

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 172 OF 2012

Vikas @ Sadhu Gendev Hagare [Mali],
Age: 36 Years, Occ: Bus Driver,
R/o. Sawargaon, Tq. Tuljapur,
Dist. Osmanabad
[Appellant is at present in Jail]

APPELLANT
[Ori. Accused no. 1]

VERSUS

The State of Maharashtra,
[Copy to be served on
Public Prosecutor, High
Court of Judicature of Bombay
Bench at Aurangabad]

RESPONDENT

...
Mr. R.N.Dhorde, Senior Counsel, instructed by Mr.
V.R.Dhorde along with Mr. P.G.Patil, Advocates for the
Appellant.
Mr. K.S.Patil, APP for the Respondent – State
...

**CORAM : S.S. SHINDE &
A.I.S.CHEEMA, JJ.**

Reserved on : 08.07.2015
Pronounced on: 29.07.2015

JUDGMENT [Per S.S.Shinde, J.]:

1] This Criminal Appeal is filed by the Appellant –
Original Accused No.1, challenging the Judgment and Order
dated 15.02.2012 passed by the Additional Sessions Judge,
Osmanabad in Sessions Case No.8/2011, thereby convicting
the appellant – original accused no.1 for the offence

punishable under Section 302 of the I.P. Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- [Rs. Five Hundred only], in default, to undergo simple imprisonment for a period of three months. He is further convicted for the offence punishable under Section 323 r.w. 34 of the I.P. Code and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.300/- [Rs. Three Hundred only], in default, to undergo simple imprisonment for a period of five days.

Facts of prosecution case, in brief, are as under:

2] The complainant [PW-1] Sajabai Bhagwat Hagare is the mother of deceased Tukaram Bhagwat Hagare and wife of PW-2 Bhagwat Balu Hagare. On 05.10.2010, PW-1 Sajabai was in her agricultural field. At about 5.00 to 5.30 p.m. when Sajabai and her son Tukaram [deceased] were in the field called '*Nagobapur*' field, the accused nos. 1 to 6 were present there. There was civil dispute going on between complainant, her husband with accused persons in the Court. Accused no.1 – Vikas @ Sadu Genba Hagare, accused no. 2 Navnath Bhiva Hagare and

accused no.3 Ganpat Bhiva Hagare were ploughing the disputed land. When PW-1 Sajabai and Tukaram asked accused nos. 1 to 3 as to why they were harrowing the land, at that time, they started beating Sajabai and Tukaram by fist and kick blows. PW-1 Sajabai went running to the village to call 4-5 people under the fear that, accused nos. 1 to 6 would beat them. However, nobody accompanied her to her field. PW-1 returned alone to the place of dispute. Accused no. 1 – Vikas Gendeo Hagare assaulted PW-1 Sajabai by means of '*Rumane*' [wooden handle of harrow]. Accused no.1 Vikas @ Sadhu Gendeo Hagare also dealt a axe blow on the right neck below the ear and in that Tukaram had fallen on the ground and was in terrible agony. Accused no.2 Navnath Bhiva Hagare also assaulted Tukaram Hagare. Accused no.3 Ganpat Bhiva Hagare also beat PW-1 Sajabai on her face and back. After the incident, the accused persons disappeared and complainant Sajabai sat weeping near Tukaram. After some time, Vanita Dnyanoba Hagare – sister in law [not examined by the prosecution] came there. PW-1 Sajabai asked her to sit, and proceeded in village and narrated the incident to the people.

3] Police came on the spot and PW-14 API Mr.Sanjay Kulkarni recorded the statement of Sajabai [Exh. 92]. As there was darkness, he deputed two Constables near the dead body of Tukaram.

4] PW-14 API Sanjay Kulkarni then registered the offence on the strength of Exh.92 vide Crime No. 54/2010 and he himself took the investigation. He again went to the spot of incident in night and recorded the statement of PW-4 Yadav Hanumant Mali [Exh.101]. He, then, sent Police Squad to arrest the accused. Accused no.3 Ganpat Bhiva Hagare, accused no.4 Vishwanath Nivruti Hagare, accused no.5 Kashinath Nivruti Hagare, accused no.6 Vishwanath Nivruti Hagare were arrested under panchanama Exh. 142 to 145. API Kulkarni also seized the clothes from the above four accused under seizure panchanama Exh.125 to 128.

5] On next day morning i.e. 06.10.2010 PW-14 API Kulkarni again went to the spot and drawn spot panchanama in Gat no. 741 [Exh.104]. He also seized pair of chappal, steel forcep, umbrella, tiffin box from nearby

spot. He also noticed the bullock-cart in the field. API Kulkarni seized the articles. He also drawn the inquest panchanama of the body of deceased Tukaram in presence of two panchas [Exh.105]. He, then, sent the dead body of Tukaram for post mortem at Sawargaon Primary Health Centre and also took photographs while drawing the panchanama of the spot.

6] On 06.10.2010, accused no. 2 Navnath Bhiva Hagare and accused no.1 Sadu @ Vikas Gendeo Hagare were arrested under panchanama Exh. 146 and 147. He also seized the blood stained clothes of accused no.2 Navnath Bhiva Hagare under panchanama Exh. 130 and blood stained clothes of accused no.1 Vikas under seizure panchanama Exh.131. The blood stained clothes of deceased Tukaram was also seized under seizure panchanama Exh.129.

7] PW-1 Sajabai was also referred for medical examination on 05.10.2010. API Kulkarni recorded statement of Dnyaneshwar Gorakh Mali and Bhagwat Babu Hagare [PW-2] on 06.10.2010. He recorded the

supplementary statement of Bhagwat Babu Hagare on 07.10.2010. API Kulkarni received the detailed post mortem report on 08.10.2010 Exh.98. According to PW-3 Dr. Sachin Swami, injury no.1 found on the right side neck of deceased Tukaram was sufficient to cause death in ordinary course. On 09.10.2010, accused no.1 Sadu @ Vikas Hagare made voluntary statement to produce the axe used in the commission of offence and at his instance axe [article 21] was recovered vide memorandum panchanama Exh.132 and seized under panchanama Exh.133 from the field of Kashinath Doke. On 10.10.2010, at the instance of accused no. 2 Navnath Bhiva Hagare '*Rumane*' [wooden handle of plough] [Article 22] was recovered vide memorandum panchanama Exh.134 and it was seized under seizure panchanama Exh.135 from the field of Kashinath Doke.

8] API Kulkarni also drawn the map of the spot of incident [Exh.107] from PW 7 Madhukar Laxman Nirantar, Naib Tahsildar. API Kulkarni also collected the blood samples of accused from Medical Officer. He also collected the blood sample of the deceased Tukaram. On

16.10.2010, he recorded the supplementary statement of Sajabai. In the supplementary statement, Sajabai has stated about the role of accused nos. 4 to 6 in the incident.

9] PW-14 API Kulkarni also collected the attendance record of accused no.1 Vikas @ Sadu from State Transport Corporation, Tuljapur where accused no.1 Vikas is posted as S.T. Driver. Exhibit-123 is the said record. API Kulkarni also collected the 7/12 extract of the land Exh.148. He also recorded the statement of witnesses. He also collected the medical certificate of Sajabai. On 30.12.2010, he sent the seized muddemal articles, seized clothes of the deceased and accused persons, blood sample bottle of deceased Tukaram and accused to C.A. Aurangabad through Police Constable PW-13 Nisar Musa Shaikh. C.A. reports are at Exh.149, 150, 151, API Kulkarni also made query from Medical Officer regarding injury no. 2 and 3, whether it was caused by forcep. After completing the investigation, the charge sheet was filed against the accused on 01.01.2011 for the offences mentioned above.

10] As the offence under section 302 of Indian

Penal Code is exclusively triable by the Court of Sessions, therefore, the Judicial Magistrate First Class, Tuljapur committed the case to the Court of Sessions.

11] The charge under Section 147, 148, 302 r/w. 149, 323 r.w. 149 of Indian Penal Code is framed against the accused by the trial Court at Exh. 63. The contents of the charge were read over to accused in Marathi. The accused pleaded not guilty and claimed for the trial.

12] After full-fledged trial, the trial Court convicted the original accused no. 1 Vikas @ Sadhu for the offence punishable under Section 302 of IP Code and he is sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- [Rs. Five Hundred only], in default, to undergo simple imprisonment for a period of three months. The other accused are acquitted from the offence punishable under Section 302, 147 and 148 of IP Code. It appears that, except the present appellant – original accused no.1, all other accused are acquitted from the offence punishable under Section 302 of IP Code. The appellant – original accused no.1 and co-accused namely Ganpat Bhiva Hagare

are convicted for the offence punishable under Section 323 r.w. 34 of IP Code. Hence this Appeal filed by the appellant – original accused no.1 – Vikas @ Sadhu Gendev Hagare [Mali].

