IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.707 OF 2018

Mohammad Navid s/o Mohammad Salim
Age 26 years, Occu. Business,
R/o Near Chunna Bhatti, Nanded
Taluka & District Nanded
(At present the appellant is in
Nashik Road Central Prison, Nashik,
Taluka and District Nashik … **APPELLANT**

VERSUS

The State of Maharashtra
through the Police Station Officer,
Itwara Police Station,
Taluka & District Nanded
(Notice to the respondent to be
served through the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Mr. Joydeep Chatterji, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.698 OF 2018

Sk. Abdulla Sk. Abdul Samad,
Age 26 years, Occu. Labour,
R/o Near Khubha Masjid,
Degloor Naka, Nanded … **APPELLANT**

VERSUS

1) The State of Maharashtra
(Copy to be on the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad)

2) Pralayasinh Rajkumarsinh Thakur,
Age 19 years, Occu. Business,
R/o Near Renuka Mata Mandir, Nanded

3) Shubham Sanjaysinh Thakur,
Age 24 years, Occu. Business,
R/o Near Renuka Mata Mandir,
Nanded … **RESPONDENTS**

.....

Mr. Joydeep Chatterji, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.776 OF 2018

Mohammad Yousuf s/o Mohd. Abdul Hak,
Age 22 years, Occu. Business,
R/o Fateh Burju, Nanded
Taluka & District Nanded … **APPELLANT**

VERSUS

The State of Maharashtra
(Copy to be on the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Mr. N.S. Ghanekar, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

.....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 15th January, 2025

Date of pronouncing judgment : 13th February, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

The challenge in these three appeals is to the judgment dated 5/9/2018, passed by Additional Sessions Judge-1, Nanded in Sessions Case, No.9/2015, whereunder the appellants herein have been convicted and consequently sentenced to various terms of imprisonments. The relevant part of the order impugned herein reads thus :

01] The accused Nos.

01- Mohd. Yousuf s/o Mohd. Abdul Hak,

02- Mohammad Navid s/o Mohammad Salim,

03- Sk. Abdulla s/o Sk.Abdul Samad,

All r/o Nanded are convicted under section 235(2) of Cr.P.C. for the offences punishable under section 302 r.w. section 34, 307 r.w. section 34 of the Indian Penal Code and under section 4/25 of Arms Act, arising out of crime No. 126/2014 registered with Police Station, Itwara, Nanded.

02] Each accused Nos.1 to 3 are sentenced to suffer rigorous

imprisonment for life each and pay fine of Rs. 5,000/ (Rs. Five Thousand only) each in default they shall suffer further rigorous imprisonment of six months for an offence punishable under section 302 r.w. section 34 of Indian Penal Code.

03] Each accused Nos.1 to 3 are sentenced to suffer rigorous imprisonment for five years and pay fine of Rs. 5,000/(Rs. Five Thousand only) each, in default they shall suffer further rigorous imprisonment of six months for an offence punishable under section 307 r.w. section 34 of Indian Penal Code.

04] Each accused Nos. 1 to 3 are sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.1,000/- (Rs. One Thousand only) each, in default they shall suffer further rigorous imprisonment of one months for an offence punishable under section 4/25 of Arms Act, 1959.

05] All the sentences shall run consecutively.

06] The period of detention undergone by the accused during the investigation, inquiry or trial shall be set of against the term of imprisonment imposed on them, as per provisions of section 428 of the Code of Criminal Procedure.

07] The accused Nos. 1 to 3 are acquitted under section 235(1) of Cr.P.C. for an offence punishable under section 294 of Indian Penal Code.

The appellants have, therefore, preferred these appeals.

