

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

CRIMINAL APPEAL NO. 459 OF 1999

1. Padmakar S/o Baburao Dadge
Age : 19 years, Occ : agri.,
2. Deelip S/o Trimbak Shivange
Age : 28 years, Occ : agri.,
3. Suryakant S/o Yeshwant Dadge
Age : 22 years, Occ : agri.,
4. Babruwahan S/o Yeshwanta Dadge
Age : 28 years, Occ : agri.,
5. Narsing S/o Baburao Dadge
Age : 28 years, Occ : agri.,
6. Bapurao S/o Amrata Dadge
Age : 50 years, Occ : agri.,
7. Babu S/o Limbaji Dadge
Age : 35 years, Occ : agri.,

All R/o Yelamwadi, Tq. Chakur,
Dist. Latur.

..APPELLANTS

-VERSUS-

State of Maharashtra

..RESPONDENT

...

Advocate for Appellants : Mr. Joydeep Chatterji a/w Mr.
V.D. Gunale

Advocate for Respondent/State : Mr. B.L. Dhas
Mr. P.N. Kutty- assist to P.P.

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WITH
CRIMINAL APPEAL NO. 79 OF 2000

The State of Maharashtra

..APPELLANT

-VERSUS-

1. Yeshwant S/o Limbaji Dadge
Age : 60 years, Occ : agri.,
2. Sanjay S/o Trimbak Shivange
Age : 25 years, Occ : agri.,
3. Sudhakar S/o Malhari Atnure
Age : 27 years, Occ : agri., & service,
4. Trimbak S/o Ramrao Shivange
Age : 50 years, Occ : agri.,
5. Vilas S/o Trimbakrao Shvange
Age : 20 years, Occ : agri.,
6. Shivaji S/o Trimbakrao Shivange
Age : 19 years, Occ : agri.,
7. Kamlakar S/o Baburao Dadge
Age : 19 years, Occ : agri.,
8. Balaji S/o Trimbakrao Shivange
Age : 19 years, Occ : education,

R.nos. 1, 2, 3, 7

R/o Yelamwadi, Tq. Chakur,
Dist. Latur.

R nos. 4, 5, 6, 8

R/o Yelamwadi, Tq. Chakur,
At present Anand Nagar, Latur.

..RESPONDENTS

...

APP for Appellant : Mr. B.L. Dhas
Advocates for Respondents : Mr. Jooydeep Chatterji & Mr.
V.D. Gunale
Mr. P.N. Kutty- Assist to P.P.

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

**RESERVED ON : July 20, 2015
PRONOUNCED ON : August 14, 2015**

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JUDGMENT (PER S.S. SHINDE,J):-

Criminal Appeal No. 459 of 1999 is filed by the original accused nos. 2, 3, 4, 7, 8, 9 and 10, who are convicted for the offence punishable under Sections 147, 148, 302 r/w 149, 325 r/w 149, 324 r/w 149 of I.P.C. and under Section 135 of the Bombay Police Act.

Criminal Appeal No. 79 of 2000 is filed by the State of Maharashtra, challenging the judgment and order of acquittal passed by the Additional Sessions Judge, Latur, acquitting the original accused nos. 1, 5, 11, 12, 13, 14 and 15 for the offence punishable under Sections 147, 148, 302 r/w 149, 307 r/w 149, 325 r/w 149 and 324 r/w 149 of I.P. Code and under Section 135 of the Bombay Police Act.

2. The brief facts of the prosecution case, are as under :-

(i) One Muktabai W/o Shankar Gawali is resident of Yelamwadi, Tq. Chakur, Dist. Latur. She is living along with five sons namely Ashok, Balaji, Sanjay, Vyankat and Baba and three daughters namely Prabhawati, Ushatai and Vijatai. Her daughter Prabhawati was married with Ranba (Ranba). Said Ranba is having land at village Yelamwadi, and the field of accused Trimbak Shivange (accused no.11) is adjoining to his land. One and half month back of the incident, Trimbak Shivange had quarrel with Ranba Dadge over half acre of land. Since then the accused Trimbak Shivange and his sons are on inimical terms with complainant's family.

