
(2017) 04 BOM CK 0236
In the Bombay High Court
Case No : 23 of 2002

Bhanudas and Ors.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 324, Section 307, Section 323, Section 341 - Acts done by several persons in furtherance

Citation : (2017) 04 BOM CK 0236

Hon'ble Judges : V.L. Achliya

Bench : SINGLE BENCH

Advocate : S.B. Bhapkar, K.N. Lokhande

Judgement

1. This Appeal is directed against the Judgment and Order dated 07/12/2001 passed in Sessions Trial No. 115/1996 delivered by the 1st Ad-hoc Additional Sessions Judge, Parbhani. By the impugned Judgment, the appellants/accused were held guilty of the offence punishable u/s 307 read with section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1,000/- [Rupees One Thousand] and in default to suffer further rigorous imprisonment for one month. Being aggrieved the appellants/accused have preferred this Appeal. 2. Brief facts leading to filing of Appeal are as follows : [a] On 28/02/1996, one Bhaskar Limbaji Jadhav [P.W.1], the Complainant, resident of Pohondul, Taluka Gangakhed, district Parbhani lodged oral complaint alleging therein that on 28/02/1996 at about 5.00 p.m., he went to Gangakhed to meet one Ramprasad Sardar, resident of Gangakhed. While going to Gangakhed, three persons namely Ashok Bhagwanappa Kapse, Prabhakar Baburao Jadhav and Nivrutti Munjabhau Jadhav [P.W.2] were accompanied him. At about 8.15 p.m., when he left the shop of Ramprasad Sardar and passing in front of Kharedi-Vikri Sangh office along with said three persons, the appellants/accused and deceased accused Balasaheb Manikrao

Jadhav met him on the road and started beating him with kicks and fists blows. They were saying that he had hand in the murder of their brother Amruta Jadhav. Accused No. 3 Vishwanath Jadhav assaulted him by means of pen knife on his right hand. Deceased accused Balasaheb Manikrao Jadhav assaulted him by knife over the right side rib. The said three persons, who accompanied him at the time of incident, intervened and separated them and brought him to hospital. [b] Police recorded the statement of complainant while he was lying admitted in the hospital. On the basis of the complaint lodged by complainant, offence u/s 307 read with section 34 of the Indian Penal Code came to be registered against the accused vide Crime No. 47/1996 with police station Gangakhed. Police Inspector Mr. Choudhari [P.W. 6] conducted the investigation. During the course of investigation, he seized the clothes of the complainant stained with blood and drawn the spot panchanama. On 29/02/1996, the appellants/accused Bhanudas and Shripati were arrested and their clothes were seized. Accused No. 3 Vishwanath Jadhav was arrested on 22/05/1996. Pursuant to memorandum statement recorded u/s 27 of the Indian Evidence Act, recovery of pen knife was made at the instance of appellant/accused Vishwanath. On conclusion of the investigation, the charge sheet was prepared and filed in the Court of the Judicial Magistrate First Class, Gangakhed to prosecute the accused u/s 307 read with section 34 of the Indian Penal Code. [c] In due course, the case was committed to the court of Sessions. Deceased accused No. 1 Balasaheb died before framing of charge. Charge u/s 307 read with section 34 of the Indian Penal Code was framed against the appellants. All of them pleaded not guilty and claimed to be tried. In order to prove its case, prosecution has examined eight witnesses. From the cross examination of the witnesses and the statements of accused recorded u/s 313 of the Code of Criminal Procedure, the defence of the accused appears to be of total denial and false implication at the instance of the complainant. [d] On conclusion of the trial, learned Additional Sessions Judge has convicted the appellants for committing offence punishable u/s 307 read with 34 of the Indian Penal Code and awarded the sentence as stated above. Being aggrieved, the appellants/accused have preferred this Appeal. 3. I have heard the submissions advanced at length by the learned counsel for the appellants and learned A.P.P. for the State and further carefully perused the record and proceedings. 4. Mr. Bhapkar, learned counsel for the appellants/accused assailed the reasons and findings recorded by the trial Court with contention that the Judgment and Order passed by the trial Court is perverse and based upon improper appreciation of evidence. He submitted that on the face of record, no offence u/s 307 read with 34 of the Indian Penal Code made out against the appellants/accused. He has contended that the trial Court has failed to appreciate that the incident was occurred at about 8.15 p.m. on main road with number of shops located on both the sides of road. As per facts deposed by P.W. 1, number of persons gathered on spot. However, no independent witness was examined to corroborate the testimony of the complainant and conviction is based upon the testimony of interested witnesses. It is pointed out that the prosecution has examined Bhaskar Jadhav [P.W.1], the complainant and Nivrutti Jadhav [P.W.2] as