2. The facts, in brief, giving rise to present appeals are as follows :

The incident took place by 10.30 p.m. on 5/10/2014 near Renuka Mata Mandir, Chirag Galli, Nanded. Those were the days of “Navratri Celebrations”. The appellants (trio) on one motorbike, No.MH-22-G-2250 emerged from the lane by the side of the temple. Appellant Yousuf was said to be riding the motorbike. The two others were riding pillion. They abused the persons standing on the road. The rider of the motorbike raced the accelerator. Appellants assaulted Pawan (deceased) first with a Khanjar. Nareshsinh (informant), Bholasinh (P.W.6), Shubham (P.W.4), Pralaysinh (P.W.3) rushed towards Pawan. Ajay Kaushik came from his residence on hearing commotion. He too was assaulted. When these four intervened, the appellants assaulted all of them with sharp weapons. Persons from the vicinity started gathering. The appellants, therefore, took to their heels, leaving behind the motorbike. All the six injured were first rushed to Government Hospital, Nanded. Then they were shifted to private hospitals at Nanded itself. Two of them namely, Bholasinh and Shubham were admitted to hospital at Secunderabad for better treatment. Ajaysinh and Pawan succumbed to the injuries.

3. A police official (Sadashiv Dhakne P.W.17) rushed to Aadhar Hospital. The Medical Officer there examined Nareshsinh and certified him to be conscious oriented to make a statement. He then recorded Nareshsinh's statement-cum-F.I.R. (Exh.60). Based on the F.I.R. (Exh.60), a crime bearing C.R. No.126/2014 was registered at Itwara Police Station, Nanded for offences punishable under Sections 302, 307, 294 read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act. Crime scene panchanama (Exh.62) was drawn. The appellants were arrested. All the three appellants made disclosure statements, pursuant to which the weapons used in commission of the crime and clothes on their person which were concealed, were recovered. Clothes on the person of the deceased and injured were also seized. Mortal remains of both the deceased were subjected to inquest and autopsy. Blood samples of the appellants and that of the injured and deceased were obtained. All the seized articles were sent to Forensic Science Laboratory (FSL), Aurangabad. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellants were proceeded against by filing a charge sheet.

4. The Trial Court framed the Charge (Exh.44). The appellants pleaded not guilty. Their defence was of false implication.

5. To bring home the charge, the prosecution examined 21 witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court passed the order impugned herein.

6. Heard. Learned Advocates for the appellants would submit that there was delay of 8 hours in lodging of the F.I.R. The delay has not been explained. Medical evidence and testimonies of some of the witnesses indicate that the informant and two other injured were conscious oriented. Still they did not relate the names of the assailants to anyone. The injured and the deceased were rushed to the hospital by their relatives/ family members and friends. In medical papers, the history was given as, “assault by somebody”. It was also reported to the Medical Officer that, the scuffle took place. The learned Advocates would further submit that, the appellants did

not know or have acquaintance with the victims. Statements of other victims have been recorded 5 days after the incident. They gave names of the appellants on the basis of information received from others. According to the learned Advocates, the investigating officer ought to have resorted to test identification parade. He did nothing in that regard. Our attention was adverted to some C.A. reports to indicate that alcohol was detected in the blood of the deceased Ajaysinh. The learned Advocates would mean to say that, all the injured and deceased belong to Rajput community. The crime scene was located in the vicinity whereat most of the population belongs to Rajputs. One of the victims admitted that Rajputs keep knives with them. He would further submit that a fight took place amongst the victims themselves, resulting into two deaths and injuries to others. We were taken through the evidence of each and every witness and their cross-examination. Omissions in their statements, amounting to material contradictions, which are said to have been duly proved, have also been brought to our notice. Learned Advocates have relied on the following set of authorities to ultimately urge for allowing the appeals :-

(1) Kanan and Ors. Vs. State of Kerala [AIR 1979 SC 1127]

(2) Ramesh Vs. State of Karnataka
MANU/SC/1312/2009 : 2009(1) SCALE 131

(3) Babu Sahebagouda Rudragoundar & ors. Vs. State of Karnataka [AIR 2024 SC 2252]

(4) State of Maharashtra Vs. Ashok Suresh Laxman Babar & ors. [2021] 3 MhLJ (Cri.) 585

7. Learned A.P.P. would, on the other hand, submit that, it was a gruesome incident. Two innocent persons lost their lives. Four suffered bid on their lives. The prosecution examined the witnesses who were injured in the incident. They have no reason to falsely implicate the appellants, sparing the real culprits. The evidence of injured eye witnesses stand on higher pedestal. According to him, the relations were first engaged in securing best of the treatment. All the injured were, therefore, shifted to 2-3 hospitals at Nanded. Even two of them were admitted to hospital at Secunderabad. M.L.C. was first received at the concerned Police Station very late. Immediately thereafter the police officer rushed to Aadhar Hospital and recorded the F.I.R. As such, there was no delay at all.