(ii) On 20.08.1998, Thursday, at about 8.00 a.m. her son-in-law deceased Ranba Dattu Dadge had

come with milk-can to her house, and he was intending to go outside. Shankar Eknath Gawali, who is husband of Muktabai and son-in-law deceased Ranba, went to the house of Manohar Patil for meal at about 8.30 a.m., on occasion of death anniversary of father of Manohar Patil. They took the meal and again came to complainant's house. Muktabai did prepare tea for them. After drinking tea, her husband and deceased Ranba, proceeded towards Nalegaon, on foot. They travelled distance at about 50 to 60 spaces. Suddenly, Muktabai heard commotion, and she started going towards said direction. So in the meanwhile her husband met her, who had received injury on his head. The complainant went ahead and came to the spot and saw that, the accused persons beating the deceased by axe, sword, Kathi, sticks, etc. Accused Babruwan had a sword, Suresh had a stick, Sudhakar had an iron bar, Padmakar had Kathi, Kamalakar had a stick, Bapurao had an iron bar, Narsing had a Kathi and Yeshwant had a stick, and they were beating to deceased Ranba

in pit, which is near to the house of Bapurao Amrata Dadge. She told the accused not to beat, but accused Baburao Dadge came near her and gave blow of axe on her head. Then Bapurao Dadge beat her by iron bar on her shoulder, thereby she received bleeding injuries. Moreover, the accused persons assaulted deceased, who died on the spot. The complainant in injured condition went to lodge the complaint at Nalegaon, Tq. Chakur. The Police sent her to the Govt. Hospital, Nalegaon, wherein she was given medical treatment. As per the version of the complainant, while beating complainant, the accused abused her by uttering the words that "Do you come there to lift the dead-body of Ranba and hurry up, lift his dead-body". (आता काय रानबाच मढं उचलाय आली का ? उचल त्याच मढं). Husband Shankar Gawali was also admitted in the hospital. Then her complaint (at Exh. 52) was recorded by the Police and both of them were sent to Latur hospital for further medical treatment.

(iii) After this incident, the Police Sub-Inspector received the information on phone, so he came there and saw the dead-body. He called panchas and drew the inquest panchanama Exh. 55 on the very same day at about 2.00 p.m. Then the dead body was removed and the spot-panchanama Exh. 56 was drawn on the spot. Earth mixed with blood, simple earth, German can, shoes, clothes were attached under spot panchanama Exh. 56. PW-3 Digamber Biradar acted as panch witness.

(iv) Thereafter, Prabhakar Latange saw the spot, so also the field of deceased Ranba. He saw that, house of Ranba is damaged, so also the electric motor and pipe line in his field was also damaged. Not only this, the pipe line of Shankar Gawali and his electric motor was also damaged. Accordingly, he drew the panchanama Exh. 79 of the damaged house of deceased Ranba. Similarly, he also drew panchanama of pipeline and electric motor in the field of Shankar

Gawali, which were damaged. Said panchanama is at Exh.80. Then Police Sub-Inspector Prabhakar Latange arrested 10 accused under the arrest panchanama Exh. 81. Then he recorded the statements of witnesses. On 22.08.1998, he received the postmortem report and injury certificates of Muktabai and Shankar. On 23.08.1998 again he recorded the statements of Shankar Gawali. Similarly, he seized the blood stained cloth of Shankar Gawali and same was attached under panchanama Exh. 64. He again seized the blood stained cloth of Muktabai under panchanama Exh. 63.

(v) On 24.08.1998, he seized the blood stained clothes of 8 accused and attached under panchanama Exh. 82 to 89. On 25.08.1998, he interrogated accused Yeshwant (accused No.1), Babu (accused No.10), Suresh @ Suryakant (accused no.4), Babruwan Dadge (accused No.7), Padmakar Dadge (accused no.2) under panchanama Exh. 90 to 94. On interrogation with them, the said accused agreed to produce the weapons

namely sticks, axe, iron bar, sword and Kathi and thereafter, they went in the field, where the accused had hidden the weapons under the heap of fodder in the field of Trimbak Shvange. They produced the weapons and same were attached under panchanama Exh. 90-A to 94-A.

