(2024) 07 BOM CK 0043

Bombay High Court (Nagpur Bench)

Case No: Criminal Appeal No. 302 Of 2022

Ravindra S/O Bhimrao Pande And 2 Others		APPELLANT
	Vs	
State Of Maharashtra, Thr. Its Pso, Police Station Benoda, Tq. Warud, Dist. Amravati		RESPONDENT

Date of Decision: July 24, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 222, 374(2)
- Indian Penal Code, 1860 - Section 34, 299, 300, 302, 304I, 304II, 307, 324, 504, 506
- Evidence Act, 1872 - Section 134

Hon'ble Judges: Vinay Joshi, J; Vrushali V. Joshi J

Bench: Division Bench

Advocate: S.P. Dharmadhikari, S.V. Sirpurkar, Poonam Pirsude, S.A. Ashirgade

Final Decision: Disposed Of

Judgement

Vinay Joshi, J

1. Heard.

1. The appellants have been convicted by the Additional Sessions Judge, Amravati in Sessions Case No.52/2015 for the offence punishable under Sections 302, 324, 506 read with Section 34 of the Indian Penal Code vide judgment and order dated 13.04.2022. Being aggrieved by the said order of conviction, this appeal in terms of Section 374(2) of the Code of Criminal Procedure (“Cr.P.C.”).

2. The appellants were charged for committing homicidal death amounting to murder of one Pramod in furtherance of their common intention. They were also charged for causing hurt to the prosecution witnesses and for the offence of criminal intimidation. The Trial Court has sentenced to suffer imprisonment for life alongwith fine of Rs. 10,000/- for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They were sentenced to suffer simple imprisonment for one month and fine of Rs. 3000/- for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code, and sentenced to suffer simple imprisonment for one year and fine of Rs. 5000/- for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code. All sentences were directed to run concurrently. Though accused No. 3 Kamal was jointly tried for aforesaid offences, however she was acquitted from all offences. The State has not challenged the acquittal of accused No.3 Kamal.

3. Appellant No.1 Ravindra (accused No.1) is father of appellant No.2 Ashish (accused No.2) and appellant No. 3 Vaibhav (accused No.4). Accused No.3 Kamal (acquitted) was wife of accused No.1 Ravindra. Accused No.1 Ravindra, accused No.2 Ashish and accused No.4 Vaibhav have been convicted for committing murder of their neighbour Pramod by means of sticks and sentenced as aforementioned.

4. The prosecution case can be stated in brief that the accused were neighbouring resident of deceased Pramod. The relations between accused and the family of deceased Pramod were strained on various count. The deceased had purchased house property from the brother of accused No.1 Ravindra for which there was a dispute. The daughter of deceased had also lodged a report against accused No. 4 Vaibhav for outraging her modesty in which Vaibhav was acquitted. Thus, there was a trite dispute between two families. On the background of such rival terms, the incident occurred.

5. At the instance of report lodged by informant Sangita Wankhede (wife of deceased), the crime has been registered. It is the prosecution case that the accused were neighbouring resident. Their relations were strained on account of rival proceedings. On 22.11.2014 around 10.00 a.m. informant Sangita was in the courtyard of her house. Deceased Pramod was about to leave the house by riding on motorcycle. The deceased took out motorcycle and went inside to wear shoes. At that time, all accused came to her house, and started to abuse and threatened to see the deceased Pramod. All of them were on the road in front of the house. Initially accused Vaibhav threw chilly powder at the person of deceased. It was followed by all accused assaulting deceased by means of wooden sticks. Informant came to the rescue of her husband, however accused No.4 Vaibhav dealt a stick blow at her waist. Informant's daughter Kranti also intervened to whom accused Ravindra beat by means of stick causing her bleeding injury. Soon after the incident, deceased Pramod was shifted to the Rurla Hospital, Warud for medical treatment. Immediately, the informant rushed to the concerned

Police Station Beloda, District Amravati for lodging the report.

