
(2013) 10 BOM CK 0102

In the Bombay High Court

Case No : Criminal Appeal No's. 433, 752, 832 of 2010

State of Maharashtra

APPELLANT

Vs

Chandrakant Krishna Jadhav and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 6 ABR 784 : (2013) ALLMR(Cri) 4390 : (2014) 1 BomCR(Cri) 430

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : A.P. Mundargi, instructed by Mr. Shekhar A. Ingwale, Anand S. Patil, Mr. V.V. Purwant in Cr.Appeal Nos. 433 of 2010, Mrs. V.R. Bhonsale, APP for the State in 433, 752 and 832 of 2010 and Mr. V.V. Purwant in 752 and 832 of 2010, for the Appellant; A.P. Mundargi instructed by y Mr. Shekhar A. Ingwale with Anand S. Patil for the Respondent Nos. 2 and 5 to 18 in 752 of 2010 and Respondent Nos. 1, 2 and 5 to 18 in 832 of 2010, for the Respondent

Judgement

A.R. Joshi, J.—Heard rival arguments at length on all the three appeals. Criminal Appeal No. 433 of 2010 is preferred by all eighteen appellants - original accused challenging the judgment and order dated 7th June, 2010 passed by Additional Sessions Judge, Kolhapur. By the said impugned judgment and order all 18 accused were convicted for the offence punishable u/s 304 Part II, Section 326 and 341, all read with Section 149 and Sections 144, 147, 148 of IPC. For the offence u/s 304 Part II of IPC all the appellants-accused were sentenced to suffer R.I. for five years each. For the offence u/s 326 read with Section 149 of IPC, they were sentenced to suffer RI for three years each and to pay fine of Rs. 1000/- in default to suffer RI for one month each. For the offence u/s 341 read with Section 149 of IPC all the appellants/accused were sentenced to pay a fine of Rs. 500/- each, in default to suffer SI for 15 days each. Though all the appellants/accused were convicted for the offence punishable under Sections 144, 147, and 147 no separate punishment was imposed on them. The substantive sentences were directed to run concurrently. By the same impugned

judgment and order all the appellants - accused were acquitted of the offence u/s 135 of the Bombay Police Act. This acquittal is challenged by the State in Criminal Appeal No. 832 of 2010. Criminal Appeal No. 752 of 2010 is also preferred by the State for enhancement of the punishment imposed against all the appellants/accused for the offence u/s 304 Part II, read with Section 149 of the IPC. Apparently, it must be construed that by filing the said appeal for enhancement on the aspect of quantum of punishment, admittedly, the State has not prayed for punishment of the appellants accused for the offence punishable u/s 302 of IPC. This is significant as earlier all the accused were charged for the offence punishable u/s 302 read with Section 149 of IPC along with other allied offences. In spite of this at the end of the trial, the trial Court came to the conclusion that offence punishable u/s 302 of IPC has not been established and the offence was diluted to Section 304 Part II of IPC thus holding all the appellants/accused guilty of the offence of culpable homicide not amounting to murder and falling under clutches of Part II of Section 304 of IPC.

2. The case of the prosecution in nut-shell is as under: -

3. In the year 2004 there was an election to elect the members of one Bhairavnath Vividh Karyakari Sahakari Society at village Kolele, Taluka Panhala, District Kolhapur (Hereinafter called as "Society" for the sake of brevity. In the said election, 16 candidates of the complainant party i.e. party belonging to Vikas Rajaram Patil were elected. The elected members contested the election under the panel of Gadaidevi Vikas Aghadi. According to the prosecution, appellants/accused Nos. 1, 2, 9, 11 and 13 had contested the said election through said Gadaidevi Vikas Aghadi and apparently were the members of the complainant party and they got elected. Thereafter, accused No. 9 was elected as the Chairman for the year 2004. Thereafter, in the year 2005 there was election of Kolhapur District Central Co-operative Bank and accordingly the Member was to be nominated to represent the society for the election of said Bank. A meeting was held on 16th October, 2005 and one Tanaji Dhavle was nominated as the candidate of the complainant party. That time accused No. 1 had proposed the name of one Dinkar Patil but said Patil was not nominated. On this count, there was a rift in Aghadi members. In the mean time, accused No. 2 was removed from the Directorship of Bhairavnath Society by order of Additional Registrar, Co-operative Societies vide order dated 31st May, 2006. As such there was animosity in the members of the said Society and Aghadi and accused No. 1 and his associates were having grudge against the complainant Vikas PW No. 5. It is also the case of the prosecution that then elected Chairman in the year 2004 i.e. accused No. 9 had not held any general meeting and as such on 17th July, 2006 a meeting was proposed for fixing the date of general body to elect the chairman and vice chairman of the society. Accordingly on 17th July, 2006 at about 9:30 a.m. the complainant Vikas PW No. 5 and his friend Tanaji Dhavle PW No. 6 were proceeding towards the office of Bhairavnath Society and that time they were accosted and obstructed by all the eighteen accused at the door of Bhairavnath society office. Apparently, all the appellants accused had gathered there in front

