
Hindurao Rajaram Kathare and Others Vs State of Maharashtra

Criminal Appeal No. 364 of 2009

Court: BOMBAY HIGH COURT

Date of Decision: Dec. 9, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 162, 313 & Penal Code, 1860 (IPC) -
Section 143, 147, 148, 149, 300

Citation: (2015) ALLMR(Cri) 1495

Hon'ble Judges: P.V. Hardas, J; G.S. Kulkarni, J.

Bench: Division Bench

Advocate: Niteen Pradhan and S.D. Khot i/b. Dilip Bodake, Advs., for the Appellant; H.J. Dedhia, APP, for the Respondent

Final Decision: Partly Allowed

Judgement

P.V. Hardas, J. - The Appellants, Original Accused Nos. 1 to 9, who stand convicted for offence punishable under Section 302 r/w. 149 of the

Indian Penal Code, under Section 148 r/w. 149, 324 r/w. 323/149 of the Indian Penal Code and sentenced to imprisonment for life and each

accused to pay fine of Rs. 1,000/- in default of which to undergo S.I. for three months, R.I. for 3 months and R.I. for 3 months respectively, with a

direction that the accused would be entitled for set off and the substantive sentences shall run concurrently, by the Additional Sessions Judge,

Satara, by Judgment dated 25.2.2009, in Sessions Case NO. 126 of 2007, by this Appeal challenge their conviction and sentence. Facts in brief

as are necessary for the decision of this Appeal may briefly be stated thus.

PW-10 PSI Hanumant Mane, who on 4.4.2007 was attached to Out Post Mayani under the jurisdiction of Police Station Vaduj was entrusted

with the investigation of the present crime. On 4.4.2007, Police Head Constable Makarand Kawale had registered an offence under Section 324,

147, 148 of the Indian Penal Code and had subsequently added Section 302 of the Indian Penal Code on 5.4.2007. PW-10 PSI Mane on being

entrusted with the investigation visited the scene of the incident and drew the scene of the incident panchnama in the presence of panch witnesses.

From the scene of the incident he seized 2 pairs of chappals, 2 sticks, 2 stones. He also drew the sample of ordinary mud and blood mixed mud

and seized them under the spot panchnama at Exhibit 61. On the same day he recorded the statements of 7 witnesses and seized the clothes of

injured. The accused were arrested on 6.4.2007 and during custodial interrogation, Accused No. 1 Hindurao expressed his willingness to point out

the place where the iron bar and sticks had been concealed. His memorandum was accordingly drawn in the presence of the panch witnesses at

Exhibit 64. Accused No. 1 led the police and the panch to village Katharewadi and from near a heap of stones produced the iron bar and sticks

which were seized under seizure memorandum at Exhibit 65. On the same day statements of 2 witnesses were recorded and clothes of the

accused were seized. The seized property was then referred to the Chemical Analyzer, Pune under requisition at Exhibit 122. Further to the

completion of investigation, a charge-sheet against the accused was submitted.

PW-7 Dr. Sayajirao Pawar examined PW-6 Nanasaheb Kathare and noticed the following external injuries:--

1. Abrasion over left parietal region on scalp, 2 inches left to midline, size 1 1/2 x 1" reddish.
2. Diffused swelling and deformity over the right knee on medial aspect of size 3" x 3" crepitus + fracture patella.

According to him, the injuries were caused by hard and blunt object. Injury No. 1 was simple while the second was suspected to be grievous.

Injuries had been caused within 24 hours. The injury certificate is at Exhibit 83. The original OPD papers are at Exhibit 84.

PW-7 Dr. Pawar also examined PW-1 Dhondabai and noticed the following external injuries:--

1. Contusion with abrasion over left hand, at wrist size 1/2" x 1/8th inch, reddish, with swelling and deformity fracture colles.

According to him, the injuries could be caused by hard and blunt object and were within 24 hours. The injury certificate is at Exhibit 85 and the

original MLC is at Exhibit 86.

Dr. Pawar also examined PW-9 Sarjerao Kathare and noticed the following external injuries:--

1. CLW over the occipitoparietal region on scalp on right side, size 1" x 1/8" x 1/8" clotted blood.
2. CLW over the occipital region of scalp 3" below the injury No. 1, size 1/2" x 1/8" x 1/8" clotted blood.
3. Abrasion over the left leg inner aspect in middle 1/3rd region of size 1/2" x 1/4" reddish.

According to him, the injuries were caused by hard and blunt object and were within 24 hours. The injuries were simple in nature. The injury

certificate is at Exhibit 87 while the original MLC papers are at Exhibit 88.

2. Injured Malhari Kathare was examined by PW-7 Dr. Pawar and he noticed the following external injuries:--

1. Both eyes were black. Oedema and swelling over eye lids of both eyes. Black pigmentation +.

2. Contused lacerated wound over biparietal region of scalp, 2"" away from midline of size 6"" x 3/4"" x scalp deep. Clotted blood +.

3. Diffuse swelling on forehead above eyebrows, redness +.

4. Abrasion on right elbow 1/2"" x 1/2"" redness.

The original OPD papers are at Exhibit 90. According to him, the injuries were caused by hard and blunt object. History of assault by stone and

stick was given. Injury No. 2 sustained by Malhari was possible by a blow of iron bar on the head. The other injuries were possible by sticks and

stones.

3. PW-8 Dr. Sanjay Kasbe, who was attached to Civil Hospital, Satara examined injured Malhari on 4.4.2007 at 4.15 a.m. Malhari had been

brought to the Hospital on reference from the Primary Health Centre, Mayani. Malhari was unconscious and was gasping. History was recorded in

respect of assault at 8.00 p.m. on 3.4.2007. The original letter of reference is at Exhibit 109. Injured Malhari was admitted in emergency ward and

his pulse was feeble and B.P. was low. Heart-sound was muffled. His pupils were semi-dilated and fixed and not reacting to light. On local

examination it was noticed that his both eyes were black and swelling was noticed on both eyes. There was contused lacerated wound on his scalp

and medical treatment was commenced. Malhari died at 4.45 a.m. on 4.4.2007. The original case papers are at Exhibit 110.

