

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 218 OF 1995

State of Maharashtra.

... Petitioner

Versus

Nina Trambak Tadas,
Age : 29 Years,
R/o Harankhede, Tq. Bhusawal, Dist. Jalgaon

... Respondent

Mr. S.D. Kaldate, APP for the appellant.
Mr. D.G. Nagode, Advocate for the respondent.
Mr. N.B. Suryawanshi, Advocate for the original complainant

CORAM : S.S. SHINDE & A.M. BADAR, JJ.

DATE OF RESERVING JUDGMENT : 10th FEBRUARY, 2015
DATE OF PRONOUNCEMENT OF JUDGMENT : 23rd FEBRUARY, 2015.

JUDGMENT : [PER A.M. BADAR, J]:-

1] This appeal is directed against the judgment and order dated 9th May, 1995, passed by the learned 3rd Additional Sessions Judge, Jalgaon, in Sessions Case No. 338 of 1994, thereby acquitting the respondent/accused of the offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 ("the IPC" for the sake of brevity).

2] Facts projected from police report leading to the prosecution of the respondent/accused can be summarized thus :-

[a] Respondent/accused Nina Tadas, is cousin uncle of Gajanan

Pandurang Tadas (since deceased). According to prosecution case, there was a dispute between the family of Gajanan Tadas and respondent/accused Nina, over open land situated nearby their house leading to the filing of civil suit by Pandurang Shankar Tadas (PW-2) - father of deceased Gajanan.

[b] The incident in question allegedly happened on 5.9.1994 at village Harankhkeda, Taluka Bhusawal, District Jalgaon, where the parties were residing. It was day of 'POLA' festival which was being celebrated in the vicinity of the office of Gram Panchayat of village Harankheda. Celebration of 'POLA' festival was over by about 5.30 p.m. of that day. Most of the persons then returned to their houses with bullocks. Respected elderly persons including Govind Khadse (PW-8) Police Patil Madhavsingh Patil (PW-6) and Police constable Vijay More (PW-7) who was deputed for Bandobast had been to the office of Gram Panchayat situated at the first floor of the building for having tea. Gajanan Tadas was chit-chating with PW4 Bhagwan Hari Gawali, PW-5 - Vijay Dinkar Tadas, Janardhan and others. At that time, respondent/accused came on the spot armed with knife used for taking out Pepen Juice from Papaya tree. He threatened Vijay Khadse (PW-5), Bhagwan (PW-4) and others and directed them to go away from that place. Respondent/accused then assaulted Gajanan Tadas by means of knife. Vijay Khadse (PW-5) and others tried to control him and to save Gajanan. Annoyed respondent/accused then gave blow of knife to PW 5 vijay Khadse which landed on ring finger of his left palm causing bleeding injury. Then, respondent/accused Nina Tadas gave fatal blow of knife on left side of chest

of Gajanan Tadas. On sustaining blow, Gajanan fell down and died on the spot.

3] According to the prosecution case, part of this incident was also witnessed by PW-6 Madhavsing Vijaysing Patil, Police Patil, PW-7 Ravindra Ramdas More, Police Constable, (PW-8) Govind Khadse who, at the relevant time were sitting in the Gram Panchayat office for having tea. They rushed to the spot of the incident, saw Gajanan Tadas lying on the ground with bleeding injury and respondent/accused Neena Tadas running away from the spot holding knife in his hand. PW-6 Madhavsingh Patil and PW-7 Ravindra More, police Constable, then chased respondent/accused Neena Tadas and apprehended him at his house. He was then brought back to the office of the Gram Panchayat. PW-6 Madhavsingh Patil informed Bodwad Police Station about the incident telephonically.

4] In the meanwhile, PW-5 Vijay Tadas informed the incident to parents of Gajanan namely PW 2 Pandurang Shankar Tadas and his wife. They reached on the spot of the incident.

5] Upon being informed about the incident, PW-10 Somnath Tambe, PSI, Bodwad police station rushed to the spot of the incident. PW-2 Pandurang Tadas then lodged report (Exhibit 20) about the incident on 5.9.1994 itself. On the basis of this report, Crime No. 33 of 1994 for the offence punishable under Sections 302 and 307 of IPC came to be registered

against respondent/accused Neena Tadas. Formal arrest panchanama of the accused was drawn. Investigating Officer then recorded statement of Vijay Tadas, Bhagwan Gawali and Janardhan on the very same day. Injured PW-5 Vijay Khadse was sent for medical treatment to Bodwad. Dead body of Gajanan was also sent to Primary Health Center at Bodwad. Blood stained shirt worn by respondent/accused Neena Tadas came to be seized. After recording inquest memorandum on 6.9.1994, post mortem examination on dead body of deceased Gajanan was conducted. On 7.9.1994, on the basis of the disclosure statement of respondent/accused, blood stained knife came to be seized from his house. Seized articles were then sent for chemical analysis. After conducting routine investigation, charge sheet came to be filed.

6] During the trial, the prosecution has examined in all 10 witnesses. After hearing parties, learned Additional Sessions Judge, Jalgaon, by impugned judgment and order dated 9.5.1995, in Sessions Case No.338 of 1994, was pleased to acquit the respondent/accused of the offences punishable under Section 302 and 307 of IPC.

7] Heard learned APP appearing for the State. He vehemently argued that evidence of two eye witnesses, namely PW-4 Bhagwan Hari Gawali and PW 5 Vijay Dinkar Khadse read with evidence of PW 6 Madhavsingh Vijaysingh Patil, PW 7 Ravindra Ramdas More, (PW-8) Govind Khadse coupled with recovery of weapon of offence from the

respondent/accused Neena Tadas, is more than sufficient to bring home the guilt to the accused. Learned APP contended that learned trial court has adopted a perverse approach while deciding the matter and, therefore, the impugned judgment of acquittal cannot be sustained.

8] We have also heard Shri Suryawanshi, learned counsel for informant Pandurang Tadas who assisted the learned APP. He contended that the impugned judgment and order of acquittal is result of perverse appreciation of evidence by the learned trial court, and, therefore, the same needs to be corrected.