6. On the basis of report (Exh. 48) lodged by the informant, Police registered crime for the offence punishable under Sections 324, 504, 506 read with Section 34 of the Indian Penal Code. Later on, the Police have added Section 307 of the Indian Penal Code. The condition of Pramod was precarious, hence he was shifted to the Government Medical College, Nagpur, where he succumbed to the injuries on 24.11.2014. The provision of Section 302 of the Indian Penal Code has been added. Post-mortem was conducted on the dead body. Panchnama of the scene of offence was drawn. Articles namely sticks used in the commission of crime were seized. Injury certificate of informant and her daughter were collected. Seized articles were sent for chemical analysis. On completion of investigation, final report has been filed.

7. In trial, the accused denied the guilt. The prosecution has examined as many as 10 witnesses to bring home the levelled charges. The defence of accused is of total denial and false implication. It is defence that at relevant time, there was a scuffle, in which the deceased fell into cement drain and died due to sustaining head injury. Thus, a case of accidental death is alternatively projected.

8. The prosecution case rests upon two injured eye-witnesses namely PW-1 Sangita (informant), PW-3 Kranti and three neighbouring eye-witnesses i.e. PW-2 Rajknya, PW-4 Suresh and PW-5 Shivraj. PW-2 Rajknya and PW-5 Shivraj did not support the prosecution case. The Trial Court held that the evidence of PW-1 Sangita is fully reliable, however discarded the evidence of PW-3 Kranti. The Trial Court also relied on the evidence of PW-4 Suresh in the form of corroborative nature. The Trial Court has discarded the evidence of memorandum and consequent seizures at the instance of accused. In substance, the conviction is solely based on the evidence of injured eye-witnesses PW-1 Sangita, corroborated by other circumstances.

9. PW-1 Sangita is s star witness of the prosecution. She is wife of deceased. She deposed about inimical terms between two families. The relations were strained since deceased had purchased the house property from the brother of accused No.1 Ravindra so also accused No.4 Vaibhav has outraged the modesty of the daughter of deceased for which Police Report was lodged. The parties were neighbouring resident.

10. It is the evidence of PW-1 Sangita that on the day of incident i.e. on 22.11.2014 around 10.00 a.m., she was in the courtyard with PW-2 Rajkanya as they were supposed to proceed to village Hiwarkhed to attend the funeral. Deceased Pramod took out his motorcycle and went inside to wear shoes. At that time, all accused arrived in the courtyard and started to abuse. Deceased Pramod came out of the house by wearing shoes on which accused No. 4 Vaibhav threw chilli powder, followed by all accused assaulting Pramod by means of sticks. PW-1 Sangita and her daughter rushed for his rescue, but, they were also dealt by stick blows. Soon after the occurrence, one Guddu

and brother of deceased Manoj shifted injured Pramod to the Rural Hospital, Warud.

11. PW-1 Sangita deposed about the assault at the instance of accused by means of wooden sticks. She also stated that in the said incident, accused No. 4 Vaibhav assaulted at her waist by stick. PW-4 Suresh, is another eye-witness residing in the neighbourhood. It is his evidence that on the date of occurrence, he saw that all accused came out of the house armed with sticks, and proceeded towards the house of deceased. Seeing things unusual, PW-4 Suresh followed and saw accused while beating deceased Pramod by means of stick. Both eye-witnesses were cross-examined at length, but the defence is unable to bring any material to raise doubt about their credibility. Minor omissions have been brought on record, but they are of insignificance. On core issue, the evidence of PW-1 Sangita about the assault remained intact. Her evidence is well supported by the evidence of PW-4 Suresh who is an independent neighbouring eye-witness. Nothing has been brought on record to create a doubt about the evidence of PW-4 Suresh who has no inimical terms with the accused.

12. The prosecution also relied on the evidence of PW-3 Kranti who is another injured eye-witness to the occurrence. She has equally stated that at the relevant time, the accused came to her house and assaulted her father by means of sticks. She deposed that when she intervened, accused No.1 Ravidra dealt a stick blow at her hand and left toe. The accused also beat her mother PW-1 Sangita. Her evidence has also passed the test of credibility during cross-examination. Minor discrepancies regarding the place of occurrence have been brought on record. It was disputed that the incident occurred in the open courtyard in front of informant's house. However the defence has admitted the spot panchanama which was at the road in front of the house of the informant. There may be minor discrepancies regarding the place of occurrence, however it has no impact on the ocular evidence of eye-witnesses.

