

(2000) 12 BOM CK 0051

In the Bombay High Court

Case No : Criminal Appeal No's. 170, 222 of 1997

Sanjay Bajirao Nagane

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 299, 300

Citation : (2001) ALLMR(Cri) 1130 : (2001) BomCR(Cri) 375 : (2001) 1 BOMLR 729 : (2002) 1 MhLj 959

Hon'ble Judges : Vishnu Sahai, J;T.K. Chandrashekhara Das, J

Bench : Division Bench

Advocate : Mr. Nitin Jamdar, Shirish Gupte and Mr. T.E. Mane, for the Appellant; Mr. A.M. Shringarpure, Assistant Public Prosecutor and Ms. G.P. Mulekar, for the Respondent

Judgement

Vishnu Sahai, J.—Since both these appeals arise out of the same set of facts and a common impugned Judgment, we are disposing them off by one Judgment.

2. Through these two appeals, the appellants challenge the Judgment and order dated 5.2.1997 passed by the Additional Sessions Judge, Solapur, in Sessions Case No. 64 of 1996, whereby they have been convicted and sentenced in the manner stated hereinafter :-

(i) u/s 302 r/w 149 of the I. P. C. to undergo imprisonment for life and to pay a fine of Rs. 2000/- in default to suffer one year R. I. ;

(ii) u/s 307 r/w 149 of the I. P. C. to undergo five years R. I. and to pay a fine of Rs. 1000/- each in default to undergo six months R. I.

(iii) u/s 452 r/w 149 of the I. P. C. to undergo 1 year R. I. and to pay a fine of Rs. 500/- each in default to undergo 3 months R. I.

In addition, the appellants - Sanjay Nagane, Prabhakar Mali, Kalidas Dupare, and Rajak Shaikh have been convicted for offences under sections 147 and 148 of the

I. P. C. On the former count, they have not been awarded any separate sentence. On the latter count, they have been sentenced to undergo 1 year R. I. and to pay a fine of Rs. 250/- each in default to undergo 3 months R. I.

In addition, the appellants - Chandrakant Barade, Shivaji Barade, Pappu @ Tanaji Maruti Vyawahare, Arjun Balbhim Londhe, Hanumant Kisan Khandagale, Kalidas Kalyan Kolate, Sambhaji Kondiba Danane, Devidas Dadasaheb Patil and Vikas Balbhim Londhe have been convicted u/s 147 of the I. P. C. and sentenced to undergo six months R. I. and to pay a fine of Rs. 250/- each in default to undergo three months R. I.

The sentences of the appellants have been ordered to run concurrently.

It is pertinent to mention that along with the appellants was tried on Bhanudas Patil but, he has been acquitted vide the impugned Judgment and one Hanumant Londhe could not be put up for trial as he was absconding.

3. Shortly stated the prosecution case runs as under :-

The informant - Namdeo Barde P. W. 4 is the husband of Rukmini Barde P. W. 5, the father-in-law of Jayshree Barde P. W. 6, brother-in-law of Savitri Barde P. W. 11 and the father of the deceased Vilas Barde. At the time of the incident, the informant and the said persons were living in village Bitargaon Taluka Madha District Solapur. The appellants, acquitted accused Bhanudas Patil and the absconding accused Hanumant Londhe are also said to be the residents of the said Village.

The appellants were the members of the Congress party and their leader was the acquitted accused Bhanudas Patil. Initially, Namdeo Barde also belonged to the Congress party but when about five to six months before the incident, the Shiv-Sena party was created in village Bitargaon, he became its president. This irked the appellants and the acquitted accused Bhanudas Patil. What irked them more was that in the year 1995, the informant Namdeo contested Gram Panchayat election against the acquitted accused Bhanudas Patil. Although he was defeated but, Bhanudas Patil and the appellants were not magnanimous in the hour of their triumph and on 14.8.1995 at about 3 to 3.15 p. m. first the appellant Chandrakant Barade peeped inside the informant's house and thereafter along with other appellants and the absconding accused Hanumant Londhe entered his house. The appellants Sanjay Nagane, Prabhakar Mali, Kalidas Dupare and Rajak Shaikh were armed with iron bars. The remaining appellants and the absconding accused Hanumant Londhe were armed with sticks. They started belabouring the informant with the said weapons. The appellant -Devidas, who was the real brother of the acquitted accused Bhanudas was saying that the informant had established the Shiv-Sena party. Seeing the informant being assaulted, his wife Rukmini Barde P. W. 5 implored the appellants and Hanumant Londhe not to assault him, but, they paid no heed to her request.