Postmortem on the dead body of deceased Malhari was performed by PW-8 Dr. Kasbe, who noticed the following external injuries:--

1. Contused lacerated wound on vertex and biparietal region, "U" shape 15 cm x 2 cm x 1 cm scalp deep.

2. Both black eyes with swelling (periorbital ecchymoses).

3. Abrasion on right elbow, 1 cm x 1 cm. bleeding present.

On internal examination he found haemorrhage under the scalp. There was comminuted fracture of skull bone on both anterior part of parietal

bone. There was extradural haematoma and subdural haematoma. Subarachnoid haemorrhage was present and brain oedema was present.

According to Dr. Kasbe, Malhari died due to intra-cranial haemorrhage with fracture of skull bone. The postmortem report of Malhari is at Exhibit

111.

4. On committal of case to Court of Sessions, Trial Court vide Exhibit 20 framed charge against the accused for offence punishable under Sections

143, 147, 148, 302 r/w. 149, 324 r/w. 149, 323 r/w. 149, 504 r/w. 149 and 506 r/w. 149 of the Indian Penal Code. The accused denied their

guilt and claimed to be tried. Prosecution in support of its case examined 10 witnesses. The defence of the accused was of denial and they claimed

that deceased Malhari was the aggressor who had come to the house of Accused No. 2 Subhash and had sustained the injuries while chasing

Subhash. The accused in their defence examined DW-1 Subhash Kathare and DW-2 Head Constable Ashok Jadhav. The Trial Court on

appreciation of the evidence convicted and sentenced the accused as aforesaid.

5. In order to effectively deal with the submissions advanced before us by the learned Counsel for the parties, it would be useful to refer to the

evidence of the prosecution witnesses.

6. Prosecution has examined PW-1 Dhondabai as an eye-witness to the incident. PW-1 Dhondabai, wife of deceased Malhari deposes that she

was residing along with her sons PW-6 Nanaso, Maruti, Bajirao and PW-9 Sarjerao along with deceased Malhari. According to her, PW-9

Sarjerao and PW-6 Nanaso were employed at the Sahyadri Karkhana for transporting sugarcane on tractor while her other sons Maruti and

Bajirao were shepherds. According to Dhondabai, she, her daughter-in-law Usha and her husband Malhari were residing in the house. Due to the

encroachment, a dispute between Malhari and Subhash was pending in the Court of Vaduj.

Dhondabai deposes that on the day of the incident deceased Malhari and her nephew PW-5 Arjun had gone to the Court at Vaduj for attending

case. At about 5.30 p.m. PW-9 Sarjerao and PW-6 Nanaso returned home. They were chit chatting in the courtyard and at that time Malhari

returned back. Malhari informed them that accused Subhash had given 2 slaps to Malhari. Accused Subhash meanwhile came in the courtyard and

questioned Malhari as to why he had become "arrogant". Subhash then picked up a stick and assaulted Malhari. Accused No. 1 Hindurao also

came to the scene of the incident and dealt a blow on the head of Malhari by an iron rod. The other accused also came to the scene of the incident

and started assaulting Dhondabai and others. Some of the accused picked up stones while others picked up the sticks. PW-6 Nanaso, PW-9

Sarjerao, Usha, PW-1 Dhondabai and Dada Daji were assaulted. Malhari on sustaining the injuries became unconscious and was removed to the

Mayani Hospital and then to the hospital at Vaduj and thereafter to the Civil Hospital at Satara. Malhari was declared dead. PW-1 Dhondabai had

sustained two injuries to her head and hand when she had intervened to rescue her husband Malhari. PW-5 Arjun and Jijaba had gone to the

Police Station for lodging a report.

7. In cross-examination she has admitted as true that the Civil Suit between Malhari and others is pending for the last 9 years. She has admitted as

correct that the Civil Suit had been filed for removal of the encroachment from the road. She has admitted as correct that there was no dispute

between Malhari and accused. She has also admitted that the house of her brother-in-law is adjacent to her house. She has admitted that the house

of PW-2 Jijaba is near her house. She has then admitted that she and her daughter-in-law Usha usually went to the field at about 11.00 a.m. and

returned to the house for cooking etc. before sun set. She has admitted that Malhari used to come after sun set. She has admitted that there is a

shed in the field where the cattle were tied. In the shed tractor and other agricultural equipments were also kept. She has admitted that she has

about 15 sheep which are looked after by Maruti and Bajirao. She has admitted that house of Accused No. 2 Subhash is at a distance of about 15

to 20 feet from her house. She has admitted that the area of Village Katharewadi is stony area and therefore vehicles like jeep, etc. cannot come to

Village Katharewadi.

She has admitted that Malhari had gone to Vaduj Court at about 8.00 a.m. and was accompanied by PW-5 Arjun. She has admitted that when

Malhari had narrated that accused Subhash had slapped him, PW-9 Sarjerao, PW-6 Nanaso were present. PW-5 Arjun had accompanied

Malhari on their way back from the Vaduj Court. Arjun however did not come with Malhari to the house as he had stopped for answering the call

of nature. Arjun returned back after some time. She then states that Arjun and Malhari reached the house together. She has then admitted that at

the time of the incident all the accused persons came to the scene of the incident together. Accused other than Accused No. 1 Hindurao were

armed with either stick or stone. She has then admitted that when accused No. 2 Subhash dealt a blow of stick to Malhari, Malhari was sitting and

was chit chatting with other witnesses. She has admitted that Subhash had dealt about 2 to 3 stick blows on the head of Malhari. Accused No. 1

Hindurao then dealt a blow of iron bar on the head of Malhari. Accused No. 1 Hindurao had given 2 blows of iron bar and one of the blows of the

iron bar hit the elbow joint of Malhari. She has clarified that both the blows of iron bar had hit the head of Malhari. She has then admitted that

Malhari was assaulted by other accused also but she could not tell the names of the accused. She has denied the suggestion that all the prosecution

witnesses including Jijaba had gone to the house of accused Subhash and had assaulted him. She has admitted that she does not know if accused

Suresh had sustained bleeding injury on his head. She has denied the suggestion that during that incident, Malhari had sustained injury to his head

as he had fallen on the ground. She has also denied the suggestion that she had sustained injuries due to fall. She has denied the suggestion that on

account of political rivalry in the village she had deposed false about the incident.

