

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****BENCH AT AURANGABAD.****CRIMINAL APPEAL NO. 23 OF 1996.**

The State of Maharashtra.

**... APPELLANT.****(Ori. Complainant).****v/s**1. Pralhad Maruti Rankhamb,  
age 50 years,2. Ram Pralhad Rankhamb,  
age 25 years,Both r/o Kaddora, Tq. Omerga,  
Dist. Osmanabad.**... RESPONDENTS.****(Ori. Accused).**...  
APP for Appellant / State: Mrs.S.G. Chincholkar.  
Advocate for Respondents: Mr.M.L. Dharashive.  
...**CORAM : S.S. SHINDE & A.M. BADAR, JJ.**

RESERVED ON : 03.02.2015.

PRONOUNCED ON : 23.02.2015.

**JUDGMENT: [Per S.S.SHINDE, J]**

1. Being aggrieved by the judgment and order dated 16<sup>th</sup> September, 1995 passed by the II Additional Sessions Judge, Osmanabad in Sessions Case No.23 of

1993, thereby acquitting the respondents / accused of the offences punishable under Section 302 r.w. 34 of IPC, the State has filed this appeal.

2. The prosecution case, in brief, is as follows:

The complainant Shahaji Vithal Sasture, son of the deceased Vithal Sasture had filed complaint. Manohar, Yuvraj and Shivaji are brothers of this witness. Complainant's brother Manohar was married with one Vijayabai daughter of Pandurang Rankhamb from the village Kaddora i.e. village of the complainant. Vijayabai had no brother or sister. Her father was having 6 acres 30 gunthas land. Out of which, he sold 4 acres land to Manohar. Accused are cousin brothers of Vijayabai. They were expecting to get this land sold by Pandurang to Manohar. As Pandurang sold this land to Manohar, they were annoyed. There were quarrels with family of complainant on this count. Complainant, his brother, father, mother were living jointly. Accused were saying that land purchased by Manohar is their land and they will take it. The incident took place on 22.10.1992 at

about 1 to 1.35 p.m. at the land purchased by Manohar. Witness Anjirbai is sister of complainant. Witness Bhagwat is nephew of complainant and son of Manohar. On the day of incident Bhagwat, his sister Surekha, their uncle Shivaji went to their land, to irrigate the same. At about 1 to 1.35 p.m. deceased Vithal went to said land. When he reached there Bhagwat and Surekha were sitting at their well. Their uncle was irrigating Jawar crop. The deceased had talk with his grandchildren. He told that, he will take round to the land. While he was taking round, accused No.1 and 2 had gone to him. At that time, accused No.1 was having an axe and accused No.2 was having lathi with him. Accused assaulted deceased with lathi and axe. They assaulted on his head, hands, legs and other parts of the body. The deceased shouted after the assault. Then deceased fell down on the ground, even then accused continued assaulting him. Bhagwat and Surekha rushed to their grandfather. After seeing them, accused ran away from that place in the sugarcane crop. Shivaji also came there. He went running towards village. The village is at

a short distance from the land. Witness Anjirbai was washing clothes at public water tap. Shivaji told her about incident. She immediately rushed to her father and saw him in injured condition. She took head of her father on her lap. She asked her father what happened to him. He told that accused Nos.1 and 2 assaulted him by lathi and axe. Bhagwat and Surekha were near her. She put cap on the injury of deceased. Then Shahaji and Shrimant came there. Anjirbai told them about her talk with her father. Then complainant took his father to Murum Police Station by Jeep. He told about the incident to police. Police got it written, at Exh.11. Then deceased was sent for treatment to Civil Hospital, Solapur by police station Murum. At this time, P.W.6 PSI Kale was serving with that police station. P.W.7 Birajdar was on P.S.O. Duty at the relevant time. He received the complaint. On its basis he registered Crime No.119/92. He gave investigation to Head Constable Khatke. The deceased Vithal died on 30.10.1992 at Civil Hospital, Solapur. Postmortem of the dead body was done by Dr. Kanki P.W.8 Investigation of the matter was

given to PSI Kale on 1.11.1992. During the investigation, weapons used by accused and blood stained clothes of the deceased were recovered. They were sent to C.A. Aurangabad for analysis. Its report was received. After investigation was over, charge-sheet against both the accused was filed before the Court of Judicial Magistrate, First Class, Omerga u/s 302, 326, 34 of IPC.