8. According to learned A.P.P., the incident was such that the injured would not be in a position to watch and recollect each and every aspect with minute details. Some minor inconsistencies were bound to occur in their evidence. The same do not go to the root of the matter. He would further submit that, on arrest of the appellants, they made disclosure statements, pursuant to which the weapons wielded by them came to be recovered along with their blood stained clothes. Our attention was adverted to the C.A. reports, indicating human blood to have been noticed on the weapons. The weapons were shown to the Medical Officers. They confirmed that injuries on the person of the deceased and injured were possible by those weapons. The learned A.P.P. too placed on record his written notes of arguments and relied on the following set of authorities :

(1) Balu Sudam Khalde & anr. Vs. The State of Maharashtra 2023 LiveLaw (SC) 279

(2) Govardhan & anr. Vs. State of Chhatisgarh (Criminal Appeal No.116/2011, decided on 9/1/2025)

(3) Criminal Reference No.14/2019 with Criminal Appeal

No.10771/2019 [Ramjag Bind s/o Ramshankar Bind
Vs. State of Madhya Pradesh

9. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

Admittedly, the incident took place by 10.30 p.m. on 5/10/2014 near Renuka Mata Mandir, Chirag Galli, Nanded. It was one of the days in “Navratri Festival”. Necessarily, devotees in number were there. The main road was in the nearby. It was a crowded place, so to say. Three persons (appellants) on one motorbike (No. MH-22-G-2250) emerged from the lane by the side of the temple. They abused those standing on the road as they wanted them to make way for them. The motorbike rider was said to have accelerated the accelerator. One of the injured, therefore, questioned him as he was enraged thereby. The trio (appellants) indulged in indiscriminate assaults with sharp weapons. Six persons were their victims. Two of them, namely Ajay and Pawan lost their lives.

10. The post mortem report (Exh.88) proved Ajaysinsh to have died of shock due to stab injury to his liver. P.W.9 Dr. Maroti noticed following two injuries on the person of Ajay :

(1) Stitched wound present over right subcostal margin obliquely placed situated 11 cm. below right nipple and 9 cm. lateral to midline, on opening of stitches stab injury of size 2.2 cm. x 1 cm. x cavity deep, directed backwards, medially and slightly upwards, on approximation of margins, length of injury 2.5 cm., both margins sharp and both angles acute, blood oozing out through the injury.

(2) Contusion present over left cuibital fossa on flexar aspect of size 4 x 2 cm., obliquely placed, brownish in colour.

11. The post mortem report (Exh.94) indicates Pawansinh died of stab injury to his left lung and heart. Column No.17 of the post mortem report indicates 8 injuries were noticed on his person by P.W.11 Dr. Santosh, who conducted autopsy. He found following injuries on the dead body of Pawansinh :-

(1) Sutured wound present over front of left side of chest in 4th inter-costal space at anterior axiliary line situated 2

cm. from nipple, vertical of size 2 cm. in length with 2 sutures in situ. On removal of sutures margins were clean cut, reddish with both angles acute of size 1.7 cm. x 0.5 cm. x cavity deep with blood oozing out. It was directed medially backward and upward, cutting through skin, subcutaneous tissues, muscles of anterior chest wall, forth inter-costal muscles, cutting lower margin of 4th rib, parietal pleura, piercing through and through lower part of upper lobe of left lung, pericardium, then pierces up to two third of left ventricle near spetum.

(2) Sutured horizontal wound with one suture at anterior part of size 2 cm. x 0.5 cm. x cavity deep, margins clean cut, reddish placed at mid axiliary line, left lateral side of chest in 4th inter-costal space.

(3) Healing super-facial wound present on front of left thigh of size 29 cm. x 13 cm. with hypo pigmonted patches at places and granulation at middle medial part of size 3 x 2 cm. with evidence of intermittent normal skin suggestive of skin graft Donar site.

(4) Healing wound with depressed area present over left dorsum foot and ankle of size 15 cm. x 12 cm. extending up to lateral border of dorsum with exfoliation.