13] The learned Senior Counsel appearing for the appellant submitted that, the Sessions Judge relying upon the sole testimony of PW-1 Sajabai came to the conclusion that, the injury no.1 found on the right side neck on the person of Tukaram was sufficient to cause death in ordinary course. It is submitted that, said Sajabai was not at all present on the spot of incident, having regard to the evidence of the other witnesses. Her evidence does not inspire confidence. It is submitted that, though PW-1 claimed that, the appellant and the accused no. 3 assaulted her by wooden handle [plough] she has not sustained any injuries. PW-1, being interested witness and is having animus against the appellant due to the dispute over the land, it appears from her evidence that, she was bent upon to involve the present appellant in the alleged crime. There is no other independent witness examined by the prosecution to support the prosecution case. It is submitted that, the prosecution has failed to prove other

injuries except injury no.1, sustained by the deceased Tukaram. The spot of incident is also doubtful, on the contrary there is every possibility that, the death of Tukaram is occurred accidentally while he was cleaning the said wooden handle. It is submitted that, sole testimony of PW-1 cannot be accepted since he is interested witness. Her evidence is not corroborated by any other evidence brought on record by the prosecution. The evidence of Medical Officer is in variance with the prosecution story, which creates serious doubt. The evidence of PW-4 Yadav is not supporting to the prosecution case. The Investigating Officer has failed to explain the delay in lodging the FIR as well as sending the said Sajabai PW-1 for medical examination. The evidence on record appears to be concocted. The recovery panchanama which was carried out on 9th October, 2010 is almost after a period of 5 days after the appellant has been arrested. C.A. report does not support the case of the prosecution, inasmuch as there is blood found on the axe which does not tally with the blood on the clothes of the deceased.

14] It is submitted that, the presence of PW-1 on the spot was doubtful, since her clothes were not stained

with blood. The deceased Tukaram sustained as many as 6 injuries. It is submitted that, though she stated in her statement before the Police that, 6 accused persons were present on the spot, and overt act is attributed to them. In her deposition before the Court, she has only named three accused persons. It is further submitted that, though PW-1 claimed in her evidence that, there was heavy rain on the date of incident. During her cross examination, she stated that, there was no mud on the clothes of Tukaram. It is submitted that, even about recording the supplementary statement, the prosecution story is not reliable inasmuch as the Investigating Officer in his evidence has stated that, supplementary statement was recorded on 16.10.2010, however, the record shows that, it was recorded on 06.10.2010. It is submitted that, though PW-1 and PW-2 have claimed that, Tukaram was taken to the Hospital on the same night of the incident. However, spot panchanama and inquest panchanama would unequivocally indicate that, dead body of Tukaram was lying on the spot even in the early morning of 6th October, 2010. It is submitted that, it is stated by the PW-1 that, after assault on Tukaram she sat near dead body of Tukaram, her sister namely Vanita came there. However, in the FIR she stated that, after assault on

Tukaram she went to village and then she came back. It is further submitted that, if the evidence of the prosecution witnesses is considered in its entirety, the same is not reliable, cogent, and no conviction should have been ordered on such shaky evidence brought on record by the prosecution. It is submitted that, it has come on record that, there was civil dispute, pending between the parties and that was the reason to falsely implicate the appellant in the alleged offence. It is submitted that, the appellant is in employment of the State Road Transport Corporation, and it is improbable that, he is involved in the commission of offence.

15] The learned Senior Counsel appearing for the appellant invited our attention to the grounds taken in the appeal memo, and the evidence on record and submits that, the prosecution utterly failed to prove the case beyond reasonable doubt, and therefore, the appellant is entitled for benefit of doubt. He invited our attention to the exposition of the Supreme Court in the case of ***Shankarlal Vs. State of Rajasthan***¹, in the case of ***Lallu Manjhi and another Vs. State of Jharkha***², In the case of ***Suresh***

1. AIR 2004 SC 3559

2. AIR 2003 SC 854

Chaudhary Vs. State of Bihar³ and in the case of **Hem Raj and others Vs. State of Haryana**⁴ and submits that, PW-1 is interested witness, and her evidence suffers from the omissions, contradictions and does not get corroboration from the other evidence on record, and therefore, deserves to be disbelieved. The learned counsel further invited our attention to the exposition of the Supreme Court in the case of **Babu Ram and Ors. Vs. State of Punjab**⁵ and in the case of **Barijana Thirupala and others Vs. Public Prosecutor, High Court of A.P., Hyderabad**⁶ and submits that, non examination of the independent witnesses makes the prosecution case doubtful, and therefore, the appellant deserves to be given benefit of doubt. He further invited our attention to the reported Judgments in the case of **Kailash Raghunath Ambedkar & Anr. Vs. State of Maharashtra**⁷, in the case of **Tulshiram Bhanudas Kambale and others Vs. State of Maharashtra**⁸, in the case of **State of Maharashtra Vs. Prabhu Barku Gade**⁹ and in the case of

3. AIR 2003 SC 1981

4. AIR 2005 SC 2110

5. AIR 2008 SC 1260

6. [2002] 6 SCC 470

7. 2004 ALL MR [Cri.] 3257

8. 2000 Cri.L.J. 1566

9. 1995 Cri.L.J. 1432

Kansa Behera Vs. State of Orissa¹⁰ and submits that, if the *muddemal* articles are not properly sealed then such evidence cannot be relied upon. It is further submitted that, if there is defective or faulty investigation and there is no sufficient evidence on record to convict the appellant, the benefit of doubt should have been given to the appellant. In support of this contention, he pressed into service exposition of the Supreme Court in the case of ***Sunil Kundu & another Vs. State of Jharkhand***¹¹, ***in the case of Motilal and another Vs. State of Rajasthan***¹² and in the case of ***L/NK, Meharaj Singh Vs. State of U.P.***¹³. Therefore, he submits that, appeal deserves to be allowed.

16] On the other hand, the learned APP appearing for the Respondent – State invited our attention to the evidence of PW-1, and also PW-2 and the Medical Officer and submits that, PW-1 was eye witness to the incident. Even one injury was found on her person, and medical evidence fully supports the prosecution case. The evidence of PW-1 gets corroboration from the medical evidence. The

10. AIR 1987 SC 1507

11. [2013] 4 SCC 422

12. [2009] 7 SCC 454

13. 1995 Cri.L.J. 457

prosecution has brought on record *motive* for commission of offence, and therefore, the trial Court has rightly convicted the appellant, hence, Appeal may be dismissed.

17] We have given careful consideration to the submissions of the learned Senior Counsel appearing for the appellant, and the learned APP appearing for the Respondent – State. With their able assistance, we have carefully perused the evidence of the prosecution witnesses so as to re-appreciate the same. The prosecution examined Sajabai Bhagwat Hagare as PW-1, who in her evidence stated that, Balu and Tukaram are her sons. Her son namely Balu resides at Surat in Gujarat State. The incident occurred prior to 11 months. On the day of incident, she herself and her son namely Tukaram was present in the agricultural field. The said field is called as '*Nagapur*' field. There is a dispute over 17 Gunthas of land in Nagapur field between the family of PW-1 and the accused no.1 Vikas, accused no.2 Navnath and accused no.3 Ganpat. The dispute was going on in Tuljapur Court. Accused no.1 Vikas is also called by the name Sadhu. It is further stated that, Tuljapur Court granted order of injunction in their favour in respect of disputed field.