9] Per contra, Shri Nagode, learned counsel appearing for the respondent/accused vehemently argued that the impugned judgment of the learned trial court is depicting a plausible view on appreciation of evidence on record. The Learned counsel for the respondent relied upon *State of Maharashtra vs. Haribhau Krishnaji Deshmukh and others* reported in *2003 Bom.C.R. (Cri.) 1233*, *State of Maharashtra vs. Kawadu Adku Sodruwar and others* reported in *2005(1) Bom C.R. (Cri.) 618* and *State of Maharashtra vs. Ruprao Harischandra Tayade*, reported in *2005 All M.R. Cri. 742*, to contend that merely because another view is possible, the appellate court, should not take such other view unless the view taken by the trial judge is proved to be perverse.

10] The learned counsel for the respondent further relied on *Ram*

Ashrit and others vs. State of Bihar, 1981 Cri.L.J. 484(1) and contended that the prosecution has not examined independent witnesses in this case. According to learned counsel for the respondent, PW-4 Bhagwan Gawali and PW 5 Vijay Khadse, were friends of deceased Gajanan and other witnesses examined by the prosecution were interested witnesses. As such, the learned trial court has rightly rejected their testimony.

11] By relying on ***Banwari and others Vs. State of Rajasthan, 1979 Cri.L.J. 161***, wherein, the Honourable Rajasthan High Court has held that Inquest report is a document of vital importance and has to be prepared promptly so as to hand over the same to the Autopsy Surgeon, in order to enable him to know true version of the occurrence. Shri Nagode, Learned counsel for the respondent submitted that in the case in hand Inquest Memorandum was not supplied to the Autopsy Surgeon with the dead body and therefore, the learned trial court has rightly refused to accept the prosecution case.

12] Shri Nagode, learned counsel for the respondent argued that prosecution has failed to prove the motive as evidence on record shows that PW-2 Pandurang has not filed any civil suit against the accused. He submitted that the station diary entry at Exhibit 36 is not proved by the prosecution. Evidence of the alleged eye witnesses is contradictory. According to the learned counsel for the respondent, from the police papers, injury was shown to be on right hand of the finger of PW-5 Vijay Khadase

whereas, he has deposed that the injury sustained by him was on finger of left palm. Recovery of article Nos. 8 knife is also doubtful and on the shirt and banyan of deceased Gajanan, there was no corresponding cut mark of stab injury. Hence, according to the learned counsel for the respondent/accused, the prosecution has failed to prove its case beyond reasonable doubt and by upholding the plausible view is taken by the learned trial court, the appeal deserves to be dismissed.

13] We have carefully perused the entire record and proceedings including depositions of the witnesses and documentary evidence adduced by the prosecution. We have minutely perused the impugned judgment and order of acquittal recorded by the learned trial court.

14] It is well settled that reversal of acquittal can be made only if the findings recorded by the learned trial court did not reflect a possible view. In the matter of *Murugesan and others Vs. State through Inspector of Police, AIR 2013 SC 274*, Honourable Apex Court has held that if the conclusions recorded by the trial court does not reflect possible view then High Court can step in for interfering the impugned judgment and order. It is held that use of expression “possible view” is conscious and not without good reason. The said expression is in contradistinction to expression such as “erroneous view” or “wrong view”, which at first blush, may convey similar meaning though a fine and subtle difference would be clearly discernible.

15] Perusal of the impugned judgment and order shows that, in the case in hand, the respondent/accused is acquitted of the offence punishable under Section 302 of IPC by the learned trial court with the reason that the prosecution has not proved the root cause behind the alleged incident and it has not proved the document Exhibit 36 - copy of the station diary entry. With a reason that, the same was not filed with the charge sheet and it does not bear seal and signature of the police station, the learned trial court, drew inference that exhibit 39 might have been prepared to fill up the lacuna and with ulterior motive to involve the accused. It needs to mention here that the extract of station diary entry exhibit 36 dated 5.9.1994 is to the effect that the police Patil of Harankhede informed on phone that after POLA festival Nina Tadas murdered Gajanan Tadas by blow of knife. The learned trial court further disbelieved the evidence of prosecution on the ground that inquest memorandum was drawn on 6.9.1994 and it was not sent alongwith the dead body. The learned trial court further observed that no cogent explanation is given by the Investigating Officer PW-10 PSI Tambe, as to why copy of Inquest and FIR was not sent to the Medical Officer, who was supposed to conduct Autopsy on dead body of Gajanan. Learned trial court further doubted the case of prosecution for the reason that according to the prosecution case, as reflected in letter exhibit 34 dated 5.9.1994, written by Police Station Officer to the Medical Officer PW-5 Vijay Khadse suffered injury to ring finger of his right palm, whereas, as per the version of PW-5 Vijay Khadse, he suffered injury to his ring finger of left palm. The learned

trial court further observed that accused alone cannot be held responsible for the crime in question as the Autopsy Surgeon has admitted that said injury is possible by sharp cutting object like shaving Blade. The learned trial court further held that since house of the accused was found to be open and knife was recovered from unlocked iron box, the recovery is suspicious. It is further held by the learned trial Court that as blood groups of the blood on seized articles could not be ascertained in chemical analysis, prosecution case cannot be said to be proved. Evidence of eye witnesses PW-4 Bandwagon Gawali and PW-5 Vijay Khadse came to be rejected by the learned trial court for the reason that they are interested and partisan witnesses. According to the learned trial court, independent witnesses have not been examined by the prosecution. Version of PW-6 Madhavsingh and PW-7 Ravindra More was doubted with a reason that, they had not prepared arrest panchanama, though they apprehended accused Nina Tadas by chasing. According to the learned trial court, there is delay in lodging FIR. In this way, respondent/accused Nina Tadas was acquitted by the learned trial court of the offences punishable under sections 302 and 307 of IPC.

16] Now, let us examine the evidence of prosecution in order to ascertain whether the view taken by the learned trial court in acquitting the respondent/accused is a possible view. According to prosecution case, in the evening of 5.9.1994, near Gram Panchayat office of village Harankhed in Bhusawal Taluka of District Jalgaon, accused Nina Tadas had intentionally and knowingly assaulted Gajanan Pandurang Tadas by delivering blow of

knife on his chest and thereby committed his murder. According to prosecution case, at about the same time and at the same place, accused Nina Tadas assaulted PW-5 Vijay Khadse by knife with such intention and knowledge and under such circumstances that if by that act, he would have caused death of PW-5 Vijay then he would have been guilty of murder of Vijay Khadse and thereby respondent/accused caused hurt to PW-5 Vijay Khadse making him liable for punishment for the offence under Section 307 of IPC.

