
(1996) 09 BOM CK 0037

In the Bombay High Court

Case No : Criminal Appeal No's. 387 and 393 of 1983

Rajaram Raghunath Darekar and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 235, 313

Evidence Act, 1872 — Section 101, 105, 3, 45

Penal Code, 1860 (IPC) — Section 101, 302, 304, 325, 34

Citation : (1997) 2 BomCR 96

Hon'ble Judges : Vishnu Sahai, J; V.R. Datar, J

Bench : Division Bench

Advocate : Anita A. Agarwal, in Cri. Appeal No. 387/83 and V.R. Bhosale, in Cri. Appeal No. 393/83, for the Appellant; I.S. Thakur, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Since both these criminal appeals arise out of the same incident and a common judgment, we are also disposing of the same by one judgment.

2. Vide judgment and order dated 30-6-1983, passed in Sessions Case No. 26 of 1983, the Additional Sessions Judge, Pune, convicted and sentenced the four appellants in the manner stated hereinafter :---

(i) 302 read with section 34 of the Indian Penal Code to imprisonment for life; and

(ii) 325 read with section 34 of the Indian Penal Code, but awarding no separate sentence.

It may be mentioned that by the impugned judgment, the learned Judge acquitted 4 other co-accused persons viz. Ramdas Darekar, Babulal Darekar, Sushila Ramdas Darekar and Laxmibai Krishnaji Darekar. Since the State of Maharashtra has not chosen to prefer an appeal against the acquittal of the said

persons, the same has become final.

3. Briefly stated, the prosecution case is as follows :---

The appellants Krishnaji and Raghunath were real brothers of the deceased Tukaram Darekar. Appellant-Rajaram is the son of Raghunath. Appellant-Rohidas is the son of Krishnaji. The acquitted accused Ramdas and Laxmibai are the son and wife respectively of Krishnaji. Acquitted accused-Babulal is the wife of Raghunath. Acquitted accused Sushila is the wife of Ramdas.

It is Alleged that there was enmity between Krishnaji and Raghunath on one side and deceased Tukaram on the other in connection with watering of their respective fields. From the evidence of Parvatibai (P.W. 1), the wife of the deceased Tukaram, it emerges that about 5/6 months prior to the incident, Tukaram had installed an electric motor on the well and had laid a pipeline from the well to his field. He had done the same by raising loan from Bank and mortgaging his field. The appellant-Krishnaji and Raghunath had objected to Tukaram taking water through the said pipeline and took the matter to the Civil Court which fixed turns for respective parties to take water from the well.

The incident is alleged to have taken place on 12-5-1981 at about 9 a.m. The evidence is that on the said date, it was the turn of Tukaram to take water from the well. (appellant-Raghunath in his statement u/s 313 of the Cri.P.C. has also admitted this fact). On the said date at about 8.30 a.m. Tukaram had gone to the well. He returned home immediately and told Parvatibai that some one had damaged the pipeline and it was not possible for him to put the stop-cork, on that, Parvatibai along with Tukaram with a spade, basket and shovel, went to the well. After removing some earth, Tukaram took out the bent pipe. Thereafter, both of them returned to their house. Again after some time they went to the well carrying a new bent pipe, a spanner and a stopper. It was at this juncture that the appellants along with acquitted accused and 2 others namely, Navanath and Usha reached there. Appellants-Rajaram and Rohidas were armed with iron-bars and the remaining persons had sticks and wooden-logs. Appellant-Rajaram told Tukaram that he will not allow him to fix the new bent pipe and insisted that the old bent pipe be installed. Tukaram replied that he would install a new pipe and take water to his field. On that, Rajaram threatened to kill him. Rohidas started hurling abuses on Tukaram, who replied that even if he went on abusing him, he will take water to his field. At that juncture, acquitted accused Ramdas inflicted a stick blow on the back of Tukaram. Tukaram, in order to defend himself, threw the spanner which he was carrying and the same struck on the right cheek of Ramdas. Blood started oozing therefrom. Acquitted accused Babubai and Laxmibai instigated the appellants and the acquitted accused Ramdas to beat Tukaram. Consequently, they started beating him. At that time, his daughter Shaila (P.W. 5) rushed to save him. However, Babubai and Laxmibai did not allow her to do so. As a consequence of the assault, Tukaram fell down on the ground. At that juncture Parvatibai surrounded him in order to save him from being further assaulted. Pandurang (P.W. 6) and Gulab (P.W. 13), also

