THE LAW LEDGER

The Fortnightly e-Journal

DELHI POLICE ACADEMY

CRIMINAL APPEAL NO. Crl. A. No. 001755 / 2011
Date of Judgment: 29 October 2025

28th Edition
October 2025



"The Supreme Court held that, irrespective of their individual actions, once the accused shared a common object and actively participated as members of an unlawful assembly, they were vicariously liable under Section 149 of the Penal Code, 1860 ('IPC')"

–THE SUPREME COURT

Haribhau@Bhausaheb Dinkar Kharuse & Anr. APPELLANT
VERSUS
State of Maharashtra.....RESPONDENT

THE LAW LEDGER

The Fortnightly e-Journal

DELHI POLICE ACADEMY

Click here to Read the Complete Judgement

The Supreme Court held that, irrespective of their individual actions, once the accused shared a common object and actively participated as members of an unlawful assembly, they were vicariously liable under Section 149 of the Penal Code, 1860 ('IPC')

THE SUPREME COURT

Haribhau@Bhausaheb Dinkar Kharuse & Anr. APPELLANT

VERSUS

State of Maharashtra.....RESPONDENT

CRIMINAL APPEAL NO. Crl. A. No. 001755 / 2011

Date of Judgment: 29 October 2025



Facts of the Case:

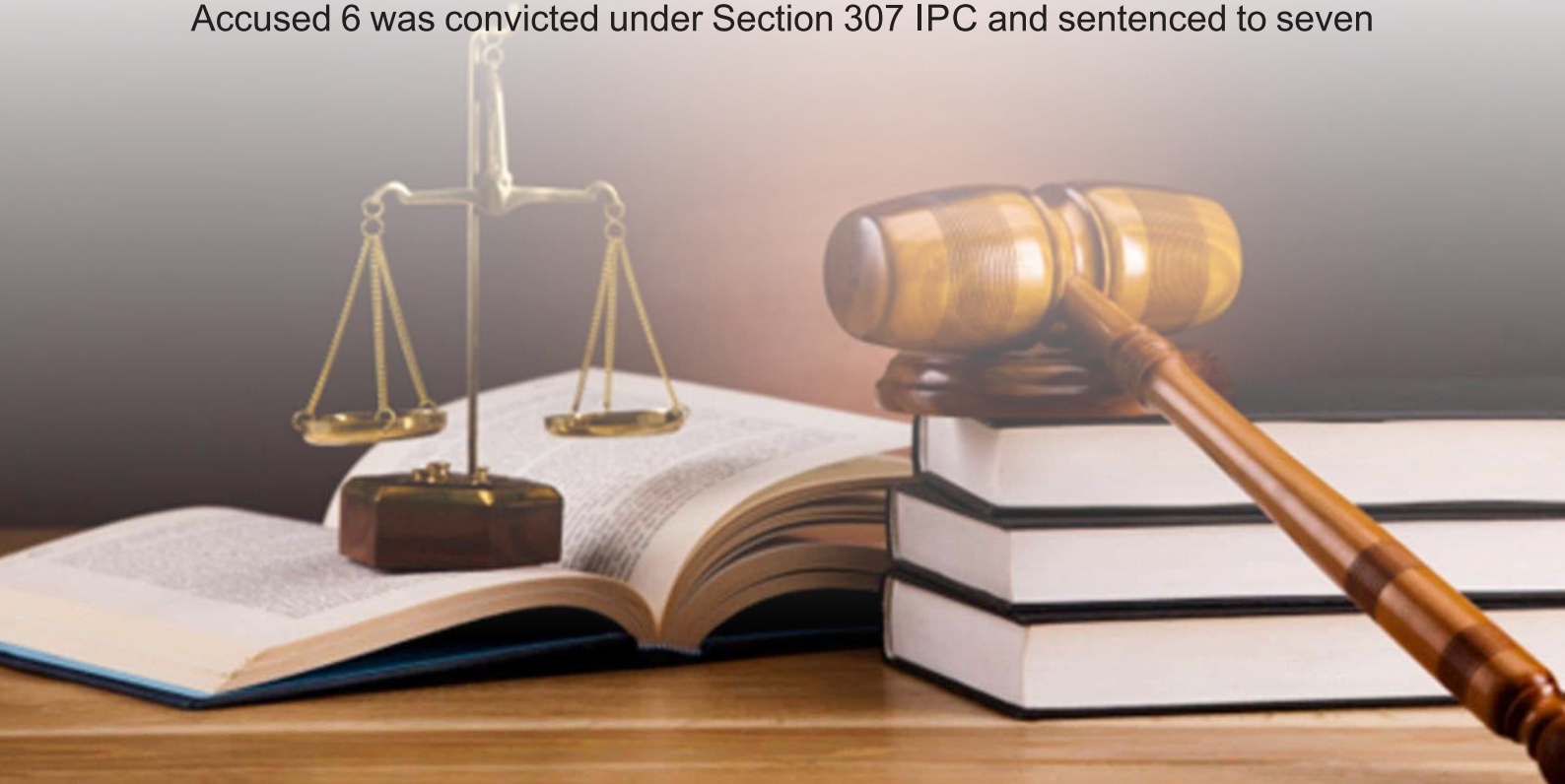
The case reveals that between 25-04-1999 and 27-04-1999, several wedding ceremonies took place within different branches of a family at village Kari, Pune District. On 26-04-1999, during one of the wedding processions, the deceased was assaulted on the head by the brother of accused 1. Later that night, the deceased lodged a police complaint.

