

**(2016) 12 BOM CK 0116**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 44 of 2015**

|                            |    |            |
|----------------------------|----|------------|
| Nashik s/o Ramhari Gawande | Vs | APPELLANT  |
| State of Maharashtra       |    | RESPONDENT |

**Date of Decision :** 15-12-2016

**Acts Referred:**

Evidence Act, 1872 — Section 3  
Penal Code, 1860 (IPC) — Section 149, Section 300, Section 324

**Citation :** (2017) 1 AIRBomRCri 690

**Hon'ble Judges :** B.P. Dharmadhikari and Kum. Indira Jain, JJ.

**Bench :** Division Bench

**Advocate :** Shri M.V. Bute, Advocate, for the Appellant in Criminal Appeal No. 44 of 2015; Shri R.S. Nayak, APP, for the Respondent in Criminal Appeal No. 44 of 2015; Shri A.S. Manohar, Advocate, for the Appellants in Criminal Appeal No. 45 of 2015; Shri R.S. Nayak, A

**Final Decision :** Dismissed

## Judgement

B.P. Dharmadhikari, J.—The original accused No. 4 ? Nashik Ramhari Gawande has filed Criminal Appeal No. 44 of 2015 while Criminal Appeal No. 45 of 2014 is filed by four accused i.e. Accused Nos. 1, 3, 5 & 7. They challenge the judgment dated 10.01.2014 delivered by the Additional Sessions Judge, Darwaha, in Session Trial No. 4 of 2008.

2. Accused No. 1 ? Siddharth Shamrao Dhoke, accused No. 3 ? Ravindra Shamrao Dhoke, Accused No. 4 ? Nashik Ramhari Gawande, Accused No. 5 ? Vijay Shamrao Dhoke and Accused No. 7 ? Amol @ Yash Siddharth Dhoke, are found guilty of offences punishable under Sections 302, 147 and 324 read with Section 34 of the Indian Penal Code and sentenced to suffer various punishments including life imprisonment. Accused No. 2 ? Nandu Narayan Dhoke and Accused No. 6 ? Ashwadeep Narayan Dhoke, are acquitted of all offences. Similarly, all accused are acquitted of offences punishable under Sections 452, 307, 325 and 504 of the Indian Penal Code as also Section 135 of the Bombay Police Act.

3. According to prosecution story, the incident has taken place on 10.09.2007 between 6.00 and 6.30 PM. The informant is one Ragho Domaji Muneshwar. He lodged report that his cousin ? Milind Gomaji Muneshwar went in front of the house of Accused No. 4 ? Nashik to cut and bring leaves and branches of peepal tree required for traditional day of Pola i.e. the day on which bullocks are worshiped. After taking permission of Nashik, he climbed on the tree and cut leaves and branches. Accused No. 4 ? Nashik noticed that Milind cut leaves and branches in excess and hence he pelted stones on Milind. When he got down, Nashik slapped him. Quarrel began and people gathered. Ragho also went there. He took both of them to the Police Patil ? Bhaurao Vishwanth Mane and pacified them. The quarrel then ended. Police Patil advised Ragho to apologize to Nashik.

4. In the evening, Pola festival was held and between 6.00 PM and 6.30 PM, Milind came to the house of Ragho for dinner. Somebody informed Milind that he had a phone call from his brother. Milind, therefore, went to attend phone call towards Hanuman Temple. As Ragho heard commotion in loud voice, he followed Milind with a view to intervene in quarrel. Quarrel was between Milind and the accused persons. They assaulted Milind by axe and sticks. Milind sustained injuries on head and neck. Wife of Ragho viz. Ahilya and daughter Sukrita (also mentioned as Shukrita or Suprita on record) came there. Gomaji, father of Milind also came there. Accused Siddharth, Vijay, Ravindra, Yash, Nashik, Nandu and Ashwadeep were having sticks and axes. They started abusing Ahilyabai and assaulting all of them. Ragho, Ahilyabai, Shukrita and Gomaji sustained injuries. Milind was lying in a pool of blood near Hanuman temple. Dhanpal Patil and Sachin Manwar came there. They lifted Milind and took him to his house. Thereafter Milind and Ragho were taken in bullock cart towards Darwha for Medical assistance. Ahilya and Gomaji joined them. On autorickshaw of Gajanan Ratne they came to Darwha Police Station. Ragho lodged report and they were referred to hospital for treatment.