8. Prosecution has examined PW-2 Jijaba. PW-2 Jijaba deposes that on 3.4.2007 at about 8.30 p.m. he was present near his house. The shed of

Malhari was at a distance of 100 to 150 feet from his house. He heard the cries coming from the shed of Malhari and therefore, rushed there. He

noticed a quarrel which was going on. The accused were assaulting deceased Malhari. Accused No. 1 Hindurao gave a blow of iron bar on the

head of Malhari while Accused Subhash dealt a stick blow to Malhari. PW-6 Nanaso was assaulted by accused Rangnath by a stick. PW-9

Sarjerao. PW-1 Dhondabai were also present there and the accused were assaulting them by sticks or stones or fist blows. Malhari became

unconscious and thereafter Dada Daji, PW-5 Arjun intervened. PW-2 Jijaba went to Panchwad and arranged for a jeep and removed injured

Malhari and also other witnesses to the Mayani Government Hospital. They were asked to go to Vaduj and therefore had gone to the Government

Hospital at Vaduj. From Vaduj they were asked to go to Satara and therefore, the injured were brought to the hospital at Satara. PW-2 Jijaba

went to the Police Station at Vaduj and lodged his report at Exhibit 52. According to Jijaba, quarrel between the accused and deceased Malhari

was on account of a dispute between Malhari and accused Subhash.

9. He has admitted that the agricultural land of Malhari is adjacent to the road. The shed belonging to Malhari is built in the agricultural land and is

also near the road. He has admitted that stones were arranged by the side of the road in the field. He has admitted that no one resides in the shed.

He has also admitted that the bore-well located on the road opposite the shed. He has admitted that his house is at a distance of about 5 to 25 feet

from the house of Malhari. He has admitted that the land of village Katharewadi is a stony land and is fit only for pedestrians.

In further cross-examination he has admitted that on the day of the incident he had not taken his dinner. He has admitted that prior to the incident

there was no quarrel between the accused and Malhari. He has admitted that he was sitting near his house since 6.00 p.m. He has admitted that he

had heard the cries a minute before 8.30 p.m. and he alone had rushed to the scene of the incident. He has admitted that when he had reached the

scene of the incident, Malhari had not fallen on the ground. He has admitted that when he had reached the scene of the incident, the assault on

Malhari had commenced. He has admitted that he had not intervened. He has also admitted that Accused No. 2 Subhash gave 2 stick blows to

Malhari and accused No. 1 Hindurao dealt 2 blows of iron bar on Malhari. He has volunteered that one blow of the iron bar was given on the

head while the other hit the elbow of Malhari. He has admitted that he could not describe the weapons with which the other accused were armed.

He has admitted that the other accused also assaulted Malhari with the weapons with which they were armed. He has admitted that the Police Patil

was not present. He has also admitted that he did not inform the incident to anyone else in the village. He has admitted not to have informed the

incident to the police at Mayani. He has admitted that in his report he had alleged that accused Rangnath had assaulted Nanaso by a stick. He has

admitted that in the Civil Suit which was filed against Malhari, his father was one of the plaintiffs while the other plaintiff was one Laxman Kathare.

He has admitted that on the day of the incident, his father and Laxman Kathare had accompanied Malhari to the Vaduj Court and both of them

had withdrawn from the Suit. He has denied the suggestion that he alongwith Malhari and others had gone to the house of Accused No. 2 Subhash

and had assaulted him. He has denied the suggestion that in the scuffle Malhari, Dhondabai, Sarjerao and Nanaso fell on the stones and sustained

injuries.

10. Prosecution has examined PW-5 Arjun, nephew of deceased Malhari, who (deposes that on the day of the incident he had accompanied

deceased Malhari to Vaduj Court. They had left village Katharewadi at about 7.00 a.m. and had reached Mayani at about 3.00 p.m. Thereafter,

they had gone to the market at Kaledhon and then had gone to village Panchwad. They were traveling from village Panchwad to village

Katharewadi on foot. After they had crossed a distance of about 1 km., Accused No. 2 Subhash came from the opposite direction driving a

tractor. At that time, deceased Malhari stopped for answering the call of nature. Accused No. 2 Subhash alighted from the tractor and questioned

the deceased Malhari as to why he was looking at Subhash. Accused No. 2 Subhash then slapped Malhari. Arjun intervened and took the

deceased Malhari alongwith him. Arjun and Malhari then went to the shed of deceased Malhari. PW-1 Dhondabai, PW-6 Nanaso and PW-9

Sarjerao were present there. Arjun, Malhari and the other witnesses then sat there chit chatting. At that time they noticed about 8 persons that is

the accused excepting Accused No. 2 Subhash going towards Panchwad. After some time they heard some noise coming from the side shed.

Accused Subhash suddenly came to the shed armed with the stick. He questioned deceased Malhari as to why he was ""arrogant"". Subhash then

dealt a blow of stick on the head of Malhari. The other accused also followed Subhash and Accused No. 1 Hindurao dealt a blow of iron bar on

the head of deceased. The other accused then started assaulting Dhondabai, Sarjerao, Nanaso and Arjun by sticks, stones and fists. Deceased

Malhari sustained bleeding injury and became unconscious. The accused abused Malhari and then fled from the scene of the incident. PW-2 Jijabai

had also arrived at the scene of the incident. According to Arjun he and Jijaba had intervened. Arjun claims that his father was also present at the

scene of the incident and he too had intervened. Arjun and Jijaba then brought a jeep from village Panchwad and removed the injured Malhari and

shifted to Government Hospital at Mayani and then to village Vaduj and thereafter to Satara. Arjun returned from Vaduj to Katharewadi and at

about 8.00 a.m. on the next day and learnt that Malhari had died.

11. In cross-examination he has admitted that the house of deceased Malhari and the house of Accused Subhash faced each other. Distance

between their houses was about 15 to 20 feet. He has admitted that his house is adjacent to the house of deceased Malhari. He has denied the

suggestion that his father and deceased Malhari had constructed their house by encroaching on the road. He has admitted as correct that the

villagers had filed Civil Suit No. 245 of 1999 against deceased Malhari and father of Arjun in the Court of Vaduj. He has admitted that accused

Subhash was not a party to the Suit.