On 27-04-1999, the deceased, accompanied by the witnesses, travelled to Bhor, while returning near Navi Ali, they stopped the vehicle. At that time, accused 1 and 2 arrived on a motorbike driven by accused 3, while accused 4 followed on another motorbike with accused 5 and accused 6 as pillion riders.

Accused 3 removed the jeep's keys and punched witness 1, while the other accused dragged the deceased and others out of the jeep. Accused 1 and 2 attacked the deceased with sharp weapons, causing his death on the spot. Other witnesses sustained grievous injuries, while witness managed to escape and report the incident to the police.

The postmortem examination confirmed that the deceased had died due to hemorrhagic shock resulting from multiple injuries inflicted by sharp weapons. Other witnesses were treated for serious injuries at local hospitals. The accused were arrested, and a chargesheet was filed.

The Sessions Court framed charges against all accused for offences under Sections 147, 148, 149, 302 ,and 307 IPC, {147 IPC is 191(1) BNS, 148 IPC is 191(2) BNS, 149 IPC is 190 BNS, 302 IPC is 103 BNS and 307 IPC is 109 BNS} and alternatively under sections 302 and 307 read with Section 34 IPC {3(5) BNS}. The Trial Court convicted accused 1 and 2 for offences under Sections 302 and 307 IPC, sentencing them to life imprisonment and seven years' rigorous imprisonment, respectively. Accused 6 was convicted under Section 307 IPC and sentenced to seven



year's imprisonment, while being acquitted under Section 302 read with Section 149 IPC. Accused 3, 4, and 5 were acquitted for lack of sufficient evidence.

Before the High Court, Accused 1, 2, and 6 filed appeals against their convictions, while the State filed an appeal challenging the acquittal of Accused 3, 4, and 5. By the impugned judgment dated 02-02-2011, the High Court partly allowed the State's appeal, reversing the acquittal of Accused 3 and 4, and dismissed the appeals of Accused 1, 2, and 6, affirming their convictions. The High Court also reversed the acquittal of Accused 6 under Section 302 read with Section 149 IPC.

Consequently, Accused 1, 2, 3, 4, and 6 were held guilty of offences punishable under Sections 147, 148, 149, 302, and 307 read with Section 149 IPC, and were sentenced to rigorous imprisonment for life for the offence under Section 302 read with Section 149 IPC, and ten years' rigorous imprisonment for the offence under Section 307 read with Section 149 IPC.