After assaulting the informant Namdeo Barde, the appellants and Hanumant

Londhe proceeded to the field of one Dashrath Barde, which as per the local inspection by the Trial Judge was situated about 1 1/2 furlongs to 2 furlongs from the house of the informant and where the informant's son Vilas, assisted by his wife Jayshree P. W. 6 and his aunt Savitribai alias Savitri P. W. 11 was doing masonry work. In the said field near a cattle shed, they belaboured Vilas and thereafter ran away.

After the appellants and others had made themselves scarce, Jayshree Barde asked Savitri to remain there and she came to the house and informed her father-in-law Namdeo Barde and mother-in-law Rukmini Barde about the assault on Vilas. She noticed Namdeo Barde was also grievously injured. Thereafter, Jayshree and Rukmini came to Dashrath Barde's field where Vilas was lying. From there, Vilas was removed to the informant's house. Thereafter, Rukmini Barde along with Vasudeo Barde P. W. 14 proceeded to Kurduwadi Police Station. At about 5.30 p.m. they reached near Kurduwadi Naka where they found Dhananjay Dikole P. W. 15 standing. Rukmini informed Dhananjay Dikole that her husband and son had been assaulted and both were seriously injured. She asked Dhananjay to accompany him to the Police Station and Dhananjay acceded to her request. At the Kurduwadi Police Station, Dhananjay requested that a jeep be sent to bring the injured. Accordingly, the police arranged for a jeep. In the same, Rukmini along with a constable left for her house. Thereafter putting Namdeo and Vilas in the jeep, she came to Kurduwadi Rural Hospital.

4. The evidence of Dr. Mohammed Ahmed P. W. 1 shows that on 14.8.1995 at 7.10 a. m. Vilas Barde and Namdeo Barde, accompanied by a police constable were brought to the Rural Hospital, Kurduwadi and thereafter he medically examined both of them; Vilas at 7.10 p. m. and Namdeo at 7.40 p.m.

On the person of Vilas Barde, he found the following injuries :-

"1.C. L. W. size 3 cm. x 1 cm. x 1 cm. on scalp occipital parietal region, right side, obliquely placed, bleeding positive, margins irregular;

2. C. L. W. 2 cm. x 1 cm. x 1 cm. on occipital region, obliquely placed margins irregular active bleeding present;

3. C. L. W. 2 cm. x 1 cm. x 1/2 cm. left elbow, posteriorly placed, active bleeding present;

4. Contusion 10 cm. x 3 cm. left arm, occupying whole left arm;

5. Contusion 3 cm. x 3 cm. left arm interiorly .

6. Compound fracture left tibia fibula deformity present, active bleeding present, clinically evidence of fracture present. This is a grievous injury caused by hard and blunt object within 24 hours.

7. Contusion 6 cm. x 3 cm. right thigh medial aspect;

8. C. L. W. 2 cm. x 1 cm. x 1 cm. each skin of right, tibia, active bleeding

present, deformity of right leg present, movements painful and tender;

9. Contusion 5 cm. x 4 cm. left thigh lateral aspect;

10. Contusion 10 cm. x 2 cm." back, left scapular region;

11. Contusion 10 cm. x 2 cm. back, right scapular region;

12. Contusion 5 cm. x 2 cm. left buttock."

In the opinion of Dr. Ahmed, excepting injury No. 6 which involved compound fracture on left tibia and fibula, remaining injuries were simple in nature and the said injuries were caused within 24 hours by a hard and blunt object. He categorically stated that they could be caused by iron bars (article Nos. 21 to 24) and sticks (article Nos. 25 to 32) shown to him.

