

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.260 OF 2017

Prabhat Ramesh Adhav

Age: 19 years,

R/at: H. No.189/90, Upendra Nagar,

CIDCO, Nashik

...Appellant
(Ori. Accused No.1)

V/s.

The State of Maharashtra

(At the instance Ambad

Police Station, Dist: Nashik)

...Respondent

**WITH
INTERIM APPLICATION NO.3770 OF 2025
IN
CRIMINAL APPEAL NO.260 OF 2017**

Prabhat Ramesh Adhav

Age about 32 years,

Residing at House No.189/90,

Upendra Nagar, CIDCO, Nashik

At present undergoing the sentence

imposed upon him at Nashik Road

Central Prison, Nashik

...Applicant
(Ori. Appellant)

V/s.

The State of Maharashtra

(At the instance of

Senior Inspector of Police,

Ambad Police Station,

Vide C. R. No.209 of 2009)

...Respondent

**WITH
CRIMINAL APPEAL NO.290 OF 2017**

Anil Jagannath Yadav

Age: 24 years, Occ. Nil,

R/o. Row House No.03,

Sai Row House, Upendra Nagar,
CIDCO, Nashik, (at present in
Nashik Road, Central Jail, Nashik)

...Appellant
(Accused No.2)

V/s.

The State of Maharashtra
Through P. I.
Ambad Police Station, Nashik
(Notice to be served on public
Prosecutor, High Court, Mumbai)

...Respondent

Mr. Nitin H. Sejjal a/w Mrs. Pooja N. Sejjal, Mr. Siddharth Gharat,
Mr. Sahir Patel & Mr. Ashwin Bhagwat, for the Appellant in Appeal
No.260/2017.

Mr. Bharat Manghani, for the Appellant in Appeal No.290/2017.

Ms. Sangeeta D. Shinde, APP for the Respondent-State.

**CORAM : BHARATI DANGRE, &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 25th NOVEMBER, 2025
PRONOUNCED ON : 19th JANUARY, 2026.**

JUDGMENT:- (PER SHYAM C. CHANDAK, J.)

1) Present Appeals have been directed against the Judgment and Order dated 03/03/2017, in Sessions Case No.1 of 2011, passed by the Court of the learned Additional Sessions Judge-5, at Nashik, thereby the Appellants/Original Accused Nos.1 and 2 (“**A-1 and A-2**”) were convicted of the charge under Sections 302, 307 and 34 of the Indian Penal Code (“**IPC**”), 1860 and were sentenced as under :-

Section 302 and 34 of IPC	Rigorous Imprisonment for life, each and to pay fine of Rs.5000/- each, in default to suffer Rigorous Imprisonment for 3 months, each.
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Section 307 and 34 of IPC	Rigorous Imprisonment for 5 years and to pay fine of Rs.5000/- each, in default to suffer further Simple Imprisonment for 3 months, each.
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2) Heard Mr. Sejpal and Mr. Manghani, the learned Counsel appearing for the Appellant in Appeal Nos.260/2017 and 290/2017 respectively and Ms. Shinde, learned APP for the Respondent-State.

3) As unfolded from the record, the prosecution story is in the year 2009 A-1 had formed a group of his friends and he wanted deceased Yogesh Mahale and Dinesh Patil to join that group. However, they refused to join the group. Being annoyed by that refusal, A-1 and A-2 started threatening deceased Yogesh and Dinesh. This led to a dispute between the accused side, on one hand and deceased Yogesh and Dinesh, on the other.

On 03/11/2009, at about 09.45 p.m., when deceased Yogesh and Dinesh were present at Girnar Sweet Mart, A-1 phoned deceased Yogesh and called them to the ground situated in Upendra Nagar, to settle the discord between them. In response, Yogesh, Dinesh and Kunal Jadhav arrived on the said ground on a motorcycle. A-1, A-2 alongwith one "RK", a Juvenile in conflict with law ("**JBL**"), were already present on the ground. There, Yogesh and Dinesh got off the motorcycle and Kunal Jadhav went away, saying that he would return within 5 minutes. On seeing Yogesh and Dinesh, the accused alongwith the JBL rushed towards them armed with knives. The A-1 and A-2 mounted attack on Yogesh with knives and