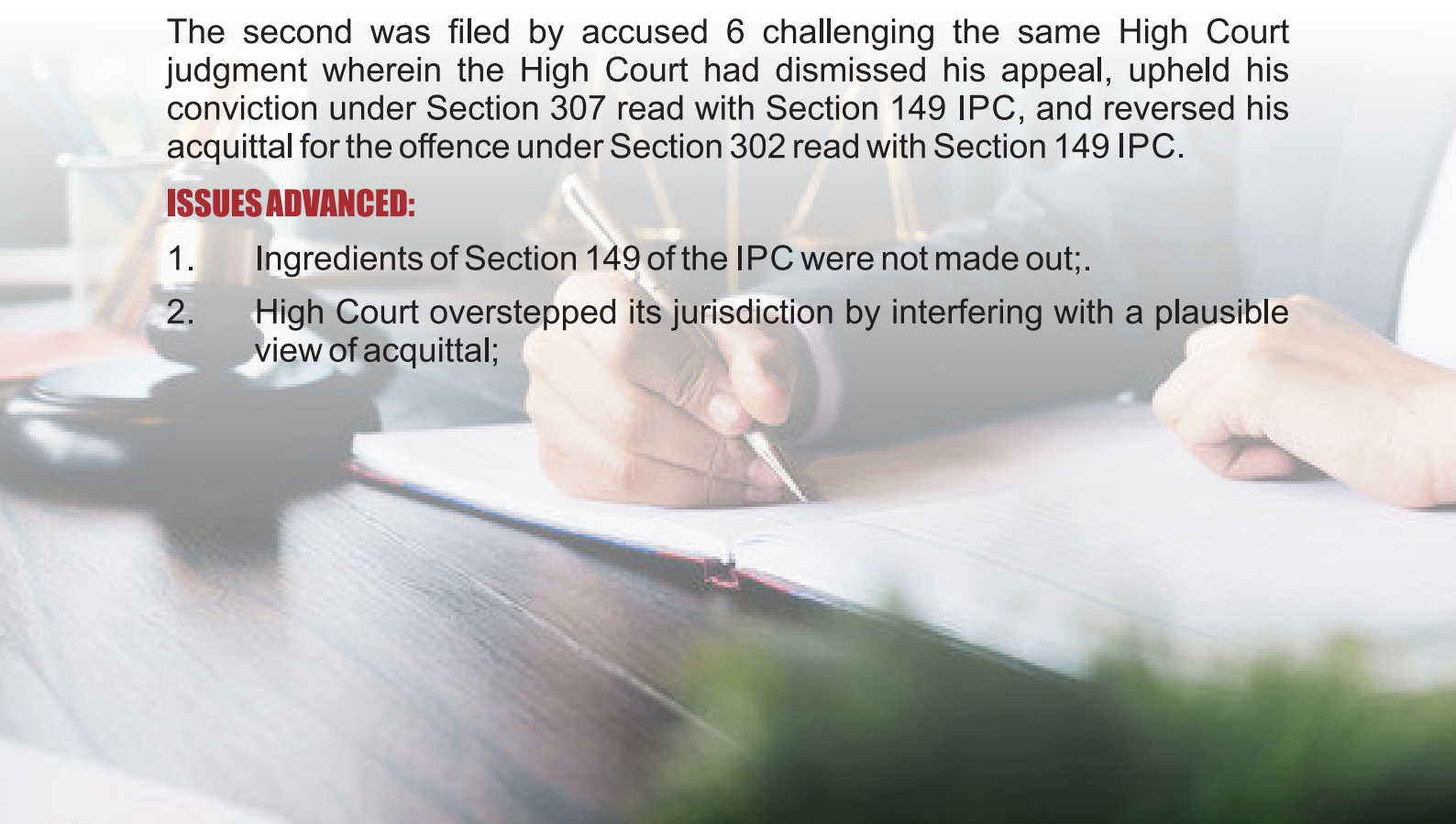
Aggrieved by the High Court's decision, accused 3 and 4 and accused 6 (collectively referred to as 'appellants') filed the present appeals.

The first appeal was filed under Section 379 of the Code of Criminal Procedure, 1973 ('CrPC') (Now 420 of BNSS) and Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 by accused 3 and accused 4, against the judgment of the Bombay High Court, which had partly allowed the appeal and reversed their acquittal for offences under Sections 302 and 307 read with Section 149 of the IPC, earlier recorded by the VIII Additional Sessions Judge, Pune.

The second was filed by accused 6 challenging the same High Court judgment wherein the High Court had dismissed his appeal, upheld his conviction under Section 307 read with Section 149 IPC, and reversed his acquittal for the offence under Section 302 read with Section 149 IPC.

ISSUES ADVANCED:

1. Ingredients of Section 149 of the IPC were not made out;.
2. High Court overstepped its jurisdiction by interfering with a plausible view of acquittal;



3. Contradictions among eyewitnesses of the incident in question;
4. No recovery or evidence against accused no. 3/appellant no. 1.