13. The learned counsel appearing for defence would submit that evidence of PW-3 Kranti cannot be acted upon since admittedly before giving evidence, she has gone through the Police statement. The learned Trial Judge by accepting said submission discarded her evidence by relying on decision rendered by the Single Judge of this Court in case of **Shri Sharad s/o. Namdeorao Shirbhate Vs. State of Maharashtra, 2007 ALL MR (Cri) 352** and another decision rendered by the Division Bench of Madhya Pradesh High Court in case of **Ramvilas and ors. Vs. State of Madhya Pradesh, 1985 CRI. L.J. 1773.**

14. In case of Sharad (supra) witness Prabhakar admitted that the Police had read over his statement and he has given evidence as per his statement. Witness Prabhakar was a panch witness in a case under the Prevention of Corruption Act. He has deposed the entire minute details as if he was reeling them out from his memory. On the facts of

said case, the Court has disbelieved his version being found to be unnatural and artificial.

15. In case of **Ramvilas** (supra) child witness at the end of his deposition stated that his earlier statement was read over to him and he was asked to give the same statement in the Court. It was noted that child witness could not give evidence properly, due to lack of understanding. In examination-in-chief, he tried to support the prosecution witness as regarding to the incident, but in cross-examination gave contradictory statements. In said context, the Division Bench found that the witness has materially used his previous statement and therefore, his testimony was discarded.

16. In case at hand, the Trial Court has simply rejected the evidence of PW-3 Kranti by citing two decisions. Observations of the Court in above two decisions made while appreciating the evidence cannot be termed as ratio decidendi. This being first appeal, we are under obligation to re-appreciate the entire evidence. The challenge in this appeal is to the order and not the reasons which are open for re-appreciation. PW-3 Kranti bears a special characteristic as she was injured eye-witness. Her presence on the spot was duly established by the injuries found on her person. Her testimony remained unshattered during cross-examination. In such context, merely because she admitted that her statement was read over to her, it would not washout her reliable testimony. Evidence of witness is to be appreciated as a whole. Certainly, admission given by the witness put us on guard, but that cannot be a sole criteria for outrightly rejecting the testimony, if otherwise found credible. Considering her entire evidence as a whole, we are satisfied that she is eye-witness to the occurrence deposed on her personal knowledge and thus, the said admission in above peculiar facts would not preclude us from relying her creditworthy testimony.

17. Even by keeping evidence of PW-3 Kranti aside, we have examined the present case. In that eventuality, it can be said that the prosecution case depends upon the evidence of single eye-witness with a peculiar character as injured eye-witness. The law is fairly well settled that conviction can be based on the testimony of single eye-witness. Way back in the year 1957 Bench of Three Judges of the Supreme Court in cases Vadivelu Thevar Vs. State of Madras, AIR 1957 SC 614 holds thus:-

“10. …… On a consideration of the relevant authorities and the provisions of the Evince Act, the following propositions may be safely stated as firmly established:-

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single

witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.

Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

18. We may profitably refer the decision of the Supreme Court in case of **Joy Devaraj Vs. State of Kerala, 2024 SCC Online SC 1648**, of which para 17 reads as below:-

"17. Even otherwise, section 134 of the Indian Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the court to be wholly reliable, the same can form the foundation for

recording a conviction……"

19. In view of above settled position, there is no difficulty in relying sole testimony of PW-1 Sangita which we found to be entirely credible and trustworthy. Besides that her evidence is strongly supported by the evidence of injured eye-witness PW-3 Kranti and evidence of PW-4 Suresh.