17] Before advertng to the prosecution evidence, let us have a brief resume of some undisputed facts and documents. It is not disputed by the defence that PW-2 Pandurang is cousin of accused Nina Trimbak Tadas. Undisputedly, Gajanan Pandurang Tadas (deceased) is son of PW-2 Pandurang Shankar Tadas. Death of Gajanan Tadas occurring on 5.9.1994 at village Harankhede is not disputed by defence. The defence has admitted Inquest Memorandum (Exhibit 12) dated 6.9.1994 recorded at Post Mortem room of Primary Health Center, Bodwad from 7.05 a.m. to 8.05 a.m. This undisputed Inquest Memorandum is showing that deceased Gajanan Tadas had sustained penetrating wound of 1 inch length on left side of the chest and his full sleeved shirt as well as Banyan were drenched with blood apart from having cut mark of 1 inch at left side chest portion. The learned trial court has not considered this aspect and doubted the prosecution case with a reason that shirt and banyan of the deceased were not having cut marks caused by the stab wound. Spot of the incident is also not disputed by the defence as the

defence has admitted spot panchanama (exhibit 13) dated 6.9.1994, so also the sketch of the spot of the incident (exhibit 15). Perusal of both these documents shows that towards eastern side of the Gram Panchayat office of Harankhede, there is a cattle pond and on the southern side of that cattle pond, the incident in question had happened. The spot panchanama and sketch shows that on the spot of the incident there was a pool of blood on the mud formed due to rains. These documents further show that on the western side of the spot of the incident, there is village boundary and on the first floor of the building located on the village boundary, there is office of Gram Panchayat. These two documents further shows that on eastern side wall of that Gram Panchayat office, there are two doors and one window. The spot panchanama Exhibit 13 further shows that from the spot of the incident, soil mixed with blood as well as simple soil came to be seized. These two admitted documents as such show that from the eastern side window of Gram Panchayat office located on the first floor of the building, the spot of the incident was clearly visible. It is not in dispute that POLA festival was celebrated in the vicinity of this Gram Panchayat office of Harankhede. The defence has also admitted the Seizure Panchanama exhibit 18, dated 6.9.1994, whereby, torn blood stained full shirt, torn blood stained Baniyan, blood stained pant and nicker of deceased Gajanan came to be seized by the Investigating Officer. This undisputed position is required to be kept in mind while evaluating the evidence of the prosecution in order to ascertain whether possible view is taken by the learned trial Court while acquitting the respondent/accused.

18] At the outset, let us examine whether Gajanan s/o. Pandurang Tadas died homicidal death on 5-9-1994. His death occurring on 5-9-2015 is not in dispute as the defence has admitted Inquest Panchanama (Exhibit 12) dated 6-9-1994. It is in evidence of PW 10 - Somnath s/o. Dwarkanath Tambe, PSI, Bodwad Police Station, that on 5-9-1994, on reaching at village Harankhed, he found dead body of Gajanan Tadas lying on the spot and as there was tension in village, without recording inquest memorandum, he sent that dead body to the Medical Officer, Primary Health Center, Bodwad, on the very same day. His evidence further shows that on 6-9-1994, he visited Primary Health Center and recorded Inquest Memorandum Exhibit 12; perusal whereof shows that it was recorded from 07.05 a.m. to 08.05 a.m. of that day. His evidence further shows that then inquest memorandum was sent to the Medical Officer, Bodwad prior to autopsy.

19] It is in evidence of PW 9 - Dr. Manohar Dhanaji Chavan, Medical Officer, Rural Hospital, Bodwad, that along with dead body of Gajanan Tadas, he received report (Exhibit 13) from Police Station with Inquest Memorandum (Exhibit 12) and then he conducted *post mortem* examination on dead body of Gajanan Tadas from 9.30 a.m. to 10.30 a.m. of 6-9-1994. Evidence of this Autopsy Surgeon, which is corroborated by contemporaneous document viz. *post mortem* report Exhibit 32, shows that deceased Gajanan Tadas had sustained sharp cutting injury 1½ inch below the left nipple, transverse in direction of size 1 inch X ¾th inch X 4 inch with corresponding internal

injuries. The injury found on the dead body of deceased Gajanan Tadas, as per version of PW 9 Dr. Manohar Chavan, was *ante mortem* in nature and sufficient in ordinary course of nature to cause death as heart of the deceased was ruptured due to this injury. PW 9 - Dr. Manohar Chavan has also stated that the injury found on the dead body can be caused by Muddemal Article No.8 - Knife. There is nothing in cross examination of this Autopsy Surgeon to disbelieve his version which unerringly points out homicidal death of Gajanan Tadas. At this juncture, it is apposite to note that finding recorded by the learned trial court, that dead body of Gajanan Tadas was not accompanied by Inquest Panchanama and there is no explanation as to why inquest was not conducted on 5-9-1994 are totally perverse. Such explanation is found in evidence of the Investigating Officer - PW 10 Somnath Tambe, PSI, and evidence of PW 9 Dr. Manohar Chavan, Autopsy Surgeon, makes it clear that he was having inquest memorandum with him prior to conducting autopsy.

20] According to the prosecution case after celebration of POLA festival was over, PW-4 Bhagwan and PW-5 Vijay, Janardan and Gajanan Tadas (since deceased) with few others were chit chatting in the vicinity of Gram Panchayat office when the accused Nina Tadas came to gave a blow of knife on the ring finger of left palm of PW-4 Vijay and then dealt a fatal blow on the left side of chest of Gajanan Tadas, causing his instantaneous death. As such, evidence of PW-5 Vijay Khadse, who allegedly suffered injury to his left ring finger of palm assumes importance. As one of the eye witnesses i.e.