rushed to rescue Tukaram, but Babubai and Laxmibai prevented them from rescuing him. The appellant Krishnaji assaulted Pandurang. At that moment, Murlidhar Darekar (P.W. 4) also came running to rescue Tukaram. Appellants Rajaram and Navanath assaulted him. After assaulting Tukaram and others, the appellants and others ran away. Thereafter, Shaila gave water to Tukaram, Pandurang and Gulab, called for a bullock-cart and on the same. Tukaram, Parvatibai and Murlidhar were taken to Primary Health Centre, Narayangaon. After sometime, Shaila, Gulab and Pandurang were also taken there.

4. The injuries of Tukaram, Parvatibai, Murlidhar, Shaila, Gulab and Pandurang were medically examined at the Primary Health Centre, Narayangaon by Dr. Prakash Vedpathak (P.W. 11), from 11.15 a.m. onwards on the same day.

On the person of Tukaram in all 17 injuries, which were either contusions or contused lacerated wounds, were found by the doctor.

On the person of Parvatibai, the doctor found two contused lacerated wounds and one contusion.

On the person of Murlidhar, the doctor found 6 contusions and 1 swelling.

On the person of Shaila, the doctor found 2 contusions. Under one of them which was on the right ring finger, he suspected fracture.

On the person of Gulab, the doctor found one contusion.

On the person of Pandurang, the doctor found one contusion.

In the opinion of Dr. Vedpathak, the injuries on the said victims were attributable to iron-bars, sticks and wooden-logs.

5. It may be mentioned that 2 more doctors viz. Dr. Krishnakant Bansi Nimbalkar (P.W. 7) and Dr. Sanjay P. Ganorkar (P.W. 8) were examined by the prosecution.

Dr. Krishnakant Nimbalkar had examined Parvatibai and proved that she sustained compound fracture of left tibia and fibula.

Dr. Ganorkar proved that Murlidhar had sustained fractures of 3rd and 4th right metacarpal of 8th and 9th ribs on the right side of chest, of left olecranon and of 6th and 7th ribs in inter scapular area of right side.

6. The evidence on record is that at 12.10 noon the same day, Tukaram succumbed to his injuries at the Primary Health Centre, Narayangaon.

7. The F.I.R. of the incident was lodged by Parvatibai. It was recorded by Police Head Constable Ramchandra Awachat (P.W.15). After recording the F.I.R., Head Constable Awachat made arrangements to shift the injured persons to Sassoon Hospital, Pune.

The evidence of Ramchandra Awachat is that on information given by the acquitted accused Ramdas, an F.I.R. (presumably in respect of the same

incident) was also recorded by him.

8. Head Constable Awachat commenced the investigation after lodging the F.I.R. He performed the inquest panchanama and the panchanama of the scene of offence the same day. On 14-5-1981 he arrested appellant Raghunath and attached his blood-stained dhoti and shirt.

9. Some part of the investigation was also done by the P.S.I. Hindurao Thorat (P.W.16). His evidence is that he took over the investigation from Head Constable Awachat on 12-5-1981 at about 8 p.m. On 15-5-1981 he seized the blood-stained clothes of Parvatibai and the same day arrested Rajaram and Rohidas and seized their blood-stained clothes.

During the course of investigation some weapons of assault were recovered at the instance of some of the accused persons.

After completion of the investigation, charge sheet was submitted against the appellants and the acquitted accused.

10. Going backwards, the autopsy on the dead body of Tukaram Darekar was conducted on 12-5-1981 by Dr. Prakash Vedpathak (P.W. 11), On the corpse he found as many as 17 injuries which were either contusions or contused lacerated wounds.