Omission is elicited in respect of Arjun not stating in his previous statement about pendency of the Civil Suit since last 8 year. He has admitted that

he used to accompany deceased Malhari on each and every date of the Suit. He has admitted that Accused Subhash, who was a member of the

gram panchayat, had also deposed in the Suit on behalf of the Plaintiff. He has admitted that on the day of the incident except Laxman and Yadu,

none were present on behalf of the Plaintiffs. He has admitted that the age of deceased Malhari was about 65 to 70 years. He has admitted that he

alongwith Laxman and Yadu and deceased Malhari had gone to Village Kaledhon as it was a market day. He has admitted that they had reached

village Kaledhon at about 4.00 p.m. He has denied the suggestion that they had consumed liquor at village Kaledhon. He has admitted that from

Kaledhon they had gone to village Panchwad in a jeep and had reached the village Panchwad at about 5.00 p.m. He has admitted that Laxman

and Yadu had stayed at village Panchwad and therefore, Arjun and deceased Malhari started going towards village Katharewadi. He has admitted

that the distance between village Panchwad and village Katharewadi is about 2 km. He has admitted that he had seen Accused No. 2 Subhash

driving a tractor from a distance of about 100 feet.

He has denied the suggestion that either he or deceased Malhari had taunted Subhash when they saw Subhash driving the tractor. He has admitted

that the incident of assault took place between 8.15 to 8.30 p.m. He has admitted that he had seen 8 accused going towards Panchwad at about

7.00 to 7.15 p.m. He has been admitted in the cross-examination that all the accused came together and each accused was armed with some

weapons that is iron rod, stick or stone. He has admitted that he alongwith others was sitting in the open ground outside the shed. He has admitted

that accused Subhash had dealt two stick blows while accused Hindurao had dealt one or two blows by an iron bar. He has admitted that he was

assaulted by the accused by fists and kicks. He has admitted that he had not sustained any injury. He has admitted that he had not got himself

medically examined. He has admitted that Dhondabai was assaulted by the accused by stick, stone as well as fists. Admission is elicited that

Sarjerao and Nanaso were also assaulted by the accused by stones and fists. He has admitted that apart from PW-2 Jijaba, none else had come

to the scene of the incident. Omission is elicited that he had not stated in his previous statement that his father had also come to the scene of the

incident and had intervened. He has admitted that he had gone to Mayani Outpost for lodging a report but the police had asked him to first go to

the hospital. He has also denied the suggestion that the deceased alongwith others had gone to the house of accused Subhash and had assaulted

him and thereafter, in the scuffle, had fallen on the ground and had sustained the injuries.

12. Prosecution has examined PW-6 Nanaso, son of deceased who deposes that on the day of the incident, he had returned at about 5.30 p.m.

from the Sahyadri Sakhar Karkhana. He deposes that he was accompanied by his brother PW-9 Sarjerao. PW-1 Dhondabai informed him that

deceased Malhari and PW-5 Arjun had gone to Vaduj Court for attending the case. Deceased Malhari and Arjun returned at about 6.30 to 7.00

p.m. Arjun informed Nanaso that Accused No. 2 Subhash had slapped deceased Malhari. Nanaso and others including Malhari and Arjun sat for

about 1 hour in front of the shed. Malhari had also disclosed that Accused No. 2 Subhash had slapped him. Nanaso then deposes that thereafter,

they went to their house and returned again to sit in front of the shed. PW-6 Nanaso, PW-9 Sarjerao, PW-1 Dhondabai, PW-5 Arjun and

deceased Malhari were sitting in front of the shed chit chatting. Malhari informed them that about 8 persons had gone towards the village. At about

8.30 p.m. 9 persons that is the accused came in front of the shed. Accused No. 1 Hindurao was armed with an iron bar while Accused No. 2

Subhash was armed with a stick. The other accused were holding stones in their hands. Accused No. 2 Subhash questioned Malhari as to why he

had become arrogant and dealt a blow of stick on the head of Malhari. Accused No. 1 Hindurao thereafter inflicted a blow of iron bar on the head

of Malhari. Malhari sustained bleeding injured on his head. Nanaso and others therefore questioned the accused as to why they were beating them.

The accused thereafter assaulted others also. Accused Suresh and Prakash assaulted Nanaso by stone and fists. PW-6 Nanaso sustained fracture

to his right knee and an injury on his left elbow. The assailants thereafter fled from the scene of the incident. Malhari was then taken to the Mayani

Hospital and on medical advice was shifted to Vaduj. Malhari was thereafter shifted to Satara. Nanaso was also medically treated at Satara.

13. In cross-examination he has admitted that he was owning a tractor since 1994. He has admitted that he and PW-9 Sarjerao used it for

transportation of sugarcane to Sahyadri Sakhar Karkhana. He has further admitted that at the time of the incident the crushing period of sugar-cane

was over and therefore. Nanaso was present in the house. He has admitted that the Civil Suit against Malhari and uncle of Nanaso had been filed

because the houses were on encroached land. He has also admitted that the Civil Suit was pending for the last 8 to 9 years. An omission has been

elicited that he had not stated in his previous statement that PW-5 Arjun had informed him that Accused No. 2 Subhash had slapped deceased

Malhari. Nanaso has admitted that he had not gone to the house of Accused Subhash to question him as to why he had slapped Malhari. Nanaso

has also admitted that no one else had gone to the house of Subhash to inquire about the incident. An omission has been elicited that he had not

stated in his previous statement that Malhari had informed him that 8 persons had gone towards the side of the village. He has denied the

suggestion that the Police at Satara had recorded the statement of Sarjerao. He has denied the suggestion that deceased Malhari accompanied by

others had gone to the house of accused Subhash and had assaulted him. He has also denied the suggestion that in the scuffle Malhari fell on the

stony ground and sustained injuries. He has denied the suggestion that even the other prosecution witnesses sustained injuries in similar manner.