PW-5 Vijay is an injured witness, we may note the principles for appreciation of evidence of such witness and then we will examine his evidence alongwith evidence of the other eye witness. In the matter of ***Bonkaya vs. State of Maharashtra 1995 (2) SCC 447***, the Honourable Supreme court has held that injured witnesses are stamped witnesses whose presence admits no doubt. As being themselves victims, they did not leave the real assailants and substitute them with innocent persons. In the matter of ***Ram Kishan vs. State of U.P., AIR 2004 SC 4678*** the Honourable Supreme Court held that where an injured eye witness is proved to be present at the time of assault by the accused then his mere acquaintance or friendship with the deceased cannot be treated as a reason to discard his evidence. Similarly, it is well settled that evidence of injured eye witness cannot be discarded in toto on the ground of inimical disposition towards the accused or improbabilities of narrating the details of actual attack. If evidence of injured witness is otherwise reliable and trustworthy then it carries more weight and cannot be thrown away merely because it is not corroborated by any independent witness. It is also settled that little discrepancies cannot make evidence of injured witness unacceptable, when his evidence as a whole has a ring of truth. [Refer **Suresh Sitaram Surve V/s. State of Maharashtra, AIR 2003 SC 344 and Ram Janam V/s. State of U.P, AIR 1979 SC 1507,**] Keeping in mind these principles, let us appreciate evidence of injured witness PW-5 Vijay alongwith evidence of PW-4 Bhagwan.

implication. On this backdrop, congruous evidence of PW-4 Bhagwan Gawali and PW-5 Vijay shows that they attended POLA festival which was celebrated in the vicinity of the Gram Panchayat office in the evening hours of 5.9.1994. Their consistent version shows that this festival was over by 5 to 5.30 pm. and the persons gathered for celebration returned to their houses with their bullocks. As per the version of PW-4 Bhagwan, respectable persons from village as well as police constable deputed for Bandobast went to office of Gram panchayat for having tea. PW-4 Bhagwan and PW-5 Vijay unanimously stated that they both, alongwith Gajanan Tadas (since deceased) continued to be on the spot and were chit chatting. As per version of PW-4 Bhagwan, then accused Nina Tadas came in front of them and gave a threat to them by directing them to go away from that place. As per the version of PW-4 Bhagwan, accused Nina Tadas was having knife used for taking out pepen juice from papaya tree. He took out that knife from his pocket and gave a blow thereof to Vijay Khadse (PW-5) causing injury to his ring finger of left palm. PW-4 Bhagwan further deposed that on seeing Gajanan, accused Nina gave a blow of that knife on the left side chest of Gajanan. Gajanan then fell down and PW-5 Vijay Khadse, ran towards the house of Gajanan Tadas. Material elicited from cross-examination of PW-4 Bhagwan strengthen his version as the defence has brought on record that standing nearby he had seen the incident of assault on Gajanan and PW-5 Vijay, by the accused. Presence of this witness on the spot at the time of the incident is thus established. The defence has further elicited from cross-examination of PW-4 Bhagwan that Police Patil of Harankhed Madhav Singh Patil - PW-6 and

Police Constable PW-7 Ravindra More, thereafter came there and witnesses the situation. Thus, even according to the defence, PW-6 Madhav singh Police Patil, PW-7 Ravindra More, rushed at the spot after happening of the incident and witnessed the situation. From cross-examination of PW-4 Bhagwan, it is thus seen that, the defence has admitted presence of these two witnesses on the spot soon after the assault. From cross-examination of PW-4 Bhagwan, the defence has further brought on record that deceased Gajanan and his brother Shrirang Tadas, at the relevant time, were facing prosecution for the offence punishable under Section 307 of IPC for attempting to commit murder of accused Nina Tadas, by similar weapon.

22] Now, let us, revert back to the evidence of PW-5 Vijay Khadse, an injured witness. As per his statement before the court, when they were chit chatting, accused Nina came armed with knife and tried to assault Gajanan Tadas with that knife. PW-5 Vijay further stated that then they tried to control accused Nina and to save Gajanan. This caused annoyance to the accused. PW-5 Vijay further stated that then accused Nina Tadas rushed towards him and gave a blow of knife which landed on the ring finger of his left palm causing bleeding injury. PW-5 Vijay further stated that accused Nina then gave a blow of knife on the left side of chest of Gajanan and on sustaining that blow, Gajanan fell down. PW-5 Vijay further stated that he then rushed to the house of Gajanan and informed this incident to father of Gajanan Tadas. This witness identified Article No.4 blood stained shirt of Gajanan as well as blood stained shirt of the accused. In cross-examination of PW-5, Vijay the defence has brought on record that merely two minute's

time was required by PW-4 Vijay to rush to the house of deceased Gajanan and thereafter, within 2/3 minutes, he narrated the entire incident to the parents of deceased Gajanan Tadas. This goes to show that, immediately after the incident, PW-5 Vijay disclosed what happened to Gajanan in detail to father of Gajanan viz. PW-2 Pandurang.

23] We have elaborately noted down what PW-4 Bhagwan and PW-5 Vijay have deposed about the incident. Evidence of both these witnesses is clear, cogent and consistent. We do not find any inconsistency in their version. It does not suffer from any material omission or contradiction. There is nothing in cross-examination of both these witnesses to doubt their version about the incident in question. True it is, that PW-4 Bhawan after witnessing the incident, had not informed the police on telephone about the incident in question but from his cross-examination itself it is seen that Police Patil of the village and Police Constable immediately came on the spot of the incident and as such, there was no need for PW-4 Bhagwan to inform the incident to police when Police came to know about the incident immediately. True it is, that neither PW-4 Bhagwan nor PW-5 Vijay were having bullocks, but, this reason by no stretch of imagination is sufficient to conclude that they were not present on the spot of the incident to witness the celebration of POLA festival and the incident in question. It is a matter of common knowledge that in a small village, where agriculture is the main occupation, villagers participate in POLA festival irrespective of the fact whether they have bullocks or not. The fact that deceased Gajanan and his

brother Shrirang were facing prosecution for the offence punishable under Section 307 of IPC for attempting to commit murder of the accused, rather gives a motive to the accused to eliminate Gajanan Tadas - his assailant. At least, this fact does not give any benefit to the respondent/accused.

