



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 171 OF 2007

1. Laxmikant S/o Sakharam Nimkarde,
Aged about 55 years,
2. Amar @ Amardip S/o Laxmikant
Nimkarde,
Aged about 27 years,
3. Adesh @ Naresh S/o Laxmikant
Nimkarde,
Aged about 22 years,
4. Subhash S/o Sahadeo Tadokar,
Aged about 32 years,
5. Mahadeo S/o Sahdeo Tadokar,
Aged about 32 years,
6. Prakash S/o Gulabrao Tadokar,
Aged about 26 years,
7. Sadananad S/o Gulabrao Tadokar,
Aged about 35 years,
8. Sahadeo S/o Shamrao Tadokar,
Aged about 65 years,
All Agriculturists by Occupation and
all R/o Rampura Kokarda, Tahsil-
Anjangaon Surji, District- Amravati.

APPELLANTS

Versus

The State of Maharashtra,

Thr. Police Station Officer, Police
Station Khallar, District- Amravati. **RESPONDENT**

WITH

CRIMINAL REVISION APPLICATION NO. 184 OF 2007

Sahdev S/o Shamrao Tadokar,
Aged about 69 years,
Occ. Agriculturist,
R/o Rampura, Police Station Khallar,
District- Amravati. **APPLICANT**

Versus

1. The State of Maharashtra,
Thr. Police Station Officer, Police
Station Khallar, District- Amravati.
2. Sahebrao S/o Trimbakrao Bobde,
Aged about 54 years,
3. Amol S/o Sahebrao Bobde,
Aged about 20 years,
4. Rahul S/o Sahebrao Bobde,
Aged about 19 years,
5. Vinod S/o Narayanrao Bobde,
Aged about 31 years,
6. Sanjay S/o Narayanrao Bobde,
Aged about 24 years,
7. Subhash S/o Sheshrao Bobde,
Aged about 31 years,

8. Chandrashekhar S/o Sheshrao
Bobde,
Aged about 29 years,
All 2 to 8 R/o Rampura
Post- Kokarda, Tq- Anjangaon,
(Surji) District – Amravati.

NON-APPLICANTS

APPEAL NO. 171/2007

Mr. P.R. Agrawal, Advocate, Advocate for the Appellants.
Mr. A.M. Kadukar, APP for the Respondent/State.

REVN NO. 184/2007

Mr. P.R. Agrawal, Advocate, Advocate for the Applicant.
Mr. A.M. Kadukar, APP for the Non-applicant No.1/State.
Mr. Ankit Ambatkar, Advocate for the Non-applicant Nos. 2 to 6.
Mr. B.H. Tekam, Advocate for the Non-applicant Nos. 7 & 8.

CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 06th MARCH, 2026.

PRONOUNCED ON : 24th MARCH, 2026.

ORAL JUDGMENT :-

1. This Appeal is directed against the judgment and order of sentence passed in Session Trial No.12/2002 dated 14.05.2007 by Adhoc Additional Sessions Judge, Achalpur by which the Appellants/accused are convicted of the offence punishable under Sections 147 and 148 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default to suffer

simple imprisonment for one month. The Appellants are further convicted of the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for six months and of the offence punishable under Section 135 of the Bombay Police Act and sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs. 100/-, in default to suffer simple imprisonment for one month.

2. The original complainant in cross complaint challenges the order of acquittal passed in Sessions Trial No. 100/2006.

3. Brief facts of the prosecution case emerges from the Police papers and recorded evidence are as under:

3(i). The accused and the informant as well as prosecution witnesses are residing of the same Village Anjangaon Surji. There is a political rivalry and old enmity between the two groups. The prosecution witnesses belongs to one group, whereas the accused persons are from another group. Injured Subhash Bobde has lodged the FIR alleging that

on 05.06.2001 at about 6.30 to 07.00 a.m., all the accused persons formed an unlawful assembly and in pursuance of common object of the said assembly came in front of the house of PW-3/Vinod Bobde by holding weapons like sword, spear, axes and sticks in their hands. The accused No.1 Laxmikant and accused No. 3/Adesh assaulted PW-3/Vinod. The accused No.1 Laxmikant was holding sword, gave a blow of sword on the head of Vinod, whereas accused No.3/Adesh gave a blow of handle of spear on the person of Vinod. When the other prosecution witnesses namely Chandrashekhar Bobde, Sahebrao Bobde, Ashok Bobde and Sanjay Bobde intervened to rescue Vinod, accused persons assaulted them also by means of weapons in their hands. In the said incident Rahul Bobde, Amol Bobde, Subhash Bobde, Sanjay Bobde, Vinod Bobde, Ashok Bobde, Rahul Sahebrao Bobde and Chandrashekhar Bobde received grievous injuries on the vital parts of their body. It was alleged that, accused persons in furtherance of their common object assaulted the prosecution witnesses and thereby committed an offence punishable under Section 307 of IPC.

3(ii). After registration of the crime the Investigating

Officer carried out the further investigation and visited the spot of incident and drawn the spot panchanama. He further seized the clothes of the injured persons, arrested the accused persons on the basis of the statement of accused No.1 Laxmikant and accused No. 3/Adesh recovered the sword Article A and spear Article- D from them. The other weapons are recovered from the accused persons seized the weapons and the blood stained clothes are forwarded to CA. On completion of the investigation the charge-sheet was submitted against the accused persons.

3(iii). As the offence punishable under Section 307 of IPC is tried by Court of Sessions, the case was committed to the Court of Sessions. The learned Adhoc Additional Sessions Judge, Achalpur framed the Charge vide Exh. 51. The contents of the charge are read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3(iv). In support of the prosecution case, the prosecution has examined in all 18 witnesses, as follows:

(i)	PW-1	Subhash Bobade	Sheshrao Exh.144	Informant
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(ii)	PW-2	Sanjay Bobade	Narayanrao	Exh.147	Injured	
(iii)	PW-3	Vinod Bobade	Narayanrao	Exh.148	Injured	
(iv)	PW-4	Ashok Bobade	Trimbakrao	Exh.150	Injured	
(v)	PW-5	Shrikrishna Narayanrao Khiralkar		Exh.153	Eye witness	
(vi)	PW-6	Rahul Bobade	Sahebrao	Exh.154	Injured	
(vii)	PW-7	Sahebrao Bobade	Trimbakrao	Exh.157	Injured	
(viii)	PW-8	Purushottam Vairale	Ramraoji	Exh.158	Panch seizure weapons	on of
(ix)	PW-9	Chandrashekhar Sheshrao Bobade		Exh.168	Injured	
(x)	PW-10	Rajesh Zagade	Pralhadrao	Exh.169	Panch seizure	on
(xi)	PW-11	Dr. Manoj Nichat	Bhagwanji	Exh.173	Medical Officer	
(xii)	PW-12	Dr. Abhijit Tale	Vasantrao	Exh.178	Medical Officer	
(xiii)	PW-13	Sanjay Udapure	Sahadeorao	Exh.181	Police Constable	
(xiv)	PW-14	Vitthal Sarode	Parashramji	Exh.183	Police Constable	
(xv)	PW-15	Arvind Mohod	Govindrao	Exh.185	Panch memorandum statement and recovery	on

					panchanama
(xvi)	PW-16	Sanjay Bhikaji Pande	Exh.186	Investigating Officer	
(xvii)	PW-17	Bhujangrao Dahat	Karutji Exh.198	Panch on memorandum statement and recovery panchanama	
(xviii)	PW-18	Dr. Sivalaruselval Sundaramoorthy	Exh.201	Medical Officer	

3(v). Besides the oral evidence, the prosecution placed reliance on Report-Exh. 145, FIR-Exh. 146, Seizure memo-Exh. 149, Seizure memos-Exhs. 159 to 167, Seizure memo-Exh. 170, Medical Certificates of the injured-Exhs. 174 to 177, Medical Certificate of Sanjay Narayan Bobade-Exh. 179, Injury Certificate of Sahebrao Trimbakrao Bobade-Exh. 180, Spot Panchnama-Exh. 187, Memorandum statement of accused No.1/Laxmikant Sakharam Nimkarde-Exh. 188, Memorandum statement of accused No.3/Adesh Laxmikant Nimkarde-Exh. 189, Recovery panchnamas-Exhs. 190 and 191, Requisition to CA-Exh.192, CA Report-Exh. 193, Notification under Section 37(1)(3) of the Bombay Police Act-Exh. 194, Medical Certificate of Chandrashekhar Bobade-Exh. 202.