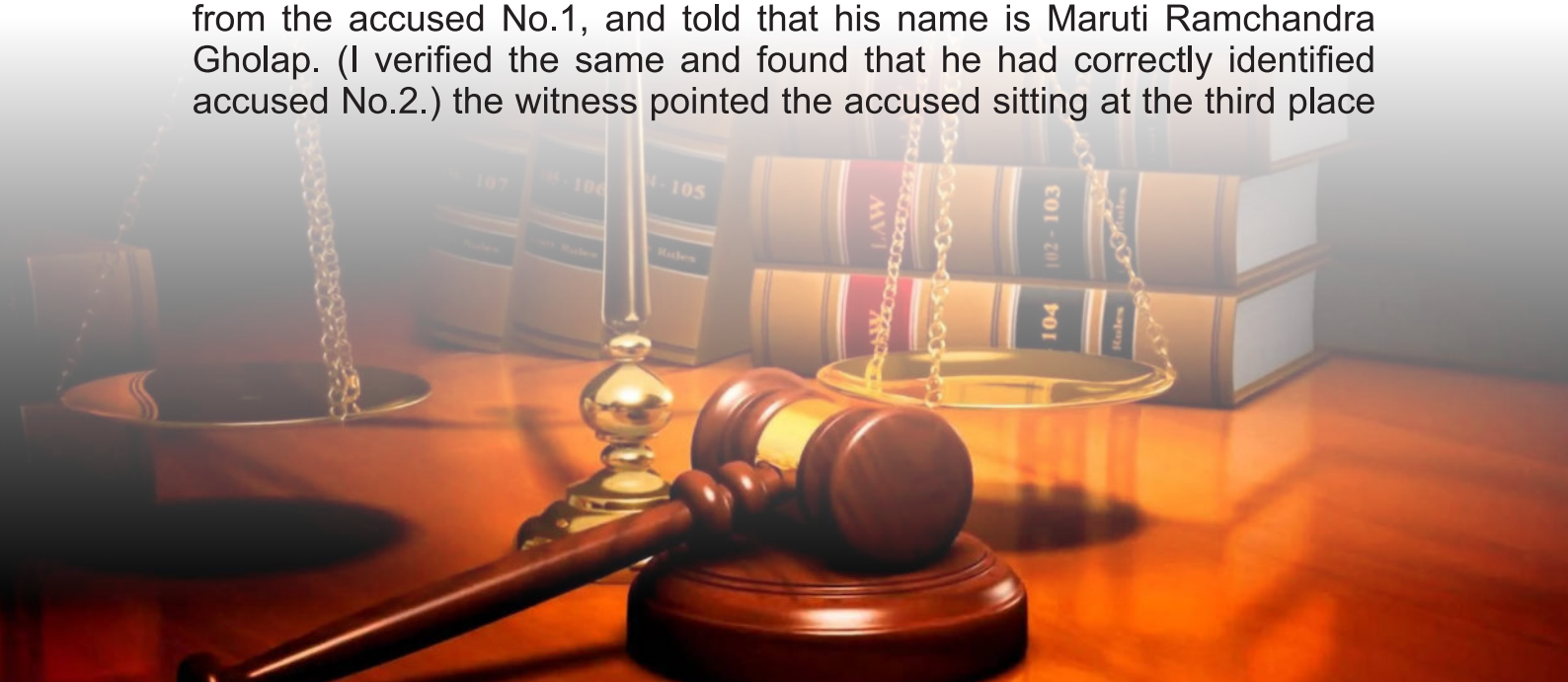
JUDGEMENT:

The Hon'ble Supreme Court upheld that the judgement of High Court.

Para 29: At the outset, the Court reiterated that interference with an order of acquittal must be exercised with great caution. However, such interference was justified where the findings of the Trial Court were manifestly perverse, unreasonable, or contrary to the evidence on record. Referring to its earlier decision in Chandrappa v. State of Karnataka, (2007) 4 SCC 415, the Court observed that an Appellate Court possesses full power to review, reappreciate, and reconsider the evidence on which an order of acquittal is founded and may reach its own conclusions if the Trial Court's view is not reasonably sustainable.