witnesses to the incident. Both the witnesses are interested witnesses. By referring the testimony of said witnesses, learned counsel submitted that their testimony inspires no confidence. By referring the injury certificate, learned counsel argued that the complainant has deposed that the deceased accused Balasaheb assaulted him by knife over the ribs. He has deposed that appellant No. 3 Vishwanath assaulted him with pen knife over the wrist joint. As per report of medical examination, same found to be simple and minor injury. He submitted that by no stretch of imagination, it can be gathered that the complainant was assaulted with an intention to kill him. It is pointed out that as per the case of the prosecution, the weapon used in the commission of the offence alleged to be pen knife. The incident was occurred all of a sudden. There is no evidence to infer that the assault was premeditated. Therefore, it can be inferred that the complainant was assaulted by accused by acting in furtherance of common intention and that too with intention to commit the murder of the complainant. In the light of the evidence on record, learned counsel submitted that the prosecution has utterly failed to prove its case beyond reasonable doubt and acquit the appellants/accused. 5. On the other hand, learned A.P.P. has supported the judgment and Order passed by the trial Court. He submitted that the evidence as adduced by prosecution is sufficient to draw conclusion that the complainant was assaulted by accused in furtherance of their common intention to kill him. He, therefore, submitted that intention of the accused to kill the complainant can be gathered from the fact that the complainant was assaulted by knife over the chest. He has contended that the Judgment and order passed by trial Court is fully in consonance with evidence on record and there is no perversity in the Judgment and order passed by trial Court so as to call interference in exercise of appellate jurisdiction. 6. In order to appreciate the submissions advanced, I have carefully perused the evidence as adduced by the prosecution. In order to prove its case, the prosecution has examined eight witnesses. The prosecution has examined Bhaskar Limbaji Jadhav [P.W.1], the complainant vide Exh. 29/30. In order to corroborate the testimony of the complainant, the prosecution has examined Nivrutti Limbaji Jadhav [P.W.2] as a witness to the incident. Beside said two witnesses, the prosecution has examined Dr. Sidharth Pandurang Bhalerao [P.W. 3], the Medical Officer attached to the Primary Health Centre, Gangakhed who examined the complainant and issued injury certificate vide Exh. 33. Beside said witness, the prosecution has examined Satwa Musale [P.W.4], the witness to arrest panchanama at Exh. 37. The prosecution has examined Rohidas Shankarrao Bhalerao [P.W.5] as a panch witness in respect of memorandum statement recorded and recovery made at the instance of accused No. 3 Vishwanath. Besides this, prosecution has examined Police Inspector Mr. Shivaji Choudhari [P.W.6], who conducted investigation and filed charge sheet. Prosecution has examined Laxman Dhondiba Mundhe [P.W.7] to prove the seizure of cloths of the complainant. Prosecution has lastly examined P.S.I. Mr. Dhondiram Padol [P.W.8], who recorded the complaint of the complainant and registered the offence. 7. If we consider the over-all case of prosecution and evidence adduced in the case, then Bhaskar