3(vi). All incriminating evidence is put to the accused in order to obtain their explanations. The defence of the accused persons is that there was a free fight between the two groups, wherein the accused persons as well as the prosecution witnesses sustained the injuries. The cross compliant is filed against the prosecution witnesses also as they have assaulted the accused persons.

3(vii). After appreciating the evidence on record and on going through the entire evidence, the learned Adhoc Additional Sessions Judge, Achalpur held the present accused persons guilty and convicted as aforestated.

3(viii). Being aggrieved and dissatisfied with the same, the present Appeal is preferred by the Appellants/accused on the ground that the injuries of the accused persons are not explained by the prosecution. The entire genesis of the incident is suppressed by the prosecution. The cross complaint which was tried alongwith the present Sessions Case is bearing Sessions Trial No. 100/2006, wherein the accused persons who are the prosecution witnesses in the present case are acquitted though some of the accused have received the grievous injuries.

The evidence of prosecution witnesses suffers from inconsistency and not inspiring the confidence. During the pendency of Appeal some of the accused i.e. Sahebrao Trimbakrao Bobde, Rahul Sahebrao Bobde, Vinod Narayanrao Bodbe and Sanjay Narayanrao Bobde entered into the settlement. In view of the said settlement, the conviction and sentence deserves to be quashed and set aside.

4. Heard Mr. Agrawal, learned Counsel for the Accused persons, who submitted that during the pendency of this Appeal some of the accused and the prosecution witnesses entered into the settlement. In view of the settlement, the conviction and sentence of the accused persons deserves to be quashed and set aside. As to the merits of the case, he submitted that, prosecution has not adduced the evidence to show that, all the accused persons were members of the unlawful assembly and in pursuance of the common object of the said assembly, they assaulted the injured persons. He further submitted that, no specific role is attributed to each of the accused, as the injuries of the accused are not explained, which is fatal to the prosecution and sufficient to show that, the genesis of the

incident is suppressed. The evidence adduced by the prosecution witnesses is suffering from the omissions and contradictions which are vital in nature and affects the prosecution case. Section 149 of IPC cannot be invoked as the fight between the two groups was free fight. Alternatively, he submitted that, considering the nature of the incident, benefit of extending the Probation of the Offenders Act be given to the present accused persons and prays for acquittal of the accused.

5. *Per contra*, learned APP supported the judgment of the learned Trial Court and submitted that, the evidence adduced by the prosecution is consistent. The prosecution has adduced the evidence explaining the role of each of the accused, which is not shattered during the cross-examination. The oral evidence is further corroborated by the medical evidence. The prosecution evidence further shows that, the accused persons were aggressors came in front of the house of PW-3/Vinod and initiated the incident. The role of the accused No.1/Laxmikant and accused No.3/Adesh is specifically stated by all the prosecution witnesses, which sufficiently shows the involvement of the present accused persons in the alleged crime. Considering

the nature of the incident merely because there was compromise between some of the accused and prosecution witnesses not sufficient to quash the conviction as the offence alleged is grievous one. It would not be open to the present Court as to acquit the accused on the basis of the settlement. Moreover, the evidence of prosecution witnesses is supported by the medical evidence and scientific evidence. In view of that, the Appeal being devoid of merits and liable to be dismissed.

6. Mr. Tekam, learned Counsel submitted that, the learned Trial Court was pleased to convict the accused persons of the offence punishable under Section 307 read with Section 149 of IPC and sentenced them as aforestated. However, the learned Trial Court failed to properly appreciate the evidence and failed to appreciate that the present prosecution witnesses have formed the unlawful assembly and caused the injuries to the accused persons. No specific finding was recorded regarding who initiated the incident. The Court wrongly discredited the FIR for not specifying the exact weapon used by each accused contrary to the settled law. The Trial Court failed to appreciate that, the accused persons in cross complaint formed the

unlawful assembly and caused the injuries to the witnesses and wrongly appreciated the evidence and acquitted the accused persons in Sessions Trial No. 100/2006.

7. In support of the contentions, Mr. Agrawal, learned Counsel placed reliance on *Lakshmi Singh & Ors. Vs. State of Bihar, (1976) 4 SCC 394; Kalyan & Ors., Vs. State of U.P, (2001) 9 SCC 632; State of M.P Vs. Mishrilal (Dead) & Ors., (2003) 9 SCC 426; Bir Singh & Ors., Vs. State of Uttar Pradesh, (1977) 4 SCC 420; State of Haryana Vs. Chandvir & Ors., 1996(8) SCC 678; Angad & Ors., Vs. The State of Maharashtra, 2026 NCBHC-AUG 92; Ramesh Vs. State of Rajasthan, 2025 SCC Online SC 50.*

8. Mr. Tekam, learned Counsel placed reliance on *Gajanand & Ors., Vs. State of Uttar Pradesh, A.I.R. 1954 S.C. 695; Lalji & Ors. Vs. State of U.P, AIR 1989 SC 754; Pal Singh Vs. Sunder Singh (dead) by Lrs. & Ors., AIR 1989 SC 758; State of Rajasthan Vs. Shiv Charan & Ors., AIR 2013 SC 2342; Karan Singh Vs. State of Haryana & Anr., AIR 2013 SC 2348; State of Madhya Pradesh Vs. Kanha Alias Omprakash, (2019) 3 SCC 605; State of Madhya Pradesh Vs. Laxmi Narayan & Ors.,*

(2019) 5 SCC 688; State of M.P. Vs. Saleem Alias Chamaru & Anr., (2005) 5 SCC 554; Superintendent of Police, CBI & Ors. Vs. Tapan Kumar Singh, (2003) 6 SCC 175; Criminal Revision Application No. 130/2016, Suman Shankar Patinge & Anr. Vs. State of Maharashtra, decided on 15.06.2023; Criminal Appeal No. 381/2019, Rohit Vijay Onkar & Ors. Vs. State of Maharashtra, decided on 13.10.2025.

9. After hearing both the sides and on perusal of the entire evidence, it has to be seen whether the prosecution is succeeded in establishing the charge against the present accused persons to prove that the accused Nos.1 to 8 were the members of the unlawful assembly and in pursuance of the common object of that assembly, assaulted the prosecution witnesses and thereby committed an offence punishable under Sections 147, 148, 307 read with Section 149 of IPC and under Section 135 of Bombay Police Act.

10. To prove that the accused persons were the members of the unlawful assembly and in pursuance of the common object they have assaulted the prosecution witnesses, prosecution mainly relied upon on the evidence of

PW-1/Subhash Bobade examined vide Exh. 144, PW-2/Sanjay Bobade examined vide Exh. 147, PW-3 Vinod Bobade examined vide Exh. 148, PW-4/Ashok Bobade examined vide Exh. 150, PW-5/Shrikrishna Khiralkar examined vide Exh. 153, PW-6/Rahul Bobade examined vide Exh. 154, PW-7/ Sahebrao Bobade examined vide Exh. 157 and PW-9/Chandrashekhar Bobade examined vide Exh. 168.