(5) Healed hypo pigmented areas over dorsum of left foot near third, forth and fifth toe involved in of size 5 x 4 cm.

(6) Abrasion present over dorsum of left great toe, second and third toe of sizes 2x1.5 cm., 3x1 cm., 1x1 cm., reddish.

(7) Abrasion present over medial left great toe of size 2x1 cm. reddish.

(8) Intravenous puncture marks present over both cutital fossa.

12. The injury certificate of informant Nareshsinh (P.W.1) indicate stab injury to right lumber region, measuring 4x6 cm. It was caused by sharp weapon, it was fresh and grievous in nature.

The injuries sustained by Shubham are :-

1) Stab wound over left side of chest wall at mid axillary lined at second to third inter- costal space of size 1 x 1 x cavity deep.

2) Stab wound over right arm medial just above the right elbow of size 1 x 1 x muscle deep

The injuries sustained by Bholasinh are :-

1) Stab injury over left side of chest wall at second to third inter-costal space near to mid axillary lined.

2) Stab wound over right arm at medial aspect of size 1 x 1 x muscle deep.

13. The aforesaid are the facts not in dispute. We, therefore, need not to advert to the evidence of the Medical Officers in much extenso. Wherever necessary, a reference to their evidence would be made.

14. As such, it is a case wherein two deaths occurred and 4 persons suffered injuries, grievous in nature. The injuries might have proved fatal. The question is, whether the appellants are the authors of the crimes they were charged with.

15. The incident took place by 10.30 p.m. on one of the days of “Navratri festival”. Nearby the crime scene, there was Renuka Mata Temple. The scene of offence was located in a populated area. According to the injured eye witnesses, the appellants came on one motorbike from a lane adjacent to the temple. It is true that there is a little bit variance as to what triggered the incident. According to two of the injured eye witnesses, the motorbike rider abused them in filthy language as they were standing at the middle of the road and the motorbike rider (appellant) wanted to have a clear way. The second version is that, the motorbike rider raced the accelerator and therefore, one of the injured questioned him. A petty quarrel ensued thereupon resulting into the incident.

16. Let us now advert to the evidence of injured eye witnesses. The F.I.R. (Exh.60) was recorded by P.W.17 Sadashiv in Aadhar Hospital, Nanded by 6.15 a.m. on 6/10/2014. As such, there was a delay of 8 hours in recording of the F.I.R. The informant (P.W.1 Nareshsinh) testified that he would run a wooden switch board cutting shop. He along with his friends Bholasinh (P.W.6), Pawan (deceased) were talking inter-se. It was 10.30 p.m. Three persons emerged on motorbike from the lane behind the temple. The motorbike borne the registration number – MH-22/G-2250. The trio started abusing them - “Hato Na Tumhari Maa Ki Chut” Pawan went to a hand-pump (public water tap). The one who was riding the motorbike, (appellant Yousuf) assaulted Pawansinh with dagger. Pawansinh fell thereby. He along with Bholasinh and Shubham therefore rushed towards Pawansinh. On hearing commotion, Ajay (deceased) came on the spot. The one who was riding the motorbike assaulted Ajay with a dagger. Ajay too fell down. The others assaulted the informant and others with knives. Bholasinh and Shubham suffered injuries to their left chest. He suffered injury to his

right side of waist. People gathered. The assailants thereupon ran away, leaving behind the motorbike.

17. P.W.1 Nareshsinh further testified that, the appellant Yousuf was riding the motorbike. Appellants Navid and Abdulla were riding pillion. The people gathered first took them to Government Hospital. Then they were rushed to Aadhar Hospital. Bholasinh and Shubham were shifted to Secunderabad for further treatment. He further testified that, on the following day, the police came to the hospital and recorded his statement-cum-F.I.R. (Exh.60). He referred to the same and identified his signature thereon. His evidence further disclosed that, he had sported faint pink colour shirt and chocolate colour Jeans Pant while the incident took place. He was shown the knife and those clothes. He identified the same.