On internal examination, he found the following fractures :---

i) Left tibia and fibula bones.

ii) Left Patella, tibia and fibula bones.

iii) Of the 9th rib on the left side. The fractured end of outer part of the rib had pierced through pleura, diaphragm and spleen.

In the opinion of Dr. Vedpathak, the deceased died on account of internal bleeding resulting from laceration of spleen and the injuries of the deceased were sufficient in the ordinary course of nature to cause his death.

11. The case was committed to the Court of Sessions in the usual manner. In the trial Court, the appellants and the acquitted accused were charged on a number of counts, including 302, 307 and 325 read with section 34 of the I.P.C. and in the alternative under sections 302, 307 and 325 read with section 34 of the I.P.C. To the said charges they pleaded not guilty and claimed to be tried.

In the trial Court, in all the prosecution examined as many as 17 witnesses. Five out of them, namely Parvatibai (P.W.1), Murlidhar (P.W. 4), Shaila P.W. 5), Pandurang (P.W. 6) and Gulab (P.W. 13), were examined as eye-witnesses. In defence no witness was examined.

The learned trial Judge acquitted four of the co-accused persons but believed the prosecution case vis-a-vis the appellants and convicted and sentenced them in the manner stated above.

Hence this appeal.

12. We have heard Mrs. A.A. Agarwal and Mrs. V.R. Bhosale for the appellants and Mr. I.S. Thakur, Additional Public Prosecutor for the respondent. We have also perused the deposition of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the injury report of Ramdas, the statements of the appellants recorded u/s 313 of the Cri.P.C., and the impugned judgment. After thoughtfully reflecting over the matter, we are of the opinion that these appeals deserve to be partly allowed. In our view, the conviction of the appellants u/s 302 r/w 34 of the I.P.C. is unsustainable and instead they deserve to be convicted u/s 304 Part II r/w 34 of the I.P.C. However, the conviction of the appellants u/s 325 of the I.P.C. r/w/ 34 I.P.C. calls for no interference.

At this juncture, we would like to express our anguish and indignation on the fact that the learned trial Judge has not chosen to award a separate sentence to the appellants in respect of the offence u/s 325 r/w 34 of the I.P.C. The learned Judge seems to be completely oblivious of the fact that two persons viz. Parvatibai (P.W. 1) and Murlidhar (P.W. 4), had sustained grievous injuries; the former had sustained two grievous injuries and the latter four grievous injuries. The said injuries have been detailed in para 5. In our view, the learned Judge should not have only awarded the appellants substantive sentences in respect of causing grievous injuries to Parvatibai and Murlidhar, but also imposed a substantial fine on them which he should have directed to be paid as compensation to these victims.

13. The controversy in these appeals lies in a very narrow ambit. It is whether the incident took place in the manner set out by the prosecution or in that suggested by the defence. We have set forth the prosecution case in paragraph three. The defence version is to be found in the statements of appellants, Rajaram and Rohidas and the acquitted accused Ramdas, recorded u/s 313 of the Cri.P.C. It is that Tukaram, Parvatibai and Murlidhar came in Rajaram's field. Tukaram blamed Ramdas for damaging his pipeline and assaulted him with an axe on the head but the said blow struck on his right cheek. Ramdas fell down. Thereafter Murlidhar started assaulting him.

14. When there are two rival versions of the same incident, Courts often straightway follow the course of weighing both of them and thereafter reaching the conclusion as to which of them is plausible / probable and in accepting that version. We wish to emphasise that this is not the correct law and such an approach is patently legally erroneous. The correct law is that even when there are counter versions of the same incident, the prosecution is not absolved of its obligation of proving its case beyond reasonable doubt, in terms of section 101 of the Evidence Act. And only after it has done so would the Court consider the defence version of the incident. In other words, there may be a case in which the Court finds that the defence version is a tissue of lies but despite that as the prosecution has failed to prove its case beyond reasonable doubt, the accused

persons would still have to be acquitted.

We would also like to point out that whereas the burden on the prosecution in terms of section 101 of the Evidence Act is to prove its case beyond reasonable doubt, that on the defence in terms of section 105 of the Evidence Act is to only prove that its case may be true. In other words, the burden on the defence is not as onerous as that on the prosecution.