(vi) Then on 26.08.1998, again he called panch witnesses namely Sham Sitaram and Devidas Patale. Accused Narsing (Accused no.8), Bapurao Dadge (accused No.9), Sanjay (Accused No.5), Deelip (Accused no.3) and Sudhakar (Accused No.6), were interrogated and on interrogation, they agreed to produce the weapons which were in their houses and field. Accordingly, the memorandum panchanamas Exh. 95 to 99 were drawn. Thereafter, the panch witnesses, P.S.I., and accused went in jeep and entered in Yelamwadi. Firstly, the accused Narsing produced Kathi from his house, Bapurao produced iron bar and Jambiya and then they went to their field, and accused

Sanjay produced the axe from cattle-shed, Deelip produced the blood stained axe from cattle-shed, accused Sudhakar went in the field of Trimbak Shivange took out the iron bar from the heap of fodder, and produced the same, and accordingly, the panchanamas Exh. 95-A to 99-A were drawn.

(vii) On 29.08.1998 again he recorded the statement of Muktabai and other witnesses. On this very day, he seized blood of injured Shankar Gawali, then he recorded supplementary statement. On 04.09.1998, he sent muddemal property through police constable Jadhav for depositing in the C.A. Office for analysis. He received the C.A. reports afterwards.

(viii) On 13.11.1998, he recorded the statements of Mahadeo Shankar Gawali and on 17.11.1998, he sent letter to Tahsildar, Chakur to draw the spot map. He received all the case papers and on 18.11.1998, he submitted the charge-sheet in the Court of Judicial

Magistrate, First Class, Ahmedpur. The Judicial Magistrate, First Class, Ahmedpur committed the case to the Sessions Court.

(ix) Then the Sessions Court framed the charge against the accused under sections 147, 148, 302 r/w 149, 307 r/w 149, 324 r/w 149 of the Indian Penal Code and under Section 37(1)(3) r/w 135 of the Bombay Police Act. It was read over and explained to the accused. All accused pleaded not guilty and they have claimed to be tried. The defence of the accused is of total denial. However, they contended that, deceased Ranba was murdered by other person and not by them. The accused persons have not examined any defence witness.

3. The trial Court, after recording the evidence and hearing the parties, convicted the accused nos. 2, 3, 4, 7, 8, 9 and 10 for the offence punishable under section 147 of I.P. Code and sentenced to suffer

rigorous imprisonment for one year and to pay fine Rs. 500/- (Rs. five hundred) each, in default, rigorous imprisonment for one month. They are convicted for the offence punishable under section 148 of I.P.Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- (Rs. five hundred) each, in default, rigorous imprisonment for one month. They are convicted for the offence punishable under section 302 r/w section 149 of I.P. Code and sentenced to suffer life imprisonment and to pay fine of Rs. 500/- (Rs. five hundred) each, in default, rigorous imprisonment for one year. They are also convicted for the offence punishable under section 325 r/w section 149 of I.P.Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- (Rs. five hundred) each, in default rigorous imprisonment for one month. They are convicted for the offence punishable under section 324 r/w section 149 of I.P. Code and they are sentenced to suffer rigorous imprisonment for one year and to pay fine Rs. 500/-

(Rs. five hundred) each, in default rigorous imprisonment for one month. They are also convicted for the offence punishable under section 135 of the Bombay Police Act and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs. 100/- (Rs. one hundred) each, in default rigorous imprisonment for fifteen days. The trial Court has acquitted the appellant – accused for the offence punishable under section 307 r/w 149 of I.P. Code.

4. The learned counsel appearing for the appellant in Criminal Appeal No. 459/1999 submits that, the impugned judgment and order is based on wrong appreciation of facts and evidence on record. The impugned judgment and order is erroneous, against the settled principles of law and also contrary to the settled principles of appreciation of evidence on record, in a criminal case. The trial Court has committed an error in not analyzing and appreciating the case laws, cited by the defence, which has resulted in serious prejudice

to the accused persons. The appellants – accused are prejudiced as the trial Court has not scanned and marshaled the prosecution evidence in its proper perspective. The findings on the issues framed by the trial court are not properly answered with a definite conclusion, so as to demonstrate the reasons for the conviction of the present appellants.