18] PW-1 further deposed that, at about 5.00 to 5.30 p.m. accused no.1 and accused no. 3 came in the disputed 17 R. land and started ploughing [*Kulawane*]. PW-1 and Tukaram went near accused persons and asked them as to why they are ploughing the land when Tuljapur Court granted order of injunction in their favour. The accused no. 3 Ganpat then started giving kick and fist blows to her. The accused No.1 Vikas then beat her on her hip by means of handle of plough [*Rumane*]. In that, handle of wooden plough had fallen on the ground. The accused no.1 Vikas assaulted Tukaram on his right neck by means of axe. Due to the assault, Tukaram was in terrible agony due to the injury. The disputed field is just adjacent to the village. Tukaram breath his last on the spot where he was assaulted. The accused nos. 1 to 3 then ran away from the spot. Except accused nos. 1 to 3 no other person was present in the field. She was sitting near Tukaram. Vanita, her sister in law came there. Police came on the spot. Police asked her about the incident and she narrated the incident to the Police. Police recorded her statement. Police obtained her thumb impression on the statement. She further stated that, the contents of the complaint read over to her are correct. She also identified thumb

impression on the complaint. She identified accused nos. 1 to 3, who came to their field and also ploughed the field and assaulted PW-1 and Tukaram. She also identified the handle of wooden plough [Rumane]. She further stated that, it is the same, which was used in the incident. So far accused nos. 4 to 6 are concerned, she identified them in the Court and she stated that, they belong to their village. She was cross examined by the advocate appeared for the accused nos. 1 and 2. She denied suggestion that, the disputed land was purchased by the father of Ganpat from Sudam Hagare. She further stated that, it is true that, in consolidation scheme 17 R. land was shown in the name of Ganpat. The dispute went up to the Deputy Director, Land Record, Aurangabad. She further admitted that, the matter was compromised, and the name of Ganpat was deleted from 17 R. land. She denied suggestion that, as they prepared forged documents for compromise, therefore, Ganpat filed a criminal complaint before the Tamalwadi Police under Section 420 of I.P. Code. Her husband and Sarpanch Bhau Patil of their village have also come to the Court. She further stated that, the disputed field is in their possession. They were cultivating the said field. Her husband Bhagwat filed a complaint against the accused

nos. 1 to 3 for committing theft of Jawar from the field. She stated that, accused no.1 Vikas is a S.T. driver. Vikas beat her husband by means of belt by saying that why case of theft was filed against him as he was on duty. Vikas was booked in Chapter Case under Section 110 of Criminal Procedure Code. She stated that, since Vikas beat her husband, therefore, she herself and her husband were annoyed and are having grudge against Vikas. She further stated that, the accused no.1 Vikas wanted to purchase the disputed land from Ganpat. Tukaram was serving in Pune at the time of incident. There was no dispute between her son Tukaram with accused no.1 Vikas and accused no. 3 Ganpat. The dispute was between PW-1, her husband and accused no. 1 Vikas and accused no. 2 Navnath. She further stated that, on the day of incident, she herself and Tukaram had gone to the field after taking the meal. They did not carry tiffin with them. She further stated that, she know the accused no. 1 Vikas and accused no. 2 Navnath were canvassing during Grampanchayat election for Santosh Bobade. She further stated that, it is true that, on the day of incident, there was heavy rain fall in the village. She further stated that, if the accused nos. 1 and 2 are convicted, there will be end of the agricultural dispute. She

did not visit the Police Station on the day of incident. Her husband Bhagwat went to Mohol to see Sudam Hagare, who was not keeping well on the day of incident. Complaint was lodged to the Police after arriving of her husband. Her husband came at about 11.00 in the night at Mohol. On the day of incident, she was present in the Nagapur field. At about 10.00 a.m., she had gone to Nagapur field. They were present in the said field prior to arrival of accused nos. 1 to 3. The accused nos. 1 to 3 ploughed two strips in the land. Due to the wet soil, while ploughing the field, one has to remove the wet soil from the iron strip, which is going to the soil at the time of ploughing by standing the iron strip. She further stated that, Tukaram was carried in the Hospital by bullock cart. Tukaram was brought to the Hospital at about 11.00 p.m. She specifically stated that, she did not state to the police the names of other accused nos. 4 to 6. She cannot assign any reason as to why the names of other accused are mentioned in her complaint. She shouted at the time of giving her fist and kick blows by accused Ganpat, however, nobody was present in adjoining respective fields. Tukaram intervened when she was beaten by Ganpat. Navnath assaulted Tukaram by means of handle of plough thereby he fallen. It did not happen

that, she ran towards the village to call the people for help. She did not state in the complaint that, those six people will beat them, therefore, she went running to the village in order to take help of other persons from the village. She stated that, portion marked 'A' shown to her from her complaint, was not stated by her in her complaint. She further stated that, it did not happen that, after coming in the village she told many people but nobody accompanied her, and therefore, she returned to the spot of incident. Portion marked 'B' shown to her was not stated to Police by her. She further stated that, she has not stated in complaint that, she told her sister in law Vanita to sit in the field and she went in the village and informed the people in the lane. She also denied portion marked 'C' from her complaint. She stated that, she was sitting near Tukaram. Blood was oozing from injury sustained by Tukaram and some blood was gathered on her hand at the relevant time. The post mortem of Tukaram was conducted on the next day morning at 10.00 a.m. She denied suggestion that, her husband narrated the complaint to Police and she only put thumb impression. She further denied suggestion that, since accused Vikas and Navnath belong to the group of Santosh Bobade, therefore, on the say of her husband and

Bhau Patil, she lodged false complaint against accused. She further denied suggestion that, merely because Navnath is real brother of Ganpat, therefore, Navnath is falsely implicated. She further denied suggestion that, as Vikas beat her husband by belt, therefore, he was also implicated falsely. She denied suggestion that, accused nos. 1 to 3 were not ploughing the land on the day of incident. She denied suggestion that, while removing the wet soil from the ploughing instrument, Tukaram slipped and fallen on the iron strip of the plough and sustained injury. She stated that, her saree did not sustain blood stain or wet soil on the day of incident. She denied suggestion that, she did not witness the incident of assaulting Tukaram by accused no.1 Vikas by means of axe and by accused Navnath by means of handle of wooden plough [Rumane]. She denied suggestion that, she did not witness the incident of assaulting Tukaram by accused no.1 Vikas by means of axe, and thereafter, the incident of running away from the spot by accused nos. 1 to 3. She also denied suggestion that, she was not beaten by means of fist and kick blows by Ganpat. She denied suggestion that, her son Tukaram sustained accidental death in the field. She denied the suggestion that, because dispute is

pending between Ganpat and her husband, therefore, she lodged false complaint.

19] This witness was further cross examined by the learned counsel appearing for the accused no.3. She admitted that, Ganpat lodged a complaint against them, therefore, their relations with Ganpat became strained.

20] It appears that, PW-1 was re-examined by the learned APP. In her re-examination, she stated that, Nagapur field is also called as 'Nagobapur field'. Nagobapur field is divided into three pieces. There are two pieces of land of Nagobapur other than piece of land of disputed 17 gunthas. She herself and Tukaram were present on the whole day on the day of incident in other two pieces of lands of Nagobapur. She further stated that, she is illiterate, she cannot understand the time in the watch. She also stated that, she does not know how many minutes consists of one hour. She further stated that, she also does not know about the distance in kilometers. During her cross examination by the counsel appearing for the accused nos. 1 and 2, she stated that, in the morning

on the day of incident, she herself and Tukaram went to the agricultural field. She is the owner of three pieces of Nagobapur land. The said lands are adjacent to each other. There is no bandh in between three pieces of lands. Within one and half minute, one can reach to the disputed 17 R. land from other two pieces of the land.

21] The prosecution examined Bhagwat Babu Hagare as PW-2, who is husband of PW-1. In his deposition before the Court he stated that, he know all the accused sitting in the Court. He had dispute with accused no.1 Vikas, accused no. 2 Navnath and accused no. 3 Ganpat. There is dispute between him and accused nos. 1 to 3 over 17 R. land of Nagobapur field. According to PW-2 the said 17 R. land belongs to him. He further stated that, civil suit is filed in Tuljapur Court and order of injunction is passed in their favour. However, the accused nos. 1 to 3 used to obstruct them in the field. Accused nos. 1 to 3 beat him. They also beat his wife thereby she sustained bleeding injury to her head. He went to the Police Station Tamalwadi. Police did not take any cognizance, therefore, he went to the Court. On one day, he was travelling by S.T.

bus and accused no.1 Vikas sat near him. He took out the documents from the pocket of his shirt. The documents were 7/12 extracts. Then he returned these documents to PW-2. He told him that, one day night, he came to his house at Sawargaon. Accused Vikas further told him that, he came to kill PW-2, however, PW-2 was in sleep, and therefore, he did not kill him. Vikas further told him that, he came to his house with axe. Vikas further told him that, he came with other two person i.e. accused no.2 Navnath and accused no. 3 Ganpat to his house. Accused No.1 told him that, he came so as to finish him. Accused no. 1 Vikas had also written on the door of his house in the blue ink that, '*Me Sadhu Boltoya, Tukaram Tuzya Bhagwatcha Me Kata Kadnar Aahe*'. When PW-2 was travelling by S.T. bus to Wadala, accused no. 1 Vikas came in the said S.T.bus. Accused no.1 Vikas told PW-2 that, he will come in his field and will kill him and then he will go on duty to Nashik and will obtain the medical certificate from Nashik about his headache and then PW-2 can do nothing. He stated that, accused nos. 1 to 3 killed his son Tukaram. On the day of incident, he had gone to see his cousin who was ailing at Mohol. On next day i.e. on 5th October, 2010, he went to S.T. stand. He went at about 5.00 to 6.00 p.m. in the

evening on S.T. stand. He was having mobile. He received a phone call from his daughter Shobha, who was present in his house in Savargaon. She told him that, Dada come to home urgently, as Tukaram was murdered by axe. She was weeping on phone. He came to Solapur by S.T. bus, then to Tamalwadi at about 10.00 p.m. from Solapur by bus to the house of his relative. When he arrived in his house, his wife was weeping. She told him that, accused nos.1 to 3 killed Tukaram. Tukaram was murdered by giving assault by axe. He was murdered in the disputed 17 R. land of Nagobapur field. At the relevant time, he was possessing order of injunction granted in their favour about the disputed 17 R. land by the Court at Tuljapur.