24] In this case of single accused, theory of false implication propounded by injured witnesses does not deserve even a moments consideration. Even if it is assumed that PW-4 Bhagwan and PW-5 Vijay were friends of deceased Gajanan, it is difficult to believe that PW-5 Vijay, as injured witness would spare his real assailant and would falsely implicate another person for causing injury to him. Defence has tried to contend that evidence of PW-4 Bhagwan and PW-5 is inconsistent. However, we do not find any such inconsistency in their evidence. PW-4 Bhagwan is saying that initially accused extended threat to them to leave that place, gave blow of knife to Vijay and subsequently, dealt a fatal blow to Gajanan Tadas. PW-5 Vijay has disclosed the same incident, but in different words. According to him, the accused initially tried to assault Gajanan but they tried to control the accused and to save Gajanan, causing annoyance to accused and, therefore, accused gave blow of knife on ring finger of his left palm and then accused gave blow on right side of chest of Gajanan. Versions of both these witnesses show that initially first blow of knife was given to PW-5 Vijay Khadse and then second blow by that knife was given to deceased Gajanan Tadas.

25] We have found evidence of PW-4 Bhagwan and PW-5 Vijay trustworthy and acceptable. Eye witness account given by them gains corroboration from other evidence on record and we shall now proceed to deal with that evidence. After sustaining bleeding injury in this assault, PW-5 Vijay was referred to PW-9 Dr. Manohar Chavan, Medical Officer, Rural Hospital, Bodwad by PW-10 Somnath Tambe, Investigating Officer on 5.9.1994 itself. Evidence of PW-9 Dr. Manohar Chavan shows that upon examination of PW-5 Vijay on 5.9.1994, he found that Vijay has sustained sharp cutting injury to the tip of his ring finger of left hand, admeasuring $\frac{3}{4}$ inch x $\frac{1}{4}$ inch x $\frac{1}{4}$ inch caused by hard and sharp object and possibly by Muddemal Article No.8 knife. The injury certificate at Exhibit 31 corroborates the version of PW-9 Dr. Manohar Chavan. When PW-5 Vijay Khadse and PW-9 Dr. Manohar are consistent in their version that injury suffered by PW-5 Vijay was to his left ring finger, mention of that injury in request letter, issued by Police to the Medical Officer, that the injury is to the right ring finger is of no consequence. Such normal discrepancy due to error of observation do not corrode the credibility of the prosecution case and the learned trial court definitely erred in blowing this issue out of proportion. On the contrary, the prosecution has proved from clear, cogent and consistent version of PW-5 Vijay, PW-4 Bhagwan, PW-10 Somnath Tambe Investigating Officer, that PW-5 Vijay was having bleeding injury to his left ring finger which is proved to be caused in the incident in question. Not only that, even PW-6 Madhav Singh, Police Patil of the village, PW-7 Ravindra More, and PW-8 Govind Tadas who immediately rushed to the spot of the

incident, have also stated in their evidence that PW-5 Vijay was having bleeding injury to his left ring finger caused in the incident. This voluminous evidence corroborates version of PW-5 Vijay.

26] The defence has given suggestion that PW-4 Bhagwan and PW-5 Vijay were friends of deceased Gajanan, which was denied by PW-4 Bhagwan. The learned trial court has rejected testimony of PW-4 Bhagwan and PW-5 Vijay for the reason that they are interested and partisan witnesses. Even if it is assumed that they were on friendly terms with the deceased, it is hard to believe that they will protect or spare the actual culprit and falsely implicate the accused. Close friend would be the last to screen the real culprit and falsely implicate another. It is true that in a charged atmosphere and when the cause is personal there is tendency to roped in an innocent person against whom the witness has a grudge, alongwith the real culprit. In such case it becomes paramount duty of the Court to deal with evidence of such witnesses with extra caution and if on such scrutiny their evidence is found to be honest and trustworthy, the court is bound to act upon it. Evidence on record does not show that either PW-4 Bhagwan or PW-5 Vijay were even remotely inimical to the accused. Similar is the position in respect of other prosecution witnesses viz. PW-6 Madhav Singh, Police Patil of village, PW-7 Ravindra More Police Constable and PW-8 Govind Khadse. None of them is having an inimical disposition towards the accused. Principles of appreciation of evidence of partisan or interested witnesses are well settled and can be found in the following authorities on the subject.

27] In *Dalip Singh v. State of Punjab, AIR 1953 SC 364*, it has been laid down as under :-

“... A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

This decision has been followed in *Guli Chand V. State of Rajasthan, (1974) SCC (Cri) 222* in which *Vadivelu Thevar V. State of Madras, AIR 1957 SC 614* was also relied upon.

28] The ground that the witnesses being close friends of the deceased and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by the Hon'ble Supreme

Court as early as in Dalip Singh Case, (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed by the Honourable Supreme Court :

“... We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rameshwar V. State of Rajasthan, AIR 1952 SC 54. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.”

29] Again in *Masalti V. State of U.P.*, AIR 1965 SC 202 Hon'ble Supreme Court observed :

“.....But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

Testing on the touchstone of the principles found in these authoritative pronouncements of law on the subject, we do not find anything on record to doubt the version of PW-4 Bhagwan and PW-5 Vijay about the incident in question, though they might be friends of deceased Gajanan.

30] We may note that there is not a single suggestion to PW-5 Vijay to the effect that he was not present on the spot of the incident but in order to falsely implicate the respondent/accused, he caused injury to his left ring finger and then struck a pose of injured witness. In absence of such suggestion, admission of PW-9 Dr. Manohar Chavan that injury suffered by PW-5 Vijay can be possible by shaving blade, leads us nowhere.