of the office of the society in the chowk and all were armed with sticks, iron rods and axe. When the complainant PW No. 5 and Tanaji PW No. 6 reached near the door of the Society hall, they were manhandled and then assaulted by all eighteen accused and assault was by means of sticks, iron rods and axe. Apparently, the blunt side of the axe was used to assault these witnesses. According to the prosecution, initially accused No. 1 Chandrakant Jadhav, accused No. 2 Sarjerao Jadhav, accused No. 3 Prakash Jadhav and accused No. 4 Vijaykumar Jadhav and also accused No. 5 Sambhaji Jadhav rushed to the entrance door of the hall and they obstructed PW Nos. 5 and 6 from entering and restrained them from opening the door of the hall. There was some altercation amongst these persons in which the complainant was questioned why the name of Tanaji Dhavle i.e. PW No. 6 was decided as a member during the election of Kolhapur District Central Cooperative Bank and why the name suggested by accused No. 1 was not accepted. The altercation was also on account of the removal of accused No. 2 Sarjerao. On this the complainant indicated that such grievances can be made in the meeting to be conducted and tried to enter the meeting hall. On this there was manhandling of the complainant PW No. 5 and his associate PW No. 6. Accused No. 1 Chandrakant Jadhav inflicted blow of iron rod on the head of the complainant Vikas Patil. Accused No. 5 Sambhaji Jadhav inflicted blow with iron rod on the back of the complainant, so also accused No. 6 Ashok Jadhav assaulted the complainant with the help of stick. PW No. 6 Tanaji Dhavle was also assaulted by the accused persons in the mob and specifically accused Nos. 5, 11, 12 and 15 assaulted said PW No. 6 with iron rod and stick. Due to this assault there was a great commotion and hearing the noise the complainant's father, his uncle and his brother rushed to the spot. Other people also gathered. The complainant's father Rajaram, his uncle Ananda (now deceased) and his brother Prakash were also assaulted by the accused persons when they tried to rescue the complainant and PW No. 6 Tanaji from the clutches of the accused. Due to the said assault victim Ananda Patil became unconscious and fell on the ground. All the appellants-accused ran away from the spot. In the said commotion and assault, the complainant PW no. 5, Tanaji PW No. 6, Prakash Patil PW No. 7 and PW No. 8 Bajirao and also one Rajaram Patil, father of the complainant sustained injuries. So also the victim Ananda Patil sustained severe injuries on his head. All the injureds were taken in one jeep to Adhar Nursing Home at Kolhapur. Except the victim Ananda Patil, other injured persons were treated at OPD. Ananda Patil was admitted in the hospital and CT scan was done for the injuries he had sustained on his head. In the afternoon of the same day, the complainant PW No. 5 lodged his complaint and accordingly C.R. No. 57 of 2006 was registered against all the appellants-accused for the offence punishable under Sections 326, 324, 341, 323, 143, 144, 147, 148 and 149 of IPC read with section 135 of the Bombay Police Act. PSI Ghadge (PW No. 14) conducted the investigation in the matter. He visited the spot and prepared spot panchnama. Initially, thirteen accused were arrested. Statements of the witnesses were recorded, including the injured witnesses.