Jadhav [P.W.1], Nivrutti Jadhav [P.W.2] and Dr. Sidharth Bhalerao [P.W.3] are important witnesses examined by the prosecution. Prosecution has examined Bhaskar Jadhav, the complainant as P.W. 1. He deposed that on the date of incident i.e. 28/02/1996, he along with Ashok Bhagwanappa Kapse, Prabhakar Baburao Jadhav and Nivrutti Munjabhau Jadhav [P.W.2] had come to Gangakhed. They reached Gangakhed at about 5.00 p.m. After reaching Gangakhed, he went to shop of Ramprasad Sarda for his private work. Other three persons accompanied with him went to Gangakhed market for purchasing household articles. After finishing their work, said three persons came to the shop of Ramprasad Sarda. From shop of Ramprasad Sarda, they started to go to their village. At about 8.15 p.m., when they were proceeding on road and reached near Kharedi-Vikri Sangh office, deceased accused Balasaheb, the appellant Bhanudas [accused No. 1], appellant Shripati [accused No. 2] and Vishwanath [accused No. 3] found to be present near said office. At that time, appellant/accused Vishwanath told him that he was directly involved in the murder of his brother Amruta. Thereafter, the accused started to beat him with fists and kicks blows. Thereafter, accused No. 3 Vishwanath took out pen knife and assaulted him twice over his left hand wrist, which caused bleeding injury to his left hand wrist. He further deposed that the deceased accused Balasaheb assaulted him by means of pen knife over the right side back [i.e. bargadi]. Due to assault, he sustained bleeding injury. The persons accompanied him namely Ashok, Prabhakar and Nivrutti intervened and separated them. The accused ran away towards State Bank of Hyderabad. His friends Ashok, Prabhakar and Nivrutti [P.W.2] brought him to the Govt. hospital, Gangakhed where he was examined by the Doctor. Lateron, police visited the hospital and recorded his statement vide Exh. 30. He further deposed that due to assault and the bleeding injury sustained in that incident, his clothes were stained with blood. 8. In the cross examination, the witness has admitted that murder of Amruta, the brother of appellants/accused Bhanudas, Vishwanath and deceased accused Balasaheb, had taken place on 07/11/1995. In that case ten persons were made accused and those ten persons includes himself and his brother Damodhar. He further admitted that in the year 1994, deceased accused Balasaheb and one Bhalerao had taken lease of extraction of sand and during that period he was the Sarpanch of village Pohondul. He has denied the suggestion that during that period, he insisted for payment of tax on each truck of sand and deceased Balasaheb declined to pay tax and on that count, he and his brother Damodhar assaulted Balasaheb with iron rod. However, he has admitted that criminal case was registered against him and his brother Damodhar on account of said incident and later-on both of them were acquitted in that case. He denied the suggestion that 15 to 20 days after said incident, he along with his associates made attack on the house of appellant/accused Vishwanath. However, he has admitted that criminal case for committing offence u/s 324 and 394 of the Indian Penal Code was initiated against him and ten other persons in the court of Gangakhed. He admitted that in that case it has been alleged that he along with 10 persons made attack on Vishwanath [accused No. 3]. He has admitted that immediately

10 to 15 days after said incident, the murder of Amruta had taken place on 07/11/1995, in which he along with his brother are shown as accused and case is pending in the Sessions Court. He further admitted that after the murder case of Amruta, he lodged complaint u/s 341 and 323 of the Indian Penal Code in the court of the Judicial Magistrate First Class, Gangakhed against accused Nos. 1 to 3 and deceased Balasaheb. 9. He has deposed he has not visited the police station after the incident. He admitted that the road which passes in front of Sarda Electricals goes towards police station Gangakhed and distance between Sarda Electricals and Gangakhed police station is about 1000 feet. He admitted that the Govt. hospital, Gangakhed is on same road and distance between police station, Gangakhed and Govt. hospital is same as that of the distance between the police station and Sarda Electrical. He has denied the suggestion that while going to Govt. hospital, one has to pass in front of the police station. 10. In cross examination, P.W. 1 has deposed that on the day of incident they came to Gangakhed in jeep but unable to tell the name of person to whom the jeep was belonging and the names of passengers travelling in that jeep. In further cross examination, he deposed that when accused were assaulting him, he raised shouts and the persons passing from road and nearby locality gathered there. He admitted that shops in Gangakhed remains open till 9.00 p.m. He deposed that he along with said three persons left the shop of Sarda for going to their village by jeep. After leaving the shop of Sarda, he found the accused persons at a distance of about 100 feet. 11. In order to corroborate the testimony of P.W.1, prosecution has examined Nivrutti Jadhav [P.W.2], whose testimony is at Exh. 31. He deposed that on the day of incident, he along with Bhaskar [P.W. 1] and two other persons came to Gangakhed at about 5.00 p.m. and from village Pohondul to Gangakhed they came by S.T. bus. At about 8.00 to 8.15 p.m., he along with Ashok and Prabhakar went to the shop of Sarda and met Bhaskar who was present in that shop. From said shop, they started to proceed to their village. When they reached near Kharedi-Vikri Sangh office, deceased accused Balasaheb and the appellants/accused came there. The accused and deceased accused Balasaheb beaten Bhaskar by means of kicks and fists blows. Thereafter, accused No. 3 Vishwanath assaulted Bhaskar [P.W.1] and deceased Balasaheb assaulted Bhaskar by knife on his back side. They separated the quarrel and later-on admitted Bhaskar in the hospital. 12. In cross examination, the witness has deposed that individually they purchased tickets for travelling in S.T. bus from their village to Gangakhed. He further deposed that they all got down from S.T. bus at Gangakhed bus stand. From bus stand they went to Mondha i.e. market and thereafter came to the shop of Sarda. He further deposed that after they left the shop of Sarda, they stopped on road for about 45 minutes. From the shop of Sarda, they saw accused who were standing at a distance of about 10 to 15 feet from shop of Sarda. He admitted that Bhaskar [P.W.1] is his cousin. 13. Thus, if we consider the testimony of P.W. 1 and P.W. 2, then it can not be disputed that they are closely related with each other and cousin brother. It is also not in dispute that the complainant and accused were on cross terms with each other and there were number of cases and counter cases registered against