14. Prosecution has examined PW-9 Sarjerao, son of deceased Malhari. Sarjerao deposes that on the day of the incident he alongwith PW-6

Nanaso and PW-1 Dhondabai was sitting in front of the shed. Dhondabai had informed him that deceased Malhari accompanied by Arjun had

gone to Vaduj for attending the court case. He further deposes that Malhari and Arjun reached the village at about 7.00 p.m. By that time PW-6

Nanaso had already arrived. Malhari and others were then chit chatting sitting in front of the shed. At that time, Sarjerao noticed 8 persons going

from village Katharewadi towards village Panchwad. According to him, except Accused No. 2 Subhash, all other accused were proceeding

towards Panchwad. Arjun had disclosed that Accused No. 2 Subhash had slapped Malhari. Suddenly all the accused came near them by breaking

the shed for removing the sticks. Accused Subhash questioned Malhari as to why he had become arrogant and dealt a blow of stick on the head of

Malhari. According to Sarjerao, he intervened and thereafter, Accused No. 1 Hindurao dealt a blow of iron bar on the head of Malhari. Accused

Prakash then assaulted Sarjerao by a stick. The other accused were assaulting Dhondabai and Nanaso with sticks and stones. PW-5 Arjun, PW-

2 Jijaba and one Dada Kathare intervened in the quarrel. Thereafter, the accused fled from the scene of the incident. A jeep was brought and

injured Malhari and the other injured were first taken to the Government Hospital at Mayani and from there to the Vaduj Hospital. The Medical

Officer at Vaduj advised that Malhari be shifted to Satara. Accordingly, Malhari was shifted to Satara. The injuries sustained by Sarjerao were

treated at the hospital at Mayani. Arjun and Jijaba then went for lodging a report. Sarjerao further deposes that the Medical Officer at Satara

pronounced Malhari as dead and signature of Sarjerao was obtained on a blank paper.

15. In cross-examination he has admitted that the shed is constructed of bamboos. He has admitted that on the day of the incident he had reached

his village at about 5.00 p.m. after finishing his work at Sugar Factory. He has admitted that he and PW-6 Nanaso had reached home together. He

has admitted that he does not know if Laxman Kathare and Dada Kathare had compromised the Civil Suit pending against Malhari. He has denied

the suggestion that at the time of the incident. PW-5 Arjun and deceased Malhari were under influence of liquor. He has denied the suggestion that

they had gone to the house of accused Subhash and had assaulted him. He has denied the suggestion that in the scuffle Malhari fell on the stone

and sustained the injuries. He has denied the suggestion that in the scuffle the other prosecution witnesses also sustained injuries. He has admitted

that he does not know if accused Suresh had sustained a bleeding injury on his head. He was showed his statement and he identified his signature

which was marked as Exhibit 116. He has denied that a statement was recorded by Police Head Constable Jadhav. He was asked question if he

had stated to Police Head Constable Jadhav that Malhari had informed them that Accused No. 2 Subhash had slapped Malhari. He has denied the

said suggestion. He has also denied that he had stated to Police Head Constable Jadhav that thereafter Malhari and others went to the house of

Subhash and Subhash started assaulting Malhari by a stick. He has denied the suggestion that when Sarjerao and others intervened, they too were

assaulted. He has denied the suggestion that Malhari had sustained injury to his head. He has denied the suggestion that he had stated to Police

Head Constable Jadhav that Sarjerao and his brother Nanaso had taken Malhari in a private vehicle to Mayani and thereafter to Vaduj. He has

denied the suggestion that he had stated to Police Head Constable Jadhav that Malhari was shifted to Satara on medical advice. He has admitted

that the distance between the house of Malhari and the house of Accused No. 2 Subhash is about 100 to 150 feet.

16. At this juncture we may state that the previous statement of PW-9 Sarjerao which is alleged to have been recorded by Police Head Constable

Jadhav was not properly put in the cross-examination. The witness was not confronted with the portions from his previous statement recorded by

Head Constable Jadhav. Suggestions were only asked if he had stated to Head Constable Jadhav without the portions being actually confronted to

the witness.

17. Accused has examined DW-2 Police Head Constable Jadhav who deposes that he was attached to the Satara City Police Station as a Head

Constable and was on duty at the Civil Hospital at Satara on 3.4.2007 and 4.4.2007. He admits that he was informed on 4.4.2007 at about 4.00

a.m. about the admission of Malhari with injuries. According to him the intimation is at Exhibit 134. He was subsequently informed at 4.45 a.m.

that injured Malhari had succumbed to his injuries by communication at Exhibit 135. He had accordingly drawn the inquest panchnama at Exhibit

37 and had referred the dead body for postmortem examination under requisition at Exhibit 136. He further deposes that after completion of the

postmortem examination, Constable Kulkarni had submitted a report alongwith a receipt at Exhibit 115 regarding handing over of the dead body

of Malhari to his son. DW-2 Police Head Constable Jadhav further deposes that he recorded the statement of PW-9 Sarjerao and after the

statement was read over to Sarjerao. signature of Sarjerao was obtained on the said statement. DW-2 Police Head Constable Jadhav further

deposes that he forwarded the statement to Satara City Police Station alongwith other documents. He has admitted his signature on the statement.

The learned Trial Judge exhibited the said statement at Exhibit 138.

18. In our opinion the entire statement of Sarjerao which was recorded by Police Head Constable Jadhav could not have been exhibited though it

was a statement signed by PW-9 Sarjerao. The said statement does not constitute any substantive evidence and at the most it could be used for

contradicting maker. As pointed out by us above, PW-9 Sarjerao was not contradicted with the portions from the said statement. The

contradicted portions obviously therefore have not been proved by DW-2 Police Head Constable Jadhav. The entire statement of PW-9 Sarjerao

could not have been exhibited. A report in respect of the incident had already been lodged at the Vaduj Police Station and therefore, the statement

of Sarjerao recorded by DW-2 Head Constable Jadhav would be a statement under Section 162 of the Code of Criminal Procedure. It could at

the most have been used to contradict Sarjerao but unfortunately, in the cross-examination, Sarjerao was not contradicted with the contents of the

said statement and only suggestions were given to Sarjerao whether he had stated to Head Constable Jadhav the suggestions which were put to

Sarjerao. Be that as it may, in our opinion, in the light of the said statement and in the light of the cross-examination, no reliance at all can be placed

on the testimony of PW-9 Sarjerao which will have to be left out of consideration while appreciating the evidence against the accused.

19. Prosecution has examined PW-8 Dr. Kasbe, who in cross-examination has admitted that Injury No. 2 that is where he had noticed both the

eyes black with swelling was an injury consequent to Injury No. 1. In other words, Injury No. 2 that is the black eyes were not an independent

injury. Thus, deceased Malhari had only sustained 2 injuries that is (1) contused lacerated wound on the scalp and (2) abrasion on right elbow.