4. During the investigation, on 19th July, 2006 the appellant-accused No. 5 allegedly made a voluntary statement to produce the weapons used in the assault and accordingly two iron rods, three sticks and an axe were recovered at his instance from the cattle shed. Also, according to the case of the prosecution, accused No. 10 Sagar Kadam made a voluntary statement and subsequently at his instance two iron rods, two sticks and one axe were recovered from the mezzanine floor from his house. All the said articles were seized under the panchnama. Some accused were put under arrest on 21st July, 2006. Statement of injured Prakash Patil was recorded and then Section 307 of IPC was inserted in the matter. While under treatment, victim Ananda Patil succumbed to the head injuries and died on 22nd July, 2006 and as such offence punishable u/s 302 of IPC was applied in the present case. Supplementary statements of the witnesses were recorded.

5. On the death of Ananda Patil his dead body was sent for postmortem after the inquest panchnama.

6. Also according to the prosecution case, during the relevant period of the incident a prohibitory order u/s 37(1) of the Bombay Police Act was in force and as such offence punishable u/s 135 of the Bombay Police Act was also applied in the matter.

7. After obtaining CA reports and on completion of investigation, a charge-sheet was filed before the Judicial Magistrate, First Class, Kolhapur and the case was committed to the Court of Session and during trial total 14 prosecution witnesses were examined and one defence witness was examined on behalf of the appellants-accused and considering the evidence led before the Court by the prosecution not sufficient to establish the offence punishable u/s 302 read with Section 149 of IPC but sufficient to bring down the case for the offence punishable u/s 304 Part II of the IPC, all the appellants-accused were convicted for the said offence. They were also convicted for the other allied offences as mentioned in the impugned judgment and order. As mentioned earlier the conviction of all the appellants-accused is challenged in the Criminal Appeal No. 433 of 2010 and the State had preferred two appeals as mentioned above, one for enhancement of the sentence for the offence u/s 304 Part II, read with section 149 of IPC and another one to challenge the order of acquittal of all the accused for the offence punishable u/s 135 of the Bombay Police Act.

8. The salient features of the present case are required to be narrated hereunder in order to have proper perspective of the matter and to ascertain whether the substantive evidence of the prosecution witnesses is sufficient to hold them guilty for the respective offences for which they had been convicted.

9. Total 14 prosecution witnesses are examined. PW No. 1 Vikram Kamble is pancha regarding the spot panchnama. PW No. 2 Hindurao Shewale is regarding recovery of the weapons at the instance of accused No. 5 Sambhaji and accused No. 10 Sagar Kadam. PW No. 3 is a pancha regarding seizure of the clothes of

the injured witnesses Vikas Patil PW No. 5 and Ananda Patil (victim). PW No. 5 Vikas Patil is a complainant - injured eye-witness. PW No. 6 Tanaji Dhawale is injured witness. PW No. 7 Prakash Patil is also injured eye-witness and PW No. 8 Bajirao is also injured eye-witness. PW No. 9 Bapu Gavaku is a retired Police Head Constable. PW No. 10 Eknath Maruti Kalantre is a Police Constable who registered the FIR at Panhala Police Station. PW No. 11 Dr Sanjay Ram Deshpande is a Medical Practitioner, Kolhapur who treated the victim i.e. Ananda Patil when he was initially admitted in the hospital. PW No. 12 is Dr. Shailendra Navare who examined five injured i.e. PW Nos. 5, 6, 7 and 8 and one Rajaram. At this juncture, it must be mentioned that said injured eye witness Rajaram, father of the complainant, was not examined by the prosecution. PW No. 13 is Dr Shankar Dekhankar who conducted the postmortem on the deceased Ananda Patil. Last prosecution witness is PW No. 14, Investigating Officer, Sanjay Ghadge. One defence witness Shivaji Kadam, Police Head Constable, from Juna Rajwada Police Station is examined on behalf of the appellants-accused. The effect of the substantive evidence is discussed hereinafter at the appropriate place.

