand and sustained injury to the neck, whereas accused Vithal had sustained injury to the hand and accused Chayabai had sustained injury to both eyes as well as the right leg. He admitted that he was arrested in the aforesaid case and remained in police custody for 4 days. He was unaware of the reason his police custody was sought.

33. The omissions were brought to the notice of P.W. 7

pertaining to the statement that (a) car arrived when they were sitting for drinking water, (b) at first four persons alighted from the car at that time Karbhari, Dhawalabai, Santosh, Chayabai alighted, (c) those four persons came near the lemon tree under which P.W. 7 and others were sitting, (d) all the eight persons came near the tree, (e) at first Vitthalsingh had assaulted brother on his left arm by means of axe, (f) when brother Sahebrao fell down, Karansingh Jarwal hit on the ribs by means of sticks forcibly, (g) Ganesh and Rahul came thereafter, who were armed with axe and sticks, Ganesh hit him on left ear by means of axe, Rahul had assaulted by means of stick on right hand, (h) those persons put axe and sticks in a Jeep and went away, after hearing the shouts Sachin Naglot and Ambarsingh came, thereafter, one Jeep came in which they sat and Jeep was taken to hospital at Pishor, at which time, Sahebsingh had pain in his chest, (I) we were admitted in hospital at Pishor for entire night, I had sustained injuries on the hand. P.W. 7 then stated that he was not in a position to state the reason why these facts were not mentioned in the statement recorded by the police. These omissions were put to P.W. 11, who, in his cross-examination, stated that those facts were not stated by P.W. 7. The important omission in this witness's testimony concerns the assault on the ribs by the appellant with a stick when Sahebsingh fell.

34. Learned counsel for the appellant then contended that, though this witness is injured, he is a highly interested witness and, therefore, his testimony will have to be taken into consideration with a valid approach. He submitted that the testimony will have to be examined in the light of the background of the other witnesses collected by the Investigating Officer and produced on record by the prosecuting agency. He submitted that P.W. 7 had admitted that even accused persons had sustained injuries in the scuffle and that an offence under Section 307 of the IPC is registered against P.W. 7. He thus submitted that a cautious approach is required to be adopted.

35. Per contra, Mr Kotecha learned that APP submitted that there is absolutely nothing to disbelieve the testimony of this particular witness, as he is a natural and also an injured witness. Mr Kotecha submitted that the Hon'ble Apex Court, in a catena of cases, has stated that the testimony of an injured witness stands on a high pedestal and should not be lightly ignored. According to him, since the incident occurred in an agricultural field where the family members were working, it is obvious that P.W. 7 would be a natural and reliable witness.

36. At this stage, it is necessary to mention here that the Hon'ble Apex Court has categorised the witnesses as wholly reliable, wholly

unreliable, partly reliable and partly unreliable. This witness cannot be called wholly reliable or wholly unreliable, but falls into a category of partly reliable and partly unreliable. The material omissions in the witness's testimony, as narrated supra, cast doubt on his version. The prosecution has not brought any material to give corroboration to the testimony of this witness.

37. Per contra, the defence has brought on several materials on record to ignore the testimony of the witness.

38. The fact that the accused persons were also injured is not even disputed by the witnesses. The question is whether the prosecution has given any explanation regarding the injuries sustained by the accused persons? Though it is stated that an offence under Section 307 of the IPC was registered against P.W. 7, the fact remains that material in the form of testimony has not been brought on record to test whether the prosecution has proved the genesis of crime or not. In this regard, it is necessary to go through the initial medical examination of the Sahebsingh (deceased), P.W. 7 and the accused persons, as well as the parents of the deceased.

39. P.W. 6 – Dr Dhiraj Patil, on 24.04.2019, was attached to Rural Hospital, Pishor, Taluka Kannad, who stated that he had examined

the accused persons, as also the injured. It is pertinent to mention here that on the day of deposition, he had the original MLC register with him. The relevant documents of which were surprisingly not brought on record. The prosecution has advanced absolutely no reason as to why the relevant entry from MLC register, though were shown to the Court, were not proved. Since the production of the necessary entries in the MLC register and their proof would have enabled the appellate Court to reach a proper decision. The said lacuna cannot be lightly ignored.