11. The evidence of PW-1/Subhash Bobade shows that, the alleged incident took place on 05.06.2001 at about 06.30 to 07.00 a.m. The incident occurred in front of the house of Vinod Bobade who is PW-3. As per his evidence at that time he was working on Tractor in front of the house of Vinod Bobade, all the accused persons namely Laxmikant, Adesh, Amar, deceased accused Mahadeo, accused No.11/Sahadeo, accused No. 4/Subhash, accused No.5/Mahadeo, accused No.6 Prakash, accused No.7/Sadanand, deceased accused Vitthal and deceased accused Gulabrao came there holding weapons in their hands.

His evidence further shows that, accused No.1 Laxmikant was holding sword, accused no. 2/Amar was holding stick, accused No.3/Adesh was holding spear, accused No.

4/Subhash was holding axe, deceased accused Mahdeo holding spear, accused No. 6/Prakash, accused No. 7/Sadanand and accused No.8 Vitthal were holding sticks in their hands. He further stated that, accused No. 1/Laxmikant and accused No. 3/Adesh started assaulting Vinod Bobade, accused No.1/Laxmikant gave a blow of sword on the head of Vinod Bobade, whereas accused No.3/Adesh gave a blow of handle of spear on the person of Vinod Bobade. PW-9/Chandrashekhar intervened. He was assaulted by deceased accused Mahadeo by inflicting blow of a spear near the ear of Chandrashekhar. Accused No.2/Amar also assaulted Chandkrashekhar with sticks. The other prosecution witnesses Ashok, Sahebrao and Sanjay came there to intervene and all the accused persons assaulted Ashok, Sahebrao and Sanjay. The prosecution witnesses Rahul Bobade and Amol Bobade also received the injuries due to the blow of sword. PW-1/Subhash also went to rescue them. He was also assaulted by accused No. 1/Laxmikant by means of sword above his left eye. PW-1/Subhash also received the injuries. Accused No.3/Adesh also assaulted him by stick of spear. The villagers came there and separated the accused persons. Thereafter accused left the spot. Injured Vinod

and Ashok sustained the bleeding injury. The clothes of all the injured were stained with blood. All the injured were taken to the Police out post Khallar Police Station. Thereafter they were taken to the Government Hospital. He lodged the report Exh. 145 and FIR Exh. 146.

12. The evidence of PW-2/Sanjay Bobade also on the similar line that, accused No.1/Laxmikant was holding sword, accused No.3/Adesh was holding spear and all other accused persons were holding sticks and axes. Accused Nos. 1 and 3 were beating Vinod and Ashok. When PW-2/Sanjay intervened accused No.8 Sahadeorao attempted to assault him. Accused No.1/Laxmikant also made an attempt to assault him by sword and while resisting the act he sustained the injury on his palm. Accused No.5 Mahadeo (deceased) gave a blow of stick, due to which he sustained the head injury.

13. PW-3/Vinod Bobade also attributed the role to the accused No.1/Laxmikant for giving a blow of sword. As per his evidence one of the accused gave a blow of axe on his head. His clothes were stained with blood i.e. Art. 'F' is Baniyan and Art. 'G' is Pajjama stained with blood was seized.

14. The evidence of PW-4/Ashok Bobade also shows that, accused No.1/Laxmikant assaulted him by sword and accused No.3/Adesh by stick and accused Sahadeo beat his brother Sahebrao. He has sustained the injuries on right little finger, above right eye and on left side of head. His blood stained clothes i.e. Art.'H' Pajama and Art. 'T' Baniyan are seized by the Police.

15. PW-7/Sahebrao Bobade and PW-9/Chandrashekhar Bobade also stated that the spot of incident was in front of the house of Vinod Bobde. Accused No.1/Laxmikant was holding sword, accused No. 3/Adesh was holding spear having wooden handle, accused No.2/Amar, accused No. 5/Mahadeo, accused No.6/Prakash and accused No.7/Sadanand were holding sticks, whereas accused No.8/Sahadeo and accused No. 4/Subhash were holding axe. As per his evidence accused No.1/Laxmikant gave a blow of sword on Ashok on his head.

16. The evidence of PW-9/Chandrashekhar is also on the similar line stating that, accused No.1/Laxmikant gave a blow of sword, accused No. 3/Adesh by spear and accused No. 2/Amar also by spear.

17. The evidence of these witnesses is further corroborated by PW-5/Shrikrishna Khiralkar who is an independent witness also testified that, Sahebrao Bobde was caught and accused No.1/Laxmikant, accused No.3/Adesh were beating Ashok with sword and stick of the spear. The sword is in the hand of Laxmikant, whereas the stick of the spear was used by Adesh to assault Ashok. Accused No.1/Laxmikant gave a blow on the head of Ashok and accused No. 3/Adesh gave a blow of stick of spear on the back of Ashok. Accused Nos. 1 and 3 also beat Sahebrao who was also caught by Sahadeorao. He lifted the injured Ashok and Sahebrao, hence his clothes were stained with blood.

18. All these witnesses were cross-examined at length. As far as the cross-examination is concerned, the spot of incident is in front of the house of Vinod Bobade, is not denied or shattered during the cross-examination. It was brought on record that, there was previous enmity between the two families. There are other houses near the spot of incident. During cross-examination, the material omissions are brought on record that, PW-1/Subhash has not narrated before the

Investigating Officer while lodging the FIR that each accused was armed with which weapon. He has also not stated specifically that accused No.1/Laxmikant gave a blow of sword on the head of Vinod and accused No.3/Adesh gave a blow of stick of spear on the person of Vinod. Thus, it was brought on record that, the role of each of the accused was not narrated by PW-1/Subhash while lodging the FIR which are the proved omissions.

19. Evidence of PW-2/Sanjay i.e. the cross-examination shows that, the cross complaint was filed against him also which was admitted by him. Attempt was made to show that, though he stated that his left hand's finger was cut but he admitted that he is having 10 fingers to both the hands. Similarly, PW-3/Vinod also admitted that, he is not aware whether the accused persons have also sustained the injuries on the day of incident and admits that, on the basis of the report of accused Sahadeo he was facing prosecution under Section 324 of IPC. His cross-examination shows that, firstly accused No.1/Laxmikant came on the spot then accused No. 3/Adesh and thereafter they were followed by the other accused.

20. PW-4/Ashok stated during the cross-examination that, there are several houses near to his house. Mahadeo Bobade filed Civil suit against Shrikrishna Khiralkar i.e. PW-5. He has given the evidence in the suit in favour of Khiralkar. This cross-examination was taken to show that PW-5/ Shrikrishna Khiralkar is the interested witness.

21. PW-5/Shrikrishna also stated during his cross-examination that, Maramari took place between the two parties. He stated before the Police that, on hearing the commotion he went there. But he denied that no incident of beating has taken place in his presence. He further denied that, it was the prosecution witnesses who assaulted the accused persons, and therefore, the accused persons sustained the injuries. On recording his statement belatedly, it is brought on record that on 4/5 days, the Police were visiting the Village but he has not gone to the Police and asked to record his statement. He denied that his statement was recorded after 10 days.

22. PW-6/Rahul's evidence is also on the similar line as to the assault by the accused persons and except the admission that cross complaint is filed against them, nothing incriminating

is brought on record.