18. P.W.1 Nareshsinh was subjected to a searching cross-examination. He testified that, people belonging to Rajput community reside in Chirag Galli and Gadipura at Nanded. All the injured belonged to Rajput community. He

admitted that, the community members keep knives with them. The distance between the Government Hospital and the crime scene was 3-4 Kms. He admitted that, Vazirabad Police Station was on way to the hospital, while Itwara Police Station was at a distance of half or one Km. from the crime scene. Whereas the distance between the spot of the incident and Aadhar Hospital was about 6-7 Kms. He was confronted with his F.I.R. which was silent to record that Pawansinh had gone towards hand-pump. It has also not been recorded therein that the person riding the motorbike assaulted Pawan with dagger. The F.I.R. is also silent to record what kind and colour of clothes the informant was clad in. In our view, this omission is not a material one so as to constitute contradiction so as to disbelieve P.W.1 Nareshsinh on this aspect only. He denied the suggestion that the incident was a fall-out of quarrel inter-se the victim and the deceased. He admitted that there was a Police Chowki near Habib Talkies. It was on main road. All the injured were in the Government Hospital for about 30 minutes. The doctor had examined him there. He did not disclose the incident to the doctor or anyone else. People were visiting the hospital. He did not see police official among them. He and

other injured were shifted to Aadhar Hospital. He was in ICU. He did not disclose the incident to doctor at Aadhar Hospital. He admitted that, one Sagarsinh had accompanied the persons who took them to the Government Hospital and then to Aadhar Hospital. He admitted to have not disclosed the incident to anyone else until the police arrived at Aadhar Hospital. He denied the suggestion that the police on their own recorded the names of the appellants in the F.I.R.

19. P.W.17 Sadashiv, (Police Officer) testified that he was serving with Itwara Police Station as P.S.I. on the fateful night. P.S.I. Gite passed on the information to the Police Station Officer (P.S.O.) that a quarrel took place near Renuka Mata Temple. He along with police officials namely Kankale and Sonaskar besides other staff went to Gadipura. P.I. Kankale directed him to record statements of injured. He, therefore, went to Government Hospital, Nanded and then other hospital wherein the injured were rushed. According to him, the doctors there told him that the injured were not in a position to give statement. He, therefore, could not record statement of any of the injured. He further testified that, doctor

at Aadhar Hospital certified P.W.1 Nareshsinh to be conscious to make a statement. He, therefore, recorded the statement-cum-F.I.R. (Exh.60) as narrated by P.W.1 Nareshsinh. He then returned to the Police Station and registered the crime. An entry in the station diary was also made. He referred to the same.

20. During the cross-examination, P.W.17 admitted that, he did not give information to the Police Station that doctor at Aadhar Hospital certified Nareshsinh to be conscious. He denied that Nareshsinh was unconscious until 6.45 a.m. This was in response to a question put on behalf of appellant Yousuf. He admitted that, in the station diary entries, which were made before registration of the crime, neither the names nor the description of the appellants were reflected. He also admitted that there is no station diary entry indicating injured Pralayasinh, Bholasinh and Shubham were unconscious. He admitted that, the same is the case about P.W.1 Nareshsinh. He admitted that, he was unaware of the names and description of the appellants until 6.30 in the morning. He denied that the names of the appellants were incorporated in

the F.I.R. in consultation with higher-ups and to avoid wrath of public. He admitted that, Nareshsinh did not state that he knew appellants Navid and Abdulla since prior to the incident. According to him, MLC was received to the Police Station by 4.15 a.m.

21. P.W.20 Dinesh was serving as Assistant Police Inspector with Itwara Police Station. It is disclosed in his evidence that he had received information that some incident had taken place in Gadipura area. He, therefore, went there. It was a few minutes past 12.00 midnight. He noticed one motorbike was lying there. He learnt that the injured were shifted to Government Hospital. He, therefore, rushed to Government Hospital. **A lame excuse has been offered by this witness for not interacting with the injured. According to him, since there was crowd in the precinct of the hospital, he did not make enquiry with injured (victims). Even though he was directed by the Police Inspector, he returned to the Police Station without recording anyone's statement**. It was he who seized the

motorbike, cap and handkerchief from the crime scene. He also collected blood spots for analysis.