According to the prosecution witnesses, both Accused No. 2 Subhas and Accused No. 1 Hindurao had assaulted deceased Malhari on his head

with stick and iron rod respectively. We further find that the Medical Officer has not opined that at the situs of Injury No. 1 multiple blows had

been given.

20. Mr. Niteen Pradhan, learned Counsel for the Appellants has urged before us that the learned Trial Court has erred in placing reliance on the

eye witnesses and according to the learned Counsel for the Appellants, no reliance could have been placed on the testimony of PW-2 Jijaba as (1)

this witness does not depose about the existence of any illumination at the scene of the incident; (2) the medical evidence contradicts his version

that both Accused No. 2 Subhas and Accused No. 1 Hindurao had assaulted deceased Malhari; and (3) this witness gives no explanation about

the alcohol which was found in the stomach contents of the deceased. The learned APP has opposed the said submission. Similar arguments are

advanced in respect of PW-1 Dhondabai, PW-5 Arjun, PW-6 Nanaso. In addition it is urged before us that PW-5 Arjun has not referred to any

injury being sustained by Accused No. 4. The learned APP has supported the findings arrived at by the Trial Court.

21. According to the prosecution witnesses, the incident had occurred at about 8.30 p.m. The prosecution witnesses were sitting outside the shed

and were chit chatting and possibly discussing about the events of the date particularly about 2 of the plaintiffs withdrawing themselves from the

Civil Suit which had been filed against Malhari. The accused are all residents of the same village. The accused had come near the prosecution

witnesses especially with intent at assaulting deceased Malhari. In such circumstances, even if it is assumed that there was no illumination in the

nature of an electric bulb at the scene of the incident, the witnesses would not be hampered in identifying the accused. All the prosecution witnesses

had categorically stated about Accused No. 2 Subhash initially questioning Malhar whether he had become arrogant. The prosecution witnesses

have also identified the other accused who had assaulted them. In such circumstances, since the accused were resident of the same village and had

assaulted the prosecution witnesses, failure to refer to the existence of any electric bulb at the scene of the incident or any illumination would not

affect the identity of the assailants. In our opinion therefore, even if it is presumed that no electric bulb was available at the scene of the incident, the

identification of the accused is not affected.

It is true that all the prosecution witnesses have claimed that initially Accused No. 2 Subhash dealt a stick blow on the head of Malhari and

thereafter, Accused No. 1 Hindurao dealt a blow of an iron rod. It is equally true that this aspect of the prosecution evidence is not corroborated

by the medical evidence as only one injury is found on the head of deceased Malhari and the second injury is an abrasion on the right elbow. Thus,

it can be said that only one blow had been given to Malhari on his head. The witnesses have certainly exaggerated the assault on deceased

Malhari. This cannot however be made a foundation for jettisoning the evidence of the witnesses.

We do not find any significance in the witnesses not referring to deceased Malhari consuming alcohol in their presence. Failure of PW-5 Arjun to

refer to deceased Malhari consuming alcohol, in our opinion, would not materially affect the prosecution case. Accused No. 4 Suresh had

sustained injuries and this is referred to by the Medical Officer. The injuries sustained by Accused No. 4 Suresh are contused lacerated wound 1

1/2" x 1/8" x 1/8" on the scalp caused by hard and blunt object and an abrasion 1" x 1/8" on the medial aspect over right arm with redness. Both

the injuries have been described in the injury certificate at Exhibit 104 as simple injuries. These injuries are possible when a large group of accused

are indiscriminately assaulting the victims and such an injury can be accidentally caused by the other accused wielding a stick. In any event, the

injuries sustained by Accused No. 4 are simple injuries and on that count it cannot be held that the prosecution witnesses have suppressed the

genesis of the incident and therefore, the testimony of the witnesses could be discarded.

22. The accused have filed their written statement under Section 313 of the Code of Criminal Procedure. Accused No. 1 Hindurao and Accused

No. 8 Rajaram have filed their written statement at Exhibit 123. According to these 2 accused, on the day of the incident and at the time of the

incident they had gone to attend some religious function at Kaledhon and were watching some entertainment program there. He has also denied

that he had discovered any weapons. A further defence is taken that on account of dispute over the threshers, the prosecution witnesses have falsely

implicated these accused.

Accused Nos. 2, 4 and 7 have submitted their written statement at Exhibit 124. In the said written statement it is stated that on 3.4.2007 at about

8.30 p.m. till 9.00 p.m. they had not met deceased Malhari. It is also stated that they do not know to drive tractor. This appears to be a specific

defence of Accused No. 2 Subhash. It is also denied that Accused No. 2 Subhash had slapped deceased Malhari. It is the further defence of the

accused that on 3.4.2007 that Accused No. 4 Subhash had come to the house of Accused No. 2 Subhash and they were chit chatting there. At

about 9.00 p.m. deceased Malhari, his wife and others came to the house of Accused No. 2 Subhash. They had consumed liquor and deceased

Malhari was armed with a stick. The complainant party abused the accused by saying that they would see as to how the accused drive them from

their houses. Malhari is also alleged to have stated that he had managed the Civil Suit. The complainant party suddenly started assaulting the

accused and Suresh, who had intervened, received a blow on his head. According to Subhash, he and Accused No. 4 Suresh extricated

themselves from the clutches of the accused and then ran away. During that scuffle. Malhari and his sons fell on the stony ground. Even PW-1

Dhondabai fell on the stony ground. Malhari had sustained injury to his head and Subhash learnt on the next day that Malhari had succumbed to

the injuries. It is denied that the accused had assaulted deceased Malhari or the other prosecution witnesses. Subhash claims that he had sustained

minor injuries and therefore, had not lodged a report.

Accused Nos. 3, 5, 6 and 9 have also filed their written statements at Exhibit 125. In the said written statement it is contended by the accused that

they had gone to attend some religious function and therefore, were not present in the village at the time of the incident.

23. Accused No. 2 Subhash has examined himself as defence witness. Accused No. 2 Subhash deposes that 5 to 6 villagers had filed Regular

Civil Suit No. 245 of 1999 in the Court at Vaduj for removal of the encroachment by deceased Malhari and his brother Dada Daji Kathare.