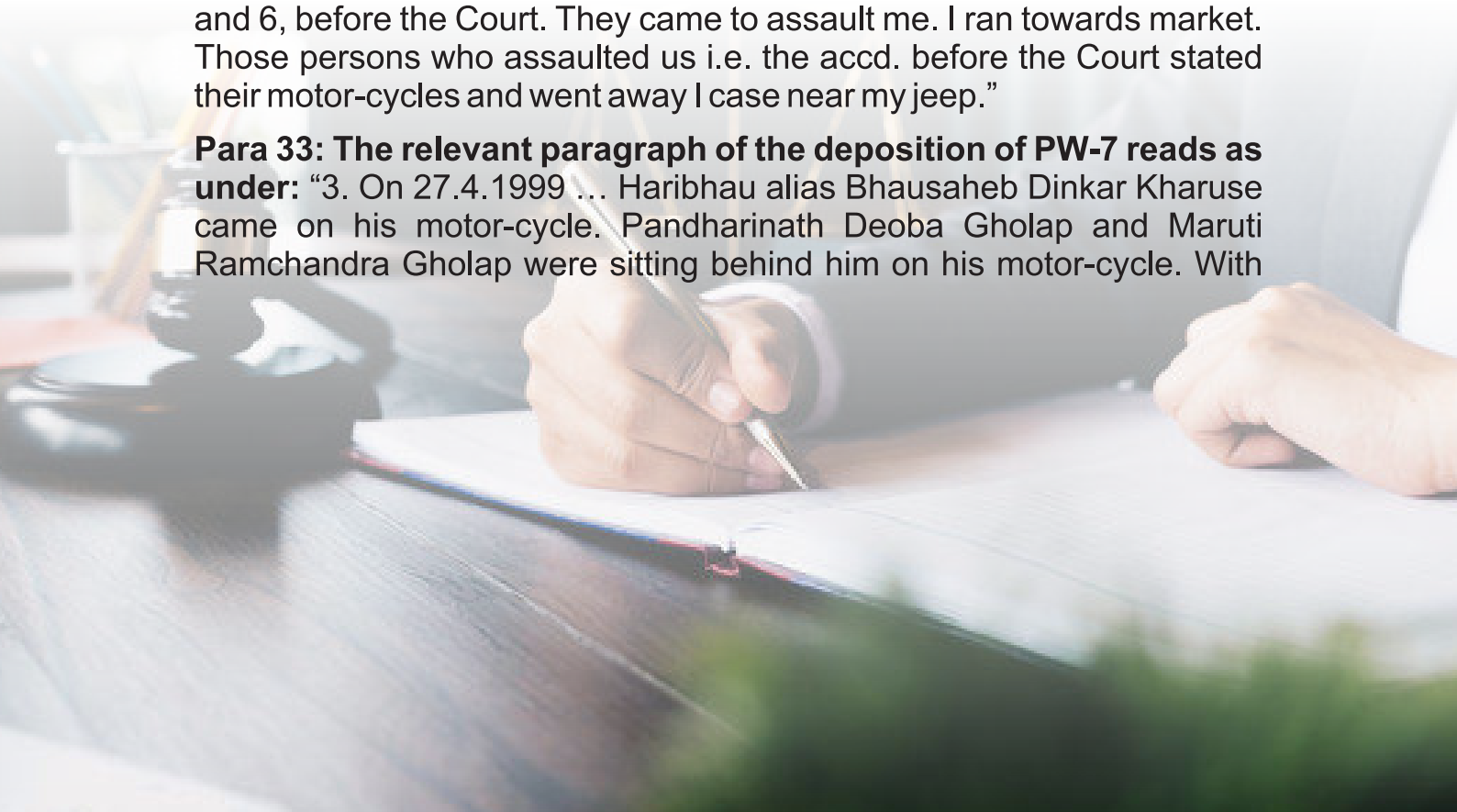
Para 30: Applying these principles to the case at hand, the Court held that the Trial Court's acquittal suffered from a fundamental misappreciation of evidence, as it failed to properly consider the consistent and corroborated testimony of the injured eyewitnesses and overlooked the active participation of the appellants as members of the unlawful assembly.

Para 32: The relevant paragraph of the deposition of PW-1 reads as under: "4. On 27.4.1999 … Bhausaheb Dinkar Kharuse came on his motor-cycle and Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on the motorcycle. The Rajendra Shira wale came on Bullet motor-cycle. Behind him two unknown persons were sitting on the said Bullet motor-cycle. I was knowing all these persons. The persons are present today in the Court. I can identify them in the Court. (The witness had gone near the dock of the accused where they are sitting.) He pointed his finger towards accd. No.1 and told that his name is Pandharinath Deoba Gholap. (I verified the same. He has identified correctly.) The witness pointed out the accused sitting at the second place from the accused No.1, and told that his name is Maruti Ramchandra Gholap. (I verified the same and found that he had correctly identified accused No.2.) the witness pointed the accused sitting at the third place