The proposition is far too well settled to require elucidation by adverting to authority but those who owe a fanatical allegiance to authorities may refer to the oft quoted case of the Apex Court reported in *Sawal Das Vs. State of Bihar*, wherein in paragraph 10, Beg, J, observed thus :---

"It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that question arises of considering facts of which the burden of proof may lie upon the accused."

15. Bearing in mind the legal position spelt out in the preceding paragraph we proposed to adjudicate upon the question as to whether the prosecution has proved its case beyond reasonable doubt. Our answer to it is in the affirmative.

In the instant case, the prosecution case rests on the testimony of 5 injured persons viz. Parvatibai (P.W.1), Murlidhar (P.W. 4), Shaila (P.W. 5), Pandurang (P.W. 6) and Gulab (P.W. 13), It is on the averments emerging from their examination-in-chief that we have set out the prosecution story in paragraph three. In short what emerges from the evidence of these witnesses is that while Tukaram and Parvatibai were on the well, the appellants and the acquitted accused came and asked Tukaram not to change the bent pipe. Tukaram, however, insisted that he would. Thereupon the appellants and others assaulted Tukaram with sticks, wooden logs and iron bars. First Ramdas assaulted him. Tukaram in order to defend himself threw the spanner which he was carrying and the same struck Ramdas on his cheek. Thereafter the appellants and others assaulted Parvatibai, Shaila, Pandurang, Gulab and Murlidhar when they rushed to his rescue.

The manner of assault as deposed to by the 5 injured witnesses is not only corroborated by the nature of injuries found by Dr. Vedpathak (P.W. 11), on the person of the deceased, but also by those found by him on their person. Dr. Vedpathak has categorically stated that the injuries of the injured and the deceased could be caused by iron bars, sticks and wooden logs. In fact, their perusal, per se shows that his opinion is correct.

16. Apart from the medical evidence there are some other circumstances which shows that the prosecution case is true.

First amongst them is that the F.I.R. was lodged very promptly. The evidence is that it was lodged by Parvatibai the same day at 11-30 a.m. i.e. within two and a half hours of the incident taking place. In the said F.I.R. all the appellants are named. In our view since the F.I.R. was lodged promptly the chances of false

implication of the appellants in it are eliminated for there was no time to make embellishments in the prosecution story.

Since it was a broad-day light incident and the appellants were very close relations of the witnesses they would have had no difficulty in recognising them.

It needs to be emphasised that excepting Murlidhar, the other witnesses are close-relations of the appellants and had they not actually assaulted them in the above-stated manner, they would not have falsely implicated them.

Assurance is also lent to the prosecution case by the circumstance that the same explains the injury of accused Ramdas.

Finally assurance to the prosecution case is forthcoming by the prompt interrogation of the injured witnesses u/s 161 of the Criminal Procedure Code by the Investigation Officer. Prompt interrogation of witnesses during investigation largely eliminates the possibility of false witnesses being inducted by the prosecution. Here there is no question of that happening because all of them received injuries during incident which were promptly medically examined and which cannot be stigmatised as being manufactured.

16A. In our view, for the reasons mentioned in the preceding paragraph, the prosecution has succeeded in proving its case against the appellants beyond reasonable doubt.

17. We now turn to the question whether the defence has discharged the burden enjoined upon it by section 105 of the Indian Evidence Act viz. of proving by preponderance of probabilities that its case may be true. To establish this the defence is harping on the injury sustained by accused Ramdas, which in the contention of the learned Counsel for the appellants, has not been plausibly explained by the prosecution. Let us have a look at Ramdas's injury. On the date of the incident itself at 1 a.m. Dr. Prakash Vedpathak (P.W. 11), examined Ramdas and found on his person an injury which he has described thus-

"There is a wound over Lt. side of face as described below. Situated just altered to Lt. eye. It is bone deep in upper part and muscle deep in lower part.

Wound has got a flap of skin which can be lifted upwards. It is attached to normal portion in upper portion when this flap is lifted floor of the wound is visible, size.

-- Lower side in 1 1/2".

-- Past side of wound is 2".