stabbed him in the chest, on the left hand, backside of the ribs and also gave fist and kick blows. The JBL assaulted Dinesh with a knife on his left-side waist and the left elbow. Meanwhile, Kunal Jadhav returned to the spot. Their friends Sandip Ghusale and Vijay Sonawane also came there. Vijay Sonawane and Kunal Jadhav removed Yogesh to Civil Hospital in an auto-rickshaw. Sandip Ghusale took Dinesh to Ambad Police Station. The Police referred Dinesh to Civil Hospital, Nashik. However, Dinesh's father shifted him to Life Care Hospital, Nashik. By that time, Yogesh had expired. The Police visited Life Care Hospital and recorded the statement-cum-dying declaration ("DD") of Dinesh Patil at 2.30 a.m. and again at 1.30 p.m. and, treating the 1st DD as an FIR, registered the same as CR No.590/2009, under Sections 302, 307, 323 and 34 I.P.C.

Investigation Officer Mr. Gorakh Patil, Sr. PI (PW-11) recorded the necessary panchanamas, seized the clothes of Yogesh, Dinesh (PW-1) and arrested the accused. During interrogation, A-1 and A-2, made separate voluntary disclosure leading to the recovery of the dagger and a knife, allegedly used by them in the commission of offence. PW-11 recorded the statement of witnesses from time to time, sent the relevant blood samples and the *muddemal* articles to the FSL for the purpose of analysis, collected the postmortem report and the injury certificate. Meanwhile, the PW-11 got transferred. Mr. Walunjkar, PI, thereafter, completed the investigation and filed charge-sheet against the accused in

the Court of the learned Chief Judicial Magistrate, Nashik and challaned the JBL before the JJ Board, Nashik.

4) The learned judge of the trial Court framed the Charge u/Secs.302, 307 and 34 I.P.C. and under Section 135 of the Maharashtra Police Act, 1951. Both the accused pleaded not guilty to the charge and claimed to be tried. The defence of both the accused was of denial and false implication. It is their specific defence that, at the relevant time, some unknown persons had assaulted Yogesh and Dinesh (PW-1) but PW-1 could not see the assailants due to the darkness. However, PW-1 gave false dying declarations to save himself.

5) To prove the charge, the prosecution examined 11 witnesses which included the informant Dinesh (PW-1), panchas, medical officers and the Police witnesses. However, Krushnachandra Sahu (PW-3) and Anand Sawarkar (PW-5), panchas to the discovery and recovery at the instance of A-2 and A-1, and Ankush Saikhede, (PW-4) panch to the seizure of the clothes of the accused, did not support the prosecution, as they turned hostile.

6) The learned Judge of the trial Court found the testimony of PW-1 and PW-7 reliable as it was supported with the medical evidence, the recovery of the weapons and the testimonies of other witnesses. Therefore, the learned Judge held that both the accused had called Yogesh and Dinesh (PW-1) at the spot, only after preparing themselves to attack them with the

deadly weapons. Then, as pre-decided, intentionally, Yogesh was stabbed in the chest, with an intention to cause his death and Dinesh (PW-1) was given the knife blows, with an intent to cause his death. Therefore, the trial Court convicted the A-1 and A-2 as noted in paragraph 1 above.

7) The learned Counsel for A-1 and A-2 made various submissions. Initially, they tried to impress upon the Court that the oral and the documentary evidence presented by the prosecution indicates that both the accused were innocent as the said evidence is not sufficient, cogent and reliable to hold them guilty of the said offences. However, after arguing the Appeals for some time in that direction, in the alternative, the learned Counsel for both the accused submitted that, even if the prosecution case is accepted as established from the evidence on record, both the accused cannot be held guilty for the murder of Yogesh and of attempting to murder of Dinesh (PW-1). To make this submission more precise, the learned Counsel submitted that since only one blow proved fatal to Yogesh and the injury sustained by Dinesh (PW-1) is not grievous injury, therefore, the case against the accused may be brought down to Section 304 Part II, 324 and 34 I.P.C.

To support their submissions, they have relied upon following reported decisions.

1) ***Sukhdev Singh Vs. State of Punjab***¹

¹ 1992 Supp (2) SCC 470

- 2) *Kunwar Pal Vs. State of Uttarakhand*²
- 3) *Ninaji Raoji Boudha And Another Vs. State of Maharashtra*³
- 4) *Chavda Jivanji Chelaji And Others Vs. State of Gujarat*⁴
- 5) *Gurmail Singh And Others Vs. State of Punjab*⁵
- 6) *Viram @ Virma Vs. State of Madhya Pradesh*⁶

8) In contrast, the learned APP supported the impugned Judgment submitting that it is based on a correct appreciation of evidence brought on record by prosecution and is based on proper reasoning and sound legal principles, therefore, the said Judgment and Order of conviction need not be upset. To support these submissions, she has placed reliance on the decision in *Virsa Singh Vs. State of Punjab*⁷.