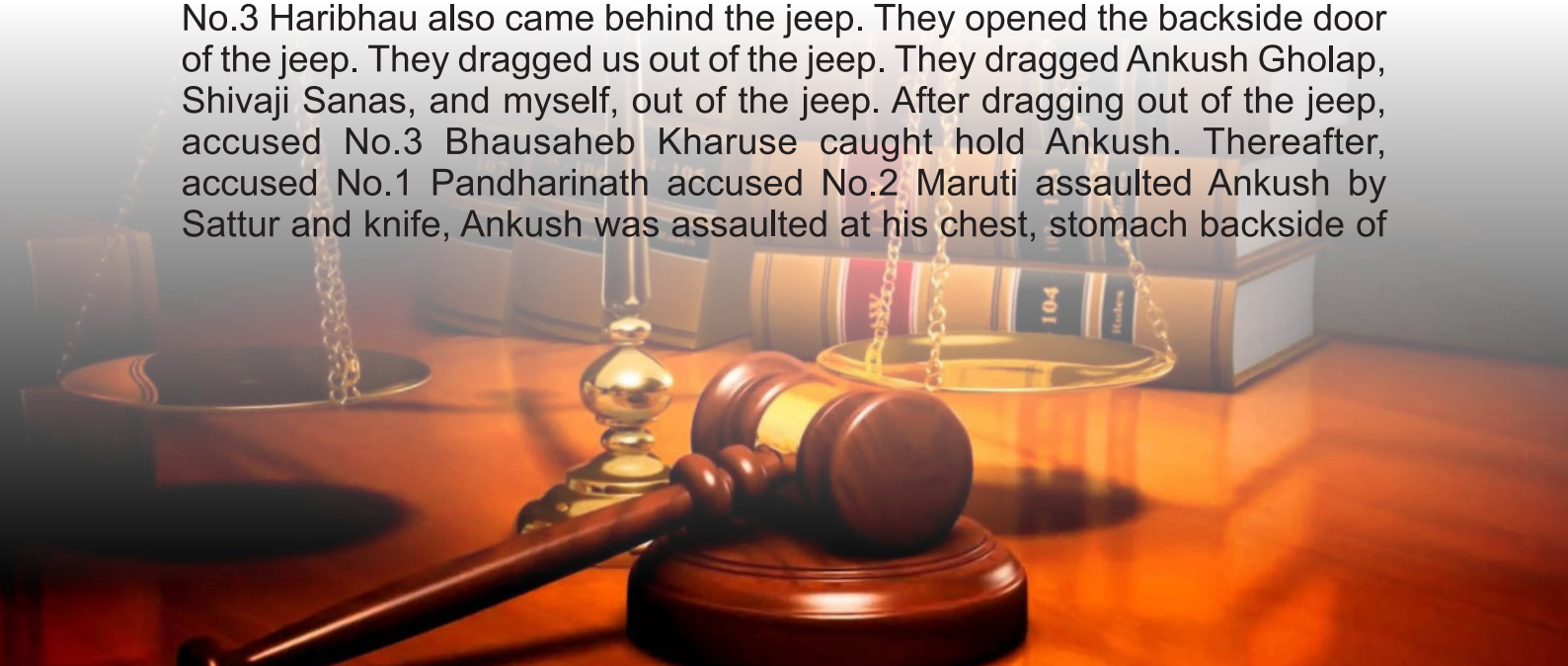


and told his name as Bhausaheb Dinkar Kharuse. (I verified and found that he is accused No.3). The witness pointed out the finger to the accused sitting at fourth place and told his name that he is Rajendra Shirawale. (I verified and found that he is accused No.4). I can identify those unknown persons who came on the Bullet motor-cycle of Rajendra Shirawale. (The witness has pointed out the accused Nos.5 and 6). Both the motor-cycles were stopped on the left side of my jeep. All the accused persons got down from the motor-cycles. The accused persons removed weapons from the diccies of their motor-cycles. The accused No.2 Maruti was possessing Sattur, the accused No.1 Pandharinath and accused Nos.5 and 6 were possessing knives (Suri), accused Nos.3 Bhausaheb and accd. No.4 Rajendra were possessing the knives. Accused No.3 Bhausaheb came near my jeep and he took off the key of my jeep. He gave first blow on my mouth. Thereafter, he immediately went behind the jeep. I saw black. All the accused were standing behind my jeep. They opened the rear side door of my jeep. They pulled Ankush Bhausaheb Gholap, Rajendra Maruti Gholap, Shivaji Sakharam Sanas and Gynaba Nagu Gholap on road from my jeep. The accused No.3 Bhausaheb was holding Ankush. Accused No.1 Pancharinath and No.2 Maruti assaulted Ankush on his stomach by Sattur and knife. Accused Nos.1 and 2 also assaulted Ankush on his head, stomach, back, hand. The intestine of the Ankush was came out of his stomach. He fall on ground. The accused Nos.1 and 2 and his campanions, the campanions were accused No.3 and 4 and unknown persons i.e. accused Nos.5 and 6 went towards Rajendra Maruti Gholap and Shivaji Sakharam Sanas. They assaulted them with weapons. I was afraid and therefore, I got down from the jeep. The two unknown person came towards me. They are accused Nos. 5 and 6, before the Court. They came to assault me. I ran towards market. Those persons who assaulted us i.e. the accd. before the Court stated their motor-cycles and went away I case near my jeep."

Para 33: The relevant paragraph of the deposition of PW-7 reads as under: "3. On 27.4.1999 … Haribhau alias Bhausaheb Dinkar Kharuse came on his motor-cycle. Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on his motor-cycle. With