During his cross examination, he stated that, there are no proceedings pending before the Land Record at Osmanabad. There was no compromise between him and Ganpat earlier about the land. He filed a suit against accused nos. 1 to 3 in Tuljapur Court as they obstructed their possession. He further stated that, it is true that, Ganpat has filed criminal complaint against him under Section 420 of I.P. Code. He further stated that, whether

the name of the Ganpat was mutated earlier in 7/12 extract is not known to him. He further stated that, he has filed a criminal complaint in Tamalwadi Police Station against accused nos. 1 to 3 and their wives for theft of Jawar. Tukaram was also serving in Pune. However, he admitted that, there was no dispute between Tukaram and accused nos. 1 to 3 and Tukaram was well build physically. He denied suggestion that, out of political motivation, he is making allegations against the accused persons. He did admit about the compromise taken place between himself on one side and Nivrutti and Ganpat in respect of Gat No. 741 before the office of the land record, Osmanabad. However, he stated that, he is not aware whether Ganpat has filed application in the office of Deputy Director of Land Record, Aurangabad. He further stated that, when he came to Tamalwadi, at that time his wife had returned to village Sawargaon from his village. When he reached to Savargaon at that time body of the Tukaram was brought in the Hospital. He had seen dead body of the Tukaram in the Hospital. He had gone to the Police Station, Tamalwadi. Nobody was with him to the Police Station. He denied suggestion that, his wife never told him that, accused nos. 1 to 3 killed Tukaram. He further stated that, police

recorded his statement on next day of incident. He further stated that, he lodged the complaint to the Police regarding threat given by the accused Vikas earlier. He denied portion marked 'A' 'B' and 'C' from his police statement. He further stated that, portion marked 'D' and 'E' in his supplementary statement was not correctly recorded by the police. He denied suggestion that, accused nos. 1 to 3 belongs to Congress Party and he himself belongs to Rashtrawadi Congress, and therefore, in collusion with Bhau Patil the accused nos. 1 to 3 were falsely implicated. He denied suggestion that, Tukaram was not murdered, but he died as he fallen on the iron strip of plough while cleaning the mud of iron strip. He was further cross examined by the advocate for the accused no.3. He stated that, he filed suit bearing No.52/2010 against Ganpat in Tuljapur Court. After filing suit, ad-interim ex-parte injunction was granted in his favour.

22] The prosecution examined Dr. Sachin Revansidha Swami as PW-3, who was working as an Medical Officer in Primary Health Centre, Sawargaon. At about 10.00 a.m. he started performing the post mortem of

deceased Tukaran from 10.30 a.m. and completed the post mortem at about 11.30 a.m. He stated that, he found the dead body was of a male gender and aged approximately 25 years. Deceased Tukaram was wearing white T-shirt, which was blood stained and he was wearing a black colour pant. The dead body was found well nourished and cold. Rigor mortise was well marked in dead body. He also noticed the eyes of the body was found open and mouth closed. He found mark of blood over neck and right cheek. He found following external injuries on the body of deceased:

- 1] *Cut injury / chop injury, horizontal over neck of size 6.5 c.m. long, 2.5 c.m. width and 5.5 c.m. in depth;*
- 2] *Stab injury – vertical over right side of neck of size 1.5 c.m. x 0.5 c.m. x 3.5 c.m.;*
- 3] *Stab injury 1 c.m. x 0.1 c.m. x 2.5 c.m. over neck right side below the angle of mandible;*

He also noticed the internal injuries – structure injured by injury no. 1 are skin, subcutaneous tissue, sternomastoid muscle, carotid vessels cervical vertebra about 50% and spinal cord 50%. Structure injured by injury no. 2 and 3 are skin subcutaneous tissue and muscle.

- 4] *Penetrating injury over right side of neck size 0.1 cm. in diameter and 4 c.m. in deep.*

There was no injury found on the skull. Brain was found pale in colour.

Thorax-walls, ribs and cartilages were intact. Larynx, Trachea and Bronchi, Pleura pale, Right lung, left lung, pale.

Abdomen-Walls, Peritoneum and Cavity was found intact. Bucal Cavity, teeth, tongue and pharynx – teeth clenched, tongue inside mouth. He found in stomach and small intestine semisolid food material. Faecal matter and gases found in large intestine. Liver and gall bladder, pancreas and suprarenals, spleen with weight, and kidneys with weight pale. Bladder found full with urine.

23] In his opinion, probable cause of death is haemorrhagic shock due to injury No.1 – cut injury. Accordingly, he prepared post mortem in his handwriting and also bears his signature. He further stated that, injuries mentioned in column no.17 in his post mortem report were ante mortem injuries. The injury no. 1 cut injury / chop injury is possible by axe article 21 now which

was shown to him. The injury no.2 and 3 in column no. 17 are possible by fork article 3 shown to him. However, he opined that, injury no. 1 is sufficient to cause death in ordinary course. After post mortem, he issued the provisional cause of death certificate. He identified the contents and his signature on the said certificate.

24] This witness was cross examined at length by the defence. He stated that, the dead body of Tukaram was brought in the night in PHC. There is no mortuary available in PHC Sawargaon. He was not staying in PHC in Sawargaon in the night of 05.10.2010. There was another Doctor in the night but he did not inform him about the dead body of Tukaram, which was brought in PHC. Doctor, who was on duty in the night, did not perform post mortem. He stated that, there is iron blade fixed below the harrow. It is true that, the said blade is heavy and having sharp edge. He further stated that, he made an inquiry with Police about the clothes of deceased, which were with the relative, and he came to know that, the clothes were wet because of the rain which had fallen earlier day of the post mortem. However, he did not notice any mud on the

clothes of the deceased. He stated that, blood was not accumulated in the body of Tukaram, but there was loss of blood external due to injuries. The spot of incident is the field which is approximately 1 kilo meter away from PHC. Police requested him to preserve a blood sample of deceased. He preserved the blood sample of deceased in two bottles. He stated that, death of Tukaram took place before 12 hours and within 24 hours period. He further stated that, the death of Tukaram might have occurred on 05.10.2010 between 10.00 to 11.00 a.m. However, he further stated that, the death may be occurred after 11.00 a.m. also. He further stated that, injury no. 1 may not be possible if by harrow blade if it was standing and if a person falls on the iron blade of the harrow. The injury no. 1 may not be possible if a person falls on the sharp corner of harrow placed vertically. However, he admitted that, he did not mention the margins of injuries in his post mortem report whether they were regular or irregular. He stated that, no injury is caused to the deceased by the handle of harrow [Kulav]. There was no injury noticed on the head of deceased by means of handle of harrow. He prepared post mortem report on 8th October, 2010 and handed over to the police on 29th October, 2010. Article-3 fork is used by the

Doctors as medical instruments. He stated that, he did not observe ecchymosis around the injury of deceased. He further stated that, it is true that, absence of ecchymosis may suggest the post mortem injury. He had given two bottle of blood sample of deceased to Police. He denied suggestion that, he had written the word chop injury in his post mortem report in column no. 17 after hearing from police about the weapon. He denied suggestion that, police had shown him the weapons before post mortem. He stated that, he had given the letter Exh.100 to police without seeing the weapon of fork. He also admitted that, he did not do the microscopic examination of the injuries. This witness, at the cost of repetition, stated that, injury no. 1 is sufficient in ordinary course to cause death. He denied suggestion that, injury no.1 is possible by the blade of harrow. He denied suggestion that, the death of Tukaram is a accidental death and not a homicidal death.