9) We have perused the evidence, considered these submissions and the reported cases cited at bar. The defence did not dispute the date, time and place of the incident, nor the injuries sustained by the deceased and the cause of his death. The defence has admitted the Inquest Panchanama and the Seizure Panchanama of the blood-stained clothes of Yogesh and his blood sample.

10) Dr. Arun Pawar (PW-9) had conducted the postmortem on the dead body of deceased Yogesh on 03/11/2009 and noted the following external injuries: i) Contused lacerated wound on left arm, size 2 x 0.5 cm;

2 (2014) 12 SCC 434

3 1976 SCC (Cri) 227

4 (2002) 9 SCC 576

5 (1982) 3 SCC 185

6 Cri. Appeal No.31 of 2019

7 AIR 1958 SC 465

and ii) Abrasions on the left side of the back, 3 in number, size 0.5 cm. On internal examination, PW-9 had noted a stab wound, 2.5 c.m., on right side of chest, below right nipple piercing intercostillog space penetrating edge of base of right lung and right ventricle of heart causing right hemothorax and empty heart, the injury being antemortem. In the opinion of PW-9, the cause of the death was shock due to the injury to vital organ (heart) with hemothorax. This evidence is supported with the postmortem report (Exh.71) and the advanced cause of death certificate (Exh.72), issued by PW-9. Therefore, the learned Judge of the trial Court held that the deceased Yogesh met with homicidal death. There is nothing wrong in this finding returned by the learned trial Judge.

This takes us to the issue as to whether both the accused were guilty of causing the murder in furtherance of their common intention, or not? In this regard we have carefully scrutinized the prosecution evidence.

11) Informant Dinesh Patil (PW-1) has testified that on 03/11/2009, at about 09.45 p.m., when he and Yogesh were present at Girnar Sweet Mart, Yogesh received a phone call from A-1 to come to the said ground situated in Upendra Nagar. The purpose behind calling Yogesh was to settle the dispute between them. PW-1 deposed that Yogesh told him about that call and, therefore, he agreed to accompany him to the ground. PW-1 deposed that, then he, Yogesh and Kunal Jadhav went to the

said ground on the motorcycle of Kunal Jadhav. He deposed that, after they get off the motorcycle, Kunal Jadhav went away. However, soon thereafter, both the accused assaulted Yogesh with knife on his chest, back, thigh and ribs. PW-1 deposed that, the JBL had assaulted him on his waist and left hand with a knife. PW-1 deposed that, meanwhile, Kunal Jadhav had returned. Therefore, A-1 threw the knife in his hand into the premises of the school for the differently abled. PW-1 deposed that on seeing the bleeding injuries of Yogesh, he made a hue and cry by going on the road. By then, Vijay Sonawane (PW-7) and Sandip Ghusale came there. Kunal Jadhav and PW-7 removed Yogesh to the Civil Hospital in an auto-rickshaw and Sandip Ghusale took him to Ambad Police Station. From there, he was referred to the Civil Hospital. Further, he was shifted to Life Care Hospital for the treatment. There, the Police recorded his statement-cum-report (Exh.52) and reduced it into writing as per his narration. He identified the same, his thumb impression/signature thereon and deposed that its contents are correct and true. Lastly, PW-1 identified his blood-stained clothes and the knife used by A-1 (Arts.1 to 3 respectively).

The aforesaid evidence of PW-1 is in line with his report (Exh.52) and the subsequent statement, which was recorded very promptly. His evidence, the report and the statement remained unrebutted in the cross-examination. There is nothing to doubt the veracity of his version and the statement. Therefore, we find it completely reliable.