the said motorcycle another motor-cycle came. Raju Shirawale was driving that motorcycle. Behind him Subhash Raghunath Pawar and one person wearing red colour shirt were sitting. I know all the persons whose named I have stated above. I can identify them. They are present in Court. (The witness went to the dock of the accused and pointed out one accused, and told his name as Pandharinath Deoba Gholap). The accused was asked to stand. I asked his name and he told his name as Pandharinath Deoba Gholap. The witness pointed one of the accused and told his name as Maruti Ramchandra Gholap. I asked the name of the accused and he told his name as Maruti Ramchandra Gholap. He is accused No.2. The witness pointed one of the accused sitting in the dock and told his name as Haribhau alias Bhausaheb Dinkar Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting in the dock and told his name as Raju alias Rajendra Bhivrao Shirawale. I asked the name to the accd. and he told his name as Raju Bhivrao Shirawale. He is accused No.4. Then witness pointed his finger to one of the accused sitting in the dock that he is the same per who worn the red colour shirt on that day. I asked him his name. He told his name as Vitthal Baburao Shinde. He is accused No.5. The witness pointed his finger towards one of the accd. sitting in the dock and told his name Subhash Raghunath Pawar. I asked his name. He told him name Subhash Raghunath Pawar. He is accused No.6. The motor-cycles were stopped on the left side of the jeep. All the accused down from the motor-cycles. The accused persons removed the weapons from the diccies of the motorcycles. The accused No.1 Maruti Gholap was holding Sattur in his hand. The accused No.1 Pandharinath Gholap was holding knife (suri). The accused No.4 Raju Shirwale, accd. No.5 Vitthal Shinde i.e. the person who worn the red shirt, accd. No.6 Subhash Pawar/were holding knives. Accd. No.3 Bhausaheb went near Sopan. He removed the keys of jeep and gave fist below on the face of Sopan Dagadu Gholap. (By that time, accused No.1 Pandharinath, No.2-Maruti, accd. No.4 Rajendra, accused No.5 Vitthal i.e. the person wearing red shirt and accused No.6 Subhash came behind the jeep. The accused No.3 Haribhau also came behind the jeep. They opened the backside door of the jeep. They dragged us out of the jeep. They dragged Ankush Gholap, Shivaji Sanas, and myself, out of the jeep. After dragging out of the jeep, accused No.3 Bhausaheb Kharuse caught hold Ankush. Thereafter, accused No.1 Pandharinath accused No.2 Maruti assaulted Ankush by Sattur and knife, Ankush was assaulted at his chest, stomach backside of



the head and back. The intestine of the Ankush came out of the stomach and he fall, on ground. Thereafter, the accused started assaulting Shivaji Sanas. Shivaji Sanas rescued himself from the hands of the accused and ran away. Accused No.4 Raju caught hold of me. The accused No.6 Subhash inflicted two blows on my chest. Accused No. 2 Maruti inflicted blows on my back. I fall in front of the shop of Mhasawade by haltering. The persons who had worn red shirt, accused No. 5 inflicted blows on my right hand."

Para 34: The relevant paragraph of the deposition of PW-9 reads as under: "3. On 27.4.1999 … Bhausabeb Kharuse came on motorcycle, along with Pandharinath Deoba Gholap and Maruti Ramchandra Gholap. With them, Raju Shirawale, came on bullet motor-cycle with Subhash Pawar and one unknown person wearing red shirt. The above persons came on the motorcycles, are known to me. I can identify them, if shown to me. They are present in the Court-hall. (The witness went to the dock where the accused persons are sitting. He touched one accused sitting amongst others, and told his name as Pandharinath Gholap). I verified the same. The accused told his name as Pandharinath Gholap. He is accused told his name as Pandharinath Gholap. He is accused No.1. The witness pointed finger to one person of the accused sitting amongst others and told his name as Maruti Gholap. The accused told his name Maruti Gholap. He is accused No.2. The witness pointed one of the accused sitting amongst the other and told his name as Bhausaheb Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting amongst the others and told his name as Raju Shirawale. The accused stood up and told his name as Raju Shirawale. He is accused No.4. The witness pointed one of the accused sitting in the dock and told his name as Subhash Pawar. The accused stood and told his name as Subhash Raghunath Pawar. He is accused No.6. The witness pointed one of the accused sitting in the dock and told that he is unknown person who was wearing red shirt at that time. The accused stood and hold his name Vitthal Baburao Shinde. He is accused No. 5. The accused persons stopped their motorcycles by the side of our jeep. They got down from the motorcycles. They removed the weapons from the diccies of their motor-cycles. The accused No.2 Maruti Gholap was holding Sattur in his hand. Accused No. 1 Pandharinath Gholap accused No. 3 Haribhau Kharuse, accused No.4 Raju Shirawale, accused No.5 who was wearing red shirt and accused No. 6 Subhash were holding knives in their hands. Accused

No.3 Bhausaheb Kharuse then went to Sopan Gholap. All other accused came behind our jeep. They opened the back-door of the jeep and dragged us out of the jeep. Accused No.3 Bhausaheb Kharuse caught hold Ankush. The accused No.2 Maruti and accused No.1 Pandharinath assaulted Ankush by Sattur and knife. Ankush was assaulted on his stomach, chest, on both the hands, back his head, and on legs. The intestine of the Ankush came out of the stomach, and he fall down on earth. Thereafter, the accused No.1 Pandharinath, accused No.2 Maruti, accused No.6 Subhash and accused No.5 unknown person wearing red shirt and accused No.4 Raju Shirawale came to me. The accused No.2 Maruti Gholap inflicted blow on backside of my head, accused No.6 Subhash Pawar inflicted blow on my hand, accused No.1 Pandharinath Gholap inflicted blow on my waist. I feel uneasy and I fell down on the earth. All the accused then went towards the Rajendra Gholap and assaulted him. In order to save myself I ran towards vegetable market."