5. As injuries suffered by Milind and informant were found serious, they were referred to Government Hospital, Yavatmal. Dhanpal Patil and Sachin Manwar took them to Yavatmal where they were immediately referred to Hospital at Nagpur. Milind died at Nagpur at 5.45 AM on 11.9.2007.

6. We have heard Shri Bute, learned counsel for the Accused ? Nashik in Criminal Appeal No. 44 of 2015 and Shri A.S. Manohar, learned counsel for the four accused in Criminal Appeal No. 45 of 2015 and Shri R.S. Nayak, learned APP counsel for the respondent ? State in both the appeals.

7. There are total four eye witnesses. They are PW4 ? Ragho, PW5 ? Gomaji, PW9 ? Ahilyabai and PW12 ? Shukrita. Apart from them, there is evidence of PW13 ? Dhanpal Patil, who carried injured to the hospital. The parties state that the evidence of Investigating Officers PW19 ? Sudhakar Sarode and PW20 ? Madhukar Shirsath, is important in the matter. It appears that eye witnesses are injured in the incident and appear to be members of the same family.

8. Shri Manohar, learned counsel has taken us through evidence of four injured witnesses to urge that it does not inspire confidence as they are mutually inconsistent. The panch witness i.e. PW6 ? Shrikant Mane, who has allegedly witnessed spot panchnama, seizure from spot and discovery under Section 27 of Evidence Act, has turned hostile. Similarly, PW7 ? Deorao Jadhav, claimed to have witnessed discovery under Section 27 and PW8 ? Nemichand Jadhav, also witness to said discovery, have turned hostile. PW11 ? Vishnu Pawar, who has witnessed spot seizure and discovery as also PW15 ? Subhash Kale, who is claimed to be witness to discovery, are all hostile. In this situation, only on the basis of interested related witnesses, who claimed to be injured, finding of conviction could not have been returned. He points out that PW13 Dhanpal Patil is not a witness to the incident and he has merely carried injured to the hospital. He further submits that the incident of leaf cutting in the morning does not constitute any offence and no charge in relation thereto has been framed. According to him, if incident in the morning is kept in mind, defence of the accused persons under their Section 313 examination becomes more probable and, therefore, needs to be acted upon.

9. His arguments at length in this respect can be looked into while appreciating evidence of these witnesses as also the defence. His main contention is, the fact that the deceased Milind was called by somebody when he was taking dinner at the residence of PW4 ? Ragho is not established and the person who came to call Milind is also not identified. Story whether he had any phone call from any person is also not gone into. He invites attention to the fact that there was charge under Section 452 read with Section 34 of Indian Penal Code against all the persons for tees-passing into the house of Ragho and that charge is not established. The eye witnesses change the whole story & shift the spot of occurrence itself. The charge under section 452 formed integral part of the prosecution story and, therefore, later charges also cannot be said to be established. The prosecution story itself fails.

10. As against this, the learned APP states that all eye witnesses have never claimed to be present at the same time and they have reached at short interval of each other. After they reached, they were attacked by accused persons. Hence, their story is consistent and has been rightly acted upon by the trial Court.

11. Inviting attention to the defence of the accused persons, he submits that all accused persons were present at one and same time at the spot of incident and if their defence is accepted, the spot and injuries to the deceased Milind and others is not in dispute. There only effort is to urge that said injury was sustained by Milind when relatives of Milind tried to assault accused persons and one of them avoided that blow. He contends that this defence needed to be established by the accused persons and they failed to do so. Only one contusion and lacerated wound on body of accused Vijay is being relied upon by them but they have not explained that injury. The burden to explain that injury was always upon them and not upon the prosecution.

12. As accused have admitted their presence at the spot and injury is sustained by Milind at the spot, the fact whether Milind had been to the residence of Ragho for taking dinner or not becomes irrelevant. Whether Milind was informed there that he has phone call and hence he left dinner incomplete and came near Hanuman Temple is also irrelevant. As Pola was already held, all villagers were at their residence and, therefore, the story of witnesses that at that time, at Hanuman temple, there was nobody, needs to be accepted.