20. To support the evidence of PW-1 Sangita, the prosecution has examined PW-7 Dr. Snehal. It is her evidence that at the relevant time, she was attached to the Primary Health Centre, Loni, as a Medical Officer. Patient PW-1 Sangita was brought to the hospital, with complaint of back pain. On examination, she has issued Medico Legal Certificate indicating that on the day of occurrence around 02.35 p.m., PW-1 Sangita was examined and she has issued injury certificate (Exh. 119) to that effect. The said evidence corroborates the evidence of PW-1 Sangita and more particularly supports her presence on the spot.

21. Likewise, it is the evidence of Medical Officer PW-7 Dr. Snehal that at the relevant time, she has also examined PW-3 Kranti and noted injuries at her left toe and contusion mark on her left hand near wrist-joint. The probable age of injury was 4 to 5 hours, caused by hard and blunt object. The said injury was possible by stick. She has issued Medico Legal Certificate (Exh. 120) on the very day. The said evidence equally supports the testimony of PW-3 Kranti.

22. Evidence of PW-1 Sangita coupled with the evidence of PW-7 Dr. Snehal establishes that in the incident PW-1 Sangita and PW-3 Kranti sustained minor injuries. It is well settled that the testimony of the injured witness stands on a higher pedestal than other witnesses and reliance should be placed on it unless there are strong grounds for rejection of said evidence. In this regard, we may advert to the decision of the Supreme Court in case of **Lakshman Singh Vs. State of Bihar, (2021) 9 SCC 191**, wherein it is observed that evidence of injured witnesses has greater evidentiary value and when witness himself is injured, minuet details about the occurrence cannot be expected, as she herself is injured. The relevant para 9 of the said decision reads as below:-

"9. In Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390], it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly". It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence". It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".

9.1. A similar view has been expressed by this Court in the subsequent decision in Abdul Sayeed [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri)

1262] . It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".

9.2. The aforesaid principle of law has been reiterated again by this Court in Ramvilas [Ramvilas v. State of M.P., 43 (2021) 9 SCC 191. (2016) 16 SCC 316 : (2016) 4 SCC (Cri) 850] and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being injured witnesses, their presence at the time and place of occurrence cannot be doubted."

23. Besides that the prosecution relied on the evidence of PW-4 Suresh who is an independent eye-witness. His evidence also suggests that at the relevant time, he saw accused armed with sticks dealt sticks blows to deceased Pramod. We see no reason to discard his natural testimony. As a cumulative effect of the above discussion, we hold that evidence of two injured eye-witnessess PW-1 Sangita and PW-3 Kranti is wholly reliable. Besides that, their evidence is supported by the medical evidence as well as independent evidence of PW-4 Suresh and thus, we have no slightest doubt about involvement of accused in the crime.

24. Learned senior counsel Mr. Dharmadhikar argued that seizure cannot be relied because there is no discloser about the place where the articles were kept. In other words, it is argued that the accused must disclose in his memorandum statement the exact place where the articles have been kept/concealed. In support of said contention, he relied on few decisions. It is the prosecution case that while accused were in custody, they have expressed their willingness to show the place where the articles have been concealed and it was followed by accused leading to the place from where the articles have been seized. The prosecution has examined PW-6 Subhash Ghongade, Panch Witness before whom the accused allegedly made discloser statement. However, during the course of evidence, sole panch PW-6 Subhash Ghongade did not support the prosecution case. Though the prosecution has proved the Panchanama through the Investigating Officer, however in absence of independent corroboration, it

is not desirable to rely on said piece of evidence. The learned Trial Court has not believed the evidence of discloser and seizure for valid reasons. We are in agreement that the seizure has not been duly proved. In the circumstances, we do no wish to deal the issue canvassed by Mr. Dharmadhikari, learned senior counsel as in any way, we are not relying on said circumstance.

25. Though the learned counsel appearing for accused would submit that the prosecution has not explained the injuries on the person of accused, in our view, minor injuries sustained by accused in the ruckus are not expected to be explained by the prosecution. It was a scuffle in which there is every possibility that accused also sustained some minor injuries. In case of **Rajendra Singh & ors. Vs. State of Bhihar, (2000) 4 SCC 298**, it is observed that ordinarily, the prosecution is not obliged to explain each injury on an accused, even though the injuries might have been caused in the course of occurrence. If the prosecution evidence is clear, cogent and credible then non-explanation of the injuries on the accused ipso facto cannot be a basis to discard the entire prosecution case. In the light of said settled position and possibility of accused sustaining minor injuries in the occurrence, it does not bear significance.