10. As such, out of 14 prosecution witnesses, the important witnesses are only PW No. 5 Vikas Patil, P.W. No. 6 Tanaji Dhavale, PW No. 7 Prakash Patil and PW No. 8 Bajirao i.e. injured witnesses and the Medical Officers PW Nos. 11, 12 and 13. The substantive evidence of these witnesses was critically discussed by learned Senior Counsel Shri Mundargi while arguing on behalf of the appellants-accused. The main points of the arguments on behalf of the appellants-accused are such;

Firstly, that there was only a commotion on the relevant day and time at the entrance door of the meeting hall and the object of the mob gathered there was to see that no meeting take place and for that purpose there was only the obstruction to PW No. 5 and 6 from entering the meeting hall.

Secondly, in the said commotion and initial obstruction of PW Nos. 5 and 6 when they insisted to enter the meeting hall there was rather manhandling of them by the persons in the mob and there were no major injuries caused to anybody even including the deceased Ananda Patil.

Thirdly, that according to the alleged eyewitnesses four accused persons gave blows of iron rod, stick and axe on the head of Ananda Patil. The medical evidence negate the said theory inasmuch as there was no external injury found on the head of the victim and this fact is fortified by the findings in the postmortem report.

Fourthly, all the alleged eye-witnesses are closely related to each other and curiously enough PW Nos. 7 and 8 and the victim Ananda Patil had no occasion to reach meeting hall in that morning and as such they apparently are got up witnesses.

Lastly, there are no independent witnesses examined by the prosecution though

the incident of commotion and assault occurred on the broad day light on 17th July, 2006. It is further submitted that so far as accused No. 7, 14 and 16 are concerned there is no overt act attributed to them by any of the alleged eyewitnesses and as such they cannot be convicted for offence u/s 304 Part II of IPC and other allied offences.

11. Apart from the above arguments, it is also strongly submitted on behalf of the appellants-accused that if at all for the sake of arguments it is accepted that the accused persons were present on the spot, their main object was not to cause any bodily injury, much less grave and fatal injury to anybody. At the most, it can be construed that they had gathered near the meeting hall with a design that the meeting should not take place, further argued. It is also strongly submitted that at the most there was a design to restrain PW No 5 Vikas Patil and PW No. 6 Tanaji Dhavale from entering the meeting hall but unfortunately the said incident turned in commotion resulting minor assault on the injured and the victim. At any rate, it is further argued, there was nothing like committing a murder of victim Ananda Patil, so also there was nothing like causing a culpable homicide not amounting to murder as erroneously held by the trial Court. It is submitted that at the most if considering the substantive evidence of allegedly four eye-witnesses it is accepted that the accused persons were involved in the matter and had assaulted the victim and other alleged eye-witnesses then at the most only the offences punishable u/s 324 read with Section 149 of IPC may be attracted.

12. Bearing in mind the above arguments advanced on behalf of the appellants-accused, we have carefully perused the substantive evidence of the prosecution witnesses and mainly of PW No. 5 and other injured witnesses PW Nos. 6, 7 and 8. A sort of summary of their substantive evidence can be given as under;

13. According to PW No. 5, he was assaulted by Accused No. 1 on his head by means of rod, accused No. 6 assaulted on his back by a stick and by accused No. 5 on his back by iron rod. As such similar such substantive evidence is given by PW No. 6 regarding said individual accused assaulting PW No. 5. Moreover, even PW Nos. 6 and 7 had given the similar substantive evidence as to assault on PW No. 5 by accused Nos. 1, 5 and 6.

14. Again, according to PW No. 5 accused Nos. 5, 12 and 15 assaulted PW No. 6 Tanaji by means of iron rod and stick. Similar such is the evidence of PW No. 6 as to assault on himself by these accused. Moreover, PW No. 7 also mentioned regarding assault on PW No. 6 by accused Nos. 12 and 15.

15. Again PW No. 5 complainant mentions regarding assault on the victim Ananda Patil by accused No. 1, 3, 4 and 11. According to him, accused Nos. 1 and 3 used iron rod, accused No. 4 used blunt side of the axe and accused No. 11 used stick to assault the victim Ananda Patil on his head. Similar such evidence is given by PW No. 6, PW No. 7 and PW No. 8.