13. The learned APP has also taken us through the evidence of eye witnesses and medical evidence on record to urge that injuries to prosecution witnesses are proved and their evidence, therefore, needs to be accepted. The learned APP has placed reliance upon some judgments and we find it appropriate to postpone the consideration thereof.

14. The incidence in the morning shows that Milind had gone to peepal tree to fetch leaves and branches for performing Pola poojan. The fact that he climbed tree and cut branches and leaves is not in dispute. The important witness in this respect is PW4 ? Ragho. He accepts the fact of throwing of stone by Nashik and beating of Milind by Nashik. He also accepts visit to house of Police Patil by himself, Gomaji, Milind and Nashik Gawande. At that place, Police Patil had asked them to give apology to Nashik but they left the place. However, this incidence does not form subject matter of trial and no charge is framed about it.

15. Shukrita, daughter of Ragho is one of the eye witnesses. We find that she has not pointed out any assault on herself by any accused. After deposing about event which has taken place in the morning, she states that uncle Milind came to her house for dinner between 6.00 and 6.30 PM. One boy came outside and informed Milind about the phone call. Milind left to attend that call. As he did not come, her father Ragho went after him. They heard shouting and, therefore, she herself, her sister and mother went to Hanuman temple square. They all saw accused Siddharth Dhoke, Yash Dhoke and Vijay Dhoke holding axe. Nashik Gawande, Ravindra Dhoke, Ashwadeep Dhoke and Nandu Dhoke were holding sticks. They were assaulting her father and uncle Milind. Both of them received bleeding injuries and fell down. Her mother tried to intervene and Siddharth assaulted her mother with the handle of axe and broke her head. Her mother ran due to fear and Siddharth chased her towards nala. Milind was lying in pool of blood and his mother Chandrabhaga was crying. Dhanpal Patil and Sachin Manwar brought Milind to their house. Siddharth and Nashik assaulted her grand father Gomaji with axe and sticks. Her uncle Milind, father Ragho and Domaji were put in bullock cart of Kisan Patil. Dhanpal Patil and Sachin Manwar had taken him to Darwha. They followed them. Milind and her father were serious and hence they were referred to Yavatmal and thereafter to Nagpur. Her mother and grand father were at Hospital in Yavatmal. She, her sister and Suraj Nagrale went with Milind and Ragho in Ambulance. She identified three axes and five sticks. She also stated that Vijay Dhoke was holding axe at Article "B", Siddharth was holding axe at Article "A" and Yash was holding axe at Article "C".

16. Her cross examination reveals that she is educated up to 12th standard. She accepted that her statement was read over to her by a clerk in the office of Public Prosecutor before she entered witness box. She could not tell date of Pola festival in the year 2008 and 2009. She stated that her statement was recorded on 12.09.2007. The statement of her mother and sister was also recorded on that day. Her father Ragho was present in village on 12.09.2007 when their statement was recorded at their house. She could not disclose the sequence in which the statements were recorded. She was not remembering whether after recording their statement, police read it over to them. She deposed that she had informed Police that she was in a position to identify the weapons and also pointed out which accused was holding which axe. She could not explain why it did not figure in her police statement. Nobody was present at Hanuman temple chowk when they reached there. Police had not shown to them weapons lying on the spot and she was shown it in the Court on the day of her deposition. She could not state whether she has seen any marks on the weapons but she had seen marks of blood and, therefore, she stated that she could identify the weapons. She admitted that there was no blood marks on weapon at Articles "A" to "H".