25] The prosecution examined Yadav Hanuman Mali as PW-4. He stated that, he knows all accused persons present before the Court. He knows Bhagwat Hagare of Sawargaon. He also knows Tukaram, son of Bhagwat

Hagare. He is no more alive. Before one year, Tukaram was murdered. He resides after two houses of the house of Bhagwat Hagare. He does not know the relations between Bhagwat Hagare and accused nos. 1 to 3. His field is located at the left side of Kemwadi road. Then against he says that, same is located at the right side of Kemwadi road. On the day of incident, he was returning from his field to the village. The time was 5.30 p.m. in the evening. The villagers were going towards the field of Bhagwat Hagare by uttering the words '*Khun Zhala, Khun Zhala*'. However, he stated that, he has not seen accused nos. 2 to 6 came running from the side of field of Bhagwat Hagare. The learned APP sought permission from the Court to cross examine this witness since witness was not supporting the case of the prosecution, accordingly permission to cross examine him, was granted. In his cross examination, he stated that, it is true that, after the murder of Tukaram, Police came in the village and made inquiry with him. He denied portion marked 'A' from his statement recorded by the Police. However, he stated to the Police in his statement that, at about 5.30 p.m. he saw 5/6 persons came running from the side of field of deceased Tukaram Hagare on Kemwadi road and in that 5/6 persons namely

Vishwanath Nivruti Mali, Kashinath Mali, Ganpat Hagare, Vishwanath Hagare, Navnath Hagare were present and Navnath Bhiva Hagare was the last between the above named people and Navnath Hagare sustained blood stained on his Dhoti. He stated that, portion marked 'B' in his police statement is not correctly recorded by the police. He further stated that, it is true that, the villager came running from the village and were going towards the field of Tukaram. He also went towards the field of Tukaram along with the villagers. He saw Tukaram in dead condition in his field. He saw Sajabai, mother of deceased Tukaram, was weeping near the dead body. However, he stated that, he did not ask anything to Sajabai or Sajabai did not tell anything to him. He stated that, he cannot assign any reason as to why police had mentioned portion marked 'A', 'B' and 'C' in his statement. He stated that, all the accused belongs to his village.

26] It is true that, this witness had not supported the prosecution case. However, his evidence supports the prosecution case to the extent that, on the day of incident, he was returning from his field to the village. The time was

5.30 p.m. in the evening. The villagers were going towards the field of Bhagwat Hagare by uttering the words 'Khun Zhala, Khun Zhala'. During his cross examination by APP, he further stated that, the villagers came running from the village and were going towards the field of Tukaram and he also went towards the field of Tukaram along with the villagers. He saw Tukaram in dead condition in his field and he saw PW-1 Sajabai mother of Tukaram was weeping near the dead body. Though, this witness was declared hostile, his version from his evidence to the above extent supports the prosecution case, which can be taken into consideration.

27] The prosecution examined Harischandra Vishwanath Doke as PW-9. In his examination in chief, he stated that, he knows complainant Sajabai, her husband Bhagwat and deceased Tukaram. He knows them because Bhagwat hails from his village. The spot of incident and the field of Bhagwat is at a distance of 700 to 800 feet away from his field. He knows all the accused present before the Court. There was dispute going between Vikas, Navnath and Ganpat with Bhagwat Hagare in Tuljapur Court about the land. The relation between them were not cordial.

Tukaram is no more alive. He died before one year. He was working in his field on the day when Tukaram expired. He saw many people on the road going towards the field of Bhagwat. By seeing the people, he went along with them to the field of Bhagwat. He saw dead body of the Tukaram lying in the field. He saw big injury on the right side of neck of Tukaram. He also saw a small injury near the big injury on the right side neck of Tukaram. Mother of Tukaram was also present near the dead body of Tukaram. However, he denied that, mother of Tukaram did tell him about the incident and the names of the assailants. It appears that, he was declared hostile and APP cross examined him. It is true that, so far actual incident is concerned, he stated that, Sajabai did not tell him about assault or assailants. He also denied portion marked 'A', 'B' and 'C' from his statement recorded by the Police. He stated that, he was called by Police on 6th October, 2010 at about 6.00 a.m. in the field of Bhagwat and one Rameshwar Hagare was called. Police told him that, they were going to draw the spot panchanama. He stated that, it is true that, the spot of incident is located at the western side adjacent to the village Sawargaon. Vanita Hagare had shown the spot of incident to Police and them. The field in which spot

of incident is located is called as Nagobapur field. In the said field, there was grass existing. There is a tamarind tree at a distance of 20 feet. One steel tiffin box was found lying behind the bullock cart in the field. A pair of chappal was also found near the tiffin box. The dead body of Tukaram was also found lying on the spot and near the dead body, one umbrella having steel rod was also found. There was also blood of Tukaram found on the soil. Police seized blood stained soil, simple soil sample, forcep, umbrella, pair of chappal in his presence. The lable bearing his signature was also affixed on the seized articles. Police had written panchanama as per the situation. After reading the panchanama, he put his signature on it. Rameshwar Hagare also signed on the panchanama. Inquest panchanama was also prepared in his presence. He saw big injury on the right side neck of Tukaram. There was also small injury noticed near the big injury on the right side of neck. After reading the panchanama, he signed on the inquest panchanama. He further stated that, article nos. 1 to 4 seized by the Police shown to him. Article nos. 1 to 3 bears his signature and thumb impression of another panch Rameshwar Hagare. The seized articles were the same, which were seized in his presence.

He was cross examined by the Advocate for the accused nos. 1 and 2. He denied suggestion that, he is deposing falsely that, when he went in the field of Bhagwat, at that time, Sajabai was sitting near the dead body of Tukaram. He denied suggestion that, he contested the Grampanchayat election against the accused.

The Supreme Court in the case of **Khujji @ Surendra Tiwari Vs. State of Madhya Pradesh**¹⁴ held thus :-

“The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

In the present case the presence of the eye-witnesses in the company of the deceased at the place of occurrence could not be doubted. One of the witnesses was injured in the incident. Immediately after the incident within less than an hour, before there was any extraneous intervention he went to the Police Station, narrated the incident and lodged the FIR. Since the FIR was a detailed document, it is not possible to believe that the investigating officer

14. (1991) 3 S.C.C. 627

imagined those details and prepared the document. The detailed narration about the incident in the FIR goes to show that the subsequent attempt of the witness to disown the document while admitting his signature thereon, is a shift. The only area where the witnesses had not supported the prosecution and resiled from their earlier statements is regarding the identity of the assailants. The evidence of the eye-witnesses was challenged by the prosecution in cross-examination because they refused to name the accused as the assailants of the deceased. The trial court made no efforts to scrutinise the evidence of these two witnesses even in regard to the factum of the incident."

Yet in another exposition in the case of **Prithi V/s State of Haryana**¹⁵ the Supreme Court held that, when a witness is declared hostile and cross-examined with permission of Court, his evidence remains admissible and there is no legal bar to record a conviction upon his testimony, if corroborated by other reliable evidence. Therefore, the trial Court was not correct in discarding the entire evidence of some of the witnesses on the ground that, they turned hostile without keeping in view the legal position stated by the Supreme Court in aforesaid cases.

15(2010) 8 SCC 536

28] The prosecution examined Rani Omprakash Lomate as PW-5, who was working as a Conductor in State Transport Corporation, Tuljapur at the relevant time. In her examination in chief she stated that, she know accused no. 1 Vikas @ Sadhu Gendeo Hagare [Mali]. Accused no.1 Vikas is also working as a S.T. driver in Tuljapur Depot, therefore, she knows him. She further stated that, on 05.10.2010, she was on duty as a S.T. Conductor on Tuljapur to Wadala Bus. Shri B.M. Gaikwad was the S.T. bus driver on that day. Her duty commenced at about 1.30 p.m. on Tuljapur Wadala bus. The said bus used to take three rounds from Tuljapur to Wadala. For the second round, the bus started at about 5.30 p.m. from Wadala to Tuljapur. Sawargaon is on the way from Wadala to Tuljapur road. The bus came at Sawargaon at about 5.45 to 6.00 p.m. At Sawargaon some passengers got down from the bus and some passengers entered in the bus. There is a request stop near Sawargaon Primary Health Centre and on that stop, some passengers were waiting. She further stated that, the passengers requested to stop the bus at the request stop. The bus then stopped at the request stop. Some passengers then entered in the bus. Accused no.1 Vikas was also entered in the bus from the request

stop. Accused no.1 Vikas sat in the driver cabin of the bus. Bus reached Tuljapur at about 6.30 p.m. All passengers including accused no.1 Vikas got down at Tuljapur. She can identify accused Vikas if shown to her.

During her cross examination, nothing useful to the defence has been elicited, except that the other accused present before the Court were not present in the passengers at Sawargaon and only Vikas was present.