12) To prove the injuries sustained PW-1, the prosecution has examined Dr.Vandana Shevale (PW-10), the Medical Officer from Civil Hospital and Dr.Prashant Pagar (PW-8). PW-10 deposed that on 3/11/2009 she was present on duty as CMO. PW-1 was admitted in the said hospital with the history of assault on 3/11/2009, at about 9.00 p.m. She had prepared his medical case papers (Exh.76 colly). According to her PW-1 had sustained two injuries viz - (i) contused lacerated wound over lower part of back, 5 cm x 1 cm x 0.5 cm in size, and (ii) contused lacerated wound over left elbow, 3 cm x 0.5 cm x 0.5 cm. The testimony of PW-8 coupled with the injury certificate (Exh.68) issued by him indicates that, at the time of the incident, he was working as General Surgeon at Life Care Hospital. On 4/11/2009, and at about 1.20 a.m., PW-1's relative had admitted him in his hospital giving history of assault on 3/11/2009, at about 9.10 p.m. He had examined PW-1 and noted two injuries on his body, *i.e.*, (i) sutured wound over left lumber region having length of 4 cm; and (ii) sutured wound over left elbow having length of 3 cm. PW-1 was inpatient for 4 days. However, PW-8 could not give his opinion about the said injuries, they being sutured. The aforestated testimonies of PW-8, PW-10, the medical case papers and the injury certificate confirmed that PW-1 had sustained the said injuries during the assault, which corroborated his testimony.

13) Another important witness in the case was Vijay Sonawane

(PW-7), who has testified that, on 03/11/2009, at about 09.30 p.m., he and Sandip Ghusale were proceeding on a motorcycle towards home. At about 09.45 p.m. when they arrived at Upendar Nagar ground, Dinesh (PW-1) came towards them from the ground and told that A-1, A-2 and the JBL assaulted him by means of a knife. PW-7 deposed that they went to the spot where A-1, A-2 and the JBL were present and Yogesh was seated on the ground with his hand on his chest, and blood was oozing from his chest. Similarly, blood was oozing from the waist and elbows of Dinesh (PW-1). PW-7 deposed that Dinesh (PW-1) told him that they would go to the Police Station. At that time, A-1 ironically stated them to lodge the complaint, and with the knife in his hand, A-1 scratched on the shoulder and back of the JBL and also inflicted an injury on his own back with the same knife. PW-7 deposed that A-1 then threw the knife outside the compound of the ground and went away. The JBL threw his torned shirt on the ground and he also went away. Yogesh was unconscious and he fell on the ground. There was blood on the ground. PW-7 deposed that he and Kunal Jadhav removed Yogesh to Ambad police station by an auto rickshaw. Sandip Ghusale took Dinesh (PW-1) to Ambad police station. The Police told them to take Yogesh and Dinesh (PW-1) to Civil Hospital and accordingly, they had removed both the injured to the Civil Hospital.

14) The said testimony of PW-7 is consistent with the testimony of PW-1. In the report (Exh.52), it is specifically stated that PW-7 had arrived

at the spot immediately after the incident and, upon seeing the condition of Yogesh and PW-1, he had assisted in removing them to the Police Station. In the backdrop, his testimony is relevant under Section 6 of Evidence Act. PW-7 has also deposed about the post-assault conduct of the accused side, which is relevant under Section 8 of the Evidence Act. Thus, the testimony of PW-7 appears very natural. PW-7 had no axe to grind against the accused persons. The accused have not explained as to why PW-7 has deposed against them. There is no material on record indicating any falsity in the testimony of PW-7. As such, the testimony of PW-7 is dependable, and thus, it lends credence to the testimony of PW-1.

15) From the evidence in the cross-examination of PW-1 and PW-7 it has surfaced on record that they and certain family members of PW-7 had criminal antecedents. Nevertheless, looking at the evidence on record, the said background is not sufficient to discard their testimony on the point of the incident, the post-incident happenings, and situation at the spot as the same has not been shaken in any manner. In this regard, the learned Judge of the trial Court in paragraph 21 observed that,

“21. ... In a criminal case character of witness is irrelevant, reliability of evidence of eye-witness depends upon (i) accuracy of the witness, original observation of the event which he described; (ii) correctness of extent of what he remembers; and (iii) his veracity. The court should consider whether in the circumstances of the case, it is possible to

believe the presence of witness at the scene of crime and whether there is anything inherently improbable or unreliable in his evidence. His evidence must be tested in the light of other evidence and his own earlier version to police. Evidence of an eye-witness cannot be rejected merely because he was previously convicted in criminal case and sentenced to undergo imprisonment. ... Moreover, a person having criminal antecedents is not necessarily untruthful nor a person having no criminal antecedents necessarily a man of veracity.”

Having regard to the quality of the evidence on record, according to us, there is nothing wrong with these observations by the trial Court.