17. She accepted that they used to take dinner at about 8.00 PM. In the month of September to November, there is darkness between 6.00 and 6.30 PM and complete darkness at 8.00 PM. No incidence of abusing or assaulting at her house took place before Pola festival. She accepted that between 4.30 and 5.00 PM, somebody was abusing on road and hence she had come out of her house to see. She could not tell who else had come out of the house with her. She accepted that her father Ragho went after Milind one or two minutes after Milind left the house to attend phone call. One or two minutes thereafter, they also left. She accepted that two three minutes thereafter Chandrabhaga and Gomaji came to the spot. She denied that Kundan had come to call Milind, Milind and father went with axe and they followed with sticks. She denied that Kundan was instructed to watch movements of the accused persons. She denied that Kundan went to the house of Gomaji and called them with sticks. She denied that Milind was not called for dinner by them. She denied that they started assaulting the accused persons with an axe and sticks and accused avoided their blows and the axe blow delivered on the accused struck Milind. She denied that blows meant for the accused persons landed on her parents and Milind. She denied that nobody was assaulting anybody when they reached the spot. She denied that Vijay was lying on the spot in a pool of blood. She denied that the accused were not having any weapons. Manner of her cross examination reveals only its roving manner.

18. She accepted that there are houses near Hanuman temple chowk and she did not count how many persons gathered at the time of incident. She denied that she had seen their faces. She could not explain why the fact that Nashik and Siddharth assaulted Gomaji with axe and stick did not figure in her police statement. She accepted that Dhanpal Patil and Sachin Manwar took only Milind and did not take anybody else. Five to 10 minutes thereafter they went to

Darwha by auto.

19. She stated that there was no dispute between Nandu, Ashwadeep and her family. The relations between two families were cordial. She denied that in 2006 they had not abused her and her sister. She accepted that on that count there was incident of assault between them and their family members. She accepted that before the incident at Hanuman temple chowk, nobody came to their house to assault her mother. She accepted that she never read her statement. She denied that she has not seen the assault and weapons. Thus, this witness in chief states that there was nobody at Hanuman temple chowk when assault took place and in cross examination states that there were several persons. She also states that Chandrabhaga and Gomaji came after her. Hence, it will be appropriate to look into the evidence of Gomaji at this stage.

20. PW5 ? Gomaji Maroti Muneshwar is father of the deceased Milind. His evidence shows that after ceremony of Pola, Milind went to the house of Ragho. After one hour he heard shouting near Hanuman temple. He went there and saw his son Milind, Ragho, Ahilya and Shukrita lying on the ground. Siddharth then assaulted him by means of axe and Nashik Gawande assaulted him by means of stick. Thus, he has not witnessed attack on the deceased or other injured persons. In cross examination, he has accepted that he cannot see properly after a distance of 8 to 10 feet and there is dark between 5.30 and 6.00 PM in rainy season. He accepted that his mental condition while giving statement to Police was not good and he had asked Police to come later. Police came 7 ? 8 days thereafter at Hospital for inquiry and then recorded his statement. This part of his statement is put to investigating officer PW19 Sudhakar Sarode and he has denied it. He further stated that Pola ceremony was performed at about 6.00 PM and villagers were visiting after ceremony of Pola. He also accepted that sticks were brought by bullock owners to control the bullocks at pola. A mob of about 50 to 100 persons gathered due to incident. He accepted that there is no telephone at his house or in the house of any neighbour. He accepted that he saw mob from his house but could not identify their face. He further accepted that he had informed police about seeing Ragho, Ahilya, Shukrita and Sarita lying on the ground but could not explain why it did not figure in his police statement. He further stated that when he went there, quarrel was going on. He identified stick only because it was up to his shoulder. But he had not seen any marks on Article "A" and Article "G". He further stated that police recorded his statement on 12.09.2007 at Nandgaon. Thus except for assault on him by Siddharth and Nashik, this person does not prove anything else.

21. PW9 ? Ahilyabai Raghoji Muneshwar is mother of Shukrita and wife of Ragho. Her deposition shows that after Milind left for attending phone call, within two minutes her husband Ragho followed Milind. After hearing shouts, she and her daughters went to Hanuman chowk. She saw Milind Muneshwar lying on the ground in a pool of blood. Her husband was lying near Milind with injury on his head. Accused persons were assaulting Milind and her husband with sticks and

axe. Siddharth assaulted on her head with handle of axe. She identifies axe article "A" with Siddharth. Axe with Vijay Dhoke and Yash Dhoke at articles "B" and "C". She further states that sticks at Articles "D" to "H" were with other accused persons. She identifies her blood stained clothes i.e. blouse and pyjama at Articles "J" and "K". Her cross examination shows that statement of her husband Ragho was not recorded by the Police at Yavatmal on the same day and he lodged report on 17.09.2007 at Police Station. Her statement was also not recorded by the police in the Hospital at Yavatmal.