40. The testimony of this witness, to understand the injuries, is necessary to reproduce :

“I am M.B.B.S. D.G.O. On 24.04.2019, I was attached to Rural Hospital, Pishor, Tq. Kannad. Kamble from Pishor Police Station issued a letter to me on that day. It was for the examination of Vitthal Asaram Naglot, Purabai Vitthal Naglot, Devchand Vitthal Naglot and Sahebsingh Vitthal Naglot. Copy of the letter dated 24.04.2019, now shown to me, is the same. It bears my endorsement and signature. Said copy is at Exh. 128. Today, I have brought original MLC register with me. As per the letter, I examined those four persons. I examined Vitthal Asaram Naglot. On examination, I found no visible injuries on the body. I examined Purabai Vitthal Naglot. On her examination, I found no visible injuries

on her body. I then examined Devchand Vitthal Naglot. On his examination, I found CLW over the left earpinna, of size: 1 cm X 0.5 cm X 0.5 cm. It was a simple injury. Age of the injury was within 24 hours, caused by a hard & blunt object. No other injury was found on Devchand's person. Then I examined Sahebsingh Vitthal Naglot. On examination, I found an incised wound over the left arm – Size of Injury: 2 cm X 1 cm, Age of Injury: within 24 hours, caused by a sharp weapon, Nature of the injury: Simple. He was referred to the Government Medical Hospital and was given a provisional injury certificate. I recorded identification marks of these patients. Thereafter, I received a letter from Pishor Police Station regarding the issuance of medical certificates. The letter dated 17.06.2019, as shown to me, is the same. It bears my signature as received. It is at Exh. 129. Certificate of Vitthal Naglot is now shown to me. It is the same. It bears my signature and seal. Its contents are correct. It is at Exh. 130. Certificate of Purabai Naglot is now shown to me. It is the same. It bears my signature and seal. Its contents are correct. It is at Exh. 131. Certificate of Devchand Naglot is now shown to me. It is the same. It bears my signature and seal. Its contents are correct. Those are in my handwriting. It is at Exh. 132. Certificate of Sahebsingh Naglot is now shown to me. It is the same. It bears my signature and seal. Its contents are correct. It is at Exh.

133. No injury is mentioned in Devchand's certificate. However, Devchand had sustained an injury. I state so based on the original MLC register that I brought with me today. (now the original MLC register is shown to the Court, wherein at MLC NO. 667 dated 24.04.2019, against the name of Devchand Vitthal Naglot – injury – CLW over left earpinna, 1 cm X 0.5 cm X 0.5 cm, and on the line below it, no other visible injuries seen over the body are mentioned. Injury sustained by Devchand Naglot is possible by means of a stick. Injury sustained by Sahebsingh is possible by means of an Axe.”

28. So far as the medical examination of Vitthal Naglot, exhibit 130, and Purabai Naglot, exhibit 131, is concerned, it is stated that “no visible injuries were seen all over the body”. Devachand Naglot, brother of the deceased, was examined below exhibit 132, in which following remark is made “CLW over left earpinna, of size: 1 cm X 0.5 cm X 0.5 cm. It was a simple injury. Age of the injury was within 24 hours, caused by hard and blunt object. No other injury was found on the person of Devchand”.

41. So far deceased is concerned, his injury certificate is below exhibit 133 and date of examination is dated 24.04.2019, what is stated is incised wound on his left arm, 2 cm X 1 cm, age of injury within 24 hours and type of probable weapon used was sharp weapon, nature of the

injury was simple. In column of remark, refer to GMCH is mentioned. Thus, it would be clear here that, except for the deceased, no visible injuries were seen to any other relatives of the deceased in the medical examination, which is clear from the injury certificate.

42. Per contra, P.W. 7 in his examination had categorically stated that Ganesh had assaulted him on the left ear by means of an axe and Rahul by means of a stick on his right hand. Despite this, no injury was found on the person of P.W. 7. This casts doubt on P.W. 7's testimony.

43. At this juncture, it is necessary to mention here that the provisional injury certificate, exhibit 138, is of Karbhari Kakarwal, Dhawalabai Kakarwal, exhibit 139 and Chhayabai (wife of deceased), exhibit 141, shows that they had suffered various injuries. The injuries below the aforesaid exhibits are reproduced under:

“Exhibit 138 – CLW over head, size of injury: 8 cm X 2 cm X 2 cm. Age of injury was within 24 hours, caused by a hard and blunt object. In the column of remarks, refer to GMCH for further M/M and no other visible injuries were seen over the body.

Exhibit 139 – Fracture on the radius and ulna left, and

CLW over the neck of size 4 cm X 2 cm X 1 cm, caused by a hard and blunt object. The injury occurred within 24 hours. She was referred to G.M.C. The nature of the injury was grievous. No other visible injuries were seen on the body.