23. Evidence of PW-7/Sahebrao during cross-examination shows that, he was Police Patil, but he denied that, the case was filed against him to remove him from the post of Police Patil. On the contrary, his cross-examination shows that proceeding APT-5/Rampura-2006 was pending before the S.D.O. for removing from the post of Police Patil. He also admits that, the cross complaint is filed against him.

24. PW-9/Chandrashekhar also cross-examined but nothing incriminating is brought on record to falsify his version. Thus, the evidence of all these witnesses is consistent as far as the role of accused No.1/Laxmikant, accused No. 3/Adesh and accused No. 2/Amar are concerned. Though PW-1/Subhash has admitted that he has not stated specific role of each of the accused but other witnesses have specifically stated the role of each of the accused and their evidence are not shattered during the cross-examination. The evidence of all these witnesses also shows that, the alleged spot of incident is in front of the house of PW-3/Vinod Bobade. Admittedly, the cross-examination of these witnesses nowhere disclose that there was any other spot

of incident. It further reveals from his cross-examination that, regarding the said incident cross complaint was filed against the prosecution witnesses bearing Sessions Trial No. 100/2006, which was also conducted before the same Court. Thus, the presence of the accused persons at the spot is established not only by the evidence of the prosecution witnesses but also by the fact that regarding the same incident one of the accused Sahadeo filed complaint against the prosecution witnesses. The trial was conducted against the prosecution witnesses. Thus, the spot of incident which is in front of the house of PW-3/Vinod Bobade is established by the prosecution witnesses and the said evidence is not shattered, which sufficiently shows that the accused persons were aggressors came in front of the house of PW-3/Vinod and the alleged incident has occurred.

25. To corroborate the version of the prosecution witnesses, the prosecution further relied upon on the medical evidence PW-11/Dr. Manoj Nichat is examined vide Exh.173 who has examined injured Ashok Bobade, Vinod Bobade, Rahul Bobade, Subhash Bobade.

26. On examination of Ashok Bobade, he found

following injuries on his person.

1. incised wound 5 x 2 cm. just above the right eye it was caused by sharp object, probable age was, 6 hours,
2. incised wound 8 cm. x 1 cm. over the occipital region,
3. abrasion 12 cm x 1/2 cm. on left anterior axillary line inverticle,
4. incised wound 4 cm. x 1 cm. on right little finger
5. contusion 6 cm. x 2 cm. over left infra scapular region,
6. contusion 6 cm. x 2 cm. over the abdomen right lumber region.

Injuries Nos. 1, 2 and 4 of Ashok Bobade were caused by sharp object. Injury No.3 was caused by pointed object and injury Nos. 5 and 6 were caused by hard and blunt object. The age of the injuries was within six hours. The injury Nos. 1 and 2 were on head. Accordingly, he issued the certificate Exh. 174. He opined that, injury Nos. 1, 2 and 4 can be caused by sword and injury No.3 can be caused by spear and injury Nos. 5 and 6 can be caused by stick.

27. On examination of injured Vinod Bobade, he found following injuries.

1. contused lacerated 8 cm. x 1 cm. on left frontal and parietal region, 3 cm. lateral to mid line
2. contused lacerated 4 cm. x 1 cm. over the frontal region near midline
3. contused lacerated 3 cm. x 1 cm. over behind left ear
4. contusion with query fracture over metacarpal bone 4 cm. x 2 cm. right palm.

All the above injuries caused on the person of Vinod Bobade by hard and blunt object within six hours. Injury Nos. 1 and 2 were on head. Accordingly, he issued certificate Exh. 175.

28. On examination of Rahul Bobade, he found following injuries.

1. Incised wound 1 cm. x 1 cm. over left infraclavicular region
2. incised wound 1 cm. x 1 cm. over the left inframmary area
3. contusion 5 cm. x 2 cm. on right scapular area

Injury Nos. 1 and 2 caused by sharp object and injury No.3 was caused by hard and blunt object. Accordingly, he prepared certificate Exh. 176. As per his evidence injury Nos. 1 and 2 can be caused by spear, whereas injury No. 3 can be caused by stick.

29. He examined Subhash Bobade. On examination, he found following injuries.

1. incised wound 2 cm. x 1 cm. on distal phalynx right index finger
2. contused lacerated 2 cm. x 1 cm. on left eye brow
3. contusion 6 cm. x 2 cm. on left forearm

Injury No. 1 caused by sharp object and injury Nos. 2 and 3 caused by hard and blunt object within six hours. Accordingly, he issued certificate Exh. 177.

30. The evidence of PW-11/Medical Officer further shows that, injury Nos. 1 and 2 on the person of injured Ashok were on head i.e. on vital part of the body. Injury nos. 1 and 2 sustained by the injured Ashok were sufficient to cause death in the ordinary course of nature. So also injuries sustained by

injured Vinod were on head i.e. on vital part of the body, were sufficient to cause death in the ordinary course of nature.

31. The cross-examination shows that, witness has denied that all contusions and abrasions are simple injuries. He explained that, if the contusions and abrasions are on non-vital part of the body are simple injuries. He further admits that, incised wound can be caused during scuffle between 5-6 persons on one and side and five six persons on the other side. He further admits, that merely because the injuries are on vital part, it cannot be said that it is sufficient to cause death in the ordinary course of nature. Thus, the attempt was made to show that, merely because injuries are sustained on vital part of the body is not sufficient to infer that, the said injuries are sufficient to cause death of the injured.

32. PW-12/Dr. Abhijit Tale is the another Medical Officer, who has examined Sanjay Bobade and found following injuries on his person.

1. lacerated wound 10 cm. x 1 cm. on left hand palm, anteriorly

2. incised wound 3 x 1 cm. on parietal area on head.

Injury No.1 can be caused by hard and sharp object, whereas injury No. 2 can be caused by sharp object. The injuries were within six hours. Accordingly, he issued the certificate Exh. 179.

33. He has also examined Sahebrao Bobade. On his person following injuries are found.

1. incised wound 8 cm. x 1 cm. on left temporal area on head

2. incised wound 7 x 1 cm. on right temporal area of head.

3. lacerated wound $\frac{1}{2}$ x 1 x 4 cm. on left hand middle finger

He issued the certificate Exh. 180. As per his evidence, injury Nos. 1 and 2 on the person of Sahebrao can be caused by sharp object and injury No.3 can be caused by hard and sharp object.

His cross-examination shows that, only because injuries on head is not sufficient to say that it would be sufficient to cause death in the ordinary course of nature. He

further admits that, during scuffle also such type of injuries are possible.

34. PW-18 is the another Medical Officer Dr. Sivalaruselval Sundaramoorthy who has examined injured Chandrashekhar Bobade, on whose person he has found following injuries.

- 1) lacerated wound of 2.5 to 5 cm. size over the left ear, upper part
- 2) a contusion of 1 x 1 cm. size over right knee
- 3) Abrasion / contusion of 1.5 x 1 cm. size over left knee
- 4) An abrasion of 1 x 3 cm. over postero lateral aspect below left elbow
- 5) Abrasion of 4 x 2 cm. in postero lateral aspect of right elbow
- 6) Abrasion / contusion of 12 x 5 cm. over upper part of right side of back

Injury No.1 was by sharp object and other injuries were by blunt object. Accordingly, he issued the certificate Exh. 202. He also admits that, injury No.1 referred to in Exh. 202 may be possible during the scuffle of two groups.

Thus, during the evidence of Medical Officer, attempt was made to bring on record that such type of injuries are possible during the scuffle between the two groups.