As the offence was triable by the Sessions Court, Osmanabad, JMFC, Omerga by his order dated 4.2.1993 committed the matter to the Court of Sessions u/s 209 of Cr.P.C.

3. After appearance of the accused before the Sessions Court, charge was framed against them u/s 302 r.w. 34 of IPC. They denied the charge and prayed for trial. During trial, prosecution examined in all 8 witnesses. Statement of accused u/s 313 of Cr.P.C. was recorded. In their defence, accused examined one witness.

4. After trial, the trial Court acquitted both the

accused of the offences charged against them. Hence, this appeal by the State of Maharashtra.

5. Learned APP invited our attention to the evidence of the eye witnesses and also other material placed on record by the prosecution and submitted that, there is direct evidence on record, which gets corroboration from the medical evidence and, therefore, the order of acquittal deserves to be interfered with.

6. On the other hand, learned Counsel for the original accused submits that the prosecution did not examine other witnesses who were present nearby the spot. The learned Counsel for the accused invited our attention to the findings recorded by the trial Court and submitted that possible view has been taken by the trial Court, benefit of doubt has been rightly given to the accused and hence, order of acquittal may not be interfered with. The learned Counsel for the accused, in support of his contention that material witnesses were not examined and, what is the effect of non examining such witnesses,

pressed into service exposition of the Supreme Court in case of ***Naraian and others vs. State of Punjab***<sup>1</sup>.

7. We have given careful consideration to the submissions of the learned APP and the learned Counsel for the accused. With their able assistance, perused the entire evidence and also the relevant provisions and judgments cited across the Bar by the learned Counsel for the accused.

8. It is true that the accused are acquitted and, therefore, it has to be presumed that their innocence has been reinforced. In that respect, it would be worthwhile to refer the observations of the Supreme Court in case of ***State of U.P. vs. Babu & Ors.***<sup>2</sup>, in paragraph 10 of the judgment, which reads, thus:

“10. Recently in *State of Punjab v. Karnail Singh* (2003 AIR SCW 4065) it was observed that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs

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1 AIR 1959 SC 484;

2 2003 ALL MR(Cri) 2356 (S.C.);

through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and others v. State of Madhya Pradesh (2002 (3) JT (SC) 387). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and another v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225) and Jaswant Singh v. State of Haryana (2000 (4) JT (SC) 114)."

*(Underline added)*

9. In the light of observations of the Supreme Court in case of **State of U.P. vs. Babu & Ors.** (supra), we would like to re-appreciate the entire evidence made available for perusal. The following charge was framed by the trial Court:

"That, you accused No.1 and 2 in furtherance of

your common intention on or about 22.10.1992 at about 1 p.m. at Kadadora Tq. Omerga Dist. Osmanabad did commit the murder by intentionally or knowingly causing the death of Vithalrao Santaram Sasture r/o Kadadora Tq. Omerga by assaulting him with axe, and stick, on his head and, thereby committed an offence punishable under section 302 r.w.s.34 of the Indian Penal Code and within my cognizance.

And I hereby direct that, you be tried by me on the above said charge.”

10. The prosecution examined eight witnesses so as to prove its case and the defence examined one witness namely, Satish – D.W.1. Prosecution has proved spot panchanama through the Investigating Officer and P.W.5 Keshavrao Rankhamb. P.W.5 Keshavrao stated in his deposition before the Court that on 22<sup>nd</sup> October, 1992, he acted as a panch. He was called at the land of Manohar. Vilas Bhanudas Rankhamb was another panch. He saw the spot of the incident. Four sugarcane plants were found broken on the spot. The spot panchanama was prepared and his signature along with signature of other panchas was taken on the said spot panchanama. He stated that the contents of the said spot panchanama are true and correct. He has denied

the suggestion in the cross-examination that the panchanama was not drawn at the spot and the spot was not shown by Manohar. The Investigating Officer has also stated in his evidence before the Court about the manner in which the spot panchanama was carried out

11. To see whether the death was homicidal, suicidal or accidental, it is necessary to discuss the medical evidence. P.W.8 Dr.Ashik Sitaram Kanki had conducted postmortem on the dead body of deceased Vithal. After examining the deceased, he expressed opinion that cause of death was *shock and haemorrhage due to fracture skull of subdural haematoma*. He further stated that External Injury No.1 alongwith corresponding injuries were sufficient in ordinary course to cause death. Therefore, prosecution has proved that death of Vithal was homicidal.