22. Her cross also shows that Milind was having mobile but it was at his house. She could not explain why the fact that Milind went towards temple in the evening from her house did not figure in her police statement. She also could not explain why the fact of accused assaulting her husband and Milind by means of axe and sticks do not figure in her statement. In cross she reiterates that Siddharth assaulted her on head when she tried to intervene. A little later she states that Police recorded her statement in her residence at about 3 to 4 PM and her husband Ragho was then present. She denied that weapons at Articles "A" to "H" belonged to her or Ragho i.e. their side. She admits that no report was lodged against persons who came to her house. Thus, this witness also goes to spot after Ragho and Milind were already brought down and already assaulted. To that extent she supports her daughter PW12 ? Shukrita.

23. Report is lodged by PW4 ? Ragho. In his evidence, he speaks of incidence in the morning as also in the evening. His narration about Milind leaving to attend phone call in the evening is consistent with his wife and daughter. He states that shortly after Milind left to attend phone call, he followed Milind and heard shouts. Fighting was going on. Vijay Dhoke assaulted him with the means of an axe. Ashwadeep Dhoke and Nandu Dhoke assaulted him with stick. Vijay Dhoke assaulted him on head with an axe. Then he describes the weapons with respective accused. He further states that he himself and Milind were lying in pool of blood on the floor at the time mother of Milind (Chandrabhaga) came there and started shouting. Dhanpal Patil and Sachin Manwar picked up Milind and they took Milind to Milind's house. Here it needs to be noted that according to Shukrita, Milind was brought to her house. Then he points out that he followed them. Thereafter he himself, Milind and Gomaji were taken to hospital in bullock cart. Ahilyabai also was occupying bullock cart. There he came to know that his wife Ahilyabai and Gomaji were also assaulted. He proves contents of his report. He further states that his trouser was stained with blood.

24. His cross examination reveals that he followed Dhanpal Patil and Sachin Manwar on foot. He also went to Nagpur with Milind by ambulance. Milind was admitted in Medical hospital. Ragho reached his village Nandgaon between 8.00 to 9.00 PM on next day i.e. on 11.09.2007. He added that he came to village on 12.09.2007. Funeral of Milind was held on 13.09.2007. Ragho was present in village on 12th and 13th September 2007. He accepted that on 12th & 13th September 2007 police did not come to village for investigation. It is to be noted

that PW19 ? Sudhakar Sarode has in cross examination stated that Ragho was not present in village on 12.09.2007. Investigating Officer has denied suggestion that he recorded statements of Ahilyabai, Shukrita and Sarita as per say of Ragho. He accepted that he was not admitted in Hospital on 10.09.2007, however, immediately he added that he was admitted and sent to Nagpur. He could not explain why the fact of Milind coming to his house for dinner was not mentioned in his report by police. He could not explain why the fact that Milind received message about telephone call from somebody did not appear in his report. Going of Milind to attend telephone call towards Hanuman temple, Ragho following him, Ragho hearing commotion are the omissions which he could not explain. He further stated that while giving report, he told police that when he reached near Milind, fighting was going on. He could not explain why this fact did not appear in his report. He deposes that he informed police about Vijay Dhoke assaulting him by means of an axe. Nandu and Ashwadeep beating him with sticks, Vijay assaulting him by an axe on forehead, over right eye on occipital region, did not find mention in his police report. Similarly, he could not explain the fact that Siddharth Dhoke, Yash Dhoke were armed with axe, Ravindra and Nashik armed with sticks or the fact that he himself and Milind were lying in pool of blood did not figure in his police report. He accepted that during Pola, every villager is having stick while taking bullocks. He further accepted that farmers keep an axe and stick with them. He accepted that he did not see any special mark on either sticks or axe. He also had not seen length, width or diameter of weapons. He accepted that because weapons were shown to him, he answered the question in affirmative. He further stated that on 17.09.2007, his statement, statement of his wife Ahilyabai and Gomaji was recorded at Yavatmal. He denied that their statements were recorded on 12.09.2007 at Nandgaon. He denied that their statements were recorded at Hospital on 17.09.2007. He stated that on the day of incident, accused had come to his residence, abused and went away. For performing Pola festival, about 200 people had gathered. Nobody was present at the time of incident near Hanuman temple. Accused Vijay was standing there. When he went to Police Station, accused Siddharth, Ravindra and Vijay were not at Police Station. He denied that Police had taken Vijay to hospital. He stated that he was not aware that Vijay had suffered injuries on face, head and other parts of body. He denied that first Siddharth lodged report against them. He further stated that police seized sticks etc. from the spot, in his absence.