26. Learned Senior counsel appearing for accused strenuously argued that the prosecution has failed to establish that Pramod met with homicidal death. We have been taken through the medical evidence to impress that head injury noted during autopsy was an operated wound. It is submitted that deceased was operated for brain injury and therefore, without examining operating Doctor, it cannot be said that the said injury was the cause of death. It is argued that the size of head injury noted by the Medical Officer was post operated stitched wound and thus, one cannot be sure about the nature of head injury. It is argued that there may be variety of factors resulting into death of Pramod. For instance, the operating Doctor may be unqualified or negligent or there may be other reasons contributing the death. It is argued that the prosecution ought to have examined the operating Doctor and thus, non-examination of said Doctor is fatal to the prosecution. In other words in absence of evidence of operating Doctor, it is difficult to hold that it is a case of homicidal death. Inasmuch as by way of non-examination of said Doctor, defence has lost the opportunity of cross-examination to bring the facts on record.

27. In order to appreciate said submission, we have gone through the medical evidence. Initially, deceased Pramod was admitted to the Rural Hospital Warud where he was examined by the Medical Officer who has issued injury certificate (Exh.157) stating three injuries out of which two were blunt injuries and one CLW i.e. head injury. The Medical Officer took X-ray and referred the patient to the Government Medical College, Nagpur for further treatment. Contextually, we have gone through the evidence of PW-8 Dr. Shivanand who has conducted autopsy on the dead body on 25.11.2014 at Government Medical College, Nagpur. On examination, he found

following injuries:-

(I) On external examination of the body following injuries were found:-

(i) On opening sticking over the scalp there was a therapeutic stitch wound over the scalp on the left frontal portion. Both the parietal to right temporal region of size 30 cm. There were 20 stitches.

(ii) Contusion over left forehead of size 4 cm x 3 cm. oblique, bluish in colour.

(iii) Contusion over the left side of the face at a distance of 2 cm. lateral to the left eye of size 4 cm x 3 cm., vertical and bluish in colour.

(iv) Abrasion over the front portion in the middle 1/3rd of the right thigh of size 2 cm. x 1 cm., vertical.

(v) Abrasion over the front portion of the middle 1/3rd of left leg of size 3 cm. x 2 cm, vertical.

(vi) Abrasion over the right half of upper lip of size 2 cm. x 1 cm., oblique.

(vii)Therapeutic intravenous injection mark over the left forearm.

(II) All the abrasions were reddish brown in colour and scabbed. All the injuries were ante-mortem.

(III) On internal examination of the body following injuries were found:-

(i) Haematoma under the scalp over the left franto parietal temporal area of size 12 cm. x 6 cm. and over the right franto parieto temporo occipital area of size 15 cm. x 5 cm, reddish brown in colour.

(ii) Therapeutic craniotomy over the left parietal and right parieto temporal bone of length 12 cm. and breadth varing from 2.5 cms. to 4 cms.

(iii) Extra-dural haematoma over both franto parioto temporal area, 100 gms., reddish brown in colour.

(iv) Duramatter was intact.

(v) Sub-arachnoid hemorrhage was present all over the brain. It was radish in colour.

(vi) Brain was conjusted.

(vii)Thorax wall was intact.