On the person of Namdeo Barde, Dr. Ahmed found the following injuries:-

"1. C. L. W. 4 cm. x 1 cm. x 1 cm scalp, frontal region horizontally placed;

2. C. L. W. 6 cm. x 2 cm. x cm. scalp, parietal region in the centre;

3. C. L. W. 3 cm. x 1 cm. x 1 cm. scalp, left parietal region;

4. C. L. W. 2 cm. x 1/2 cm. x 1/2cm. scalp, left parietal region.

5. Contusion 3 cm. x 3 cm. left arm, anteriorly

6. Contusion 8 cm. x 2 cm. left forearm ventral aspect;

7. C. L. W. 1 cm. x 1/2 cm. x 1/2 cm left forearm in lower 1/3 outer aspect, movements, at left wrist painful; tenderness present deformity present clinically evidence of fracture of ulna, left lower end;

8. Contusion 5 cm. x 3 cm. left thigh, outer aspect;

9. Contusion 3 cm. x 2 cm. left knee, medially;

10. Contusion 3 cm. x 2 cm. left leg, medial aspect;

11. C. L. W. 3 cm x 1 cm x 1 cm right leg on shin of tibia vertically placed, clotted blood present, tenderness present movements painful and restricted, clinically evidence of fracture tibia right;

12. Contusion deformity right ankle, movements at right ankle painful restricted;

13. Contusion 6 cm. x 3 cm right thigh outer aspect in the middle;

14. Contusion 3 cm. x 3 cm right hand dorsum movements of right finger restricted and painful;

15. C. L. W. with contusion 2 cm. x 1/2 cm. x 1/2 cm. right arm in the middle, movements painful and restricted.

16. C. L. W. 2 cm. x 1/2 cm. x 1/2 right arm, outer aspect in the lower 1/ 3;

17. Contusion 3 cm. x 3 cm. right arm, outer aspect.

In the opinion of Dr. Ahmed, injury Nos. 7 and 11 were grievous in nature and the remaining were simple in nature. In his opinion, all of them were attributable to a hard and blunt object and injury Nos. 1 to 17 were possible by article Nos. 21 to 24 (iron bars) and article Nos. 25 to 32 (sticks).

5. It is pertinent to mention that the evidence of Namdeo Barde shows that at Rural Hospital, Kurduwadi, his F.I.R. was recorded. From the evidence of A. P. I. Digambar Mule P. W. 17 it is manifest that same day at 7 p. m. he had sent A. P. I. Gaikwad for recording the F.I.R. to Rural Hospital and the F.I.R. was recorded by him.

On the basis of the F.I.R., A. P. I. Digambar Mule P. W. 17 registered C. R. No. 52 of 1995 under sections 147, 307 etc. at Police Station Kurduwadi.

6. Since the condition of the victims was precarious, Dr. Ahmed advised that they be shifted to Civil Hospital, Solapur.

On the advise of Dr. Ahmed, Rukmini Barde P.W. 5, shifted Namdeo and Vilas to Civil Hospital, Solapur but, on the way, near Mohol, Vilas succumbed to his injuries. Rukmini's evidence shows that along with Namdeo, she reached Civil Hospital, Solapur at 8 to 9 p. m.

7. The evidence of Dr. Ramesh Ukarande P. W. 2 shows that on 14.8.1995, he was Medical Officer, Civil Hospital, Solapur and at 11 p. m. examined Namdeo Barde and found on his person the following injuries :

- "1. Contusion 1" in diameter left wrist joint;
2. Sutured wound 1" in length right mid forearm;
3. Sutured wound 2" in length left frontal parietal region;
4. Contusion 1" in diameter right ankle joint.
5. Contusion 1/2" in diameter left mid forearm."

In the opinion of Dr. Ukarande, injury Nos. 1 to 3 were simple in nature and Nos. 4 and 5 were grievous, as they had resulted in fracture of left radius, ulna lower 3rd and fracture of fibula and medial malleolus left third.

In his opinion, the said injuries were caused within 24 hours and were attributable to a blunt object.