12. The spot of incident, as stated by the complainant P.W.1 Shahaji Vithal Sasture in his deposition, is in the land purchased by his elder brother Manohar. In his

evidence before the Court, he stated that Manohar is his elder brother. Yuvraj is his younger brother. Shivaji is his another brother. Manohar got married with Vijayabai. Parental house of Vijayabai is in the same village. She is daughter of Pandurang Mahadu Rankhamb. Vijayabai has no brother or sister. Pandurang has 6 acres 30 gunthas land at their village. Out of it, Manohar purchased 4 acres some gunthas land some years after his marriage. His marriage took place before 17 to 18 years. Accused are from *bhavki* of Pandurang. They are cousin brother of Vijayabai. This witness identified the accused present before the Court. The witness further deposed that all his brothers live jointly. Accused were saying that the land purchased by Manohar is their land and they will take it. For this reason, they were threatening them. At many times, they complained the matter to the police.

P.W.1 Shahaji Sasture further deposed that the incident took place on 22.10.92 at about 1.30 to 1.35 p.m. at the land purchased by Manohar. At that time, the witness was taking meal at his house. The land is at

a distance of 500-600 feet away from their house. His brother Shivaji came to him and told accused assaulted to Anna i.e. his father Vithal by axe, lathi near the sugarcane crop in their land. He went there. When he reached there, Bhagwat son of Manohar, Anjir Tai his sister and Surekha his brother's daughter were present there. Shrimant Rankhamp also went there immediately before him. He saw accused No.1 and 2 running from their sugarcane crop to their own land. He saw them from a distance 250 to 300 feet. He saw axe with Ram and lathi with Pralhad. He saw head of his father was kept on the lap of Anjir Tai. All of them were weeping. He asked to Anjir Tai as to what happened? She told him that accused Ram assaulted by axe and Pralhad by lathi to his father. She told that his father told it to her. He saw injuries on the head, eye, hand, leg of his father. He had no talk with the father. He took his father to Murum Police Station by Jeep. Murum is at a distance of 25 to 30 kms. from their village. He told to police about the incident. Police wrote the same. He put his signature on it.

He further deposed that the police sent his father i.e. deceased to the hospital at Solapur. He also went to Solapur with his brother Manohar, and in the said hospital, his father died after eight days.

This witness was cross-examined by the defence Counsel. He denied the suggestion that he came to know condition of his father at first time from Pamabai Mahadeo Rankhamb and then he went to their land. He specifically stated that there is only one *Bandh* between the lands of accused and Manohar. He further stated that his father was lying at a distance of 2 – 3 feet from the foot path i.e. Samudral-Kaddora passing through his land. He has denied various suggestions given by the defence. On the contrary, he reiterated his version in the examination-in-chief about the place of the incident and the manner in which the incident had taken place. He has specifically denied the suggestion that Shivaji did not tell him about the incident. Upon reading his cross-examination in its entirety, it appears that nothing was brought on record by the defence so as to shake

credibility of his version in the examination-in-chief.

In his evidence, he has specifically deposed that the incident took place on 22<sup>nd</sup> October, 1992 at about 1.30 – 1.35 p.m. in the land purchased by Manohar. At that time, he was taking meal at his house. The land wherein the incident had taken place is at a distance of 500 – 600 feet away from his house. His brother Shivaji came to him and told that accused assaulted Anna i.e. his father with axe, lathi near the sugarcane in their land. Then he went there. When he reached there, Bhagwat s/o Manohar, Anjir Tai - his sister and Surekha daughter of his brother were present there. He specifically stated that he saw accused No.1 and 2 running from their sugarcane crop to their land. He saw them from a distance of 250 to 300 feet. He saw accused Ram with axe and Pralhad with lathi. He has also stated the presence of Anjirbai, on whose lap, head of his father was kept and all they were weeping. Upon close scrutiny of his cross-examination, it appears that his evidence in the examination-in-chief has not been shattered even in

a slightest manner.