35. Besides the oral evidence of these witnesses, evidence of PW-8/Purushottam Vairale is adduced to prove the seizure of the weapons at the instance of the accused, who has not supported the prosecution case. Though witness has turned hostile, the panchnamas are shown to be proved during his evidence, which is not correct. PW-10/Rajesh Zagade is examined vide Exh. 169, in whose presence the blood stained clothes of Ashok and Vinod were seized by drawing panchnama Exh.170. He narrated that, in his presence the said panchnama was drawn. During his cross-examination nothing incriminating is brought on record. PW-15/Arvind Mohod and PW-17/Bhujangrao Dahat who acted as a Panch on the memorandum statement of accused No.1/Laxmikant and accused No.3/Adesh, but both these witnesses have left loyalty towards prosecution and not supported the prosecution case.

36. PW-13/Sanjay Udupure and PW-14/Vitthal Sarode are the Police Constables who are the formal witnesses. PW-13/

Sanjay Udupure registered the FIR, whereas PW-14/Vitthal Sarode registered the crime. PW-16/Sanjay Pande is the Investigating Officer, who has narrated about the investigation. His evidence discloses that, at the instance of the accused Prakash, accused Mahadeo, accused Sadanand, he has seized the sticks. At the instance of accused Vitthal and Mahadeo he seized axe. From accused Subhash he has seized axe. Accordingly, the panchnamas are drawn. On 20.06.2001 accused No.1/Laxmikant and accused No.3/Adesh made a memorandum statement and shown their willingness to show the place where the weapons are kept. Accordingly, their memorandum statements Exhs. 188 and 189 were recorded. At their instance, accused No.1/Laxmikant laid them in a cattle shed and took out the sword concealed in heap of fodder, which was seized by drawing panchnama Exh. 190 and accused No.3/Adesh also shown the place cattle shed i.e. heap of fodder and produce the spear in presence of panchas. Accordingly, panchnama Exh. 191 was drawn.

37. His cross-examination shows that, he denied that he interrogated accused Nos. 1 and 3 at the same time. It was

contended by the learned defence Counsel that, the time of beginning and its completion are recorded at Exhs. 188 and 189 is having a distance of 15 km from Police Station. The place of seizure is 30 minutes away from the Police Station and therefore, the seizure panchnama is not believable. During his cross-examination, the omissions which are brought on record in the evidence of PW-1/Subhash are proved. There is no denial as to the memorandum statement of the accused and the recovery at the instance of the accused.

38. The judgment of the Trial Court is commented upon by the learned Counsel for the accused on the ground that, the genesis of the incident is suppressed by the prosecution as the injuries on the person of the accused are not explained. It is an admitted position that, the cross complaint was registered against the prosecution witnesses. Admittedly, the record of the cross complaint shows that, accused Mahadev Udebhanji, accused Mahadeo Sahadeorao, accused Sahadeorao and Subhash Sahadeorao sustained the injuries in the said incident. The injury sustained by Mahadev Udebhanji is the abrasion contusion over the back of left shoulder 4 x 1 c.m., simple in

nature. The accused Mahadev Sahadeorao sustained the injury a lacerated wound of 2cm. X 0.3 c.m. The noting on medical certificate shows that, he was referred for the X-ray to ascertain the fracture but no further evidence is adduced that he sustained the fracture injury. Similarly, Sahadevrao also referred to ascertain whether he has sustained the fracture to skull. There is no further evidence to show that he has sustained the grievous injury. Similarly, Subhash sustained the lacerated wound and suspected the dislocation of the left shoulder and referred to X-ray but no further evidence that he sustained the fracture or dislocation of left shoulder. The injuries of Amarjit Nimkarde was also referred for X-ray of right tibia but there is no evidence that he has also sustained the grievous injuries.

39. The law is settled that, where the prosecution fails to explain the injuries on the accused two results follow (i) that the evidence of prosecution witnesses is untrue and (ii) that the injuries probabilise the plea taken by the Appellants.

40. In the case of *Mohar Rai and Bharath Rai Vs. State of Bihar*, MANU/SC/0057/1968 and *Lakshmi Singh & Ors. Vs. State of Bihar*, MANU/SC/0136/1976, wherein it is observed

that:

“In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(3) that in cases there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

41. It has been further made clear that, failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise, in the case of ***Lakshmi Singh*** (supra) relied upon by Mr. Agrawal, learned Counsel for the accused, it is observed that non-explanation of the injuries on the accused by the prosecution may affect the prosecution case and such non-explanation may assume greater importance where the defence gives a version which competes in probability with that

of the prosecution. These aspects further highlighted by the Hon'ble Apex Court in the case of *Vijayee Singh Vs. State of U.P.*, *MANU/SC 0284/1990*, that if the prosecution evidence is clear, cogent and creditworthy and the Court can distinguish the truth from the falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case and much depends upon the facts and circumstances of each case.

42. Thus, the law is settled that the non-explanation of the injuries by the prosecution will not affect the prosecution's case where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, probable, consistent and creditworthy, it would not affect the omission on the part of the prosecution to explain the injuries.

43. In the case of *Ramlagan Singh Vs. State of Bihar*, *MANU/SC/0216/1972*, it is observed that, prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put the questions to the prosecution witnesses regarding the injuries of the accused

persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of the accused.

44. In *Hare Krishna Singh & Ors. Vs. State of Bihar, MANU/SC/0181/1988*, it was observed that, the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence.

45. Here in the present case, the evidence on record of the injured witnesses shows that, there was a previous enmity between the accused and the prosecution witnesses. PW-5/Shrikrishna Khiralkar is the independent eyewitness of the said incident. Despite their cross-examination the evidence is not shattered to show that it was the prosecution witnesses who were involved in the assault. On the contrary, the evidence shows that, it was the accused persons who were aggressors came in front of house of PW-3/Vinod Bobade and the incident was initiated as they have started assaulting Vinod Bobade.

Other prosecution witnesses intervened and they were also assaulted by the present accused persons.

46. Thus, the evidence sufficiently shows that, it was the accused persons who are the aggressors raised the quarrel with the prosecution witnesses and caused them grievous injuries. It is settled law that, if there are serious injuries or grievous injuries found on the body of the accused then the prosecution owes the duty to explain such injuries and the failure on the part of the prosecution to explain may point towards the innocence of the accused. At the same time, the well settled law is that, if the injuries are superficial and minor in nature then the prosecution need not explain such injuries. Here in the present case, admittedly, the accused has not offered any explanation to show that they have sustained the injuries at the hands of the prosecution witnesses, which are grievous in nature. Their statements recorded under Section 313 of Cr.P.C., wherein also they have not explained that, they have sustained the grievous injuries. The medical certificates in the cross complaint though shows that, they have sustained the injuries but there is no evidence on record to show that they have

sustained the grievous injuries. Therefore, the prosecution is not under the obligation to explain the said injuries in the light of the evidence adduced by the prosecution which is clear, cogent and creditworthy, on the basis of which, it can be distinguish what is the truth. A mere fact that, injuries are not explained by the prosecution, is not sufficient to reject the prosecution's case. On the contrary, the evidence on record shows that, it was the accused persons who were aggressors as the incident has occurred in front of the house of one of the injured.

47. Another ground raised by the learned Counsel for the accused, is that it was a free fight between the accused persons and the prosecution witnesses and in the said free fight accused as well as the prosecution witnesses has sustained the injuries. The testimony of the witnesses relied upon by the prosecution would indicate that, the incident occurred as the accused persons came in front of the house of injured Vinod and thereafter the incident starts. Thus, the accused were the aggressors as they went armed with weapons in front of the house of injured Vinod and assaulted the prosecution witnesses. On the facts and circumstances of the case, it was the accused

persons who with a preparation went at the spot of incident and the alleged incident has occurred. By no stretch of imagination it can be said that, it is a free fight.