16) The oral evidence by Ashok Saikhede (PW-2) and Uday Jadhav (PW-6) relates to recording of the Seizure Panchnama of the clothes of Dinesh (PW-1) and the Spot Panchnama. Although PW-2's evidence is somewhat shaky, the seizure of the clothes has been duly proved through the testimony of Gorakh Patil, the I.O. (PW-11). That apart, since the testimony of PW-1 is reliable, therefore, even if the seizure of his clothes is ignored, it does not affect the core of the case. The defence did not dispute the spot of the incident, including the presence of the human blood there. Therefore, the testimony of PW-6 need not be dealt with in detail.

17) As noted above, PW-3 and PW-5 both did not support the prosecution on the aspect of the discovery and recovery of the weapons. However, PW-11 has proved the same. Further, PW-11 has proved that he

had issued the letter dated 16/11/2009 (Exh.79) and forwarded the *muddemal* articles and the samples to the FSL, for the purpose of chemical analysis. The CA report (Exh.84) shows that human blood was found on the dagger and the knife (*Suri*), recovered by PW-11 at the instance of A-1 and A-2, respectively. Said evidence has successfully withstood the cross-examination on behalf on the accused.

18) In the wake of above, we safely conclude that, the A-1 and A-2 had assaulted Yogesh with the deadly weapons and the JBL had assaulted Dinesh (PW-1) with a knife, in furtherance of their common intention.

19) According to the prosecution, the homicidal death of Yogesh is covered by Section 300 *3rdly* I.P.C., which provides that culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this regard, the observations in the case of ***Virsa Singh*** (Supra) in paragraph 12 and 13 are relevant and it read as below:-

“12. To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 “thirdly”;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not

accidental or unintentional or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

20) Looking at the aforesaid observations in the case of ***Virsa Singh*** (Supra) and the evidence in the case in hand, we find that the decision in the case of ***Sukhdev Singh*** (Supra) is most relevant. Therein,

the Appellant **Sukhdev Singh** and three others were tried for the offence of Section 302 and 34 I.P.C. The Appellant was convicted under Section 302, one co-accused was convicted under Section 302 read with Section 34 I.P.C. On appeal, the High Court acquitted the co-accused but confirmed the conviction and sentence of the Appellant under Section 302 I.P.C. The prosecution case, in brief, was that the four accused persons, armed with deadly weapons, surrounded the deceased and assaulted him simultaneously, and after the deceased fell down, the appellant allegedly inflicted a *gandasa* blow near the right ear, which was sufficient to cause the death in the ordinary course of the nature. The Hon'ble Supreme Court considered the evidence and in paragraph 6 observed and held that :

“6. ... Even though we have accepted the testimony of PWs 2, 3 and 4 as to the participation of the appellant in the crime, we are unable to accept their evidence giving specific overt act to each of the accused because according to the prosecution the victim was surrounded by all the four accused and each one armed with weapons and attacked him simultaneously. Therefore, it is difficult to fix this fatal injury to the appellant accepting the evidence of the witnesses whose evidence on that aspect has to be considered with a pinch of salt. Under these circumstances, we are constrained to hold that the appellant caused the injury with the knowledge that he was likely by such act to cause death and he is liable to be convicted under Section 304 Part II IPC.”

21) In the case in hand, in the cross-examination, PW-1 has admitted that he cannot tell specifically as to which accused had assaulted on which particular part of body of Yogesh and, as to how many blows

were given on which particular part of body and from what direction. Admittedly, the two external injuries caused to Yogesh were not serious. Only one internal injury was caused to him, which lead to his death. However, as noted above, there is no conclusive evidence as to which of the two accused, had caused this fatal injury.

22) In view thereof, we find it difficult to hold that the accused were guilty of the offence of Section 302 and 34 I.P.C. However, looking at fact that both the accused together with the JBL simultaneously mounted assault on Yogesh and Dinesh in the night time and with the deadly weapons, knowledge requisite under Section 304 Part II read with Section 34 I.P.C. is attributable to them. Accordingly, we conclude that the A-1 and A-2 both were guilty of the offence punishable under Section 304 Part II and 34 of I.P.C.