-- Ant. side is 2".

-- Fresh bleeding seen."

18. The injury of Ramdas is certainly serious. But we cannot accept the submission of the learned Counsel for the appellants that the said injury of

Ramdas has not been explained by the prosecution. We find that Parvatibai (P.W.1), who was along with the deceased, right from the inception of the incident has unequivocally stated that after Ramdas had assaulted Tukaram on his back with a stick, Tukaram threw the spanner which he was carrying and the same struck on the right cheek of Ramdas. As a consequence thereof blood started oozing out.

It is significant to mention that Dr. Prakash Vedpathak (P.W. 11), in paragraph 4 of his deposition has stated that the said injury could be caused by article as (spanner) which was shown to him. Although Dr. Vedpathak was subjected to a grueling cross-examination, his evidence on the point that the said injury of Ramdas could be caused by a spanner, was not shaken. It is true that in his cross-examination he also stated that the said injury could be caused by an axe, but this does not mean that it could not be caused by a spanner. It is true that in the F.I.R. and in her statement u/s 161, Cri.P.C. Parvatibai has not stated that the injury of Ramdas was caused as a result of her husband throwing his spanner on Ramdas, but the said omission, in our view, is not fatal to the prosecution case, because she must have been in extreme agony on account of the injuries which she had suffered when she lodged the F.I.R. and her statement u/s 161 was recorded. It should be remembered that she had sustained fracture of left tibia and fibula and that both the F.I.R. and the statement u/s 161 Cri.P.C. are not meant to be an encyclopedia.

Hence the contention of learned Counsel for the appellants that the prosecution has failed to explain the injury on Ramdas is devoid of substance and we accordingly reject it.

19. Since the prosecution has explained the injury of Ramdas the decision of the Apex Court reported in Lakshmi Singh and Others Vs. State of Bihar, , cited by the learned Counsel for the appellants would have no application, because the same only postulates of the three inferences of being drawn against the prosecution in the eventuality of its not explaining the injuries of the accused.

20. As a matter of fact it would have made no difference even if the prosecution had not explained Ramdas's injury. At the worst, it could have been said that he may have been first attacked by the deceased Tukaram, and thereafter he and others assaulted Tukaram and others. But still the right of private defence would not have accrued to Ramdas and others. Instead Tukaram's act in assaulting Ramdas with spanner would have been within the ambit of his right of private defence of person in terms of section 101 of I.P.C. The evidence is and it has also been admitted by appellant Raghunath in his statement u/s 313 of the Cri.P.C. that it was the turn of Tukaram to take water in terms of order of Civil Court, and if that was so when the appellants and others came armed at Tukaram's well with iron bars, sticks and wooden logs he could have reasonably apprehended that they may cause him at least hurt and hence he had the right to cause harm short of death to Ramdas.

21. Mrs. Agarwal also contended that the defence version of the incident appears to be plausible. We regret, that we cannot concur with her submission. At this juncture, we would like to briefly refer to the defence version. That is contained in statements recorded u/s 313 Cri.P.C. of appellants, Rajaram and Rohidas, and acquitted accused Ramdas. According to it, Tukaram, Parvatibai and Murlidhar came to Rajaram's field. Tukaram blamed Ramdas for damaging his pipe-line and assaulted him with an axe on head but the blow instead struck Ramdas on his right cheek. Ramdas fell down and thereafter Murlidhar started assaulting him.

We have no hesitation in observing that the defence version of the incident is a tissue of lies. Firstly, we find that Ramdas sustained only one injury. In other words, the defence case that Murlidhar assaulted him after Tukaram had assaulted him is palpably false. Secondly, in the defence version of the incident even the presence of the three injured witnesses viz. Shaila, Gulab and Pandurang is not even mentioned. Mrs. Agarwal's contention that the injuries of the said persons were caused by fall, does not appear to be sound. During cross-examination, Dr.Prakash Vedpathak, who had examined the said persons was categorically asked this fact and replied that injuries of Shaila were caused by a hard and blunt object and could not be caused by fall. Finally, the defence version does not explain the manner in which the deceased Tukaram, Parvatibai, Murlidhar and Shaila sustained injuries.