16. When the substantive evidence of these witnesses is scrutinized and even

certain omissions on the aspect as to the assault on the other eye-witnesses are considered, it must be said that all these witnesses categorically mentioned regarding assault on the victim Ananda Patil by accused Nos. 1, 3, 4 and 11 on his head. This consistency in the substantive evidence of these prosecution witnesses i.e. PW Nos. 5 to 8 is vital and required to be accepted regarding assault on the head of the victim Ananda Patil. At this juncture, it must also be mentioned that so far as the assault on the victim is concerned, these witnesses are not taking names of any other accused. Thus, this negates the arguments advanced on behalf of the appellants-accused that the prosecution witnesses are falsely taking the names of the accused persons as the assailants. Had it been a concoction and preplanned design to implicate all eighteen accused so far as the assault on the victim Ananda Patil is concerned, there was apparently no impediment for these witnesses to take the names of other accused apart from accused Nos. 1, 3, 4 and 11. In any event, considering the substantive evidence of the eye-witnesses definitely the involvement of the appellants-accused Nos. 1, 3, 4 and 11 is established so far as assault on the victim Ananda Patil is concerned. Again on this aspect the argument advanced on behalf of the appellants, as to no visible external injury seen by the doctors on the head of Ananda Patil, is required to be discussed. On this aspect, the substantive evidence of attending doctor PW No. 11 Dr Sanjay Deshpande is of significance. According to him, on the day of the incident at about 11:40 a.m. the patient Ananda Patil was brought to the hospital at Adhar Nursing Home where he was working as a Medical Practitioner. He was the patient in the OPD and then shifted to intensive care unit (ICU) as he was unconscious. Some treatment was given to the patient and then he was referred to CT scan. The substantive evidence of this doctor is important which reads thus:

C.T. Scan shows multiple skull fracture, nasal bone fracture, soft tissue swelling and bilateral fronto parital subdural haematoma with cerebral haemorrhage. Neuro Surgeon was called in the hospital. He advised immediate surgery for drainage of haematoma. On the same evening he was operated by Dr Virendra Pawar, the Neuro Surgeon. Thereafter, the patient was shifted to ICU. He was given artificial ventilation. On 19th July, 2006 patient developed hypotension. In spite of such treatment patient died on 22nd July, 2006 at about 3:00 a.m. Because of the injuries referred to above the patient died.

17. This medical witness PW No. 11 had produced the original case papers regarding the treatment given to the victim Ananda Patil. According to him, the injuries noticed by him on the victim were caused by multiple blows by hard and blunt object and age of the injury was within six hours when he examined the patient and according to him injuries were possible by iron rod, stick, blunt side of axe like muddemal shown to him. During cross-examination of this witness, it is brought on record that he was not present when the patient was operated by Neuro Surgeon. Though on various aspects this witness was cross-examined as to how much blood was drained and whether any other method for drainage of the blood from the site of haematoma of brain could have been adopted by the

Surgeon, the main effect of the evidence of this witness still remains that there was a severe internal injury on the head of the victim Ananda Patil and subsequently he succumbed to the injuries.

18. Again, on the above aspect as to injury on the victim Ananda Patil on his head, it is brought to our notice that as per the postmortem which was conducted by PW No. 13 Dr. Shankar Dekhankar, he had seen only three surgical wounds externally. There were no other external injuries observed by him. The substantive evidence of this doctor PW No. 13 reads thus;

From 2002 to 2006 I was attached to CPR Hospital as medical officer. I have carried out 2 to 3 thousand postmortem examinations. On 22.7.2006 I carried out postmortem examination on the dead body of one Ananda Patil, resident of Kololi. On his examination I noticed the following external injuries;

- (1) Surgical wound on left side of head on temporal area, 8 cm having 9 stitches.
- (2) Surgical wound on right side temporal area, 19 cms and having 18 stitches.
- (3) Surgical wound perpendicular to injury No. 2 having length 5 cms and 5 stitches. All above injuries were antemortem.

On internal examination of head, I noticed multiple

noticed multiple depressed fracture of nasal bone, left parietal bone, left side of frontal bone extra dural, subdural and infra cerebral haemorrhage present defused below fractured area.