31] In order to consciously deal with evidence PW-5 Vijay, let us examine, whether, his version gains further corroboration from the evidence available on record. PW-2 Pandurang is father of deceased Gajanan and informant in this case. His version shows that on 5.9.1994, by 6.00 p.m. POLA festival was over and at 6.00 p.m. PW-5 Vijay came to his house in frightened condition. As per evidence of PW-2 Pandurang, PW-5 Vijay informed him that accused Nina Tadas had assaulted Gajanan and Gajanan sustained injury to left side of his chest by knife used for taking out pepen juice from Papaya tree. PW-2 Pandurang further deposed that PW-5 Vijay narrated him that 3 persons including he himself (Vijay) Janardan and Bhagwan were present on the spot and they tried to pacify accused Nina but

accused Nina had also inflicted injury to him (Vijay). PW-2 Pandurang further deposed that, then he alongwith his wife rushed to the spot and found Gajanan lying dead near the cattle pond. Report (Exhibit 20) lodged by this witness with promptitude on 5.9.1994 itself which is duly proved by him as well as PW-10 Somnath Tambe, I.O. corroborates the testimony of PW-2 Pandurang. Disclosure made to him by PW-5 Vijay are also finding its place in this FIR.

32] Thus, evidence of PW-5 Vijay gains corroboration from version of PW-2 Pandurang. Former statement of PW-5 Vijay brought on record from evidence of PW-2 Pandurang can be used to corroborate his own evidence in terms of section 157 of the Indian Evidence Act, 1872, which enables a person to corroborate his own testimony by his own previous statement. PW-5 Vijay has narrated all that transpired on the spot of incident during the murderous assault on deceased Gajanan to PW-2 Pandurang. This narration of the incident was made by PW-5 Vijay to PW-2 Pandurang shortly after the occurrence of murderous assault on Gajanan which is consistent with his version before the learned trial court. In cross-examination of PW-5 Vijay, it is brought on record that he took time only about two minutes to reach the house of PW-2 Pandurang and then he narrated the incident to PW-2 Pandurang for about 2/3 minutes. This shows that PW-5 Vijay narrated what he had seen and suffered at once or atleast shortly after the incident without there being any chance to pollute or prejudice his mind. There was virtually no interval between the incident and his narration in detail to PW-2

Pandurang so as to afford any occasion to PW-5 Vijay for reflection or tutoring. Thus, this previous statement of PW-5 Vijay to PW-2 Pandurang becomes an important piece of evidence under Section 157 of the Indian Evidence Act, 1872 and thereby, version of PW-5 Vijay is strengthened.

33] As it is brought on record from Cross-examination of PW-4 Bhagwan that Police Patil of the village and Police Constable immediately came on the spot of the incident, let us see what PW-6 Madhavsingh Police Patil of the village states about the incident. Evidence of PW-6 Madhavsingh shows that at about 5.30 p.m. POLA festival was over and he alongwith Police Constable More (PW-7) and others went to the office of the Gram Panchayat for having tea. After hearing hue and cry, he and others saw from the window as to what happened. PW-6 Madhavsingh further deposed that he saw Gajanan lying on the ground and accused Nina standing nearby holding knife in his hand. PW-6 Madhavsingh also saw Bhagwan PW-4 and Vijay Khadse PW-5 standing on the spot and that PW-5 Vijay was having injury on ring finger of his left hand. Similar is the version of PW-7 Ravindra More, Police Constable deputed at village Harankheda for police bandobast. His evidence shows that when he alongwith Police Patil and others went to the office of the Gram Panchayat at first floor after POLA festival was over, he heard hue and cries and, therefore, he peeped through the window and saw one injured person and one person holding knife. PW-8 Govind Khadse who was with PW-6 Madhavsingh and PW-7 Ravindra has stated in his evidence that when they had been to the office of the Gram Panchayat after

celebration of POLA festival was over at about 6.00 p.m., they heard hue and cries and on peeping through the window of Gram Panchayat office, he saw Gajanan lying on ground and accused Nina holding knife in his hand. As per version of PW-8 Govind, he also saw PW-4 Bhagwan, PW-5 Vijay and Janardhan Chimkar standing nearby. PW-6 Madhavsingh and PW-7 Ravindra More, Police Constable unanimously deposed that they hurriedly reached on the spot and saw accused running towards the village. They chased him, apprehended him from the house and brought him back to the office of Gram Panchayat. PW-6 Madhavsingh further deposed that he then informed the incident by making a telephone call to police Station, Bodwad.

34] We may note few inconsequential admissions given by PW-6 Madhavsingh and PW-7 Ravindra which were used by the learned trial court for disbelieving their evidence. PW-7 Ravindra More admitted in cross examination that on arrival of Police Inspector Bodwad, he did not file any report regarding arrest of the accused. PW-6 Madhavsingh Patil admitted in cross-examination that he has not noted this incident in Khabri Book. Evidence of PW-6 Madhav singh Patil, PW-7 Ravindra More and PW-8 Govind Khadse that they had seen what happened after the incident from window of the Gram Panchayat office, is fully trustworthy as the spot was visible from that place as seen from the Spot Panchanama (Exh.13) and the sketch (Exh.15). The incident happened just at front side of the window, as seen from both these documents as well as the evidence of witnesses for the prosecution. Even size of the window is brought on record by the defence from cross-examination of PW-8 Govind Khadse. That window is stated to be

a big window atleast admeasuring 2 feet x 3 feet size. As the spot of the incident was visible from the office of the Gram Panchayat there is nothing to disbelieve version of PW-6 Madhav Singh Patil, PW-7 Ravindra More and PW-8 Govind Khadse that they saw deceased Gajanan lying on the spot and the accused holding knife standing nearby. Similarly, presence of PW-4 Bhagwan and PW-5 Vijay is vouched by these prosecution witnesses, though PW-7 Ravindra More could not name them, he being an outsider. In the light of trustworthy version of PW-6 Madhavsingh and PW-7 Ravindra, much importance cannot be given to non-writing of incident in Khabri Book or non filing of report of arrest by them. Ultimately, PW-10 Somnath Tambe, I.O. reached the spot immediately and recorded FIR as well as arrest panchanama. It is thus clear that evidence of PW-4 Bhagwan and PW-5 Vijay about the incident gains corroboration from the evidence of these witnesses, who had seen the accused standing by the side of the dead body of deceased Gajanan holding knife in hand, giving an irresistible conclusion that it was the accused alone, who had caused fatal injury to deceased Gajanan , as disclosed by PW-4 Bhagwan Gawali and PW-5 Vijay Khadse.