Subhash claims that he was not a member of the Group Grampanchayat, Panchwad. He has admitted that he was a member between 2000 and

2005 and that his evidence was recorded in the Civil Suit in 2005. He claims that he does not know to drive a tractor. He further claims that one

Dilip Utugade had purchased a tractor by taking loan in the name of father of Accused No. 2 Subhash. Subhash claims that he has about 5 to 6

acres agricultural land and in the morning of 3.4.2007 he had gone to his field and had worked there till sun set. After returning home he had taken

his dinner. Accused No. 4 Suresh had come to his house at about 8.00 p.m. and both of them were chit chatting. At about 8.30 p.m. or 9.00 p.m.

they heard some altercations and therefore Subhash came out of his house followed by Accused Suresh. They noticed deceased Malhari, his wife

and children were abusing them and questioned them as to how they would remove their houses. The complainant party further threatened that

they would set the suit on fire and thereafter, started assaulting Subhash. Deceased Malhari was armed with a stick. Accused No. 4 Suresh

intervened to rescue Subhash and in that process sustained a stick blow on his head. There was a scuffle and Subhash ran away. The assailants

chased him and deceased Malhari fell on his head while the other assailants also fell on the ground. The assailants were under influence of liquor.

Subhash and Suresh went to his field and thereafter, a towel was tied around the head of Subhash. According to Subhash since he had sustained

minor injuries and since the assailants were intoxicated, he did not lodge any report at the Police Station. On the next day, he learnt that Malhari

had succumbed to his injuries.

In cross-examination on behalf of the APP, he has admitted that the registration number of the tractor purchased on a loan in the name of father of

Subhash is MH-11/G-4972.

24. The defence of Accused No. 2 Subhash that the complainant party under intoxication had attacked him and had assaulted him as well as

Accused No. 4 Suresh appears to us to be a figment of imagination of this witness. The defence put forth by Accused No. 2 Subhash, in our

opinion, is a false defence. It is difficult to believe that deceased Malhari as well as all the other prosecution witnesses tripped and fell on the stony

surface while chasing Accused No. 2 Subhash and Accused No. 4 Suresh, who managed to flee to their field without having tripped or fallen on

the ground. It is equally difficult to believe that someone else had purchased a tractor in the name of father of Accused No. 2 Subhash, particularly

on loan being taken by father of Accused No. 2 Subhash. It is therefore apparent to us that a tractor had been purchased on loan by father of

Subhash and if that be so, it is equally difficult to believe that Accused No. 2 Subhash did not know to drive a tractor. The evidence of PW-5

Arjun that they had seen Accused No. 2 Subhash driving a tractor and thereafter, Accused No. 2 Subhash after alighting from the tractor had

slapped deceased Malhari is corroborated by the other prosecution witnesses who deposed that this fact was narrated to them by PW-5 Arjun as

well as by deceased Malhari. If indeed Subhash had been assaulted and Accused No. 4 Suresh had sustained injuries on account of assault by the

deceased, a report would have been immediately lodged. It appears that the report had not been lodged and it was only after Malhari had

succumbed to his injuries that a report was lodged. We, therefore, find that the defence of Accused No. 2 Subhash that deceased Malhari and the

other prosecution witnesses had sustained injuries due to fall is a false defence.

25. Mr. Niteen Pradhan, learned Counsel for the Appellants has urged before us that the evidence of the Medical Officer PW-8 Dr. Kasbe rules

out any assault by Accused No. 2 Subhash and the only injury which is attributed to deceased Malhari had been caused by Accused No. 1

Hindurao as alleged by the prosecution witnesses. It is therefore urged before us that since Accused No. 1 Hindurao did not have the intention to

commit murder of deceased Malhari, an offence punishable under Section 304 of the Indian Penal Code that is culpable homicide not amounting to

murder would at the most be proved against Accused No. 1 Hindurao.

26. In support of this proposition, learned Counsel for the Appellants has referred to the Judgment of the Supreme Court in Hemraj v. The State

(Delhi Administration) [1990 (Suppl.) SCC 291 : [2004 ALL MR (Cri) 2807 (S.C.)]. In the said Judgment the Supreme Court found that the

incident had occurred on the spur of the moment and in the heat of the passion and the Appellant and the deceased had suddenly grappled each

other and it was during the course of sudden quarrel that the Appellant had given a single stab which landed on the chest of the deceased causing

an injury which in the opinion of the Medical Officer was sufficient in the ordinary course of nature to cause death. The Supreme Court further

came to the conclusion that in the light of the facts it could not be held that the Appellant had the intention to cause that particular fatal injury and

therefore, convicted him for an offence punishable under Section 304 part II of the Indian Penal Code.

Reliance is also placed on the Judgment of the Supreme Court in Prakash Chand Vs. State of H.P., . In the said case the Supreme Court found

that there was a verbal altercation between the deceased and the accused and thereafter the accused went to his room brought his gun and fired a

gun shot at the deceased from a distance of 35 feet. The Supreme Court therefore came to the conclusion that the case of the accused before it

was covered by the 4th Exception and therefore, convicted the accused under Section 304 part II of the Indian Penal Code.

Reliance is also placed on the Division Bench Judgment of this Court in Suresh Konkani Vs. The State of Maharashtra and Tulshiram Konkani, ,

In the said case the Division Bench came to the conclusion that the case of the accused was covered by the 4th Exception to Section 300 of the

Indian Penal Code as the injuries have been inflicted. As an evidence suggested that in the heat of the moment the Appellant had inflicted the injury

with a yoke which was lying there at the scene of the incident. Reliance is also placed on the Judgment of the Supreme Court in Ramkishan Shelke

Vs. The State of Maharashtra, . In the said case the Supreme Court convicted the accused for offence punishable under Section 304 part I of the

Indian Penal Code as the Supreme Court found that the assault had been made in the course of a sudden quarrel without premeditation and

without the accused taking undue advantage.

Reliance is also placed on the Judgment of the Supreme Court in Vijay Ramkrishan Gaikwad Vs. State of Maharashtra and Another, . In the said

case during a scuffle between the deceased and his brother on one side and the accused and his 4 companions on the other, the accused had

stabbed and grievously injured deceased with a knife. The Supreme Court found that apart from the deceased, the accused/appellant had also

received an injury on his three fingers and since the accused had inflicted the injury in a sudden fight without premeditation and in the heat of

passion, benefit of Exception 4 was given and his conviction was altered from Section 302 to 304 part I of the Indian Penal Code.