25. He has denied suggestion of defence given by accused persons. He denied that he had asked Milind to beat Siddharth and Nashik. It is denied that in that assault Vijay sustained injury of stick and axe. He denied that when on second occasion he assaulted Vijay, Vijay avoided that blow and it landed on Milind. He denied that thereafter to save Vijay, Siddharth, Nashik, Ravindra came there. He has stated that on the day of incident, he was admitted in hospital at Yavatmal. Gomaji and Ahilyabai were also admitted there. He states that he was admitted from 10.09.2007 to 22.09.2007 in Government hospital at Yavatmal. Thus, he contradicts himself as earlier he has deposed that he was in village on 12th

September 2007 and had gone to Police Station on 17.09.2007. He has stated that he was admitted in Hospital at Yavatmal for 3 ? 4 hours in ICU. He stated that Gomaji and Ahilyabai were discharged on 11.09.2007 by the Doctor. He stated that documents about discharge may be with the police. He accepted that while giving report, he disclosed that one incident of beating took place at his house while one incident took place at Hanuman temple but then accepted that no such incidence took place near his house. He accepted that after the incidence, PW19 ? Investigating Officer ? Sarode never came to him. He accepted that while giving report, he stated that while he was taking dinner between 6.00 and 6.30 PM, Siddharth Dhoke, Vijay Dhoke, Ravindra Dhoke, Yash Dhoke and Nashik Gawande came there with sticks and axe. He could not remember whether they abused his wife Ahilyabai or assaulted him with sticks and axe. He also did not remember that accused persons assaulted Gomaji, Milind with sticks and axe on their head and, therefore, they had sustained head injuries. It is obvious that this part of cross examination is about the episode at his house and not at Hanuman square. It appears that charge under Section 452 IPC was, therefore, framed. He also states that previously he had lodged report against all accused persons and, therefore, incident took place. But, from the specific defence of the accused, it seems to be not in dispute that Milind received fatal blow at a square near Hanuman Temple.

26. While speaking about incident in his report, this witness has deposed that between 6.00 to 6.30 PM, accused Siddharth, Vijay, Ravindra, Yash and Ashwadeep came with stick and axe in his house and they abused his wife and assaulted him, therefore, he sustained injury on his head. They also assaulted Milind and Gomaji with sticks and axe and caused injury on their head and hands. He specifically stated that this incident took place at his house. He stated that accused Nandu, Ashwadeep did not come in his house with other accused persons and as they did not assault, he did not disclose their names while giving report. Thus, this witness changes the spot entirely and points out attack within his house on himself, deceased Milind and Gomaji. But next part of his cross examination reveals that Milind left his house for attending phone call and then he heard shouts 5 to 7 minutes thereafter. He accepted that cases for selling illicit liquor were filed against him. He denied that he was stating for the first time in the Court that incident took place near Hanuman Mandir. Thus, this witness points out assault at his residence and thereafter assault in front of Hanuman temple. No express suggestion is given to him about later attack near Hanuman temple.

27. The fact that he was injured is not in seriously dispute. His wife Ahilyabai and his uncle Gomaji were also assaulted. His nephew Milind was killed in the incidence. Chemical Analyser"s report at Ex. 243 reveals human blood in soil collected from the spot at Hanuman Temple. Human blood is also found on a piece of wooden stick and a bamboo stick. However, no blood is detected on any of the four axes, three bamboo sticks and another wooden stick. But then human blood at spot also supports the prosecution story of assault at square near

Hanuman Temple. Merely because one weapon more than total number of accused is recovered under Section 27 of the Evidence Act, the deposition of the Investigating Officer is not rendered doubtful. When the accused plead a blow of an axe on Milind, not finding human blood on any axe is not a circumstance in their favour.