35] The prosecution has also relied on seizure of blood stained shirt of the accused, soon after the incident. Evidence of PW-1 Ramdas Gawali, panch witness shows that on 5.9.1994, at the office of Gram Panchayat, accused took out his shirt which was stained with blood and police seized that shirt and sealed it in his presence. Exhibit 17 is the arrest cum seizure panchanama showing that the full shirt of the accused stained with blood came to be seized and sealed. It also reflects that arrest of the accused was

effected on 5.9.1994 itself. Evidence of this panch witness is duly corroborated by Investigating Officer - PW-10, Somnath Tambe, who also deposed about the seizure of this blood stained shirt of the accused on the date of incident itself. Chemical Analyser's report at Exhibit 46 shows that shirt of the accused was having considerable number of blood stains of human blood. This incriminating evidence also point out guilt of the accused.

36] It is the case of the prosecution that, on the basis of the disclosure statement of the accused, weapon of offence i.e. article No. 8 knife was recovered. PW-3 Ramesh Sharma is the panch witness of this recovery and his evidence shows that on 7.9.1994, he and one Ambarish were called to act as panch witnesses. PW-3 Ramesh deposed that while in custody of police, accused Nina disclosed that he will produce the knife kept at his house and accordingly Memorandum Panchanama Exhibit 22 was prepared. The accused then took them to village Harankheda, pointed out his house, entered inside the house and took out a knife from an iron box kept in his house. This knife, as per version of PW-3 Ramesh, came to be seized vide panchanama Exhibit 43. This evidence is corroborated by evidence of PW-10 Somnath Tambe, Investigating Officer. Recovery Panchanama at Exhibit 23 shows that blood stained knife was sealed after keeping it in the plastic bag. This knife was subjected to chemical analysis and C.A. Report at Exhibit 46 shows that it was stained with blood on blade and handle. Prosecution witnesses have identified this knife (Article No.8) to be a weapon used by

the accused for inflicting fatal blow to deceased Gajanan and for injuring PW-5 Vijay.

37] At this juncture, it is material to note that as seen from evidence of PW-6 Madhavsingh and PW-7 Ravindra More, accused took shelter of his house after the incident and they apprehended him from his house. The knife was ultimately recovered on the basis of disclosure statement of the accused from his own house. The fact that the house was open and iron box was unlocked is of no consequence because, ultimately it was the fact discovered on the basis of information given by the accused while in police custody and thus, this evidence is relevant under Section 27 of the Indian Evidence Act, 1872. The recovery was not from an open place accessible to all and sundry. Ultimately, because of finding blood on that knife and identification of that knife to be the weapon of assault by the witness, the same is proved to be used in commission of this crime by the accused.

38] Much capital is sought to be made out of the fact that inquest memorandum was not sent alongwith dead body. The finding of the learned trial court on this aspect is certainly perverse. Inquest memorandum at Exhibit 12 dated 6.9.1994 is an admitted document. This inquest memorandum was recorded from 7.05 p.m. to 8.05 p.m. on 6.9.1994. Evidence of PW-9 Dr. Manohar Chavan shows that he received inquest memorandudum alongwith requisition by police prior to conducting post mortem examination. Post Mortem report at Exhibit 32 do show that the

inquest memorandum was received by the Medical officer prior to conducting post mortem examination from 9.30 am. To 10.30 a.m. on 6.9.1994.

39] Similarly, finding of the learned trial court that the station diary at Exhibit 36 is not duly proved, is also erroneous and perverse. Perusal of the record goes to show that PW-10 Somnath Tambe has brought the original station diary with him alongwith its relevant extract which came to be marked as Exhibit 36. On comparing the same with the original station diary, the extract thereof was marked as Exhibit 36 by the learned trial court while recording evidence. When the extract of station diary entry/exhibit 36 was compared with the original by the learned trial court, the finding of the learned trial court that copy of station diary entry is not duly proved, is erroneous. Moreover, in the wake of voluminous evidence including eye witness account, even if it is assumed that the station diary entry is not proved, that by itself does not render prosecution case doubtful.

40] We have already noted reasons assigned by the learned trial court in acquitting respondent/accused - Nina Tadas of the offence punishable under Section 302 and 307 of IPC and we have also elaborately dealt with the same in order to demonstrate that the doubts expressed by the learned trial court cannot be termed as reasonable doubts. Absence of motive is also considered by the learned trial court for doubting the prosecution case. Motive assumes importance in cases relating to

circumstantial evidence. The case in hand is not a case based on circumstantial evidence. We are having eye witness account of the incident given vividly by the prosecution witnesses. That apart, it is brought on record by the defence that deceased Gajanan alongwith his brother Shrirang were facing trial for the offence punishable under section 307 of IPC with an accusation that they attempted to commit murder of respondent/accused - Nina Tadas. Material elicited from cross-examination of evidence of PW-2 Pandurang do show that he had filed civil suit against father of the accused and others in respect of open land abutting the house and respondent/accused Nina Tadas was prosecuting that civil suit as legal heir. With this material on record, finding of the learned trial court that the prosecution has not proved motive behind the crime is totally perverse, leave apart motive is not relevant in the instant case based on eyewitnesses' account of the incident.

41] Case of the prosecution is also doubted by the learned trial court with a reason that independent witnesses, though available were not examined. It has come on record from cross-examination of the prosecution witnesses including PW-2 Pandurang, PW-4 Bhagwan and PW-5 Vijay that the incident of murderous assault on deceased Gajanan happened in the populous area. Cross-examination of these witnesses shows that the premises of the Gram Panchayat and surrounding area was crowded due to POLA festival. Many houses including the house of Gav Kamgar, Pan tapri, shops and post office are situated in the vicinity of the spot of of incident.

With this evidence, one may argue that the incident must have been witnessed by many others who are not examined as witnesses by the prosecution. However, one has to keep in mind that what matters is the quality and not the quantity of evidence. In such situation, the Court is required firstly to assess the trustworthiness of the evidence adduced and available on record. If it is worthy of reliance then such testimony has to be accepted and acted upon though there may be other witnesses available who could have been examined. If available evidence suffers from infirmity and cannot be acted in absence of other evidence, which though available has been withheld from the court then the question of drawing adverse inference against the prosecution arises. In the matter of ***Hiralal Pandey and others vs. State of U.P. Reported in AIR 2012 SC 2541***, Honourable Supreme Court has held in para No.12 thus :-

“12. In Hem Raj and Others vs. State of Haryana (AIR 2005 SC 2110 : 2005 AIR SCW 1885) Supra, this Court has held that non-examination of independent witnesses by itself may not give rise to adverse inference against the prosecution, but when the evidence of the alleged eyewitnesses raises serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witnesses would assume significance.”