them. It is also not in dispute that Bhaskar [P.W.1], the complainant was facing prosecution of causing murder of brother of the appellant/accused and deceased Balasaheb and said incident was occurred few days prior to the incident. In this back-ground, it is expected that court should be very careful while placing reliance on testimony of such interested witnesses. 14. In the light of over-all testimony of P.W. 1 and P.W. 2, the witnesses to the incident, their testimony can not be relied and corroborated on material particulars through independent evidence. In the instant case, no independent witness has been examined by the prosecution. It has been brought through the testimony of P.W. 1 that the incident was occurred on busy road and number of persons from the vicinity gathered on the spot and witnessed the incident. It is also brought on record that the incident was occurred on main road and that too in market area. It is also brought on record that the incident was occurred at a short distance from the shop of Shri. Sarda. Although the independent witnesses were available, no attempt was made to examine them. Thus, there is no independent witness to corroborate testimony of P.W. 1 and P.W.2. 15. If we consider the testimony of P.W.2, then it raises a serious doubt as to very presence of P.W. 2 on the spot of incident. There is no consistency in the testimony of P.W. 1 and P.W. 2. It is pertinent to note that P.W. 1 has deposed that on the fateful day of the incident, he along with Nivrutti [P.W.2] and two other persons came to Gangakhed in a private jeep. He has further deposed that at the relevant time of the incident, they started from the shop of Sarda to return to their village by jeep. In contrast to the testimony of P.W.1, P.W. 2 has deposed that on the fateful day of the incident, all of them came to Gangakhed in S.T. bus and they got down from S.T. bus stand at Gangakhed and from bus stand they went to Mondha i.e. market yard. P.W. 1 has deposed that he saw the accused persons at a distance of 100 feet from the shop of Sarda. Whereas, P.W. 2 has deposed that he saw the accused persons at a distance of 10 to 15 feet from the shop of Sarda. P.W. 1 has deposed that after the said three persons came to the shop of Sarda, they proceeded to go to their village. Whereas, P.W. 2 has deposed that after leaving the shop of Sarda, they stopped for about 45 minutes on the road. Thus, there is no consistency amongst the testimony of P.W. 1 and P.W. 2. The variance between the testimony of P.W. 1 and P.W. 2 on material facts relating to incident raises serious doubt as to presence of P.W. 2 on the spot of incident. Possibility of he being made witness at the instance of P.W.1, can not be ruled out in the facts and circumstances of the case. P.W. 1 has deposed that he has sustained bleeding injury and his clothes were stained with blood. P.W. 2 has deposed that he had taken P.W. 2 to Rural hospital in school rickshaw. The clothes of P.W. 2 were not seized during the course of investigation. In this view, no reliance can be placed on the oral testimony of P.W. 2 as a corroboration to the testimony of P.W. 1. 16. If we discard the oral testimony of P.W. 2, then it remain the testimony of P.W. 1 and evidence in the nature of injury report and seizure of weapon used in commission of offence. I have already discussed in foregoing paragraphs that it has been brought through the cross examination of P.W. 1 that there were cases and counter cases registered in between accused and