48. Though Mr. Agrawal, learned Counsel for the Appellants, placed reliance on the decision of *State of Haryana Vs. Chandvir* and *Angad & Ors., Vs. The State of Maharashtra* (supra). The facts of the cited case shows that, in both the cases it was the prosecution witnesses who were aggressors went at the spot of incident with preparation, but in the present case, the accused persons are the aggressors and the incident was initiated by the accused persons, and therefore, the observation in both these cases is not helpful to the accused persons.

49. As per the prosecution case, the accused persons were the members of unlawful assembly and in furtherance of common object of that assembly they entered into the courtyard of the house of Vinod Bobade alongwith the weapons in their hands and started assaulting the injured Vinod Bobade. At the relevant time, the other prosecution witnesses intervened and they have also sustained the injuries. It is submitted by the learned Counsel for the accused persons that, no specific role is

attributed to each of the accused. During the evidence of PW-1/Subhash some omissions are brought on record to show that, he has not stated while lodging the FIR as to which accused was holding which weapon. Admittedly, PW-1/Subhash has not stated but his evidence is to the extent that all the accused persons entered into the courtyard of the house of the injured Vinod Bobade by holding weapons in their hands and caused the injuries to all prosecution witnesses.

50. At this juncture, the relevant legal provision 141 of IPC which defines unlawful assembly. It says an assembly of 5 or more persons as designated as unlawful assembly if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

51. As per Section 148 of IPC which deals with rioting armed with deadly weapons, whoever guilty of rioting, being armed with a deadly weapon or with anything which used as weapons of offence is likely to cause death, shall be punished with imprisonment either description for a term which may extend to three years or with fine or with both. The offence of riot is defined in Section 146 of IPC. In view of the said

definition, whenever force or violence is used by the unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

52. As already observed that, the evidence of all the injured witnesses i.e. PW-1/Subhash, PW-2/Sanjay, PW-3/Vinod, PW-4/Ashok, PW-5/Shrikrishna, PW-6/Rahul, PW-7/Sahebrao and PW-9/Chandrashekhar consistently stated that all the accused came in the courtyard by holding weapons in their hands and started assaulting Vinod, therefore they intervened and they were also assaulted. The evidence of these witnesses is consistent to show that, accused No.1/Laxmikant was holding sword, accused No.3/Adesh was holding spear and accused No.2/Amar was holding stick. They have specifically narrated who has assaulted whom. These witnesses evidence consistently shows that, it was the accused No.1/Laxmikant and accused No.3/Adesh who assaulted injured by means of sword and spear.

53. Section 149 of IPC creates a constructive or vicarious liability of the members of the unlawful assembly for

the unlawful acts committed pursuant to the common object by any other member of that assembly. By applying this principle every member of an unlawful assembly to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 of IPC. The question which is relevant and which is required to be answered by the Court is whether the accused is the member of an unlawful assembly or not.

54. In the case of ***Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel*** (2018) 7 SCC 743, wherein the Hon'ble Apex Court held that:

“in a cases where a large number of accused constituting “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 of IPC is essential in such cases for punishing the members of such unlawful assembly on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an unlawful assembly is sufficient to render him vicarious liable under Section 149 of IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicarious liable under Section 149 of IPC for the offence punishable under Section 302 of IPC.”

55. In ***Nitya Nand Vs. State of U.P & Anr. in Criminal Appeal No. 1348/2014 decided on 04.09.2024***, the Hon'ble Apex Court observed by reproducing para No.22 of the judgment of ***Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel***.

“22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.”

56. Recently, in the judgment of ***Zainul Vs. The State of Bihar in Criminal Appeal No. 1187/2014 dated 07.10.2025***, the Hon'ble Apex Court has held that:

*“49. The expression observed that “in prosecution of the common object” means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In ***Charan Singh Vs. State of U.P*** reported in ***(2004) 4 SCC 205***, this Court held that the test for determining the “common object” of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons*

carried by its members, and their conduct before, during, or after the incident.”

57. It is further observed that, Section 149 of IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fasten only upon proof that the act was done in perusal of the common object.

58. Thus, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a “member” of the unlawful assembly. Utmost it is important to consider whether the assembly consisted of some members who were merely viewers and who were there out of curiosity, without the knowledge, then such persons cannot be said to be members of

the unlawful assembly. Thus, the existence of a common object is to be inferred from certain circumstances such as:

- a. the time and place at which the assembly was formed;
- b. the conduct and behaviour of its members at or near the scene of the offence;
- c. the collective conduct of the assembly, as distinct from that of individual members;
- d. the motive underlying the crime;
- e. the manner in which the occurrence unfolded;
- f. the nature of the weapons carried and used;
- g. the nature, extent, and number of injuries inflicted, and other relevant considerations.

59. By applying these consideration in the present case, oral evidence of injured witnesses shows that, all accused came at the spot together with deadly weapons like swords, spear and sticks in their hands and assaulted the injured mentioned above and thereafter left the place. The appearance of all the accused at the spot alongwith the weapons causing the injuries to the injured, is sufficient to show their common object. Therefore, there is no hesitation to hold that, all the Appellants accused were the members of unlawful assembly and in prosecution of

their common object they have assaulted the injured persons.

60. The evidence of these injured witnesses corroborated by PW-11/Dr. Manoj Nichat Medical Officer shows that, the injuries sustained by PW-3/Vinod and PW-4/Ashok are on vital part of the body and sufficient to cause death in the ordinary course of nature. These injuries are attributed to the accused No.1/Laxmikant and accused No.3/Adesh. The CA report on record also shows that, blood stains are found on the clothes of injured Ashok and Vinod corroborates the prosecution case. The CA report further shows that, the soil which was collected from the spot of incident i.e. in front of the house of injured Ashok also mixed with blood, which also corroborates with the fact that the alleged incident has occurred in front of the house of injured Vinod. Thus, prosecution has proved that the alleged incident has occurred in front of the house of injured Vinod.

61. The prosecution placed reliance on the evidence of Investigating Officer to prove the memorandum statement of the accused and the discovery of the place where the weapons were concealed. Admittedly, the panch witnesses have not

supported the prosecution case. The evidence of Investigating Officer shows that, the accused No.1/Laxmikant and accused No.3/Adesh had made the memorandum statement in presence of panch witnesses. The said memorandum statement was reduced in writing. The evidence of Investigating Officer as to the memorandum statement of accused No.1/Laxmikant and accused No.3/Adesh was commented on the ground that, the statement of accused No.1/Laxmikant was started at 06.35 p.m. and there is no mention of the conclusion of the said statement. The statement of the accused No.3/Adesh was started at 06.55 p.m. The recovery panchnama shows the timing at 07.00 O' clock and concluded at 08.45 p.m. The spot from which the weapons were recovered was at a distance of 30 minutes. Admittedly, the said timing is mentioned by the Investigating Officer since starting from the Police Station till conclusion of the panchnama i.e. the recovery part is concerned. Therefore, no much importance can be given to the said submissions. Admittedly, the panch witnesses PW-15/Arvind Mohod and PW-17/Bhujangrao Dahat has not supported the prosecution case, therefore prosecution placed reliance on the evidence of Investigating Officer. The conditions necessary for the

applicability of Section 27 of the Indian Evidence Act are broadly discussed as under:

“(1) Discovery of facts in consequence of an information received from accused;

(2) Discovery of such fact to be deposed to;

(3) The accused must be in police custody when he gave information; and

(4) So much of information as relates distinctively to the fact thereby discovered is admissible.”

62. Thus, what is admissible is the information and the same has to be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. The basic idea embedded in Section 27 of the Indian Evidence Act, is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. The legislative idea in insisting on such searches to be made in presence of two independent witnesses of the locality is to ensure the safety of such all articles middled

with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.