13. P.W.3 Bhagwat s/o Manohar Sasture is an eye witness to the actual incident. In his examination-in-chief, he stated that the deceased Vithoba was his paternal grand father. The incident took place on 22<sup>nd</sup> October, 1992. He deposed that on that day, he, his uncle Shivaji, his sister Surekha went at about 8 to 9 a.m. To irrigate their land. At about 1 to 1.30 p.m., his grandfather came to their land. At that time, he and Surekha were sitting on the side of their well. Shivaji was irrigating Jawar crop in the same land. At that time, Jawar crop was 1 to 1½ feet in height. Grandfather came to him. Grandfather asked them whether water of the well is over. They said no. Grandfather asked them to sit there and told that he will take round, accordingly he went. He further deposed that while his grandfather was taking round, accused No.1 and 2 assaulted him. At that time, accused No.1 was having an axe and accused Pralhad was having lathi with him. Accused Ram gave stroke of axe on head of his grandfather and accused

Pralhad gave stroke of Lathi on hand, leg, eye and other parts of the body of his grandfather. At that time, he and his sister Surekha were sitting on the well. Grandfather shouted by saying '*Are Baba Re*'. They reached to their grandfather. At that time, accused Ram and Pralhad were assaulting to grandfather. His Grandfather was lying on the ground and even then, accused were assaulting him. After looking them, accused ran away in the sugarcane crop. His uncle came there and went running towards village. Anjir came there and took head of his grandfather on her lap. Anjir asked as to who assaulted him. He told accused No.1 and 2 assaulted him by lathi and axe. Shahaji and Shrimant came there after some time from the village. Then Shrimant lifted his grandfather and they went towards the village. As injuries of grandfather were serious, they took him to S.T. Stand. One jeep came there. By that jeep, they took grandfather to Murum. He further deposed that at the time of incident, *dhoti, banian, shirt, cap* was on the person of his grandfather. He identified the said clothes – Articles 3 to 5 before the

court.

This witness PW 3 Bhagwat was cross-examined by the advocate appearing for the defence. The defence has brought on record that his statement was recorded on the next day of the incident. He denied to have stated in his statement dated 22.10.92 that Anjirabai came to land. He did not state before police that due to grave injuries, his grandfather was not in a speaking condition. He was in a condition to speak. All other suggestions have been denied by this witness.

14. Upon careful perusal of evidence of P.W.3 Bhagwat, it appears that he has stated minute details about the manner in which the incident had taken place and which accused assaulted by which weapon. He specifically deposed that the accused No.1 was having axe and accused Pralhad was having Lathi with him. Accused Ram gave stroke by axe on the head of his grandfather and accused Pralhad gave stroke of Lathi on eye, hand, leg and other parts of body of his grandfather and then,

the accused persons ran away. Therefore, his aforementioned version about the actual witnessing the incident is not shattered, in any manner, in his cross-examination. His evidence inspires full confidence, trustworthy, reliable and deserves acceptance.

15. The prosecution examined P.W.2 Anjir d/o Vithalrao Sasture. In her evidence before the Court, she stated that the incident took place on 22<sup>nd</sup> October, 1992 at the land purchased by his brother Manohar. At the time of incident, she was washing clothes on the public water hand pump of the village. From the said place, the place of the incident is 500 feet. At the relevant time, her father was in the land of Manohar. Surekha and Bhagwat were also with her father. Her brother Shivaji was returning from that land to the village. He came shouting that "Annala Marale". When this witness asked Shivaji, he replied that accused No.1 and 2 assaulted Vithal by lathi and axe. Then she went running and saw that father was lying in the blood. She found injuries on head, eye, leg of her father. Surekha and Bhagwat who

were present, were weeping. She tried to lift her father Vithal. However, he asked not to lift him and allow her to sleep there. She took his head on her lap. She further stated that her father gave his cap by his left hand. She asked him, "Anna, who assaulted you?" He replied that Ram and Pralhad assaulted him by Lathi and axe. Then this witness started weeping. At that time, Bhagwat and Surekha were near her. Then she had narrated further details.