complainant. The murder of Amruta, real brother of appellants/accused Bhanudas, Vishwanath and deceased accused Balasaheb had taken place few months prior to the incident. In said case, the complainant [P.W.1] and his brother were made accused with others. It has also come on record that on account of beating to deceased accused Balasaheb, one case was registered against the complainant and his brother. It has also come on record that about 15 - 20 days before the incident, the complainant had made attack on - appellant/accused No. 3 Vishwanath and criminal case u/s 324, 392 of the Indian Penal Code was initiated against the complainant and other persons in the court at Gangakhed. Immediately thereafter the incident relating to murder of Amruta had taken place. In this back-ground, I am of the view that it is highly unsafe to place reliance on the sole testimony of such witness to sustain the conviction. No reason has been put-forth by prosecution as to why the statement of independent persons were not recorded though the incident was occurred at a busy road surrounded with number of shops and people have gathered to witness the incident. In this view, it is to be seen whether there is any other evidence to corroborate the testimony of Bhaskar [P.W.1]. Learned A.P.P. has contended that the testimony of P.W. 1 finds due corroboration through medical report of examination of P.W. 1 and recovery of knife at the instance of accused No. 3 and deceased Balasaheb. 17. If we consider the testimony of Dr. Sidharth Bhalerao [P.W.3], the Medical Officer, who examined Bhaskar [P.W.1] on 28/02/1996 at 8.40 p.m., then according to him, following injuries were found to the body of Bhaskar [P.W.1] : [i] Stab injury over chest right axillary area. [ii] Incised injury over left fore-arm. [iii] Incised injury on left fore-arm. He deposed that injury No. [ii] and [iii] were simple injuries and caused by sharp cutting object. So far as injury No. [i] is concerned, the witness has deposed that injury was grievous one and caused by sharp cutting object. He further deposed that injury No. [i] alone was sufficient to cause death of person if proper treatment is not made available to such person within time. In cross examination, he has admitted that the weapons - articles 4 and 5 were not shown to him before recording his evidence. He admitted that edges of weapon - article No. 4 is sharp on one side and relatively blunt on other side. He denied the suggestion that if the edge of one side is sharp and other is blunt, the margins of injury would not be clear-cut margins. He denied the suggestion that injury No. [i] was simple in nature and same was not sufficient to cause danger to human life even if no treatment was provided to such person. 18. If we consider the testimony of P.W. 3 and injury certificate which is at Exh. 33, then as per P.W. 3, injury No. [i] found to be only grievous injury caused to Bhaskar [P.W.1] and injury Nos. [ii] and [iii] were found to be simple injuries and not sufficient to cause death of any person. As per testimony of P.W. 3, injury No. [i] is attributed to deceased accused Balasaheb. 19. As per testimony of P.W. 1, appellant/accused Vishwanath assaulted him twice over his left hand wrist. Both the injuries i.e. injury Nos. [ii] and [iii] attributed to accused No. 3 are described as simple injuries. Thus, in the light of evidence on record, at the most, it can be said that accused No. 3 voluntarily caused hurt to the left forearm of the complainant

Bhaskar by means of pen knife. P.W. 3 has admitted that the said injuries were simple in nature and even in absence of medical assistance, it would not have resulted in causing the death of a person. Therefore, in the facts and circumstances of the case, at the most, offence u/s 324 of the Indian Penal Code can said to have been committed on the part of appellant/accused Vishwanath. 20. Although, the prosecution has approached with the case that the accused have acted in furtherance of common intention to assault the complainant, but there is no evidence to infer that accused have acted in furtherance of common intention and attempted to cause the murder of the complainant or assault him. It has come on record through the testimony of P.W. 1 that while they were passing from the road, suddenly they met the accused. On seeing the complainant, appellant/accused Vishwanath said that he has caused the murder of his brother Amruta and then the accused started beating him by means of fists and kicks blows and later-on pen knife was used in the commission of offence by deceased accused Balasaheb and Vishwanath. Therefore, it can be safely inferred that the incident was occurred all of a sudden. There is no evidence to show that the alleged assault was premeditated. Even if it is accepted that pen knife was used in the commission of offence, still no inference can be drawn that the accused intended to assault the complainant with an intention to kill him. Use of pen knife itself sufficient to infer that accused never intended to assault complainant with intention to kill him. Had the accused would have acted with such intention, they would have carried deadly weapons with them and the assault would not have been made on such busy road and that too in public view. In this view, the reasons and findings recorded by the trial court holding that the prosecution has proved its case beyond reasonable doubt are not sustainable in law. Therefore, the conviction of appellants u/s 307 read with section 34 of the Indian Penal Code is not sustainable in law. The reasons and findings recorded by trial Court convicting the appellants for offence u/s 307 read with section 34 of the Indian Penal Code are perverse and not sustainable both on facts and in law. 21. Having reached to the conclusion that the incident was not occurred in furtherance of common intention of accused, it is to be examined as to whether individually appellants/accused are liable for commission of any offence. As discussed, authorship of causing alleged stab injury i.e. injury No. [i] has been attributed to deceased accused Balasaheb. Appellant/accused Vishwanath has been alleged to have caused injury Nos. [i] and [ii] over the right fore-arm of complainant Bhaskar. Other appellants/accused Shripati and Bhanudas are alleged to have assaulted the complainant by means of fists and kicks blows. There is no cogent and convincing evidence to show that the appellants/accused Nos. 1 and 2 Bhanudas and Shripati assaulted the complainant by means of kicks and fists blows. In this view, they deserve to be acquitted. 22. So far as, appellant/accused No. 3 Vishwanath is concerned, in the light of evidence on record at the most it can be held that he had assaulted complainant by means of pen knife and caused simple injury over his left fore-arm. P.W. 1 has categorically deposed that appellant/accused Vishwanath has assaulted him over his right fore-arm by pen knife. Dr. Bhalerao [P.W.3] has corroborated the testimony of P.W. 1.