8. The autopsy on the corpse of the deceased Vilas Barde was conducted, between 8 a.m. and 10 a.m., on 15.8.95 by Dr. Sanjay Sawant P. W. 3 who found on it the following injuries :

- "1. Contusion on right thigh bluish black in colour 5" x 1" in size;
2. C. L. W. on right lower leg 1" x 1" bone deep with fracture tibia fibula;

3. C. L. W. on left lower leg bone deep 1" x 1" size with fracture tibia fibula;
4. Imprint abrasion (chain) 7" x 1" in size brownish in colour on back left shoulder;
5. Imprint abrasion (chain) 7" x 1/2" size incised on right side shoulder (back)
6. Contusion on back 7" x 1/2" bluish black in colour;
7. Imprint abrasion (chain) on back below injury No. 6 4" x 1/2" in size;
8. Contusion on back which is circular to oval in shape 3" x 2" in size bluish black in colour;
9. Contusion on left buttock 3" x 1" in size bluish black in colour;
10. Contusion on left buttock below injury No. 9, 3" x 1/2" in size bluish black in colour;
11. Contusion on left thigh posteriorly 5" x 4" in size; bluish black in colour;
12. Compound fracture tibia fibula left side;
13. Imprint abrasion on right thigh posteriorly 4" x 1/4" in size; brownish in colour (chain imprint);
14. Multiple abrasion on left thigh posteriorly 1 x 1 cm. in size each;
15. Multiple abrasion on right forearm dorsal aspect 1 x 1 cm. each;
16. Abrasion on right shoulder 1 x 1 cm. brown in colour;
17. Sutured wound on head 1" in length;
18. Sutured wound on head 1" in length which is on the middle of head."

The Internal damage found by Dr. Sawant was as under :-

Fracture of tibia fibula on right lower leg; compound fracture of tibia and fibula on left leg; and fracture of 5th, 6th and 7th ribs on the right side.

In the opinion of Dr. Sawant, the deceased died on account of shock and haemorrhage due to fracture of tibia fibula both sides with fracture of ribs with multiple contusions on body.

9. The case was investigated in the usual manner by A. P. I. Gaikwad P. W. 16 and A. S. I. Digambar Mule P. W. 17.

On conclusion of the investigation, the appellants and the acquitted accused Bhanudas Patil were charge-sheeted.

During trial, in all the prosecution examined 17 witnesses. Four of them namely Namdeo Barde P. W. 4, Rukmini Barde P. W. 5, Jayshree Barde P. W. 6 and Savitri Barde P. W. 11 were examined as eye-witnesses.

The defence of the appellants was denial. No defence witness was examined.

The learned Trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellants in the manner stated in para 2 above.

Hence these appeals.

10. We have heard learned counsel for the parties and perused the entire material on record. In our view, both these appeals deserve to be partly allowed inasmuch as instead of an offence u/s 302 r/w 149 of the I. P. C., an offence u/s 304(2) r/w 149 of the I. P. C. is made out against the appellants.

We have no reservations in observing that the convictions and sentences of the appellants on all other counts suffer from no infirmity.

11. In spite of the fact that Mr. Nitin Jamdar, learned counsel for the appellant - Sanjay Nagane in Criminal Appeal No. 170 of 1997 and Mr. Shirish Gupte learned counsel for the appellants in Criminal Appeal No. 222 of 1997 canvassed a solitary submission before us namely that no offence u/s 302 r/w 149 of the I. P. C. is made out against the appellants and only one u/s 304(2) r/w 149 of the I. P. C. is made out against them, we have examined the matter in entirety.

As we have mentioned earlier, four eye witnesses namely Namdeo Barde P. W. 4, Rukmini Barde P. W. 5, Jayshree Barde P. W. 6 and Savitri Barde P. W. 11 were examined by the prosecution. Out of them, Namdeo Barde and Rukmini Barde gave evidence in respect of the assault on the former and Jayshree Barde and Savitri Barde gave evidence in respect of the assault on the deceased Vilas. In para 3 of this judgment, we have set out the details in respect of the assault on both Namdeo Barde and Vilas Barde on the basis of the said ocular account. Consequently we do not intend graphically recounting the details.