63. Admittedly, in the present case, PW-15/Arvind and PW-17/Bhujangrao have not supported the prosecution's case. However, the evidence of Investigating Officer PW-16/Sanjay shows that, during interrogation accused No.1/Laxmikant and accused No.3/Adesh gave a statement that they would produce the weapons of the offence and accordingly their statements were recorded in presence of the panchas. The accused Nos. 1 and 3 took them in cattle shed and took out a sword concealed in a heap of fodder. There is some inconsistency in the evidence of Investigating Officer as he has not stated anything about the voluntariness of the statements of the accused. However, the evidence specifically states that on 20.06.2001 the accused No.1/Laxmikant initially made a statement in presence of the panchas which was recorded at Exh. 188 and the accused No.3/Adesh also made a statement on the same day in presence of the panchas, which is at Exh. 189. It further shows that, thereafter

both the accused took them in the cattle shed and shown the respective places where the articles were concealed. The aspect of statement whether it is voluntary or not is not challenged by the defence. It is only denied that, they have not made the statement. Therefore, the evidence of PW-16/Sanjay is sufficient to show that, the accused made a voluntary statement in presence of panchas and the place of concealment was discovered at the instance of the accused persons. The evidence of the Investigating Officer as to the recovery is not shattered during the cross-examination.

64. In *Modan Singh Vs. State of Rajasthan, MANU/SC/0126/1978*, wherein it was observed that, if the evidence of Investigating Officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that, seizure witnesses do not support the prosecution version. Similar view was expressed in *Mohd. Aslam Vs. State of Maharashtra, MANU/SC/2255/2000*, and *Anter Singh Vs. State of Rajasthan, MANU/SC/0096/2004*, that even if panch witness turns hostile, the evidence of person who affected the recovery would not stand vitiated.

65. Thus, the evidence of the Investigating Officer can be considered for proving the recovery as official acts are done by him is a wise presumption of law recognized by the Legislature as seen from the provisions of Section 114 of the Indian Evidence Act.

66. Though the evidence of the Informant is suffering from inconsistencies as there are improvements in the evidence, however, the evidence of other injured eyewitnesses who would stand on the higher pedestal and their evidence were not shattered during cross-examination sufficiently shows that the accused persons were the aggressors, therefore the contention of the learned Counsel for the accused that it was a free fight is not sustainable.

67. The law as to the appreciation of evidence is settled. The appreciation of the ocular evidence, there is no straight jacket formula. In the case of *Balu Sudam Khalde & Anr. Vs. The State of Maharashtra in Criminal Appeal No. 1910/2010* decided by the Hon'ble Apex Court on 29.03.2023 laid down the principles for appreciation of ocular evidence in a criminal case as follows:-

“APPRECIATION OF ORAL EVIDENCE

25. *The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:*

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere

variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear

of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

68. In the light of the above principles if the evidence of all the injured witnesses corroborated by the medical evidence and the CA reports which shows blood stains found on the clothes of PW-3/Vinod and PW-4/Ashok, is sufficient to prove the charges against the accused. The evidence of the Medical Officer sufficiently shows that, the injuries sustained by both of them was sufficient to cause death in the ordinary course of nature. Therefore, as far as the charge under Sections 147, 148, 307 read with Section 149 of IPC is duly proved against the accused persons.

69. The learned Counsel for the accused, submitted that during the pendency of this Appeal some of the accused and the original Complainant entered into the settlement and filed an application for compounding and recording of compromise. The Criminal Application (APPA) No. 127/2025 is filed contending

that, during the pendency of the Criminal Appeal, the Appellants and Respondent Nos. 2, 4, 5 and 6 in Criminal Revision No. 184/2007 i.e. Sahebrao Trimbakrao Bobde, Rahul Sahebrao Bobde, Vinod Narayanrao Bobde and Sanjay Narayanrao Bobde decided to settle the dispute between them as by passage of time the relations between them becomes cordial and to keep their relations healthy they have decided to settle the dispute amicably.

70. As can be seen from the evidence, the offences proved against the accused persons are mainly under Section 307 of IPC which reads as under:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

71. While dealing with an identical situation, where an offence under Section 307 of the Indian Penal Code, is sought to be quashed on the basis of a settlement, parameters are laid down by the Hon’ble Apex Court in the judgment of *Narinder*

Singh and others Vs. State of Punjab and another, 2014 SCC

Online 265, which reads as under:

“(VI) Offences under Section 307, I.P.C. would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 L.P.C. in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 L.P.C. is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 I.P.C. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/deleicate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

72. Similarly, in the judgment of ***Naushey Ali and others***

Vs. State of U.P. and Anr., 2025(4) SCC 78, in paragraph Nos. 10

and 11, which is apropos to reproduce the same as under :

“10. In State of Madhya Pradesh v. Laxmi Narayan and Others, (2019) 5 SCC 688, after discussing the ratio in Narinder Singh and Others v. State of Punjab and Another, (2014) 6 SCC 466 and other judgments, this Court held:

15.....

15.1.....

15.2.....

15.3.....

15.4. Offences under Section 307 IPC and the Arms Act, etc., would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether Incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove:

11. Before we apply this judgment to the facts, it will be worthwhile to recall the observations of Sikri, J. in Narinder Singh (supra):

“26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or

both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. ”

73. In the judgment of ***State of Madhya Pradesh Vs. Laxmi Narayan & Ors., [2019] 2 S.C.R. 864***, after elaborately considering the entire law on the subject, the Hon'ble Supreme Court has stated in paragraph No. 9.1 as under:

“9.1 However, the High Court has not at all considered the fact that the offences alleged were non compoundable offences as per Section 320 of the Cr.PC. From the impugned judgment and order, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgment and order passed by the High Court, it appears that the High Court has mechanically quashed the FIR, in exercise of its powers under Section 482 Cr.PC. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of State of Maharashtra vs. Vikram Anantrai Doshi, (2014) 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.PC. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the FIR by the High Court in the present case for the offences under Sections 307 and 34 of the IPC, and that too in exercise of powers under Section 482 of the Cr.PC. is just contrary to the law laid down by this Court in a catena of decisions.”

74. Thus, the offence punishable under Section 307 of

IPC is not covered under the list of compoundable offences. In view of Section 320 of Cr.P.C. which prohibits any compounding except as permitted under the said provision, it would not be possible to compound the above said offences. As observed by the Hon'ble Apex Court in the case of *Murali Vs. State rep. by the Inspector of Police* by referring the judgment of *Ram Pujan Vs. State of UP, [(1973) 2 SCC 456*, that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence and observed the major offence for which the Appellants have been convicted is no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our opinion, meets the ends of justice if the sentence of imprisonment awarded to the Appellants is reduced to the period already undergone. It has further held that, in our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions.

75. In the present case, admittedly, all the accused have not entered into a settlement. It is a part settlement with some of the accused. The Trial Court has already considered the

aspect that there was a previous enmity and out of previous enmity the alleged incident has occurred and shown the leniency while awarding the punishment. Therefore, I do not find any reason to interfere even in the aspect of reduction of sentence, considering the nature of the offence and considering the fact that, in all 7 to 8 persons sustained the injuries. Out of them, PW-3/Vinod and PW-4/Ashok sustained the grievous injuries. Therefore, even accepting the fact that some of the accused entered into the settlement, no interference is called for.