Reliance is also placed on the Judgment of the Supreme Court in Chenda @ Chanda Ram Vs. State of Chhatisgarh, . In the said case the Supreme

Court held that since the scuffling parties were in motion, that could have blow fell on the head unintentionally and only one blow had been given.

The ratio of the aforesaid Judgments in our opinion is inapplicable to the facts of the present case. In the present case the accused had gone to the

shed of the deceased and the deceased was sitting outside. Accused No. 2 Subhash had questioned the deceased as to why he had become

arrogant. Accused No. 1 Hindurao was armed with an iron bar and with that iron bar he had given a blow on the head of the deceased. The

evidence of the prosecution witnesses does not disclose that Hindurao had intended to give a blow on some other part of the body but either

accidentally or inadvertently the blow of the iron rod fell on the head of the deceased. Thus, blow of an iron rod was an intentional injury and it had

given unintentionally on the head. The injury which was inflicted to the deceased resulted in his death instantaneously and therefore, it can be said

that the injury was sufficient in ordinary course of nature to cause death.

27. The evidence of the prosecution witnesses are discrepant in respect of whether all the accused were armed with any weapons. PW-1

Dhondabai has clearly admitted that Accused No. 2 Subhash had taken a stick which was lying near the shed and assaulted the deceased.

Witnesses are however positive that Accused No. 1 Hindurao had come to the scene of the incident armed with an iron rod. In respect of the

other accused there is a discrepant evidence as to whether all of them armed with either sticks or stones. None of the accused were armed with

any lethal weapons like sword or axe. All the accused had also not participated in assaulting deceased Malhari as the medical evidence clearly

establishes that it was only Accused No. 1 Hindurao who had inflicted injury to deceased Malhari which resulted in his death. In these

circumstances therefore, in our opinion, the common object of the unlawful assembly was not to commit murder of deceased Malhari. It further

appears that Malhari had managed to ensure that 2 of the plaintiffs withdrew themselves from the Suit. While returning home there was an

altercation with Accused No. 2 Subhash and Accused No. 2 Subhash had slapped him. On reaching the shed of deceased Malhari, Accused No.

2 Subhash had immediately questioned Malhari as to whether he had become arrogant. This would certainly indicate that the behaviour of Malhari

either in securing the withdrawal of 2 plaintiffs from the Suit or his behaviour when he met Accused No. 2 Subhash had somehow annoyed

Accused No. 2 Subhash. The dispute that is the Civil Suit was pending since long and the Civil Suit could not be a ground for attacking deceased

Malhari. Common object of the unlawful assembly at the most would be to give a sound thrashing to Malhari as the accused had suspected that

Malhari had become arrogant. The common object of the assembly therefore must be for causing grievous hurt to Malhari and obviously the other

witnesses who were present. Accused No. 1 Hindurao, after Subhash had questioned Malhari, suddenly wielded the iron rod and hit iron rod on

the head of Malhari. The other injury that is the abrasion sustained by Malhari could be as a result of fall also on the ground. Thereafter, all the

other accused, even according to the prosecution witnesses, broke the part of the shed and took sticks and stones and assaulted the prosecution

witnesses. Thus, the common object of the assembly can by no stretch of imagination be said to be to commit murder of deceased Malhari. If that

had been so, all the other accused would have come armed with the weapons and would have also assaulted deceased Malhari. As at that point of

time the accused could not be attributed with the knowledge that Malhari had succumbed immediately on receiving the injury at the hands of

Accused No. 1 Hindurao. As pointed out by us above, the common object of the assembly would be most obviously to cause grievous hurt to

Malhari. The other witnesses were assaulted and grievous injuries like fracture were caused to some of them. We have pointed out in detail the

weapons with which the injuries were caused by the accused. In the present case the 4th Exception obviously would not be applicable as there

was no sudden fight. The complainant party had not provoked the accused and the accused were the aggressor and had gone to the house of

Malhari. The injury was not caused in the heat of passion and/or during the fight and therefore, the benefit of the 4th Exception cannot be given to

Accused No. 1 Hindurao.

28. All the accused have been convicted under Section 302 r/w. 149 of the Indian Penal Code as well as under Section 324 r/w. 149 and 323

r/w. 149 of the Indian Penal Code. We have pointed out above the common object of the unlawful assembly was not to commit murder of

deceased Malhari but the common object of the assembly was to cause hurt to deceased Malhari. Accused No. 1 Hindurao would be alone liable

to be convicted for the offence punishable under Section 302 of the Indian Penal Code as Hindurao had intentionally caused the injury by an iron

rod on the head of deceased Malhari which resulted in death of deceased Malhari. The conviction of the other accused for offence punishable

under Section 302 r/w. 149 of the Indian Penal Code, in our opinion, is unsustainable.

29. Learned Counsel for the Appellants on the basis of the record has pointed out to us that Accused Nos. 1 and 2 have undergone approximately

six years of imprisonment while Accused Nos. 3 to 9 have undergone one year of imprisonment. Resultantly therefore, we partly allow this Appeal.

The conviction of Accused No. 1 Hindurao for offence punishable under Section 302 r/w. 149 of the Indian Penal Code is hereby set aside and

instead Accused No. 1 Hindurao is convicted for offence punishable under Section 302 of the Indian Penal Code maintaining the sentence of

imprisonment and fine as passed by the Trial Court. His conviction and sentence for offence punishable under Section 148 r/w. 149, 324 r/w. 149

and 323 r/w. 149 is maintained.

Conviction and sentence of Accused Nos. 2 to 9 for offence punishable under Section 302 r/w. 149 of the Indian Penal Code is set aside and they

are acquitted of the offence with which they have been convicted. Fine if paid by them for offence punishable under Section 302 r/w. 149 of the

Indian Penal Code be refunded to them. Their conviction and sentence for offence punishable under Section 148 r/w. 149, 324 and 323 r/w. 149

of the Indian Penal Code is hereby maintained. Since Accused No. 2 Subhash is in Jail, he be released forthwith, if not required in any other case.

Bail bonds of Accused Nos. 3 to 9 stand cancelled.