In short, Namdeo Barde stated that there was enmity between him, the appellants and the acquitted accused Bhanudas Patil because, although he originally belonged to the Congress party to which party Bhanudas Patil and the appellants also belonged but, about five to six months before the incident, he became the president of the Shiv-Sena party and Bhanudas Patil and the appellants continued being the members of the Congress party.

His evidence shows that in Gram Panchayat election he contested against Bhanudas Patil and although the latter won but, victory did not make him magnanimous and the present incident was the outcome of political and election rivalry.

The evidence of Namdeo Barde and Rukmini Barde shows that on the date and time of the incident, they were inside their house. First the appellant - Chandrakant Barde came and peeped inside the house and finding that Namdeo Barde was inside it, immediately came along with the other appellants and the absconding accused Hanumant Londhe.

The evidence of Namdeo Barde and Rukmini Barde further shows that whereas

the appellants - Prabhakar Mali, Kalidas Dupare, Rajak Shaikh and Sanjay Nagane were armed with iron bars, the remaining persons were armed with sticks.

Their evidence shows that all of them with iron bars and sticks assaulted Namdeo.

The evidence of Jayshree Barde and Savitri Barde shows that immediately after assaulting Namdeo, all of them went to the field of one Dashrath Barde where the deceased Vilas, assisted by them, was doing masonry work and assaulted him with the said weapons.

We have examined the evidence of all the four eye-witnesses and find it to be implicitly truthful. The manner of assault as furnished by Namdeo and Rukmini in respect of the assault on the former and that furnished by Jayshree and Savitri in respect of the assault on Vilas is corroborated by the medical evidence, to which we have extensively referred to earlier.

We have seen that the medical evidence shows that the injuries of Namdeo and Vilas were attributable to iron bars and sticks.

12. It is pertinent to mention that all these eye-witnesses have explained their presence on the place of the incident; Namdeo and Rukmini have stated that they were inside their house when the assault on the former was made. Jayshree and Savitri have stated that they were assisting the deceased Vilas in masonry work in the field of Dashrath Barde when he was belaboured.

13. In our view, the evidence of the aforesaid eye-witnesses squarely establishes both the involvement of the appellants in the incident and the commission of offences punishable u/s 307 r/w 149 of the I. P. C. and 452 r/w 149 of the I. P. C. against all the appellants and also establishes the commission of offence punishable u/s 148 of the I. P. C. by appellants - Sanjay Nagane; Prabhakar Mali, Kalidas Dupare and Rajak Shaikh and that u/s 147 of the I. P. C. by the remaining appellants.

14. We however, find merit in the solitary contention of Mr. Gupte and Mr. Jamdar that the learned Trial Judge erred in convicting the appellants for the offence u/s 302 r/w 149 of the I. P. C.

We have seen that the incident took place in two parts; in the first part the informant - Namdeo Barde was assaulted and thereafter the appellants came to the field of Dashrath Barde, which as per the local inspection conducted by the learned Trial Judge was situated at a distance of about 1 1/2 furlongs to 2 furlongs from the house of Namdeo Barde and assaulted Vilas.

It is manifest from the evidence of the prosecution witnesses, to which we have referred to above, that the initial target of assault was Namdeo and Vilas was assaulted in the second phase.

It appears to us that after assaulting Namdeo, the appellants were carried away and launched an assault on Vilas. We however, feel that the evidence does not

betray that the common object of the unlawful assembly was to murder Vilas.

We have earlier set out in entirety the injuries found on the corpse of the deceased by the Autopsy Surgeon Dr. Sanjay Sawant P. W. 3. We have seen that the deceased in all suffered 18 injuries and excepting two of them namely injury Nos. 17 and 18 which were on the head and were simple in nature, other injuries were mostly distributed between hands and legs, though some were also on the back.