Medical Officer has opined the cause of death as head injury. He has opined that the said injury was possible by assaulting on head with stick. Post-mortem examination report (Exh.132) corresponds to the injury noted by Medical Officer. It is apparent that

besides abrasions, there were three injuries out of which two were mere contusions and one operated head injury. Certainly, we cannot go by the size of the head injury found at the time of postmortem, since it was already stitched one. True, examination of operating Doctor would have assisted, but in our view that cannot be a decisive factor. Already injury certificate (Exh.157) issued at Rural Hospital Warud has been produced. It clearly specifies that there was CLW at head caused by hard and blunt object. It has come in the evidence that, X-ray, CT scan were done. In our view, the defence cannot muster any strength on the ground of non-examination of operating Doctor when the things are otherwise clear. The defence did not opt to examine either of the Medical Officer as a defence witness nor referred case papers which are available. It is evident that there was head injury (CLW) of a serious nature which caused to operate, but patient could not survive. Thus, apparently the cause of death was a head injury. We are not ready to accede the defence submission about hypothetical probabilities about the negligence in operation. The defence could have undertaken said exercise by examining the defence witnesses, but they did not.

28. The evidence of PW-1 Sangita is wholly reliable and inspires full confidence of the Court. It was supported by injury certificate (Exh. 119) and the evidence of PW-3 Kranti and independent witness PW-4 Suresh. We see no reason to discard natural testimony of two injured eye-witnesses.

29. Notably the incident took place at around 10.00 a.m. whilst PW-1 Sangita lodged report with the Police at around 12.45 p.m. The incident of quarrel and beating must have consumed at least 10 to 15 minutes. Followed by shifting the injured to the Rural Hospital, Wardu and then, PW-1 Sangita went to the Police Station to lodge the report which was within two hours from the occurrence. First information report (Exh. 48) bears detailed narration about participation of accused. In the assault, to our mind, lodging of report within two hours with specific description strongly supports the prosecution case. Always, quick lodgement of first information report carries importance since it eliminates the chances of concoction. The period of two hours was too short, which wipes out the possibility of interpolation or twisting of the things. Quick lodgement of report lends strong assurance about the genuineness of the prosecution.

30. Taking over all view of the matter, we hold that the prosecution has duly proved that on the day of occurrence, the accused dealt stick blows to the Pramod who died within two days while under treatment. Undisputedly, the relations were strained which caused accused to assault deceased in which later died. Therefore, we have no hesitation to hold that accused No.1 Ravindra, accused No.2 Ashish and accused No.4 Vaibhav in-furtherance of their common intention assaulted deceased resulting into death. It is evident from the facts that all accused jointly went to the house of deceased with sticks. Undoubtedly, due to the assault made by accused, Pramod met with

homicidal death.

31. The question arose whether the act of the accused of causing death of Pramod amounts to murder or culpable homicide not amounting to murder. On the basis of evidence, the pivotal question of intention is to be decided whether the case falls under Section 302 or 304 Part I or 304 Part II of the Indian Penal Code. Murder is a gravest form of culpable homicide, which has its peculiar characteristic required to be proved before a person is to be held guilty for committing murder as defined under Section 300 of the Indian Penal Code. It requires judicial scrutiny of the prevailing facts. Merely the fact that death of human being is caused is not enough to constitute offence of murder unless one of the mental status mentioned in ingredient of Section 300 is present. It must be proved that there was an intention to inflict the particular bodily injury actually found to be present. The intention of the person causing the injury has to be gathered from careful examination of the facts and circumstances of each case. The intention to cause the requisite type of injury is a subjective inquiry and then there would be further inquiry whether injury was sufficient in ordinary course of nature to cause the death is of objective nature.

32. It is now well understood that in the scheme of the Indian Penal Code "culpable homicide" is the genesis and "murder" is the species and generally speaking culpable homicide sans special characteristics of murder is culpable homicide not amounting to murder. The Indian Penal Code recognizes three degrees of culpable homicide. The first degree of culpable homicide is "murder" which is defined by Section 300 and made punishable under Section 302 of the Indian Penal Code. The second degree is culpable homicide as defined under Section 299 and made punishable under Section 304 Part I of the Indian Penal Code. The third degree of culpable homicide is made punishable under Section 304 Part II of the Indian Penal Code. Whenever the accused causes the death of another and had no intention to kill, then the offence would be murder only if, (1) the accused knew that the intended injury would be likely to cause death, or (2) that it would be sufficient in the ordinary course of nature to cause death or, (3) that the accused knew that the act must in all probability would cause death, and if the case cannot be placed as high as that and the act is only likely to cause death and there is no special knowledge, the offence comes under Section 304(II) of the Indian Penal Code.