29] The prosecution examined Rameshwar Dnyanoba Hagare as PW-6. In his evidence, he stated that, on 06.10.2010, he was not called by API Kulkarni. He knows Bhagwat Hagare. He knows Tukaram [deceased]. He stated that, Tukaram was his cousin. He had gone to the spot where Tukaram was dead. The spot of death is located in the Nagobapur field of the deceased. The API Kulkarni drawn panchanama in his presence. He stated that, field was barren land. There was bullock cart standing under the Tamarind tree in released condition. There was pair of chappals lying near the bullock cart. There was tiffin lying near the bullock cart. There was dead body of

Tukaram also lying in the field. There was pair of chappal and umbrella lying near the dead body. Pair of chappal and umbrella were seized by Police. Thereafter, panchanama was written. The contents of the panchanama were read over to him. Harischandra Doke was also another panch with him. After writing the panchanama, his thumb mark was taken as well as Harischandra Doke signed on the panchanama. The contents of the panchanama read over to him and he stated that the said contents are correct. Then, API Kulkarni prepared inquest panchanama of the dead body of Tukaram. He had seen the dead body of Tukaram, who had injured on his right neck. Panchanama was prepared as per the condition of dead body of Tukaram. API Kulkarni prepared inquest panchanama in his presence. He stated that, the contents of the said panchanama are correct. He obtained his thumb impression and also the signature of Harischandra Doke another panch. He identified umbrella article-2 and also another article-1 chappal. However, he has stated that, he had not seen article-3. He also identified simple soil and blood stained soil shown to him.

During his cross examination, he stated that, it is true that, the date 06.10.2010 mentioned in the panchanama is correct. Only one field is called as a field of Nagobapur. He further stated that, many persons were gathered near the dead body. However, he stated that, his thumb impression on the inquest panchanama was obtained in the Hospital on 6th October, 2010. He stated that, it is true that, while putting thumb impression on panchanama, the dead body was not present in the field. He denied suggestion that, he did not go to the field for spot panchanama. He denied suggestion that, spot panchanama and inquest panchanama were not prepared in his presence.

30] The prosecution examined Madhukar Laxman Nirantar as PW-7. In his evidence, he stated that, at the relevant time he was working as Circle Officer in Sawargaon Circle, Taluka Tuljapur. He went to draw the map of spot of incident. He prepared the map. He identified his signature on the said map. He submitted map to the Police Inspector with forwarding letter. He denied suggestion that, he prepared the map as per the say of M.V. Patil. He denied the suggestion that, he did not visit Gat No.741.

31] The prosecution examined Dr. Pandurang Shrirang Pawar as PW-8. In his examination in chief, he stated that, he was working as Medical Officer at Sawargaon Primary Health Centre since December, 2007. On 6th October, 2010, he was on duty in the Primary Health Centre, Sawargaon. Police referred to one Sajabai Bhagwat Hagare along with letter of medical examination to PHC. He medically examined Sajabai Bhagwat Hagare. He asked her about the history of the incident. She told him about the history of assault. He noted the injuries in the MLC register. He did not notice any visible injuries on the person of Sajabai. Sajabai told him that, she had a pain in her back due to the blow of stick. He issued medical certificate. He identified the contents of the said medical certificate. He stated that, due to blow of Rumane, Sajabai may have pain in the hip region.

During his cross examination, he stated that, without observing the injury, he has written the age of injury but witness volunteers that, he had touched the portion during medical examination where Sajabai stated about the pain. He further stated that, if the fist and kick

blows are given to a person then the skin colour of that person changes where he was assaulted by fist and kick blows.

32] The prosecution examined Dilip Dharma Jadhav as PW-10. In his evidence, he stated that, he was working as a Depot Manager in Maharashtra State Road Transport Corporation, Depot, Tuljapur. He did produce the record of the office duty of the accused Vikas Gendeo Mali. He stated before the Court that, Vikas Mali is a driver in Tuljapur Depot and his name appeared on the muster roll of the S.T. driver. As per the muster roll of Vikas Mali, he was absent continuously from 23rd September, 2010 till the date. He further stated that, the period 23rd September, 2010 to 11th October, 2010 mentioned in certificate of the absentee on duty of Vikas Mali is correct, as per the original muster record. The prosecution has brought on record through this witness that, prior to the date of incident and on the day of incident and thereafter also, the accused was not on duty. During his cross examination, he could not tell whether the accused Vikas Mali applied for leave for the said period.

33] The prosecution examined Babulal Amin Patel as PW-11. It appears that, he turned hostile and did not support the prosecution case. Therefore, he was cross examined by APP. However, during his cross examination also, he did not support the prosecution case. Therefore, his evidence is not useful to the prosecution.

34] The prosecution examined Savita Ashok Mane as PW-12. In her examination in chief, she stated that, she does not know the accused nos. 2 to 6 present before the Court. However, during her examination in chief, she stated that, on the day of incident at about 5.30 to 5.45 p.m., she was present at her house. She was sitting at the staircase of the door of her house. One man came to her house and asked her water to drink. She offered the water to that person. She stated that, the person to whom she offered the water was frightened and there was blood stained on his shirt. However, she stated that, she does not know, who was that person. However, she was declared hostile and learned APP cross examined her. During her cross examination, she stated that, it is true that, at about 5.30 to 5.45 p.m. Vikas @ Sadhu Gendeo Mali of her village

was proceeding in front of her house. He asked her a water to drink. She gave water to Vikas to drink. Vikas drunk the water. However, she stated that, it is not correct to say that, Vikas was in a frightened condition. Therefore the evidence of this witness is not useful to the prosecution.

35] The prosecution examined Nisar Musa Shaikh as PW-13. In his evidence he stated that, since 2009 he was attached to Police Station Tamalwadi. On 04.01.2011, he was on duty in Police Station. An offence was registered vide Crime No.54/2010 in Police Station Tamalwadi. API Kulkarni told him to carry the muddemal articles seized in Crime No.54/2010 to C.A. Aurangabad. The muddemal articles were in sealed pack. API Kulkarni also gave him a forwarding letter to C.A. Aurangabad along with the muddemal articles. He further stated that, he carried the muddemal articles on 05.01.2011 morning to Aurangabad. He had given the sealed muddemal articles to C.A. Aurangabad. Now he was shown the office copy of the letter written to C.A. by API Kulkarni, it bears the signature of API Kulknari and also the signature of C.A. Aurangabad for receiving the muddemal articles for examination. Office

letter is at Exh.140. He has submitted the receipt to the Investigating Officer. Nothing substantial has been illicitated during his cross examination by the defence.

36] The prosecution examined Sanjay Venkatrao Kulkarni as PW-14. His evidence is at Exhibit-141. During his examination in chief, he stated that, at the relevant time, he was attached to Police Station, Tamalwadi as Assistant Police Inspector. On 05.10.2010, he was present on duty in Police Station, Tamalwadi. He stated that, on 05.10.2010 at about 7.15 to 7.20 p.m, he received a phone call from one Katkar, resident of village Sawargaon. Katkar informed him on phone that, Tukaram Bhagwat Hagare expired in the field near stream at village Sawargaon. Thane Amaldar then made entry in the Station Diary about receiving the phone. He then proceeded with Police staff towards Sawargaon. He stated that, after taking information of the field, he himself and Police Staff proceeded towards the field near stream. He saw Tukaram Bhagwat Hagare lying in the field and near him complainant Sajabai with one another Lady were found sitting. She saw injury on the neck of Tukaram and many people gathered

there. As there was darkness, however, panchanama could not be drawn. He asked Sajabai about the incident. She gave the statement, which was recorded in writing. He stated that, after recording the statement, thumb impression of Sajabai was taken on it. He also signed on the said statement. Upon perusal of statement, he stated that, it bears thumb impression of Sajabai and his signature. He further stated that, statement of Sajabai was recorded on the spot. The contents of the same are correct.

37] He further deposed that, he then returned to Police Station, Tamalwadi. He registered the offence on the strength of the statement [Exh.92] vide Crime No. 54/2010. The endorsement registering the offence is in his handwriting and below it his signature on it. Then, he took the investigation of the crime with him. He stated that, while returning from field to Police Station, he had deputed two Police Constable near dead body of Tukaram Hagare for bandobast. He further deposed that, he again went to the spot of incident in the night. He recorded the statement of Yadav Hanumant Mali. He then sent a Police Squad to

arrest the accused. Four accused were nabbed by Police Squad. Four accused were brought to Police Station. Their names are Ganpat Bhiva Hagare, Vishwanath Krishnath Hagare, Kashinath Nivruti Hagare and Vishwanath Nivruti Hagare. He also drawn arrest panchanama of four accused in presence of two panchas. He was shown the four arrest panchanamas. Arrest panchanamas bears his signature and signature of panchas and the contents of the same are correct. There are also photos of accused affixed on the arrest panchanamas. Arrest panchanamas are at Exhibit 142, 143, 144 and 145 respectively.