22. In our considered view, the defence has failed to prove its case by a preponderance of probability in terms of section 105 of the Indian Evidence Act. We have no hesitation in rejecting the defence version of the incident.

23. Now, only one question survives namely, whether the trial Judge was justified in convicting the appellants u/s 302 read with 34 of the I.P.C. Both Mrs. Agrawal and Mrs. Bhosale vehemently contended that he erred in convicting them on the said count. In their contention, the common intention was only to grievous hurt to the deceased and the trial Judge should have convicted the appellants for an offence u/s 325 r/w 34 of the I.P.C. in place of an offence u/s 302 r/w 34 of the I.P.C.. In the instant case since the eye-witnesses have not been able to pin-point as to which of the appellants was responsible for causing the injury of the deceased which resulted in fracture of 9th rib on the left side leading to laceration of spleen which led to the death of the deceased, the question is whether the said injury was caused in furtherance of the common intention of the appellants or their common intention was at a lower ebb and one out of them who could not be pin-pointed by the witnesses exceeded it. We now propose to examine the said question.

24. It is a trite that the question of common intention / its extent, is a question of fact and not one of law. In inferring it the Court bears in mind circumstances like :

(i) the motive for assault;

- (ii) the weapons used;
- (iii) parts of body on which the injuries are inflicted;
- (iv) the number of injuries inflicted; and
- (v) whether the offence in respect of which common intention is being sought to be inferred was completed on the spot i.e. if common intention for murder is being sought to be inferred, whether the deceased was done to death on the spot (We should not be understood to mean that this is always necessary).

25. In our view, the common intention of the appellants was not to commit the murder of the deceased within terms of section 302 I.P.C. but it was only in respect of the knowledge of death of the deceased contemplated by section 304(II) I.P.C. for the reasons stated hereinafter :

- (a) The appellants and the deceased were close relations;
- (b) There was no background of long standing enmity between the appellants and the acquitted accused on the one side and the deceased and the injured persons on the other;
- (c) Killing of the deceased was the result of a trifling reason arising from the insistence of the deceased to replace the bent pipe by installing a new one and the equal adamant posture of the appellants and others that they would not allow him to do so;
- (d) Although as many as 17 injuries were inflicted on the deceased, but not even a single injury was caused on the most vital part of the body namely head;
- (e) That from the evidence of Dr. Vedpathak, who performed the autopsy and also examined the deceased in his life time, it is clear that the death of the deceased was primarily the result of the injury which had caused fracture of 9th rib on the left side leading to laceration of spleen. The other injuries of the deceased it appears were not capable, in the ordinary course of nature, of causing the death of the deceased. It has not been specified by the eye-witnesses as to which of the four appellants, was responsible for inflicting this fatal injury which resulted in the fracture of 9th rib of the deceased which led to laceration of spleen;
- (f) that excepting fracture of 9th rib (left side) the other fractures were distributed between hands and legs of the deceased and it has not been specified as to which of the four appellants were responsible for causing them and
- (g) There was no hindrance in the way of the appellants and others in killing the deceased on the spot if they so wanted. The evidence is that he was not killed on the spot.

26. In our judgment, bearing in mind the circumstances mentioned in the preceding paragraph it would be hazardous to hold that the murder of the deceased was committed in the furtherance of the common intention of the

appellants. The act of the appellants would certainly fall within the ambit of clause thirty of section 299 I.P.C. In our view, when the appellants conjointly inflicted a large number of injuries on the deceased, (may be none of them were on his head), it can be reasonably inferred that they shared the common intention with respect to the knowledge of his death in terms of section 304(II) I.P.C. One of them who could not be pin-pointed in evidence exceeded that common intention and inflicted an injury on the 9th rib (left side) which caused laceration of spleen leading to death of the deceased. Since that injury was not caused in furtherance of common intention of the appellants, they cannot be convicted for an offence u/s 302 read with 34 I.P.C.. But all the same, they would be squarely guilty of an offence u/s 304(II) read with 34 I.P.C.