22. In the cross-examination, he testified that, he learnt at the crime scene and even at the hospital as well that there was scuffle, “Names of assailants were not disclosed to me.” He tried to cover up lapse in his duty to lodge the report on his own, by stating that he did not get detailed account of the incident, so he did not lodge the report. When he paid visit to the crime scene, street lights were glowing. He gave a vital admission to the effect that the PSO had received information that the assailants were unknown.

23. P.W.13 Dr. Sanjay Kadam was the Medical Officer at Aadhar Hospital. He had treated P.W.1 Nareshsinh. During his cross-examination, he admitted that 3 injured were referred to his hospital from Yashoda Hospital. Nareshsinh was conscious. He, however, did not disclose history of assault. He was specific to state that, Nareshsinh was conscious from 6 October to 11 October and when he was discharged, he was quite healthy. The injury certificate of P.W.1 Nareshsinh is at

Exh.109. It indicates he suffered grievous injury to his right lumber region 4 x 6 cm.

24. In our view, the testimony of P.W.1 Nareshsinh alone is vital (very important) to drive home the charge. The other injured namely, P.W.3 Pralayasinh faltered in the cross-examination while the others two gave their statements on 10th/ 12th i.e. 5 days after the incident even though they were conscious oriented from the time of assault until their discharge from the hospital. True, two of them were shifted to Secunderabad. Their statements were recorded 3 days after their discharge from the hospital and when they had already been to Nanded. We have every reason to observe that these 2 injured, P.W.4 Shubham and P.W.6 Bholasinh might have given names of the assailants in their statements since by that time the appellants were arrested and everything was in public domain.

25. Let us advert to other evidence. P.W.2 Tolesinh is a witness to the crime scene panchanama (Exh.62). Based on his evidence, the crime scene panchanama has been admitted

in evidence. The learned A.P.P. took us through the same so as to bring on record topography at and around the crime scene. There is no dispute in that regard. The learned A.P.P. would submit that, the sketch attached to the crime scene panchanama corroborates the situation at the crime scene. When there is no quarrel about the same, we find no much importance thereto.

26. P.W.3 Pralayasinh is another injured eye witness. Although he testified almost on the lines of the examination-in-chief of P.W.1 Nareshsinh, his replies to the questions put to him during cross-examination lead us to not rely on his evidence. We, therefore, directly refer to his cross-examination, wherein he admitted that he did not know the appellants prior to the incident. He had not given the police description of the assailants. No test identification parade was held. He admitted to have seen the appellants for the first time before the Court. He went on to admit that he did not see who assaulted whom. He was frightened. He did not know who brought him to the hospital. He went on to admit that, he told

the doctor that he was not knowing the assailants. He came to know about the assailants from the people of his vicinity.

27. The next injured witness is P.W.4 Shubham. He testified that, he was in the company of Bholasinh (P.W.6), Pawan (deceased) and P.W.1 Nareshsinh at the shop of Bholasinh. Three persons came on motorbike from behind the temple. They stopped the motorbike near the hand-pump. The rider of the motorbike raised the accelerator. They, therefore, questioned him. Thereupon, the trio, armed with knives, started assaulting them. They first assaulted Bholasinh. Then Pawan was assaulted. On hearing commotion, Ajaysinh arrived. The assailants then assaulted Ajay and Pralayasinh.

28. P.W.4 Shubham further testified that, he knew appellant Yousuf as he used to visit Bholasinh's shop. He gave the names of the appellants. He also gave the motorbike number, that was left behind by the appellants. The police recorded his statement on 10 October and seized the clothes on his person, stained with blood, on 12 October.

29. During his cross-examination, he admitted to have not given full name of appellant Navid and place of his residence, to police. He even did not state to have known Navid before the incident. He admitted that, he was conscious from 6 October to 9 October, but was not able to speak on 6 and 7. He admitted to have not disclosed the doctor names of assailants. He came to Nanded on 9 October i.e. on third/ fourth day of the incident. Till his police statement was recorded, he did not disclose the names of the assailants to anyone. He even admitted that, he was conscious for two hours next after the incident. During that period, police did not record his statement. He even could not state full name of appellant Abdulla Builder.