P.W.2 Anjir was cross-examined by defence counsel. The defence tried to bring on record through her cross-examination that her father i.e. victim was unconscious and was not in a position to speak; however, this witness has denied the said suggestion. She has also denied suggestion that she did not ask her father as to who assaulted him and he did not tell that accused assaulted by lathi and axe. Therefore, if the evidence of this witness is considered in its entirety, same is trustworthy and inspires confidence. Her presence at the spot is also stated by the P.W.3 Bhagwat

and P.W.1 Shahaji. This witness has stated about presence of P.W.3 Bhagwat at the spot. The evidence of this witness and evidence of P.W.1 lends support to the version of P.W.3 Bhagwat, the eye witness, inasmuch as, P.W.1 Shahaji saw both the accused running with axe and lathi and the victim told P.W.2 Anjir that the accused assaulted him.

16. The prosecution has proved the inquest *panchanama*,. Upon perusal of the inquest *panchanama*, it appears that number of injuries were appearing on the body of Vithal including on his head. The inquest *panchanama*, is at Exh.17. The prosecution has proved the inquest *panchanama*, through the Investigating Officer.

17. The recovery *panchanama*, of clothes of the injured Vithal was carried out and the shirt, banian and other clothes recovered under the *panchanama*, were containing blood stains.

18. There is also memorandum statement of the accused and in pursuance to the information given by them, weapons were recovered. The panch witness namely, Vinayak Gunda Sawant was examined as P.W.4 to prove the fact that memorandum statement of the accused was recorded in his presence and at the instance of accused persons, axe and stick was recovered. This witness has supported the prosecution case. The trial Court has disbelieved his evidence only on the ground that he has deposed as panch for 2 – 3 times in the past. In our opinion, merely because he acted 2 – 3 times as panch that by itself is no ground to disbelieve his evidence when in his examination-in-chief he has categorically stated about the manner in which the statement was given by the accused and in pursuance to information given by them, as a matter of fact, accused themselves took out the weapons and thereafter, *panchanama*, was prepared.

19. P.W.7 Bapurao Kashinath Birajdar, was working as Police Head Constable at the relevant time with Police

Station, Murum. In his evidence, he stated that on 22<sup>nd</sup> October, 1992 he was working as PSO with Police Station, Murum. His duty on that day was from 2 p.m. to 8 p.m. At about 4 p.m. complainant Shahaji came to his police station with his father. His father was injured and was in a serious condition. He got written statement of Shahaji. Shahaji signed it. He identified the complaint and also his signature appearing on Exh.11 i.e. complaint. He had denied the suggestion that Shahaji did not come to the police station. He stated in the cross-examination that, the distance between Murum to Yenegur is half hours by Bus. He has denied the suggestion that distance between Kaddora to Yenegur is one and half hours by S.T. Bus.

20. P.W.6 Bapu Narayan Kale, examined by the prosecution was working as PSI at Murum Police Station at the relevant time. He stated in his evidence that he took investigation of the matter on 1<sup>st</sup> November, 1992 from Head Constable Khatke. He received panchanamas, statements, and property recovered in the matter. He

went to village Kaddora and seized blood stained clothes of the deceased Vithal. He recorded supplementary statements of the witnesses. On 22<sup>nd</sup> November, 1992 he sent recovered clothes, axe, lathi to Chemical Analyzer, Aurangabad with Police Constable Akoskar, B.No.1081. After receiving the C.A. report on 20.1.93, he submitted charge-sheet in the court.

In his cross-examination, he denied the suggestion that he falsely recorded the statements of Shahaji, Manohar, Shivaji, Anjir, Bhagwat and Surekha. He specifically stated that he recorded statement of Bhagwat as stated by him. The defence, through this witness in cross-examination, has tried to bring on record that, when Bhagwat, his sister Surekha were sitting near their grandfather i.e. deceased Vithal, grandfather was not in a position to speak at the relevant time. However, in our opinion even in absence of oral statement of Vithoba with Anjir that accused assaulted him, the other evidence on record in the nature of eye witness account, given by eye witness P.W.3 Bhagwat coupled with evidence of P.W.1

Shahaji, PW-2 Anjir, P.W.4 Vinayak and other evidence, is sufficient to prove the guilt of accused persons.