The above internal injuries were corresponding to the external injuries stated above. The injuries noticed by me are sufficient in the ordinary course of nature to cause the death of a person. The injuries are possible by blunt object like stick, iron rod, or blunt side of axe. In my opinion, the probable cause of death was fracture of skull and cerebral haemorrhage caused by hard and blunt object. Accordingly, I have prepared postmortem report. I am now shown postmortem report. It bears my signature. Contents are true and correct. It is at Exh. 154(4).

19. During the cross-examination of this witness, it is brought on record that except three surgical wounds described in column No. 17 of the postmortem, he had not noticed any other external injury. Much capital is made of this answer given by the Medical Officer and it was strongly submitted on behalf of the appellants-accused that if this medical evidence is accepted then the substantive evidence of alleged eye-witnesses PW Nos. 5 to 8 is doubtful as according to them at least four accused persons had assaulted Ananda Patil on his head by means of iron rod, sticks and blunt side of the axe. Though these witnesses have mentioned so as to assault on head, it must be construed that it was assault by the named accused persons when there was great commotion and gathering of a mob of other accused persons, totally 18 in numbers. It cannot be construed that each and every blow must have hit the victim on his head and that also with such a force to cause external injury. Still considering the medical evidence in

our considered view the eye-witnesses cannot be disbelieved as to the role assigned to the named accused persons i.e. accused Nos. 1, 3, 4 and 11. More so when as per evidence of PW No. 13 he observed that internal injuries were corresponding to external injuries. In that event, definitely there was involvement of these four persons in assaulting the victim. Though initially main charge against the main appellants accused was for offence punishable u/s 302 read with section 149 of IPC, it was brought down to section 304 Part II of IPC by the Sessions Court and rightly so in our view. This is more so, considering the act done by the accused persons in a sudden fight and there was no motive to cause murder of Ananda Patil who happened to be there on the spot on hearing the commotion and tried to rescue PW Nos. 5 and 6 from the clutches of the accused persons. Again on this aspect of accepting the commission of offence punishable u/s 304 Part II of IPC, it is again to be construed whether all the other accused can be taken in the purview of the said offence by taking shelter of Section 149 of IPC. On this learned counsel for the appellants strongly submitted that there was no common object of all 18 accused persons to do away with the victim Ananda Patil. Moreover, no any overt act is attributed to the other accused persons, other than the accused Nos. 1, 3, 4 and 11 so far as the assault on the victim Ananda Patil is concerned. In that view of the matter, as argued on behalf of the appellants, recourse to section 149 of IPC cannot be taken to rope all the other accused persons along with other accused Nos. 1, 3, 4 and 11. In that event it must be held that the appellant accused Nos. 1, 3, 4 and 11 are individually liable for the punishment for the offence punishable u/s 304 Part II of IPC and benefit of doubt is required to be given in favour of other accused so far as the offence punishable u/s 304 Part II of IPC is concerned.

20. Now coming to the offence punishable u/s 326 read with Section 149 of IPC for which all the appellants-accused were convicted, the injuries sustained by injured eye-witnesses are required to be construed. The medical certificates showing the injuries sustained by these eye-witnesses are on record and as per their contents a following is the summary so far as injuries to the individual eye-witnesses.

PW No. 5 Vikas Rajaram Patil:-

Head injury. CLW over scalp - occipital region - (2x1x1)

cause: alleged assault. Caused by hard and blunt object.

PW No. 6: Tanaji Shankar Dhavale

Head injury. CLW over forehead (left) side

(3x1x1 cm)

CLW over (right) index finger (1x1 cm.)

Blunt trauma (right) forearm.

Age of injury within six hours.

Caused by alleged assault.

Hard and blunt object.

Nature: fracture ulna lower 1/3 (right).

PW No. 7:- Prakash Rajaram Patil.

Injury: Head injury with fracture proximal phalanx of (right) thumb.

(1) CLW over occipital region (5x1x1 cm.)

(2) CLW over (right) index finger (4x1 x 1 cm.)

(3) Blunt trauma (right) thumb.

(4) (right) shoulder blunt trauma.

Age of injury: within six hours.

Cause: Hard and blunt object/alleged assault.