30. P.W.6 Bholasinh gave his evidence in examination-in-chief almost on the lines of the evidence of P.W.1 Nareshsinh and P.W.4 Shubham. He testified that, appellant Yousuf assaulted on his ribs with a knife. He claimed to have known Yousuf as he would visit his shop. According to him, Navid and Abdulla Builder had accompanied Yousuf on the

motorbike. He testified that, as his condition was serious, he was shifted to Hyderabad. He was discharged from the hospital on 9th, while his statement was recorded on 10th.

31. During his cross-examination, he admitted to have not stated the police that appellant Yousuf assaulted him with knife. He was confronted with matter portion marked “A” in his statement. According to him, he has not stated the same to the police. He denied to have suffered injuries during inter-se scuffle as they had consumed liquor. He testified to have informed Manojsinh about the incident while he was being taken to the hospital. According to him, Manojsinh had arrived on the spot within 10 minutes. His police statement is silent to record that he knew Navid before the incident. During his stay at Hospital in Secunderabad, he did not inform the Medical Officers there names of the assailants. He admitted that, for the first time on 10 October he disclosed the names of Navid and Abdulla Builder.

32. P.W.10 Manojsinh, to whom P.W.6 Bholasinh claim to have related about the incident, testified that, Bholasinh had

told him the name of motorbike rider and was further informed that the pillion riders were friends of Yousuf (Accused No.1).

33. The conduct of P.W.10 Manojsinh in not lodging the F.I.R. or disclosing what he learnt from the injured eye witness soon after the incident goes a long way to disbelieve his evidence. He was present at Government Hospital while police had come there. He testified that, two unknown persons were in the company of Yousuf. Admittedly, Manojsinh did not claim to be an eye witness.

34. P.W.15 Dr. Avinash was a Medical officer on duty at Dr. Shankarrao Chavan Medical College and Hospital, Nanded. He testified that, by 11.55 p.m., 6 injured (including 2 deceased) were brought to the hospital by their relatives. He gave their names. He examined all of them. He tendered in evidence medical papers of all of them (Exhs.119 to 124).

35. In the cross-examination, he admitted that history of “assault by somebody” was recorded in the medical papers. According to him, except Ajay and Pawan (deceased), all other

injured were conscious. He was specific to state that, Pralayasinh (P.W.3) was conscious and oriented. He (P.W.15) immediately informed Vazirabad Police Station. P.W.1 Nareshsinh (informant) too was conscious. **He admitted that history was given by P.W.1 Nareshsinh (informant) as "assault by somebody"**. He admitted that, P.W.1 Nareshsinh did not give names of assailants. Bholasinh too was conscious.

36. P.W.14 Dr. Anand was the Medical Officer attached to Yashoda Hospital, Nanded. He attended Pralayasinh. According to him, the history was given by relatives. The history was - "Scuffle at Gadipura". According to him, Pralayasinh (P.W.3) was conscious oriented. The history was, "assault by somebody".

37. The aforesaid was the material evidence in the case. The appreciation thereof lead us to conclude that, three persons who were not known to the injured had come on one motorbike and they assaulted the six persons named above indiscriminately. True, two of the six injured namely Ajay and Pawan died. They had suffered multiple injuries. Both of them

were not in a position to speak. All the six injured were first rushed to Dr. Shankarrao Chavan Medical College and Hospital. P.W.15 Dr. Avinash attended them. The injured were there for half an hour. The four injured who had been examined as prosecution witnesses, were conscious throughout. In spite of the same and the fact that the police officials had rushed to the crime scene, and the said hospital as well, still no attempt was made by police officials to record statement of any of the injured. The police officials appear to have consciously allowed the time to pass until they could know the names of the assailants/ appellants. In our view, the names of the appellants might have come to the knowledge of the police on the enquiry based on the motorbike that was found at the crime scene.

38. P.W.16 Mohd. Saleem was the owner of the motorbike. He was examined as a prosecution witness. He testified that, by 9.30 p.m., he gave his motorbike to Navid (According to the prosecution, one of the appellants herein). He further testified that, after a while, he received a phone call of Navid. He, therefore, went to Itwara Police Station. Navid

was present there. He told that, his motorbike has been taken away from him at a place of Renuka Mata Temple. He further testified that, Navid before the Court was not that Navid to whom he had given the motorbike. The learned A.P.P., therefore, cross-examined him, but nothing fruitful has come on record.