21. It appears that, the defence examined one witness Satish Devidas Umrekar so as to falsify the statement of P.W.2 Anjir that at the relevant time of the incident, she was washing clothes at the public water hand pump of her village. According to defence, there was no hand pump at the place stated by P.W.2 Anjir. However, if the evidence of D.W.1 Satish is considered and in particular, his cross-examination by the APP, it is abundantly clear that, he stated that before the earthquake of 30.9.1993 he never visited village Kaddora. He admitted that at village Kaddora, there are seven bore-wells taken by the Government; out of these 7 bores, 5 were taken before earthquake and 2 were taken afterwards. He could not tell in which year and at what location earlier five bore-wells were taken. Therefore, evidence of D.W.1 Satish is not useful to the defence. On the contrary, in his cross-examination, he stated that 7 bore-wells were taken by the Government at village Kaddora.

23. P.W.8 Dr.Ashik Sitaram Kanki, in his examination-in-chief stated that on 30.10.1992 dead body of Vithal Santram Sasture was sent to him for postmortem at 3.20 p.m. at General Hospital, Solapur. He conducted postmortem between 3.30 p.m. to 4.30 p.m. on the same day. He further stated that on external examination, he found the injuries as mentioned in column No.17 of his report. Internal injuries found by him were mentioned in column No.19 of his postmortem report. External Injuries mentioned in deposition of P.W.8 Dr.Ashik are as follows:

- “1. Sutured Wound on the scalp near vertex 2” in length anterior posterior.
  2. Sutured wound (Surgical) on the scalp right parietal temporal region. 4” in length, semicircular shape 2 drain.
  3. Abrasion on posterial aspect of left forearm 6”x1” brown black scab.
  4. Contusion on left leg below knee lateral aspect over area 6”x3” dark brown and swelling subcutaneous tissue shows extragasation of blood fracture fibule.
  5. Swelling at left wrist fracture old raiious.
- All injuries were antemortium in nature.”

Internal injuries mentioned in deposition of P.W.8 Dr.Ashik are as under:

“1. Haematoma under all over scalp.  
2. Fracture fronto parietal bones right side anterior post.  
3. Fracture right anterior cranial fossa. Berror hole at right temporal bone piece of bone missing.  
Brain: Subdural haematoma all over brain.  
Brain: was congested, oedemating.  
Right temporal sloughed Durga sutured at temporal region.”

In his cross-examination, P.W.8 Dr.Ashik denied the suggestion that he did not examine the patient. He denied the suggestion that Injury No.1 was not possible by axe which was shown to him. Therefore, if the evidence of medical officer is taken in its entirety, it appears that he has in clear words stated that, External Injury No.1 along with corresponding injuries was sufficient in ordinary course to cause death. He stated that Injury No.1 with corresponding internal injury is possible by an axe which was shown to him before the Court. If his evidence is perused, he has stated that all injuries are antemortem in nature. Upon perusal of the injuries, there is no slightest doubt that the said injuries were caused by axe and stick. Therefore, the evidence of P.W.3 Bhagwat – eye witness gets complete corroboration from the medical evidence and, therefore, the

prosecution has clearly established the guilt of both the accused. As already observed, P.W.3 Bhagwat has actually witnessed the incident. P.W.1 Shahaji saw the accused Ram running with axe and accused Pralhad with stick. Spot of incident is also proved through evidence of Investigating Officer and P.W.5 Keshavrao. Prosecution has also proved inquest panchanama, recovery of clothes of deceased, memorandum statement given by the accused and pursuant to that, discovery of weapon concealed by them and which were in fact, taken out by the accused from that place and handed over to the Investigating Officer.