Taking note of the evidence on record, the Court observed that a careful perusal of the depositions revealed the testimonies of the eyewitnesses to be natural, coherent, and mutually corroborative on all material particulars. The witnesses consistently stated that on 27-04-1999, the accused persons, including the appellants, had arrived at the scene on two motorcycles armed with deadly weapons such as knives and sattur.

The Court noted that the appellants had actively facilitated the commission of the offence by accompanying the co-accused, ensuring the confinement of the victims, and participating in a coordinated assault. The witnesses categorically deposed that accused 3 and 4 were among those who surrounded the deceased and the injured witnesses, thereby preventing their escape, and that they were fully aware that the co-accused were armed. The evidence further established that the accused 6 inflicted grievous injuries on witness 7, demonstrating his direct participation in the attack.

The testimony of witness 9 corroborated these accounts and clearly identified all three appellants as members of the group acting in concert and sharing a common objective.

The Court held that the consistent and corroborated narrative of the



eyewitnesses left no room for doubt that accused 3 and 4 had facilitated the attack by transporting the armed assailants to the scene, and accused 6 had directly participated in the assault, making all of them integral participants in the execution of the unlawful design.

Medical Corroboration

The Court observed that the medical evidence strongly corroborated the prosecution's case and reinforced the credibility of the eyewitness testimonies. The doctor who conducted the post-mortem on the deceased, recorded multiple incised and penetrating wounds on vital organs, including the heart, liver, and brain, which were sufficient in the ordinary course of nature to cause death due to hemorrhagic shock.

The Court noted that these medical findings perfectly aligned with the ocular evidence, highlighting the brutal and coordinated nature of the attack. The timing, nature, and multiplicity of injuries clearly indicated a deliberate and orchestrated assault executed in furtherance of a common unlawful object. The Court concluded that the harmony between the medical and eyewitness evidence left no scope for doubt regarding the active participation of the appellants in the premeditated attack.

Common Object and Vicarious Liability

The Court observed that the principal defence of the appellants, that there was no common object to commit murder, and the intent was only to cause hurt was untenable. The prosecution had established that all accused, including the appellants, arrived together armed with lethal weapons and jointly executed a deliberate and coordinated assault. The nature of the weapons, the ferocity of the attack, and the precision of the assault demonstrated that the common object extended beyond causing hurt and encompassed murder.

Relying on Section 149 of the IPC and precedents such as **Masalti v. State of U.P., 1964 SCC Online SC 30,** the Court held that once participation and sharing of the common object are proved, every member of an unlawful assembly becomes vicariously liable for offences committed in furtherance of that object.



In this case, the evidence conclusively established that accused 3 and 4 facilitated the attack by transporting the armed assailants, while accused 6 directly inflicted grievous injuries, demonstrating active participation. The Court noted that the appellants were not passive spectators but integral participants in a premeditated and violent assault.

After a comprehensive review, the Court found that the prosecution had proved beyond reasonable doubt the active participation of the appellants in furtherance of the common object to commit murder and grievous assault. The High Court had correctly reversed the Trial Court's acquittal, which had failed to appreciate material evidence. The Court held that Sections 302 and 307 read with Section 149 of the IPC were fully satisfied, rendering the appellants vicariously liable.

Accordingly, the Court affirmed the conviction and sentences imposed on accused 3, 4, and 6 by the High Court, and dismissed the appeals as devoid of merit.

The Court further noted that the High Court had rightly reversed the acquittal, having rendered cogent and well-reasoned findings based on a proper appraisal of the evidence on record.

Court's Observations:

- The presence of the appellants at the scene with weapons and their active participation in surrounding the victims showed clear involvement in the crime.
- The consistent and reliable statements of injured eyewitnesses were rightly relied upon by the High Court.
- The Court held that even if a specific overt act by each accused was not proved, their membership in the unlawful assembly with a shared intention to commit murder made them equally liable.
- The Supreme Court found no perversity or error in the High Court's reasoning and reaffirmed that vicarious liability under Section 149 IPC applies when a common object to commit a serious offence is evident.
- The appeals were dismissed, and the convictions were confirmed.