23) In so far as the conviction under Section 307 and 34 I.P.C. is concerned, neither PW-10 nor PW-8 have deposed that the injuries of PW-1 were grievous in nature. The learned Judge of the trial Court held that, the injuries sustained by PW-1 were not sufficient in the ordinary course to cause his death. However, the learned Judge observed that for the purpose of Section 307 I.P.C. what is material is the intention or knowledge and not the consequences of the actual act done for the purpose of carrying out the intention. Therefore, in paragraph 32 of the impugned judgment, the learned Judge observed and held thus:-

“32) The act cannot be judged from the mind of wrong doer, but the mind of wrong doer can be judged from his act. In view of the Latin maxim *acta exteriora indicant, interiora secreta*, from the act of person intention may be gathered. In the present case, by making phone call, accused called the deceased and Dinesh (PW-1) at the ground situated in Upendra Nagar, accused formed intention, then by possessing weapon they made some preparation and by brutally assaulting deceased Yogesh Mahale and Dinesh (PW-1), they achieved the object. The accused have succeeded in object of committing murder of deceased Yogesh Bhaulal Mahale. However, because of some intervening circumstances, they failed to achieve object of committing murder of Dinesh (PW-1). However, they have completed third stage of crime. Thus, the act of accused squarely falls within the ambit of ingredient of Section 307 read with 34 of Indian Penal Code.

24) However, the learned Judge has failed to notice that, despite both these accused and the JBL were prepared to brutally assault Yogesh and Dinesh (PW-1), they restricted themselves to inflicting only one grievous internal injury and two simple injuries to Yogesh and only two simple injuries to Dinesh (PW-1). In the facts, even the act of causing death of Yogesh giving him the stab in the chest was not sufficient to hold the A-1 and A-2 guilty of his murder. In the backdrop, we are persuaded to hold that the act of the JBL in inflicting the knife injuries on the person of Dinesh (PW-1) in furtherance of the common intention of A-1 and A-2, would be certainly not punishable under Section 307 and 34 I.P.C. but under Section 324 and 34 I.P.C., *i.e.*, voluntarily causing hurt with dangerous weapon.

25) The conspectus of the above discussion is that, the learned Judge of the trial Court failed to consider the prosecution evidence in its correct perspective. As a result, he wrongly held that both the accused were guilty of the offences of the murder of Yogesh and attempting to commit murder of Dinesh (PW-1) in furtherance of their common intention with the JBL.

On the contrary, both the accused were liable to be held guilty only of the offences of Section 304 Part II and 34 I.P.C., on account of causing the death of Yogesh and under Section 324 and 34 I.P.C., on account of the hurt caused to Dinesh (PW-1) by the JBL by means of a knife, in furtherance of the common intention of all of them. These infirmities, therefore, warranted an interference in the impugned Judgment and Order to bring down the impugned conviction and sentence from the offence of Section 302 and 34 I.P.C. to Section 304 and 34 I.P.C. and from the offence of Section 307 and 34 I.P.C. to Section 324 and 34 I.P.C. Both the Appeals succeeds, accordingly. Hence, the following Order is passed.

- i) Both Appeals are partly allowed.
- ii) The impugned Judgment and Order dated 03/03/2017, in Sessions Case No.1 of 2011, passed by the Court of the learned Additional Sessions Judge-5, at Nashik thereby convicting and sentence the Appellants under Sections 302, 307 and 34 I.P.C. is quashed and set aside.

- iii) Instead, the Appellants are convicted under Section 304 part II and 34 I.P.C. for causing homicidal death of Yogesh Bhaulal Mahale and they are sentenced to suffer rigorous imprisonment for 10 years each and to pay fine of Rs.5000/- each, in default to suffer Rigorous Imprisonment for 3 months, each.
 - iv) Additionally, the Appellants are convicted under Section 324 and 34 I.P.C. for voluntarily causing hurt to Dinesh Rajaram Patil (PW-1) and they are sentenced to suffer rigorous imprisonment for 3 years each and to pay fine of Rs.5000/- each, in default to suffer Rigorous Imprisonment for 3 months, each.
 - v) Both the aforesaid substantive sentences shall run concurrently after extending the benefit of set off.
 - vi) The Appellant/Accused No.1 Prabhat Ramesh Adhav is in jail since his arrest and he has already undergone the said sentences imposed on him, hence said Appellant/Accused No.1 Prabhat Ramesh Adhav shall be forthwith released from jail if not required to be detained in any other crime/case.
 - vii) The Appellant/Accused No.2 Anil Jagannath Yadav is on bail. His bail bonds stand surrendered. The Appellant/Accused No.2 Anil Jagannath Yadav shall appear before the trial Court on 2nd February, 2026 at 11.00 a.m. to undergo the remaining sentence.
- 26) In wake of disposal of Appeal, Interim Application stands disposed of.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)