Exhibit 141 – (1) Contusion over the right thigh of size 2 cm X 2 cm, caused by a hard and blunt object, age of injury was within 24 hours, nature of injury was simple.

(2) Contusion over the left thigh of size 2 cm X 2 cm, caused by a hard & blunt object, the age of injury was within 24 hours, and the nature of injury was simple.

(3) Contusion over the right foot, of size 1 cm X 1 cm, caused by a hard and blunt object, age of injury within 24 hours, and nature of injury was simple. No other visible injuries were seen over the body.”

44. This shows that Dhawalabai had sustained the fracture, whereas Chhayabai had a contusion. The fact remains that both parties had sustained injuries; therefore, it was for the Investigating Officer to investigate the crime properly so to bring Genesis of crime on record.

There is one more aspect to the case, statement of one Sukabai was examined during the course of investigation by the Investigating Officer – P.W. 11. Said Sukabai was not examined as a witness at the behest of the prosecution. P.W. 11, in his cross-examination, had categorically admitted that during the enquiry with Sukabai, she informed that deceased Sahebsingh and Devchand followed Chhayabai by holding an axe when they came there. The wives of Devchand and Parabai followed them. So also, Sahebsingh and Devchand were talking in Padeshi language, they would not leave, saying that they would go to jail, and then they threatened.

45. PW 11, in his cross-examination, further admitted that, as per the enquiry with Sukabai, what emerged is that deceased Sahebsingh and Devchand started beating the mother of Chhayabai, her grandfather Karbhari, her maternal uncle Vitthalsingh and her brother Ishwarsingh and, thereafter, relatives of Chhayabai's mother's parents, after this beating, went away by sitting in a Jeep. P.W. 11 also deposed that all these facts found during the enquiry made by him with Sukabai. Accordingly, he recorded her statement, and even in a supplementary statement, Sukabai did not deviate from it. P.W. 11 also found during the investigation that the house of Sukabai was near the land of Sahebsingh,

and Sukabai was the eyewitness.

46. No doubt it is true that it is for the prosecution to decide which witness to examine and which witness to drop, but the fact remains that Sukabai, an independent eyewitness, would have thrown light on the incident. P.W. 11 had categorically stated that what he had found in the enquiry and, therefore, non-examination of Sukabai by prosecution goes to the root of the matter. Again, it can be said that the prosecution has suppressed the genesis of crime.

47. At this juncture, learned counsel for the appellant has invited my attention to the testimony of P.W. 3, who had performed a postmortem on the body of Sahebsingh. P.W. 3 had stated that he had performed an autopsy on the body of Sahebsingh along with Dr Santosh T. More on 01.05.2019 and on external and internal examination, the following injuries were found :

“External injuries :

- 1. Abrasion present over the right upper arm anteriorly, of size 6 cm X 41 cm, with a blackish scab present.*
- 2. Stitched lacerated wound present over left elbow posteriorly, 2 cm X 1 cm, blackish scab with 2 stitches*

present.

3. *Abrasion present over the left arm over the 3rd finger, 0.3 cm, blackish scab.*

4. *Abrasion present over the left leg just below the left knee, 2cm X 1cm, with a blackish scab present.*

5. *Abrasion present over the left leg below the left knee, below injury no. 5 of column no. 17 – 2 cm X 1 cm, blackish scab present.*

6. *Stitched wound present over the left chest in the 4th and 5th intercostal spaces, margins are regular with blood infiltration seen. Injury suggestive of intercostal drainage.*

7. *Ribs fracture on the left side of the chest.*

On internal examination on opening the skull, we found :

8. *Subdural haemorrhage of size 6 cm X 5 cm X 0.5 cm present over the left temporal region, reddish.*

9. *Chest wall contusion of size 15 cm X 12 cm present over the mid-sternal and adjacent left half of the anterior chest wall, reddish.*

10. *Undisplaced fractures of left 7th, 8th & 9th ribs posteriorly with surrounding muscle hemorrhage.*

11. *Parietal pleura torn at sites corresponding to the fractured ribs with a collection of 100 cc of reddish fluid in each side of the pleural cavity.*

12. *The Left lung contusion of size 5 cm X 5 cm is present over the upper lobe, reddish in colour.*

13. *Right lung contusion of size 3 cm X 3 cm present over the upper lobe, reddish in colour.*

14. *Pericardium contused over an area of size 7 cm X 6 cm over the anterior wall with adherent blood over the anterior wall, reddish in colour.*

15. *The left splenic region shows haemorrhage, reddish in colour.*

16. *Spleen shows a laceration of size 3 cm X 2 cm present over the medial pole, hemorrhagic.*

17. *Right kidney shows subcapsular haemorrhage, parenchyma contused.”*

48. He proved the postmortem report below, Exhibit 90. The cause of death was multiple injuries. He stated that injuries in column 18 were possible with a hard and blunt object, and the blunt side of an axe. Injuries in column 17 were not possible with the sharp side of an axe.