39. As stated above, all the four injured namely P.W.1 Nareshsinh, P.W.3 Pralayasinh, P.W.4 Shubham and P.W.6 Bholasinh were conscious and oriented at all the three hospitals whereto they were shifted one after the other. Still, the F.I.R. was recorded 8 hours after the incident. In case of **Ganesh Bhavan Patel & anr. Vs. State of Maharashtra, (1978) 4 SCC 371**, the Apex Court observed in paragraphs No.15 and 18 as follows :-

> "15. As noted by the trial Court, one unusual feature which projects its shadow on the evidence of PWs Welji, Pramila and Kuvarbai and casts a serious doubt about their being eye witnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of

> occurrence or soon thereafter, their statements under Section (6), Cr.P.C. were recorded on the following day. Welji (P.W.3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.
>
> 18. In this connection, the second circumstance, which enhances the potentiality of this delay as a factor undermining the prosecution case, is the order of priority or sequence in which the investigating officer recorded the statements of witnesses. Normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses.. . . . ."

40. One need not spell importance of prompt lodging of F.I.R. The informant has to explain the delay in lodging the F.I.R. When a very serious incident took place and police rushed to the crime scene and hospital as well immediately and more so injured were conscious oriented, no attempt was made to record their statements at the earliest point of time.

On the contrary, the history recorded in all the medical papers is either “scuffle” or “assault by someone”.

41. We have perused the authorities relied on by learned A.P.P. A criminal case has to be decided on the facts and circumstances appearing therein. Law of precedent can hardly apply in criminal cases since no two criminal cases could be similar on facts. We agree with the learned A.P.P’s. submission based on the authorities relied on that delay in recording statements of witnesses may not be fatal. Moreover, when gruesome incident has occurred, the injured may not be in a frame of mind to recollect everything. Minor inconsistencies inter-se the evidence of eye witnesses are bound to occur. At the cost of repetition, and with utmost respect, we observe that the findings and observations made in the authorities relied on were based on factual matrix appearing therein. Judicial utterances are made in the setting of facts of each case.

42. On appreciation of the evidence in the case, we find the injured witnesses including the informant were not in

the know of the identity of the appellants. The informant, in the cross-examination, testified that, he did not understand Marathi. It was specifically suggested to him that the police incorporated the names of the appellants in the F.I.R. In our view, 8 hours time might have been availed by the prosecution agency to realize or to come to know names of the assailants and thereafter only statement-cum-F.I.R. of P.W.1 Nareshsinh has been recorded at 6.15 a.m. in the morning. While he was conscious oriented, since the incident onwards. Other three injured too were conscious oriented.

43. When eye witness account becomes unreliable, the circumstantial evidence in the nature of seizure of blood stained clothes and weapons would be of little consequence to corroborate the prosecution case. Accepting the prosecution case as it is, that the three appellants gave disclosure statements in presence of panchas and pursuant thereto three knives were seized, clothes on their person at the time of incident were also seized under the panchanama, the C.A. Reports (Exhs.172 to 181) suggest the clothes to have been stained with blood and one of the knives too had blood stains,

it is not known as to why the investigating officer kept all these articles with the S.D.P.O. up to 31 October and then sent to FSL. This fact has not been explained. It was specifically suggested to the investigating officer that the said clothes were tampered with during this period. The seized articles were not in muddemal room, but said to have been in the cupboard of the S.D.P.O. So has been testified by P.W.21 Ramdas Shrimangle. We, therefore, do not propose to lay much emphasis on the circumstantial evidence in the nature of C.A. reports, recovery of weapons and blood stained clothes, besides the opinion given by the Medical Officer that the injuries might have been caused with the seized weapons.

44. For all the aforesaid reasons, we are not at one with the findings recorded by the Trial Court. In the result, the appeals succeed. Hence the order :

O R D E R

(i) All the Criminal Appeals are allowed.

(ii) The impugned order of conviction and sentence dated 5/9/2018, passed by Additional Sessions Judge-1, Nanded in Sessions Case, No.9/2015 is hereby set aside. The appellants are acquitted of the offences punishable under Sections 302 read with Section 34, 307 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act.

(iii) The appellants be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

fmp/-