38] He further deposed that, he seized the clothes of four accused under drawing separate panchanamas in presence of two panchas. He identified the said clothes before the Court. It bears his signature and also signature of the panchas. He further deposed that, on the next day morning, he again went to the spot of incident and then drawn spot panchanama in presence of two panchas. Panchanama was drawn from 6.00 a.m. to 7.00 a.m. The spot of incident is located in Gat No.741 in the field called as Nagobapur field. He found one bullock cart at a distance

of 15 feet long from tamarind tree in Gat No.741. He also found one pair of leather chappal lying in front of bullock cart. He also found tiffin box lying behind the bullock cart and also noticed one umbrella lying near the dead body of Tukaram. He also noticed one steel forcep lying near the left leg of Tukaram. He found blood stained soil near the dead body of Tukaram. He seized pair of chappal, steel forcep, umbrella. He took sample of blood mixed soil and sample of plain soil. He also drawn the panchanama as per the situation. He identified his signature and signature of one pancha and thumb impression of another panch. He also identified seized articles 1 to 4. Then he drawn inquest panchanama of dead body of deceased in presence of two panchas. It bears his signature. He obtained signature of one panch and thumb impression of another panch. He took photographs from the Photographer while drawing the spot panchanama. He sent the dead body of Tukaram for post mortem at Sawargaon Primary Health Centre. He took five photographs, which are articles A, B, C, D and E during spot panchanama. The Medical Officer gave provisional death certificate. Other two accused were arrested on 06.10.2010. He drawn arrest panchanama. He seized clothes of Navnath Bhiva Hagare and also clothes of

accused Vikas @ Sadu Gendeo Hagare in presence of panchas. He seized shirt, pant, baniyan having blood stained. He identified the said clothes before the Court. He recorded the statement of Dnyaneshwar Gorakh Mali and Bhagwat Babu Hagare on 06.10.2010. He recorded supplementary statement of Bhagwat Babu Hagare on 07.10.2010. He received detail report of post mortem on 8th October, 2010.

39] He further deposed that, on 09.10.2010 accused Sadu @ Vikas Gendeo Hagare made voluntary statement before him and panchas to discover the axe used in the commission of offence. Accordingly, the statement of accused Sadu @ Vikas was recorded and memorandum panchanama was drawn. Memorandum panchanama at Exh.132 is the same of accused Sadu @ Vikas. It bears his signature and signature of one panch and thumb impression of another panch and also the signature of accused Sadu @ Vikas. Its contents are correct. Accused Sadu @ Vikas stated before him and in presence of panchas that he will discover the axe which was used in the commission of offence, from the field of

Kashinath Krushnath Doke and said axe was hidden by him in the bush in the field of Kashinath Krushnath Doke. Accordingly, he himself, Police Staff, two panchas Babulal Hamid Patel and Rashid Munaf Shaikh and accused Sadu @ Vikas went by Police Jeep as directed by Sadu @ Vikas to the field of Kashinath Doke. Accused Vikas asked to stop the jeep near the field of Kashinath and he then got down from the Jeep and went in the field followed by them. Accused Sadu @ Vikas then went near the bandh in the field of Kashinath Doke and from the bush which was towards between West and South direction, took out the axe from the bush which was concealed by him and produced it. There was blood stains found on the axe produced by Vikas @ Sadu in the field of Kashinath Doke. The said axe was seized under seizure panchanama in presence of two panchas. Seizure panchanama of axe Exh. 133 is the same and it bears his signature and signature of one panch and thumb impression of another panch. It also bears the signature of accused Sadu @ Vikas. Its contents are correct. He was shown article 21 axe, he said that, it is the same, which was produced by the accused Sadu @ Vikas and seized by him. The axe bears the labels having his signature and signature of one witness and thumb

impression of another panch. Accused Vikas @ Sadu before the Court is the same person who made voluntary statement before him, and at his instance axe was seized by him. He further deposed that, on 10.10.2010, accused Navnath Bhiva Hagare made voluntary statement before him and at his instance Rumane [wooden handle of plough] was recovered. Then he issued a letter on 11th October, 2010 to the Circle Officer Revenue Department to draw map. Accordingly, Circle Officer drawn the map. He recorded the statement of witness namely Harichandra Vishwanath Doke on 15.10.2010. He gave a letter to the Medical Officer for collecting the blood samples of accused on 12th October, 2010. Accordingly, the Medical Officer collected the blood samples of the accused. On 16.10.2010 he recorded the supplementary statement of Sajabai Hagare. Thereafter, he issued a letter to Depot Manager, Tuljapur about giving details of the attendance of accused Vikas @ Sadu on the day of incident. Accordingly, Depot Manager, Tuljapur furnished the information as per his request.

40] He further deposed that, on 2nd November, 2010, he recorded statement of Prakash Shankar Mali. On

20th November, 2010, he recorded statement of Madhukar Shankar Nirantar. On 24.12.2010, he recorded the statement of Balaji Dnyandeo Sutar. On 25th December, 2010, he recorded statement of Shobha Navnath Gawali and Vanmala Dnyanoba Hagare. He recorded statements of Balu Mahadeo Gaikwad, Rani Omprakash Lomate and Savita Ashok Mane on 26.12.2010. On 27.12.2010, he collected the medical certificate of Sajabai. On 30.12.2010, he sent the seized muddemal articles to C.A., Aurangabad through Police Constable Shaikh B.No. 765. C.A. office, Aurangabad, received the letter and articles on 05.01.2011. The seized articles were sent to C.A. in sealed condition. He also issued a letter on 31.12.2010 to the Medical Officer for making query regarding injury no.2 and 3 mentioned in column no.17 of post mortem report as to whether injuries caused by seized forecep. Accordingly, Medical Officer replied by query by giving letter at Exh.100. He submitted the charge sheet before the Court accompanied with all the documents – reports. He also recorded the statements of Yadav Hanumant Mali, Harischandra Vishwanath Doke and Savita Ashok Mane as per their say. During investigation, Bhagwat Hagare produced a copy of application filed in Tuljapur Court in RCS No. 52/2006. He further stated that,

the Court at Tuljapur granted ad-interim *ex parte* temporary injunction in favour of Bhagwat Hagare. He also deposed that, the certified copy of the charge sheet against Navnath, Vikas, Ganpat and others under Section 379 of I.P. Code on the complaint of Bhagwat Hagare is also filed on record. Bhagwat Hagare filed a private complaint against accused Vikas @ Sadu Gendeo Hagare in Tuljapur Court. The certified copy of the said case along with its order is produced on record at Exh.162. Bhagwat Hagare also filed N.C. Case on 11.09.2010 against accused Vikas. Bhagwat Hagare was referred to medical examination after lodging the N.C. The medical certificate is produced on record. Accused Ganpat Hagare also filed a complaint in the Court, which was referred under Section 156 [3] of Criminal Procedure Code against Bhagwat Hagare. Accordingly, the FIR was registered and charge sheet was also filed. Copy of the said FIR and charge sheet is also on record.

41] PW-14 was cross examined by the defence counsel at length. He admitted that, he did not record the statement of Katkar. He stated that, he recorded the statement of Sajabai in the light of torch. However, he

stated that, torch light was not sufficient to draw inquest panchanama. He took Sajabai with him to the Police Station after recording the statement to obtain the thumb impression on FIR.

The learned senior counsel appearing for the appellant brought to the notice of this Court that, Sajabai never went to the Police Station as stated by PW-14. In this respect, it is relevant to mention that, information given to the Incharge Police Officer is to set investigation in motion. Said statement can be oral or in writing, and therefore, it has no bearing on the prosecution case that, accused Vikas killed deceased Tukaram, and to that effect sufficient evidence is brought on record.