For the said reasons, we reject the submission of learned Counsel for the appellants that only an offence u/s 325 r/w 34 I.P.C. is made out.

27. There is another reason as to why the conviction of the appellants cannot be sustained u/s 302 read with 34 I.P.C. Dr. Vedpathak (P.W. 11), stated that the deceased died as a result of fracture of ninth rib (left side) resulting in laceration of spleen. Whereas when the deceased was assaulted on his back by all or some of the appellants, they could be attributed the common intention of causing fracture of ninth rib it would be too much to infer that they also shared the common intention to lacerate the spleen. The safer course would be to infer that when they assaulted the deceased on his back they had the knowledge that spleen of the deceased could be lacerated. In such a situation, in our view, only an offence u/s 304 Part II read with 34 of I.P.C. and not one u/s 302 read with 34 I.P.C. would be made out against the appellants.

28. The question is as to what should be the quantum of sentence to be awarded to the appellants. This is a contentious issue. Whereas Mrs. Agarwal and Mrs. Bhosale submitted that bearing in mind the circumstances enumerated hereinafter namely :---

- (a) that the incident took place nearly 15 1/2 years ago;
- (b) that the appellants and the victims are close relations;
- (c) that there is no previous enmity between them; and
- (d) that the incident was the outcome of a trifling matter, it being whether the bent pipe should be changed or not;

it is a fit case in which the appellants be not sentenced to a jail term but instead a substantial amount of fine be imposed upon each of them, which should be directed to be paid by us as compensation to the wife of the deceased. Mr. Thakur, learned Addl. Public Prosecutor urged that looking to the manner in which the incident has taken place and the number of injuries caused to the victims, it would be outrageous to the ends of justice, if a sentence of fine alone is imposed. He urged that if we do this we would be giving a premium to people to take law in their own hands.

To us, the contention of Mr. Thakur appears to be weighty. When, as per the orders of the Civil Court, it was the turn of the deceased to take water from the well the appellants showed utter defiance to law when they went armed on the place of the incident and on the insistence of the deceased that he would change the bent pipe first launched an assault on him then on those who ran to his rescue.

We have given our anxious consideration to the questions. In our view, considering the totality of circumstances it would be expedient in the interest of justice if each of the appellants are sentenced to undergo Rigorous Imprisonment for a period of three years and a fine of Rs. 12,500/- (Twelve thousand five hundred) in default to undergo Rigorous Imprisonment for two years, u/s 304 Part II read with section 34 of the I.P.C. This fine shall be deposited by the appellants within six months from today in the trial Court. In case the same is deposited by them, the learned trial Court shall immediately inform the widow of the deceased-Parvatibai (P.W. 1) and pay the whole of it i.e. Rs. 50,000/- (Rupees Fifty thousand) to her as compensation. In case she is no more, the said amount shall be paid in equal proportion to her legal heirs or heir as the case may be.

29. In the result, both these appeals are partly allowed and partly dismissed. We set aside the conviction and sentence of the appellants u/s 302 read with section 34 of the I.P.C. and acquit them on that count. We however, convict them u/s 304 Part II read with section 34 of the I.P.C. for which offence we sentence each of them to suffer Rigorous Imprisonment for three years and to pay a fine of Rs. 12,500/- (Rupees twelve thousand five hundred) and in default, to undergo R.I. for two years. The fine shall be deposited in the trial Court within six months from today. The whole of it i.e. Rs. 50,000/- (Rupees Fifty thousand) shall be paid as compensation to Parvatibai (P.W.1), the widow of the deceased and in case she is not alive, in equal proportion to the legal heir / heirs of the deceased as the case may be. As soon as the fine is deposited by the appellants, the trial Court shall inform Parvatibai and / or as the case may be, legal heir or heirs of the deceased about this compensation.

The appellants are on bail. They shall be taken into custody forthwith to serve out their sentences.

Before parting with this judgment, we will be failing in our fairness, if we do not record our appreciation for the enormous assistance which we have received from the learned Counsel for the parties in the decision of these appeals.

In case an application for certified copy of this judgment is made, the same shall be issued on an expedited basis.

Appeals partly allowed.