24. Upon careful perusal of the impugned judgment, it appears that the trial Court framed only one point for its determination. In fact, the trial Court has not discussed the evidence of the Medical Officer or medical evidence so as to find out whether death of the deceased was homicidal, accidental or suicidal. It was incumbent upon the trial Court to frame proper points for its determination. However, the trial Court failed in its duty

to frame proper points on all aspects for its determination. It further appears from the perusal of the impugned judgment, that the evidence of the eye witness is disbelieved on the ground that they are interested witnesses inasmuch as, they are relatives of the deceased Vithal. It further appears that P.W.3 Bhagwat, at the relevant time, was of 14 – 15 years. The trial Court has also observed that though other witnesses were available, they were not examined by the prosecution. Surprisingly, the trial Court observed that Exh.11 – FIR does not disclose the version of P.W.3 Bhagwat and P.W.2 Anjir before the Court. In this respect, it is relevant to mention at this juncture that it is well established that FIR is not an encyclopedia and, therefore, the trial Court should not have expected that what is stated by P.W.3 Bhagwat and P.W.2 Anjir before the Court should have appeared in the FIR. In our opinion, it is incorrect appreciation of the evidence. So far as P.W.3 Bhagwat is concerned, at the relevant time, his age was 14 – 15 years and upon reading his evidence it its entirety, it inspires full confidence and gets

corroboration from the medical evidence.

Apart from that, P.W.1 Shahaji witnessed the accused running from the spot with weapons. In our opinion, the trial Court was not correct in discarding the evidence of the eye witnesses on the ground that they are interested witnesses. The Supreme Court in the case of ***Mohd. Ishaque v. State of West Bengal***<sup>3</sup>, held that interested/partisan witnesses is not a ground to discard evidence of such witnesses if such evidence taken as a whole supports the prosecution.

25. In the case of ***Habib v. State of U.P.***<sup>4</sup>, the Supreme Court held that mere fact that P.Ws.1 and 2 are interested witnesses being relatives (son and brother of deceased), is not a reason to discard their evidence, if evidence is trustworthy.

In case of ***Dharnidhar v. State of U.P.***<sup>5</sup>, the

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3 (2013) 14 SCC 581;

4 (2013) 12 SCC 568;

5 (2010) 7 SCC 759;

Supreme Court held that testimony of related witness, if found to be natural and truthful, cannot be discarded merely because of his relationship with deceased / victim and being interested witness. The same view has been taken by the Supreme Court in the case of ***Birender Poddar v. State of Bihar***<sup>6</sup>.

In case of ***Balraje v. State of Maharashtra***<sup>7</sup>, the Supreme Court held that when eyewitnesses are stated to be interested and inimically disposed towards accused, not proper to conclude that they would shield real culprit and rope in innocent persons. Truth or otherwise of evidence has to be weighed pragmatically and court should analyse their evidence carefully. But, if after careful analysis and scrutiny of their evidence, such version given by witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.

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6 (2011) 6 SCC 350;

7 (2010) 6 SCC 673;

In the case of **Musheer Khan v. State of M.P.**<sup>8</sup>, the Supreme Court held that, fact that witness may be interested is not a ground to discard his evidence but it should be weighed carefully and cautiously before accepting same.

26. The Supreme Court in para 14 of the judgment in case of **Masalti vs. State of Uttar Pradesh**<sup>9</sup>, observed, thus:

“14. Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. 51 S.C.-IO 146 Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. 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. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to

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8 (2010) 2 SCC 748;

9 AIR 1965 SC 202;

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.”

27. Therefore, it is well established that merely because the witnesses are partisan or interested that by itself is no ground to discard their evidence. However, their evidence has to be scrutinized with great care and caution. It appears that instead of concentrating on version of P.W.3 Bhagwat about the actual incident and version of P.W.1 Shahaji witnessing accused running with respective weapons and also the evidence of P.W.2 Anjir, the trial Court concentrated on minor contradictions, omissions and improvements. The Supreme Court in case of **Tahsildar Singh and another V/s State of U.P.<sup>10</sup>**, held that if the statement before the police-officer and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other.

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<sup>10</sup> AIR 1959 SC 1012

While passing the impugned judgment, the trial Court has not kept in view the observations of the Supreme Court in case of **Tahsildar Singh** (supra)

The Supreme Court in case of **Pudhu Raja and another v. State represented by Inspector of Police**,<sup>11</sup> in paragraphs 18 and 19 held that minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. Therefore, in the facts of that case, Supreme Court held that, the trial Court erred in directing acquittal on the basis of immaterial inconsistencies and High Court rightly reversed the same.