PW-14 further deposed that, he recorded supplementary statement of Sajabai on 16th October, 2010. The learned senior counsel submitted that, record shows that, the statement of Sajabai was recorded on 6th October, 2010. However, PW-14 stated that, it is recorded on 16th October, 2010. It is submitted that, to fill in the lacunas in the prosecution case the supplementary statement of Sajabai was recorded. Upon perusal of the contents of first

statement of Sajabai, it is abundantly clear that, Sajabai has stated the manner in which the accused assaulted deceased, and therefore, supplementary statement of Sajabai, which have bearing on the case of the original accused nos. 4 to 6 is of no use to the defence since those accused are acquitted by the trial Court and even Sajabai stated before the Court that, only three accused were there at the time of commission of offence. PW-14 stated in his cross examination that, it did not happen that, the dead body of Tukaram was taken by a bullock cart to the Hospital in the night of 05.10.2010. The learned senior counsel for the appellant submitted that, PW-1 and PW-2 have stated in their evidence that, the dead body was taken to the Hospital on the same night. Therefore, there is variance in the version of PW-14 and PW-1 and PW-2 about when the dead body was taken to the Hospital, and therefore, the entire prosecution case appears to be concocted. In our opinion, whether the dead body was taken to the Hospital during that night or next day is the post offence event, which have no bearing on main incident of killing Tukaram by the accused persons, and therefore, minor omissions and contradictions would not play vital role in the facts and circumstances of this case. PW-14 denied suggestion that,

he had shown the seized steel forcep to the Medical Officer for ascertaining his opinion about injury nos. 2 and 3. In fact, when the injury no.1 itself was sufficient to cause death of Tukaram, as stated by the Medical Officer, PW-3, in his deposition before the Court, non explanation of other injuries would have no bearing on the prosecution case. However, PW-14 in his examination in chief has stated that, he has seized steel forcep from the spot, and therefore, merely because other injuries are not specifically explained nevertheless forcep recovered from the spot, and Medical Officer has opined that, remaining injuries are possible by the said forcep, the prosecution has explained those injuries. It is true that, during cross examination of PW-14, he stated that, Sajabai stated in complaint at Exh.92, the names of accused no.4 to 6. However, during examination in chief, Sajabai stated about the presence of only three accused persons. It is also true that, portion marked A, B and C from the police statement of Sajabai, though denied by her, but PW-14 stated before the Court that, said portion was stated by her. However, whether the accused nos. 4 to 6 were present on the spot or otherwise, would have affected on accused nos. 4 to 6, who are already acquitted. Therefore, certain omissions / contradictions which are not

substantial in nature, would not affect the prosecution case as a whole, so far killing of Tukaram by Vikas accused no.1 is concerned.

42] We have discussed the evidence of all prosecution witnesses in detail in the foregoing paragraphs. The case of the prosecution is based upon direct evidence of PW-1, and therefore, establishing motive by the prosecution was not necessary. However, in the present case, the prosecution has brought on record previous enmity between PW-2 and the accused nos. 1 to 3. The evidence of PW-1, PW-2, and the Investigating Officer [PW-14] unequivocally indicates that, PW-2 has filed a suit before the Competent Court of which the subject matter is disputed 17 R. land between the family of PW-2 and the accused nos. 1 to 3. Apart from filing of said civil case, other criminal cases have also been filed by PW-2 and even the accused persons against PW-2. The details in respect of those cases have been discussed while discussing the evidence of PW-2 and Investigation Officer [PW-14]. It has also come in the evidence of PW-2 that, accused – Vikas used to extend threats to him that, one day he will kill PW-2 and will not leave any evidence of such killing. The said

aspect has been also discussed in detail while discussing the evidence of PW-2. Therefore, the prosecution has brought on record clinching evidence to prove the motive, and accordingly proved the same. It is admitted position that, PW-2 and accused persons belong to same village, and also dispute did exist between them, and they know each other very well. It is true that, there are minor contradictions, omissions and improvements in the evidence of the prosecution witnesses. However, after discussing the evidence of all prosecution witnesses, we are of the opinion that, those omissions, contradictions and improvements are not so material, which would have impact upon the main incident of killing of Tukaram by the accused persons. The prosecution has brought on record through the evidence of PW-1 that, on the relevant day of incident, PW-1 along with her son Tukaram [deceased] went in the agricultural field at Nagapur land. It has also come on record that, the said field is divided into three parts, and there is dispute about one part consisting 17 R. land. On the relevant day of incident, in between 5.00 to 5.30 p.m. the accused no. 1 and accused no. 3 came in the disputed 17 R. land and started ploughing [Kulawane]. PW-1 and Tukaram went near accused persons and asked them as to

why they are ploughing the land when Tuljapur Court granted order of injunction in favour of complainant's family, and thereafter, the accused no. 3 Ganpat started giving kick and fist blows to PW-1. The accused no.1 Vikas then beat her on her hip by means of handle of plough [Rumane]. The accused no.1 Vikas assaulted Tukaram on his right neck by means of axe, and then the accused nos. 1 to 3 ran away from the spot. The fact that spot of incident was aforementioned land has been established by the prosecution beyond reasonable doubt through the evidence of PW-1, PW-2, PW-4, PW-9 and PW-14. The prosecution has also proved inquest panchanama and prosecution witness has noticed cut injury / chop injury, horizontal over neck of size 6.5 c.m. long, 2.5 c.m. width and 5.5 c.m. in depth. PW-3 Dr. Sachin Revansidha Swami, in his evidence before the Court stated that, cause of death is haemorrhagic shock due to injury no.1 i.e. cut injury. He further stated that, injury no.1 is sufficient to cause death in ordinary course. His evidence during cross examination remained unshattered. Though, the learned senior counsel argued that, no mud was found either on the clothes of deceased Tukaram or PW-1, however, it has come in the evidence of PW-3 that, he made an inquiry with Police

about the clothes of deceased, which were with the relative, and he came to know that, the clothes were wet because of rain, which had fallen earlier day of the post mortem. PW-3 has also stated that, the dead body of Tukaram was brought in the night in PHC, however, there is no mortuary available in PHC Sawargaon.

43] The evidence of PW-1 gets complete corroboration from the evidence of PW-3. There was recovery of axe at the instance of accused Vikas. Apart from corroboration from the medical evidence, the prosecution has established beyond doubt that, blood of blood group 'A' was found on the pant of the accused Vikas. It has come on record that, blood group of deceased was 'A'. Though PW-4 turned hostile, his evidence to the extent that, spot of incident is the Nagapur / Nagobapur field and that he saw persons running in the said field and dead body of Tukaram lying in dead condition and PW-1 sitting near dead body was weeping, leaves no slightest doubt in mind that, spot of incident has been proved by the prosecution beyond reasonable doubt. The presence of PW-1 has been stated by the PW-4 as well as PW-9 in their evidence. The evidence of hostile witnesses, which supports the

prosecution case can safely be accepted, as already discussed in the foregoing paragraphs. Merely because the prosecution has not explained injury nos. 2 and 3 is of no consequences since PW-3 in no uncertain terms has stated that, injury no.1 was sufficient in ordinary course to cause death of Tukaram. PW-2 has narrated in his evidence minute details stated by PW-1 about the incident. The fact that PW-8 examined PW-1 and found she may have pain in the hip region due to blow of Rumanee. The evidence of PW-8 also strengthened the prosecution case that, PW-1 was present in the field at the relevant time of incident and as a matter of fact, she was also given blow by Rumanee.

44] The presence of the accused Vikas on the relevant date in the village has been proved by the prosecution through the evidence of PW-5. Already evidence of PW-5 has been discussed. The prosecution also examined Depot Manager [PW-10], Maharashtra State Road Transport Corporation, Depot, Tuljapur, who stated that, on the relevant date of incident, accused Vikas was not present on duty. The evidence of PW-10 Depot Manager has been discussed in detailed. PW-1 has stated in her

evidence that, she is illiterate. She cannot understand the time in the watch. She does not know how many minutes consists of one hour, and does not know about the distance in kilometers. Therefore, it appears that, she is a rustic villager, and therefore, minor omissions and contradictions in her evidence would not nullify overwhelming evidence brought on record by the prosecution about the manner in which Tukaram was killed by the accused persons by axe and also blow of Rumane was given to PW-1.

45] As already observed, there is dispute of 17 R. land situated at Nagapur / Nagobapur field between PW-2 and accused persons, and civil suit is filed, which is pending before the Competent Court at Tuljapur wherein defendants were injected from interfering in the possession of PW-2. Therefore, the prosecution has proved beyond reasonable doubt motive for commission of offence, spot of incident, carried out inquest panchanama and the death was homicidal. The evidence of PW-1 corroborated by the evidence of PW-3, which unequivocally indicates that, Tukaram died due to injury no.1, which was caused by axe by giving assault by accused no.1 Vikas, as stated by PW-1 in her evidence. It is not necessary for us to reiterate

findings recorded by the trial Court, suffice it to say that, the trial Court has properly appreciated the evidence on record. The findings recorded are in consonance with evidence on record. There is no slightest doubt that, the accused no.1 Vikas has assaulted Tukaram by axe, and as a result Tukaram died on the spot.

46] In the light of the discussion in the foregoing paragraphs inevitable conclusion is that, Appeal is devoid of any merits, and same stands dismissed.

Sd/-

[A.I.S.CHEEMA, J.]

Sd/-

[S.S. SHINDE, J.]

DDC