We have found evidence of the prosecution witnesses examined in the case to be trustworthy and reliable and as such, this argument about non examination of independent witnesses sans merit and hence, is liable to be rejected. The learned trial court erred in nurturing doubt in prosecution

case on this count, without examining the trustworthiness and reliability of the evidence of the prosecution available on record.

42] Similarly, In our opinion, the learned trial court was not correct in giving over-bearing importance to the fact, as to whether the injury was to the right palm ring finger or left palm finger of PW-5 Vijay for doubting the prosecution case. In similar way, though Report of Chemical Analyzer at Exhibit 46 shows that human blood was found on the shirt of respondent/accused Nina Tadas and knife as well as clothes of the deceased were stained with blood, the learned trial court for doubting the prosecution case made a capital of the fact that the Group of the blood found on these articles could not be determined. The learned trial court lost sight of the well settled principle that proof beyond reasonable doubt cannot be equated with a proof of mathematical precision. Doubts would be called reasonable if they are free from from zest of abstract speculation. It is seen from the reasoning of the learned trial court that it has shown exaggerated devotion to the rule of benefit of doubt by nurturing fanciful doubts. A reasonable doubt is always a fair doubt based upon reason and common sense, rather than imaginary, trivial or merely possible doubt. At this juncture, it is apposite to refer to the observations of the Honourable Apex Court in the matter of *Shivaji Sahebrao Bobade v. State of Maharashtra (1973)2 SCC 793*, wherein it is held thus :-

“The dangers of exaggerated devotion to the rule of benefit of

doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The Judicial instrument has a public accountability. The Cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author. (Glanville Williams in 'Proof of Guilt') has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a, public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guidelines. For all these reasons it is true to say, with Viscount Simon that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent". In short our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents".

43] In the light of foregoing discussion, we are unable to accede ourselves to hold that the conclusion reached by the learned trial court in acquitting the respondent/accused - Nina Tadas, reflects a possible view. On the contrary, on the basis of voluminous evidence on record, no conclusion can reasonably be arrived that the prosecution has failed to prove its case so far as offence under Section 302 of IPC is concerned. The evidence on record shows that respondent/accused Nina Tadas was armed with knife and he has chosen vital part of the body i.e. left side of chest of deceased Gajanan for inflicting fatal blow. As such, it is established that the respondent/accused Nina Tadas committed murder of deceased Gajanan by intentionally and knowingly causing his death.

44] Now, let us examine whether the prosecution has proved commission of offence punishable under Section 307 of IPC by respondent/accused Nina Tadas. The prosecuting has proved by its cogent and consistent evidence that respondent/accused Nina Tadas had inflicted blow of knife on the ring finger of left palm of PW-5 Vijay Khadse, causing bleeding injury of size $\frac{3}{4}$ inch x $\frac{1}{4}$ inch x $\frac{1}{4}$ inch on his ring finger of left palm. Evidence of injured witnesses PW-5 Vijay goes to show that this injury was suffered by him when he tried to control respondent/accused Nina Tadas in the process of saving deceased Gajanan Tadas. Evidence of PW-5 Vijay shows that his attempt to save Gajanan caused annoyance to the accused and, therefore, the accused gave blow of knife which landed on his ring finger of left palm. As such, it becomes clear that the respondent/accused

Nina Tadas had not assaulted PW-5 Vijay with requisite intention of causing his death. Section 307 of IPC requires presence of intent coupled with some overt act for execution thereof. For holding an accused guilty of the offence punishable under Section 307 of IPC, it is not essential that the actual injury capable of causing death should have been inflicted, though the nature of actual injury caused may give considerable assistance in gathering the intention of the accused. In the case in hand, evidence of injured witness PW-5 Vijay does not show that the respondent/accused Nina Tadas was intending to cause his death. However, it is proved that the respondent/accused - Nina Tadas had voluntarily caused hurt to PW-5 by dangerous weapon i.e. Muddemal Article No.8 knife - an instrument for stabbing or cutting. As such, guilt of respondent/accused Nina Tadas for the offence punishable under Section 324 of IPC is established. In the result, we have no alternative but to quash and set aside the impugned judgment and order dated 9.5.1995 passed by the 3rd Additional Sessions Judge, Jalgaon, in Sessions Case No. 338 of 1994, thereby acquitting respondent/accused Nina Tadas, for the offence punishable under Section 302 and 307 of IPC.

45] In the light of foregoing discussion, we proceed to pass the following order :-

[a] The impugned judgment and order dated 9th May, 1995, passed by the learned 3rd Additional Sessions Judge, Jalgaon, in Sessions Case No. 338 of 1994, thereby acquitting respondent/accused - Nina Trambak Tadas of the offences punishable under Sections 302 and 307

of IPC, is quashed and set aside;

[b] Criminal Appeal No. 218 of 1995, filed by the State against the order of acquittal is allowed on the following terms :-

[i] Respondent/accused Nina Trambak Tadas r/o. Harankhede, is convicted for the offence punishable under Section 302 of IPC and is sentenced to suffer imprisonment for life and he is directed to pay fine of Rs. 5,000/-, in default, to suffer R.I. for one year;

[ii] Respondent/accused Nina Trambak Tadas r/o. Harankhede, is convicted for the offence punishable under Section 324 of IPC and is sentenced to suffer R.I. for two years and he is directed to pay fine of Rs. 1,000/-, in default, to suffer R.I. for three months;

[iii] Substantive sentences to run concurrently;

[iv] Respondent/accused Nina Trambak Tadas, R/o Harankhede to surrender to his bail bounds for undergoing the sentence of imprisonment.

[v] Respondent/accused Nina Trambak Tadas, shall be entitled to set off under Section 428 of the Cr.P.C., for the period already spent in jail.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.