28. In the present case, the incident had taken place at village Kaddora as per the version of the complainant in between 1.30 to 2 p.m. The F.I.R. was lodged at Murum Police Station in between 4 to 4.30 p.m. Therefore,

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<sup>11</sup> (2012)11 SCC 196;

prompt lodging of FIR rules out the possibility of false implication of the accused persons. There is no reason for the prosecution witnesses to falsely implicate the accused if they are not real culprits. It has come in the evidence of the complainant P.W.1 Shahaji that there was motive for commission of offence inasmuch as, Pandurang Rankhamb from the same village had sold 4 acres of land out of his land of 6 acres 30 gunthas to his son-in-law Manohar, brother of the complainant. Accused are cousin brothers of Vijayabai, wife of Manohar. They were expecting to get this land sold by Pandurang to Manohar. As Pandurang sold this land to Manohar, they were annoyed. There were quarrels with family of complainant on this count. Complainant, his brother, father, mother were living jointly. Accused were saying that land purchased by Manohar is their land and they will take it.

It is true that when the case is based upon account of eye witness, motive has no vital role to play. However, in the present case, the prosecution has established

motive for commission of offence.

Another reason given by the trial Court is that there was delay in sending FIR to the Court. In fact, this is not a circumstance within the control of the complainant or victim and particularly, in the facts of the present case when the FIR was promptly registered within 2 – 3 hours of commission of offence.

29. We are aware that we are considering the appeal filed by the State challenging order of acquittal and, therefore, at this juncture, it would be appropriate to make reference to the observations of the Supreme Court in case of ***State of A.P. vs. M. Madhusudhan Rao***<sup>12</sup> wherein, the Supreme Court in para 13 held, thus :-

“13. There is no embargo on the appellate court to review, reappreciate or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his

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<sup>12</sup> 2009 ALL MR (Cri) 547 (S.C.);

acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed. Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere."

(Underline added).

30. We have re-appreciated the entire evidence keeping in view the observations of the Supreme Court in aforementioned two expositions i.e. ***State of U.P. vs. Babu & Ors.*** [supra] and ***State of A.P. vs. M. Madhusudhan Rao*** [supra], and we are of the considered view that, the approach of the trial Court in considering the evidence is vitiated by manifest illegality and the conclusions recorded by the trial Court, possibly could not have been arrived at by any Court acting reasonably and judiciously. The trial Court did not frame proper points for its determination, not paid attention to the version of the eye witnesses coupled with other prosecution

witnesses and concentrated on minor contradictions, inconsistencies, improvements in relation to trivial matters which do not affect core of prosecution case. When the evidence on record is sufficient, there was no reason for the trial Court to observe that other witnesses are not examined and therefore, the accused are entitled for acquittal. In our opinion, when the evidence brought on record by the prosecution is more than sufficient to prove the guilt of the accused, the reason assigned by the trial Court that other witnesses were not examined by the prosecution, cannot sustain.

31. In the light of the observations in foregoing paragraphs, inevitable conclusion is that the findings recorded by the trial Court are perverse and not in consonance with the evidence available on record.

32. In the light of the discussion in the foregoing paragraphs, we hold that accused No.1 Pralhad Maruti Rankhamb and accused No.2 Ram Pralhad Rankhamb are guilty of the offence punishable under Section 302 r.w. 34 of

Indian Penal Code.

33. Accordingly, we pass the following order:

- i) The impugned judgment and order dated 16<sup>th</sup> September, 1995 passed by the II Additional Sessions Judge, Osmanabad in Sessions Case No.23 of 1993 is quashed and set aside. Criminal Appeal filed by the State against order of acquittal is allowed.
- ii) The accused No.1 Pralhad Maruti Rankhamb and accused No.2 Ram Pralhad Rankhamb are convicted for the offence punishable under Section 302 r.w. 34 of IPC and sentenced to suffer life imprisonment and to pay a fine of Rs.5000/-, in default, to suffer R.I. for one year.
- iii) Both the accused to surrender forthwith to undergo the aforesaid sentence.
- iv) The accused will be entitled to set off under Section 428 of Cr.P.C. for period spent in Jail as under trial.

**[ A.M.BADAR, J]**

**[S.S. SHINDE, J]**