It is also pertinent to mention that out of the 18 injuries suffered by the deceased, as many as 3 were abrasions and 2 were multiple abrasions. Looking to the dimensions of the said injuries, in our view, they were caused by a fall. In other words, there were 13 injuries on the person of the deceased which were attributable to the assault made by the appellants and Hanumant Londhe. What we want to convey is that from the medical evidence, it appears that each of the appellants inflicted only one blow. In our view, had the common object been to commit the murder of the deceased Vilas, then injuries more in number would have been inflicted on vital parts of the body of the deceased by the appellants.

It is also pertinent to mention that out of the three fractures which were found on the corpse of the deceased, two related to non-vital parts of the body, right lower leg (fracture of tibia and fibula) and left leg (fracture of tibia fibula) and one related to fracture of 5th, 6th and 7th ribs on the right side. However, in respect of the fracture on ribs, we do not find any external corresponding injury. It appears to us that the said fracture was suffered by the deceased when he fell down as a result of the assault made on him by the appellants and Hanumant Londhe.

It is further pertinent to mention that the Autopsy Surgeon Dr. Sawant has not stated that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death.

In such a factual matrix, in our view, it would be hazardous to hold that the common object of the unlawful assembly was to commit the murder of the deceased.

It should be borne in mind that the question as to what is the common object of an unlawful assembly is primarily a question of fact and has to be decided on the facts of each case. In this connection, we feel it pertinent to refer to para 33 of the Division Bench decision of the Allahabad High Court rendered in the case of Moti and others v. State, which reads thus :

Para 33. "The question as to what was the common object of the unlawful assembly is essentially a question of fact which has to be determined on the facts and circumstances of each case. The motive for the crime, the weapons used in the attack, the conduct of the assailants, both before and at the time of the attack are relevant considerations."

15. For the said reasons, in our view, the common object of the unlawful

assembly of which the appellants were undisputedly members, was not to commit the murder of the deceased and hence the first part of section 149 of the I. P. C. would not be applicable.

16. The question is whether on the facts of this case the second part of section 149 of the I. P. C. namely whether the appellants knew that the murder of the deceased was likely to be committed would be attracted.

If the answer to it is in the affirmative, then the appellants would be liable for the offence punishable u/s 302 read with 149 of the I. P. C. However, our answer to the said question has to be in the negative. Before the appellants can be constructively held liable for the murder of the deceased under the second part of section 149 of the I. P. C., it has to be established that they had its knowledge.

In other words, two things have to be established before holding that the appellants would be liable for the offence u/s 302 read with 149 of the I. P. C. :-

(a) that murder has been committed; and

(b) the appellants had the knowledge of the likelihood of its being committed.

If any of them are not established, a conviction u/s 302 read with 149 of the I. P. C. cannot be sustained.

17. To ascertain whether murder has been committed, we have to turn to section 300 of the I. P. C.

It reads thus :

Section 300 :

"Murder, Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly: If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly: If the person committing the act knows that it is so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

In our view the act of the appellants, who though were members of an unlawful assembly, would not fall within the four corners of any of the four clauses; under firstly because had they intended to cause the death of the deceased, they would

have inflicted more injuries, which were accompanied by internal damage, on vital parts of the body of the deceased; under secondly because both the language of the clause and illustration (b) shows that this clause would only be attracted where it is shown that it is in the knowledge of those assaulting the deceased that he was suffering from any infirmity, which though not ordinarily sufficient to cause death, was sufficient to cause death of the deceased; under thirdly because the Autopsy Surgeon has not stated that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause his death; and under fourthly because on the facts of this case, it can neither be said that the appellants knew that their act was so imminently dangerous that it must in all probability cause death nor such bodily injury as was likely to cause death. As we have seen earlier, each of the appellants only inflicted one injury; the bulk of the injuries were inflicted on non-vital parts of the body of the deceased; excepting fracture of vth, vith and viith ribs on the right side, which appear to be caused by fall because, there was no external injury above them, the fractures also relate to non-vital parts of the body, namely the leg bones; and although two injuries were inflicted on the head of the deceased but both were simple in nature.