Nature: Fracture proximal phalanx grievous.

PW No. 8:-Tanajki Ananda Patil.

Injury: Head injury.

CLW over occipital region (2 x 1 x 1)

Blunt trauma (right) shoulder arm.

Age of injury: within six hours.

Cause: Alleged assault.

Hard and blunt object.

21. Considering the nature of injuries sustained by the eye-witnesses as detailed above and considering the substantive evidence of the doctor PW No. 12 Dr. Shailendra Navare who examined these witnesses, it is reasonably accepted that there were fractures to some of these witnesses i.e. PW Nos. 6 and 7 though it is brought to our notice that no x-ray plates were produced by the prosecution during the trial of the Sessions Case. This in itself will not negate the effect of the substantive evidence of the Medical Officer and the contents of the Medical certificates which are already exhibited and proved by the doctor. Mere absence of production of the x-ray report cannot lead us to come to the conclusion that injuries sustained by PW Nos. 6 and 7 were not grievous. In that event the arguments advanced on behalf of the appellants as to non establishment of the charge punishable u/s 326 read with section 149 of IPC cannot be accepted. At this stage, we have not lost sight of the fact that while discussing the establishment of the offence punishable u/s 304 Part II of IPC, we have not held other accused, than accused Nos. 1, 3, 4 and 11, guilty of the said offence and at that stage we had not accepted the case of the prosecution as to application of

section 149 of IPC but so far as offence punishable u/s 326 of IPC is concerned though the said two distinct offences were out of the same transaction, the gravity of the offences is different. In other words, as argued on behalf of the prosecution that there might not be common object to kill the victim or to cause culpable homicide not amounting to murder but still must be common object to cause injury to the eye witnesses and hence as mentioned above it must be held that the offence punishable u/s 326 read with section 149 of IPC is established against all the accused persons. This is more so looking to the definition of Section 304 Part II of IPC requiring "knowledge" to the assailant as to his act would cause death of the victim. In our considered view, such "knowledge" could only be attributed to the accused who actually inflicted blows on the head of the victim.

22. So far as the appeal of the State for enhancement of the punishment for the offence punishable u/s 304 Part II of IPC, we are not inclined to agree with the arguments advanced on behalf of the State that the maximum punishment contemplated by the said Section is required to be imposed. On this aspect, we have carefully considered the circumstances under which the entire incident occurred. As we have already held that the object of the unlawful assembly was to restrain PW Nos. 5 and 6 from entering meeting hall and in that process there was assault on the victim Ananda Patil and other witnesses. In our considered view, the imprisonment of five years imposed by the trial Court would serve the purpose and the circumstances do not warrant enhancement of the said punishment. Hence, there is no merit in the appeal for enhancement being Appeal No. 752 of 2010.

23. Lastly, coming to the appeal filed by the State against the acquittal of appellants-accused for the offence punishable u/s 135 of the Bombay Police Act, it must be said that there is nothing brought on record by the prosecution regarding prohibitory order, if any passed by the appropriate Authority not to possess any arms during the said relevant period of the said incident and as such there is no substance in the argument advanced on behalf of the State on the aspect as to challenge to the acquittal u/s 135 of the Bombay Police Act. In view of above, in our considered view, all the three appeals can be disposed of by the following order:

ORDER:

(1) CRIMINAL APPEAL NO. 433 OF 2010:-

(i) Criminal Appeal No. 433 of 2010 is partly allowed;

(ii) Appellant Nos. 1, 3, 4 and 11 are held guilty of the offence punishable u/s 304 Part II of the IPC individually committed by them and substantive sentence awarded for the said offence of five years imprisonment sentence shall sustain.

(iii) Remaining accused Nos. 2, 5 to 10, 12 to 18 are acquitted of the offence u/s 304 Part II of IPC read with section 149 of IPC and the substantive sentence

imposed on this count on them is quashed and set aside.

(iv) The conviction and sentence of all the appellants - accused for the offence punishable u/s 326 read with Section 149 of IPC shall sustain.

(v) Criminal Appeal Nos. 752 of 2010 and 832 of 2010 preferred by the State shall stand dismissed.

All the three appeals are disposed of in terms of above order.