33. In order to ascertain the legal impact of the act of accused entire relevant material needs scrutiny. In this regard observations of the Supreme Court in case of **Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444 at paragraph** 29 are worthy to note, which reads as below :

“**29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters -**

plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body;(iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger;(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

34. Reverting to the facts of this case, admittedly though the relations were strained, the parties were residing in the neighbourhood. It emerges from the evidence that at the relevant time, accused came with sticks which are generally available in the village houses. No doubt, the accused arrived at the place to deter deceased Pramod, however something more is required to infer that they intended to cause his death. It is not a case that accused were armed with dangerous weapons namely knife, sword, dagger etc. They brought ordinary articles which were easily available in village houses. Therefore, possession of a stick cannot be a sure criteria to infer the intention. Rather whatever was available at the house to deter the deceased, was carried by father and two sons. Though the accused gave blow at the head and face, however that alone cannot decide the nature, but it is to be appreciated in context with other circumstances. It has come on record that two blows at face did not cause a fracture injury, the isolated head injury was proved to be fatal. It reveals that after giving two to three strokes, the deceased was left to his fate. The accused who were three in number

armed with sticks had ample opportunity to deal more blows since neither deceased ran away nor there was stout resistance. The given facts no where suggest that either accused intent to cause death or intent to cause such a bodily injury coupled with knowledge, that it is likely to cause death or even intentionally caused such particular bodily injury which is sufficient in ordinary course of nature to cause death. The evidence does not suggest that accused had pre-arranged to eliminate the deceased, but in hit of passion, they carried sticks and only one blow at head was dealt which proved to be fatal. Having cumulative effect of all above circumstances, it is difficult to cull out a definite intention of the accused to kill deceased. However, the act of striking at head by stick would definitely attract the knowledge that the said act is likely to cause death and it squarely falls within the Clause (c) to Section 299 of the Indian Penal Code.

35. The above discussion firmly establishes that the act of accused would fall in the third degree of culpable homicide not amounting to murder. Section 222 of Cr.P.C. permits court to convict accused for minor offence though he was not charged for the same. The Code never specifies as to which are the minor offences corresponding to major offences. The offence of culpable homicide not amounting to murder of third degree would be well construed as minor offence of Section 302 of the Indian Penal Code. Therefore, the act of accused would fall in the category of latter part of culpable homicide not amounting to murder which is punishable U/s 304 Part-II of the Indian Penal Code.

36. While accused No. 1 Ravindra s/o Bhimrao Pande was in Jail, he died on 17.05.2023. None of the legal heirs have applied for continuation of appeal, therefore appeal to the extent of accused No.1 Ravindra s/o Bhimrao Pande stands abated. So far as accused No.2 Ashish s/o Ravindra Pande and accused No. 4 Vaibhav s/o Ravindra Pande are concerned, from the date of conviction i.e. 13.04.2022 till date i.e. for the period of two years they are in Jail.

37. Coming to the point of sentence, admittedly the accused are not habitual offender. The incident is outcome is of bitterness on account of purchase of house and case of outraging the modesty. It is nobody’s case that either the accused are history shitter or prior convict. The incident arose out of bitterness in which entire family i.e. father and two sons are behind bars. While awarding sentence, we must maintain right balance. Though the accused are not history shitter, however we must not forget that innocent man has lost his life. Having regard to the all above facts, we are of the considered view that eight years of rigorous imprisonment would be just to balance the scale.

38. In view of above, criminal appeal is partly allowed. We hereby modify the impugned order dated 13.04.2022 passed by the learned Additional Sessions Court, Amravati in Sessions Case No. 52/2015 to the extent of altering conviction of accused No.2 Ashish

s/o Ravindra Pande and accused No.4 Vaibhav s/o Ravindra Pande from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code and sentence them to suffer rigorous imprisonment for eight years along with fine and default clause as imposed by the Trial Court. The rest of the order of the Trial Court is maintained as it stands.

39. Appeal stands disposed of in above terms.