28. PW18 ? Dr. Gajanand Kharote is the Medical Officer, who has examined Milind, Ragho, Gomaji, Ahilyabai. Medical Certificate issued by him after examining these persons are at Exhs. 175, 176, 177 and 178. Use of hard and blunt object to cause injuries to Gomaji and Ahilyabai is mentioned by him. Injuries to Ragho are caused by heavy and sharp edged object as per column No. 5 of Exh. 176. Injuries to the deceased Milind are also by heavy and sharp object. His evidence does not show that PW12 Shukrita was injured at all. PW12 Shukrita also does not, in her deposition, claim that she was assaulted. Finding of Trial Court that Shukrita d/o Ragho was also assaulted and punishing the appellants under Section 324 IPC for that assault is unsustainable. Injuries suffered by Gomaji and Ahilyabai are by hard blunt object.

29. In Post mortem report of Milind Exh. 194, in column No. 17, about 27 injuries are mentioned. In column No. 19, internal injuries are mentioned. There are five incise wounds, two chop wounds and there is also head injury. This militates with specific defence of the accused which is being examined below.

30. It is in this background that we have to look into the defence of the accused persons under Section 313 of the Criminal Procedure Code. Accused No. 1 ? Siddharth mentions that villagers had gathered in front of Hanuman temple for Pola festival. PW4 ? Ragho, PW5 ? Gomaji, PW9 ? Ahilyabai, one Rukhmabai, Kundan and daughters of Ragho were present there and moving around with wrong intention. Milind and Ragho were carrying axe and others were carrying sticks. He, therefore, inquired from Milind as to whom they were looking for and Milind informed that they wanted to beat Nashik Gawande, who quarreled in the morning on the issue of cutting of peepal leaves/ branches. Accused No. 5 ? Vijay expressed that fighting was over in the morning and there was no point in re::: opening it. Milind, Ragho and Gomaji were under influence of liquor. Ragho and Milind assaulted Vijay with axe uttering that he was relative of Nashik Gawande. Blow of axe was given on his head and hence he got bleeding injury. He shouted. At that time, Gomaji, Ahilyabai, Rukhmabai, Kundan, Sarita and Shukrita all assaulted Vijay. Villagers who were attending Pola gathered. Siddharth tried to save his brother. Ragho Muneshwar attempted to give blow of axe on head of Siddharth but he avoided it. That blow landed on the head of Milind. Few blows delivered by Ragho and Gomaji landed on Ahilyabai. Gomaji also injured himself. Milind died because of injury of axe of Ragho. The statement of accused No. 2 ? Ravindra is on same lines. Statement of accused No. 5 ? Vijay Dhoke is again identical. Accused No. 7 ? Amol has also submitted his written statement similarly. Thus, all these persons have in writing and under their own signature, as a part of their 313 Criminal Procedure Code examination, taken a specific

defence. Their effort is to paint that prosecution witnesses and the deceased were aggressors. They do not dispute the spot or the presence of the eye witnesses or the injuries caused to the eye witnesses.

31. This defence, therefore, establishes the spot in relation to which prosecution has prepared spot panchnama and carried investigation. Witness Ragho appears to be a rustic person, who has contradicted himself in relation to this spot or then in relation to his availability in the village on 12.09.2007 or thereafter. But that is rendered inconsequential due to the above defence.

32. Medico legal certificate of accused Vijay has not been proved and in it reason of injuries given by Vijay is of fall in intoxicated condition. Doctor attending him has recorded an observation that there was strong smell of alcohol, his speech was slurred and his gait was unsteady. No bleeding injury caused by any sharp weapon was noticed on his head. He was discharged at 3.45 AM on 11.09.2007 on own request.

33. Accused persons have not examined any witnesses in defence to show that injured witnesses were aggressors. Even if the residence of Ragho is accepted as spot, attendance of accused persons there, does not advance their defence at all.