18. For the said reasons, in our view, even with the aid of the second part of section 149 of the I. P. C. the appellants would not be liable for the offence punishable u/s 302 read with 149 of the I. P. C.

19. But, it is impossible to escape the inference that when as members of an unlawful assembly, the appellants assaulted the deceased with iron bars and sticks they committed an act with the knowledge in terms of clause thirdly of section 299 of the I. P. C., that his death may result therefrom and hence, they would be liable for the offence u/s 304(ii) read with 149 of the I. P. C.

20. The question which remains is the quantum of sentence which should be awarded to the appellants for the offence u/s 304(ii) read with 149 of the I. P. C. We have reflected over it and considering the over all circumstances feel that a sentence of six years R. I. and a fine of Rs. 10,000/- on each of the appellants, in default a sentence of two years R. I., would meet the ends of justice.

21. So far as the other offences committed by the appellants are concerned, in our view, the sentence awarded to them cannot be castigated as excessive and calls for no reduction.

22. IN THE RESULT :

(A) Criminal Appeal No. 170 of 1997 is partly allowed. Although we maintain the convictions and sentences of the appellant for the offences punishable under sections 307 r/w 149 of the I. P. C., 452 r/w 149 of the I. P. C. and 148 I. P. C. and his conviction for the offence u/s 147 of the I. P. C. but, we set aside his conviction and sentence for the offence u/s 302 r/w 149 of the I. P. C. and instead find him guilty for the offence u/s 304(2) r/w 149 of the I. P. C. and sentence him to suffer six years R. I. and to pay a fine of Rs. 10,000/-, in default

to undergo two years thereunder;

The fine shall be deposited by the appellant within 9 months from today in the Trial Court.

In case the said fine is not deposited, within the said time, the appellant shall serve out the sentence in default of payment of fine.

In case the appellant has paid the fine of Rs. 2000/- for the offence u/s 302 r/w 149 of the I. P. C. the same shall be refunded to him.

The appellant is in jail and shall serve out the sentence.

(B) Criminal Appeal No. 222 of 1997 is also partly allowed. Although we maintain the convictions and sentences of the appellants for the offences punishable u/s 307 r/w 149 of the I. P. C. and 452 r/w 149 of the I. P. C. and the convictions and sentences of the appellants Prabhakar Sambhau Mali, Kalidas Limba Dupare and Rajak Hamu Shaikh for the offence u/s 148 of the I. P. C. and conviction of the said appellants for the offence u/s 147 of the I. P. C. and convictions and sentences of the appellants - Chandrakant Ambu Barde, Shivaji Dattu Barde, Pappu @ Tanaji Maruti Vyawahare. Arjun Balbhim Londhe, Hanuman Kisan Khandagale, Kalidas Kalyan Kolate, Sambhaji Kondiba Danane, Devidas Dadasaheb Patil and Vikas Balbhim Londhe for the offence punishable u/s 147 of the I. P. C. but, we set aside their convictions and sentences for the offence u/s 302 r/w 149 of the I. P. C. and instead find them guilty for the offence u/s 304(2) r/w 149 of the I. P. C. and sentence them to undergo six years R. I. and to pay a fine of Rs. 10,000/ each in default to undergo two years R. I. thereunder.

The fine shall be paid by the appellants within 9 months from today in the Trial Court falling which the defaulting appellant/appellants, as the case may, be shall undergo the sentence in default of payment of fine.

In case the appellants have paid the fine of Rs. 2000/- for the offence u/s 302 r/w 149 of the I. P. C., it shall stand refunded to them.

The appellants are in Jail and shall serve out their sentence.

(C) The learned Trial Judge has directed that out of the fine realised, 30,000/- shall be paid to Jayshree Vilas Barde, resident of Betergaon as compensation. The said direction is set aside and instead, we direct that out of the fine recovered, Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand) shall be given to Jayshree Vilas Barde P. W. 5 as compensation.

Immediately on the fine being deposited, the Trial Court shall inform Jayshree Vilas Barde about this compensation and pay the same to her without any loss of time.

In case Jayshree Vilas Barde is not alive, the said compensation shall be paid to her legal heirs.