Prosecution has proved that immediately after the alleged incident, the complainant was taken to Rural hospital. The incident was occurred at about 8.15 p.m. As per the testimony of P.W. 3, the complainant was examined at 8.40 p.m. and aforesaid injuries were noticed on his left fore-arm. Pen knife used in the commission of offence was recovered at the instance of appellant/accused No. 3. Thus, the testimony of P.W. 1 finds due corroboration from the medical evidence i.e. in the form of injury certificate coupled with oral testimony of Dr. Bhalerao [P.W.3] and the recovery of knife. Thus, in the light of the evidence on record, it can be safely stated that the prosecution has proved its case to the extent of proving the assault by means of pen knife by the appellant/accused No. 3 Vishwanath. As observed, the injuries caused by pen knife over the left fore-arm of the complainant were found to be simple in nature. Therefore, in the facts and circumstances of the case, it can be stated that the prosecution has proved its case to the extent of committing offence u/s 324 of the Indian Penal Code, as against appellant/accused Vishwanath. 23. In view of above, the Appeal filed by the appellants/accused deserves to be allowed to the extent of appellants/accused Bhanudas and Shripati and they are liable to be acquitted for committing offence u/s 307 read with section 34 of the Indian Penal Code. So far as Appeal filed by appellant/accused No. 3 Vishwanath is concerned, the Appeal deserves to be partly allowed to the extent of setting aside his conviction u/s 307 of the Indian Penal Code, and he deserves to be convicted for offence u/s 324 of the Indian Penal Code. I am, therefore, inclined to pass the following order. ORDER [1] Criminal Appeal No. 23 of 2002 filed by appellant/accused No. 1 Bhanudas s/o Manikrao Jadhav and appellant/accused No. 2 Shripati s/o Dattarao Jadhav is allowed. The impugned Judgment and Order dated 07/12/2001 passed in Sessions Trial No. 115/1996 delivered by the 1st Ad-hoc Additional Sessions Judge, Parbhani convicting the appellants u/s 307 read with section 34 of the Indian Penal Code is set aside. Both the appellants/accused stand acquitted for the offence u/s 307 read with section 34 of the Indian Penal Code. Fine amount, if deposited, same be refunded to appellants/accused Nos. 1 and 2. [2] Criminal Appeal No. 23 of 2002 filed by appellant/accused No. 3 Vishwanath s/o Manikrao Jadhav is partly allowed. The conviction of the appellant/accused u/s 307 read with section 34 of the Indian Penal Code is set aside. Appellant/accused No. 3 Vishwanath s/o Manikrao Jadhav is convicted for the offence u/s 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs. 5,000/- [Rupees Five Thousand] and in default of payment of fine, to undergo simple imprisonment for one month. [3] Criminal Appeal No. 23 of 2002 stands disposed of in above terms. At this stage, learned counsel for the appellants/accused urged to grant eight weeks time to appellant/accused No. 3 Vishwanath s/o Manikrao Jadhav to surrender before the trial court. In view of the request made, appellant/accused No. 3 Vishwanath s/o Manikrao Jadhav is granted eight weeks time to surrender before the trial court. Ordered accordingly.