76. The Criminal Revision Application No. 184/2007 is preferred by one of the accused who is the original complainant in a cross complaint in connection with Crime No. 19/2001. The allegations levelled on the basis of a report lodged by Sahadev Shamrao Tadokar against Sahebrao Bobde, Amol Bobde, Rahul Bobde, Vinod Bobde, Sanjay Bobde, Subhash Bobde and Chandrashekhar Bobde that on 05.06.2001 at about 07.00 a.m. these accused persons formed an unlawful assembly and in prosecution of common object of such an assembly caused the injury to Sahadev Tadokar and other injured witnesses and

thereby committed an offence punishable under Sections 148, 324 read with Section 149 of IPC. After completion of the investigation the charge-sheet was submitted against the accused. Though the offences are triable by the Court of Magistrate but being it is a cross complaint and both the cross cases to be decided by the same Court, the case was committed to the Court of Sessions. Learned Adhoc Additional Sessions Judge, framed the Charge vide Exh. 21.

77. In support of the charge prosecution has examined in all 9 witnesses, as follows:

(i)	PW-1	Mahadeo Wanoskar	Ramrao	Exh.32	Panch
(ii)	PW-2	Ishwar Jamodkar	Jairam	Exh.34	Panch
(iii)	PW-3	Sahadeo Talokar	Shamrao	Exh.35	Informant
(iv)	PW-4	Subhash Talokar	Sahadeorao	Exh.38	Injured
(v)	PW-5	Amardeep Nimkarde	Laxmikant	Exh.39
(vi)	PW-6	Mahadeo Talokar	Sahadeorao	Exh.40
(vii)	PW-7	Laxmikant Nimkarde	Sakharamji	Exh.41

- | | | | | |
|--------|------|--------------------------------------|--------|--------------------------|
| (viii) | PW-8 | Sanjay Bhikaji Pande | Exh.43 | Investigating
Officer |
| (ix) | PW-9 | Dr. Sivalaruselval
Sundaramoorthy | Exh.51 | Medical Officer |

78. On consideration of the evidence, admittedly, PW-1/Mahadeo and PW-2/Ishwar only stated that, they have signed on the panchnama. As per the evidence of PW-3/Sahadeo, the alleged incident has occurred when he was present in the house and they were beaten by all the accused who came there alongwith the weapons in their hands. As per his evidence accused No.2/Amol gave a blow of stick on his head. His son Subhash was also beaten by all the accused. His cross-examination shows that, the relationship between him and accused were strained. It further came in his evidence that, he was prosecuted in a cross complaint. It further came that there were quarrels between him and the accused before the incident. As far as the spot of incident is concerned, nothing is on record to show that, the alleged incident has occurred in front of his house.

79. Evidence of PW-4/Subhash also shows that, after hearing a commotion near his house, he went near the house of

Vairale, wherein the quarrel was going on between his father and the accused. Accused persons beat his father and brother and they both have sustained the injuries. He was assaulted by accused Chandrashekhar. During his cross-examination this aspect that he was assaulted by Chandrashekhar was brought on record in the manner of omission. Thus, he has not stated during his statement that he was assaulted by Chandrashekhar.

80. PW-5/Amardeep only states that, the accused persons beat PW-3/Sahadeo, PW-4/Subhash, and one Mahadeo Talokar and he received the injuries when he was separating the quarrel. As per his evidence the place of incident is at a distance of 100 feet from his house. He has also not narrated regarding the exact place of incident. On the contrary, his evidence shows that the alleged incident has taken place near the house of Dilip Bobde. Thus, admittedly the alleged incident has taken place near the house of Dilip Bobde and Vinod Bobde.

81. Evidence of PW-6/Mahadeo and PW-7/Laxmikant is also on the similar line. They were also accused in the cross complaint.

82. The evidence of the Investigating Officer also shows that spot of incident is in the middle of the locality. He further admits that, Subhash Bobde gave a report against the Informant. On the basis of which, Crime No.18/2001 was registered.

83. There is no dispute that, Mahadeo Talokar, Sahadeo Talokar, Subhash Talokar and Amardip Nimkarde has received the injuries in the said incident. The evidence on record shows that, there was a scuffle between the prosecution witnesses and the accused persons. The accused persons in Crime No. 18/2001 who are the prosecution witnesses in Crime No. 19/2001 were the aggressors. The learned Sessions Judge has rightly considered that, the evidence in cross complaint sufficiently shows that, the prosecution witnesses are the aggressors and initiated the quarrel. In the said incident, these witnesses have also sustained the injuries. The evidence of prosecution witnesses is not consistent with the evidence of Medical Officer.

84. The learned Counsel for the Applicant, placed reliance on various judgments and submitted that, the accused persons who are the Respondents in Criminal Revision were the

members of the unlawful assembly and in prosecution of the common object of the said assembly they have assaulted the Applicant and other prosecution witnesses. However, the entire evidence nowhere states that the Respondents in Criminal Revision were the members of the unlawful assembly. On the contrary, the alleged incident has occurred in front of the house of one of the Respondent Vinod Bobde. The prosecution witnesses in cross complaint proved the spot of incident as well as the Applicant and the other prosecution witnesses were the aggressors. The Respondents in criminal Revision have received the grievous injuries. It is further proved that, it was the Applicant and other prosecution witnesses formed the unlawful assembly and went in front of the house of Vinod Bobde and assaulted him as well as other Respondents. Thus, the entire evidence shows that it was the Applicant and other prosecution witnesses who formed the unlawful assembly and in prosecution of their common object went at the house of the Respondents and in pursuance of the common object assaulted them.

85. The present Criminal Revision Application is filed by the Applicant for setting aside the acquittal passed by the Adhoc

Additional Sessions Judge, Achalpur. Considering the scope of Revision, reappreciation of the evidence is not permissible. The only thing this Court has to see is whether any illegality or error is committed by the Court while acquitting the accused. In view of Section 397 of Cr.P.C., this Court or the Sessions Court is empowered to call for and examine record of any proceeding before any inferior criminal Court situated within its or its local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior Court and may, when calling for such record direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his bond pending the examination of the record.

86. Thus, the scope of the Revision is very limited, only to see as to the correctness, legality or propriety of any finding and sentence or order. While exercising the revisional powers especially while dealing with the orders of acquittal, cardinal principle to be kept in mind is that there is a presumption of

innocence in favour of the accused unless the accused is proved to be guilty, the presumption continues and finally culminates into fact when the case ends in acquittal. The possibility of two views in criminal cases is not an extraordinary phenomenon while considering the orders of acquittal. A fact cannot be lost sight that the Trial Court has appreciated the entire evidence and passed an order of acquittal. Admittedly, the order of acquittal passed by the Trial Court after appreciating the evidence, the High Court is not expected to sit as a Court of Appeal and re-appreciate the evidence. However, when the findings of the Courts below where on the basis of no evidence or evidence which even if believe in entirety cannot prove the guilt of accused for the offence charged exercise of revisional jurisdiction.

87. After considering the record, the view taken by the learned Trial Judge while acquitting the Respondents is a plausible view and therefore, no interference is called for.

88. For the reasons discussed above and on consideration of the oral evidence, medical evidence and scientific evidence and other proven fact, in my considered

opinion, the prosecution has proved the guilt of the accused Appellants in Criminal Appeal No.171/2007. Therefore, no interference is called for. The Criminal Revision is also devoid of merits and liable to be dismissed. In view of that, I proceed to pass the following order.

ORDER

- i. The Criminal Appeal No. 171/2007 is **dismissed**.
- ii. The Criminal Revision Application No.184/2007 is **dismissed**.
- iii. The Appellants in Criminal Appeal No. 171/2007 shall surrender before the Superintendent Central Prison, Amravati on 06.04.2026 to undergo the sentence.
- iv. R & P be sent to the Trial Court.

89. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)