34. Deposition of PW13 ? Dhanpal Patil, a relative of injured persons, is important. He states that people were running towards Hanuman temple and hence he went there. He found Milind lying on the ground, face downwards. He turned him and noted that blood was oozing from his head. Sachin Manwar was also present there. Ragho Muneshwar was also lying in injured condition. Hence, he and Sachin took Milind to the house of Milind. Accused persons Siddharth, Yash Dhoke, Nashik Gawande and Ravindra Dhoke were standing near temple with sticks and axe. He also deposes that Milind Muneshwar told him that these persons assaulted him. Thereafter Ragho came in the house of Milind informing that very same persons assaulted him. In cross examination, he accepted that Milind was unconscious. He also states that Milind regained conscious when he was in bullock cart. Police recorded his statement on third day after the incidence at the house of Police Patil. He stated that after obtaining his statement, police also took his signature. The statement of Sachin was also recorded and then signature of Sachin was also obtained. His further cross shows that he reached the spot after the incidence. He took Milind to house of Milind within 5 to 10 minutes and went to bring bullock cart. He stated that except for four accused persons, he did not see any other accused person on the spot.

35. Thus, evidence of this person also establishes presence of the accused with weapons on the spot. If accused persons were not aggressors, there was no question of anybody seeing them with weapons. Accused in that situation should have immediately lodged a report and complained of attack on them. They have not taken any such step.

36. No arguments are advanced about nature of injuries sustained by Ragho, Ahilya or Gomaji. Conviction under Section 324 for assault on PW12 Shukrita is

also not assailed. But then material on record shows that finding of Trial Court in that respect is unsustainable. But then exoneration therefrom does not result in any practical benefit to the appellants. Their conviction by the Trial Court on other counts needs to be maintained.

37. As stated by the Hon'ble Apex Court in the case of Jodhan v. State of Madhya Pradesh, reported at 2015 Cr. L.J. 3291, paragraph 22, an injured witness enjoys special status. His testimony deserves credence unless there are strong grounds for rejection of his evidence due to major contentions and inconsistencies. Here the injuries are proved by an independent medical evidence. In the case of Sikander Singh & Ors. v. State of Bihar, reported at 2010 All MR (Cri) 2663 (S.C.), the Hon'ble Apex Court holds that right of private defence is to be established by the party setting it up and members of aggressors party can not plead it. This judgment also shows that it is not an unqualified proposition that prosecution has to always explain the injuries sustained by the accused or for its failure to explain, the prosecution version should be discarded. Paragraph 29 of this judgment also points out that such injuries must be serious and sustained during the occurrence in question. Accused persons including Vijay have not taken any steps to prove the injury certificates. History of or reason for injuries narrated in unexhibited medical certificate on record by Vijay is also not in favour of the accused persons. Therefore only, accused might not have taken steps to get it proved. Paragraphs 21 & 22 in the case of Ashok Debbarma v. State of Tripura, reported at AIR 2014 SC (Suppl.) 1434 show that because of Section 313(4) answers given by the accused in their Section 313 Cr. P.C. statements or their specific defence in it, can be looked into while evaluating the material on record. Here, as stated above, a specific case of Ragho accidentally inflicting an axe blow on Milind has been unsuccessfully put to the eye witnesses by the appellants. They have also chosen to submit it in writing as their defence as part of their Section 313 examination. This case in defence therefore can be looked into and it establishes the spot as also the presence of appellants at the spot.

38. In this situation, in the light of arguments advanced, we do not find anything wrong with the conclusions of the trial Court. No case is made out warranting intervention.

39. We therefore pass the following order :-

A. Conviction of the appellants for the offence under Section 147 IPC, for murder of Milind under Section 302 IPC and under Section 324 for assault on Ragho, Ahilya and Gomaji is upheld.

B. Their conviction under Section 324 IPC for assault on PW12 Shukrita is quashed and set aside. However, this does not in any way alter the quantum of punishment.

C. Muddemal property be dealt with as directed by the Trial Court after the appeal period is over.

D. Criminal Appeals are, therefore, dismissed.