49. In cross-examination, this witness admitted that police did not send any object to him to seek his opinion, and there may be a number of objects which can cause injuries as mentioned in column nos. 17, 18, and 19. He admitted that, except for injury no. 1 in column no. 17, the rest of the injuries were caused on the left side of the body. He admitted that there was no fracture on the head, and he did not find any imprints on any of the injuries. He admitted that, due to the body rolling, some injuries were possible on the right side, and since ribs are said to be more fragile than other bones, they may also sustain fractures in a fall. He admitted he had given a very guarded opinion that the cause of death was multiple injuries, and he had not mentioned that the cause of death was homicidal injuries. P.W. 3 had further admitted there may be a number of reasons which may cause these types of injuries, and the blunt side of an axe is a heavy object; therefore, its blow certainly leaves an imprint. He admitted that axe may be the reason for all the injuries.

50. If the testimony of the aforesaid witness is perused, it would be crystal clear that he had admitted that the opinion given by him was guarded. Whether any injury was a fracture or not has not been stated by this witness. First of all, it is necessary to mention that it was just the doctor's opinion, and unfortunately, it was guarded. The said piece of

evidence would thus not be sufficient either to corroborate or to invite conviction of the accused persons.

51. I thus conclude that the prosecution has not proved beyond a reasonable doubt that it was the present appellant who had caused the injuries to the deceased.

52. Part I of Section 304 of the IPC is culpable homicide not amounting to murder when the act is done with the intention to cause death or such bodily injury as is likely to cause death. The accused's intention can also be inferred from the weapon used and the body part chosen. According to the cross-examination of P.W. 7, the fact of hitting the deceased on his ribs after he fell is an omission, and therefore, cannot be taken into consideration. Two other blows, one on his hand and one on his leg, by means of sticks, would reveal that there was no intention of the accused to cause the death. Be that as it may, aforesaid injuries also cannot be attributed to accused for want of sufficient evidence. Coming to the nature of injuries, suffice it to say that it cannot be said that the bodily injury was of such a nature as to likely to cause death. The appellant cannot be said to be an author of an injury that caused a fracture of a rib, and thus, the prosecution has also not proved that the bodily injury was likely to cause death.

53. Though Mr Kotecha, learned counsel, then contended that the testimony of P.W. 10 would also have to be considered, since he was the person to whom Sahebsingh narrated the incident. Suffice it to say that the trial Court ignored the testimony of this witness. In the absence of a challenge to that particular finding by the State, the testimony is not required to be looked into.

54. Mr Kotecha learned APP has contended that the testimony of P.W. 3 cannot be ignored, as he had categorically stated that there was a fracture to the rib. According to him, the injury of such nature would be enough to attract the ingredients of Section 304 of the IPC. As already stated, there is nothing on record to connect the appellant to the injury, i.e. rib fracture. Non-obtaining of the query report by the prosecution, nor forwarding the weapons of crime, for the opinion goes to the root of the matter. In that view of the matter, I conclude that the prosecution has not proved its case beyond a reasonable doubt.

55. So far as the examination of defence witnesses is concerned, it is a well-settled principle of law that defence witnesses, as well as prosecution witnesses, stand on the same footing and cannot be given different treatment. It is a fundamental principle of criminal law that it is for the prosecution to prove the case beyond a reasonable doubt, and,

therefore, the discussion of the testimony of the defence witness may not be relevant as the prosecution itself has not discharged its burden of proving the case.

56. Overall, the background of the case would clearly reveal that the ring of truth is missing from the case of prosecution.

57. Thus, the following order is passed :

ORDER

- i. Criminal Appeal is allowed.
- ii. The judgment passed in Sessions Case No. 701/2019, passed by the Additional Sessions Judge, Aurangabad, dated 31.12.2025, convicting the appellant for the commission of an offence punishable under Section 304 Part 1 of the IPC, is set aside.
- iii. Consequently, the accused is acquitted for the commission of an offence punishable under Section 304 Part I of the IPC.
- iv. Fine amount, if deposited, be refunded to the appellant.

v. Appellant be set at liberty forthwith, if his custody is not required in any other proceedings.

vi. Pending Criminal Application stands disposed of.

(RAJNISH R. VYAS, J.)

SPC