5. It is submitted that, section 149 of IP Code creates a specific offence and deals with the punishment of that offence. Whenever Court convicts a person/s for an offence, with the aid and assistance of section 149 of IP Code, a clear findings regarding common object of the assembly is to be given and the evidence discussed must show not only the nature of the common object but also the object was unlawful. In this case, reading the medical evidence in general and particularly, the Doctor's explanation, on the nature and number of injuries in cross examination, it would appear that the object of the alleged unlawful assembly,

in this case on the face of the prosecution story, could not be said to be the object to commit murder of Ranba Dadge and therefore, the charge u/s. 302 r/w. section 149 of IP Code fails on that count. The charge is also not substantiated by the prosecution evidence as well.

6. It is submitted that, the only motive alleged by the prosecution is against the accused Shivange family because of the trifle dispute between them on account of adjacent agricultural lands, while no motive whatsoever is alleged against the rest of the accused. The PW-1, Muktabai, mother-in-law of deceased Ranba admits that, her family and members of Shivange family, being living in the neighbourhood of each other in the village were on cordial and visiting terms till the initiation of the civil and criminal litigation about two months prior to the incident. Thus, there was no other reason to complaint against each other on any count.

7. It is submitted that, FIR though not a

substantive piece of evidence is not a less extremely important piece of evidence and because of the havoc, which tampered FIR can play upon an innocent person, it needs close scrutiny, particularly when, it is lodged by an interested and inimical person/s closely related to the deceased and that being the first document in time to serve the intent of legislature, as demonstrated under the provisions of Section 154 of Cr.P.C. in such cases, the FIR is treated as a touch-stone of the prosecution case. In this case, FIR was allegedly lodged by PW-1, Muktabai to PSI J.D.Kolekar, in the Hospital at Nalegaon on 20.08.1998 [Exh.52]. Significantly, the actual time when the FIR was recorded by the PSI, has not been mentioned on it. This FIR was registered by the Police in the Station Diary maintained by the Police Station, Chakur, at 1.00 p.m. It is submitted that, the information given by PW-1, Muktabai, to the PSI, was not all the first FIR. The Station Diary Entry No. 21 [Exh.70] has an information of an offence of cognizable nature, which was taken on the oral information lodged

by Prabhavati, wife of the deceased Ranba, who was accompanied by her brother Vyankat Shankar Gawali. This witness, Vyankat Shankar Gawali, who was cited as an eye witness to the alleged incident, was not examined by the Court in prosecution case. A bare look at the Station Diary Entry No. 21 [Exh.70] goes to show that, the facts narrated by Prabhavati and Vyankat Gawali were nothing short of information of a cognizable offence, yet no FIR was registered by the Police. No copy of it was given to the Judicial Magistrate First Class by Police. Instead of showing the entry made in the Station Diary, the police left for Hospital at Nalegaon, where they claimed to have recorded statement of PW-1, Muktabai, mother-in-law of deceased. Thus, the alleged FIR [Exh.52], purely being a statement, recorded by the police under Section 161 of Cr.P.C., is hit by section 162 of the Criminal Procedure Code. The Lower Court erred in not appreciating these vital points of importance concerning the FIR in this case. The height of the

things is that, the prosecution did not choose to prove the contents of the FIR recorded in the Station Diary Entry No. 21 [Exh.70].

8. It is submitted that, the prosecution has examined three witnesses as eye witnesses viz. PW-1 Muktabai, mother-in-law of deceased Ranba, PW-2 Madhav Shankar Gawali, brother-in-law of the deceased and PW-4 Shankar S/o. Eknath Gawali, who are closely related to the deceased Ranba. PW-1 and PW-4 are injured witnesses, who were hospitalized for some time at the Primary Health Centre, Nalegaon, and thereafter, in the Civil Hospital at Latur. PW-1 Muktabai, who is cited as informant and whose information is treated as FIR [Exh.52], disowns in clear terms the material portions in the said complaint, with a view to claim herself to be an eye witness. The witness was confronted by the prosecution itself, about the material part marked 'A' in Exh.52, which wipes out the possibility of this witness being an eye witness. PW-

1 Muktabai admits in clear and unambiguous term that, though she was interrogated by PSI Kolekar in the Hospital at Nalegaon, she did not give anything in writing, so much so, that she claims that her two thumb impression were only obtained, on two separate papers in the Civil Hospital at Latur, by some unknown Police Officer. In short, the FIR [Exh.52] stands substantially disowned by the witness PW-1 Muktabai.

9. It is submitted that, PW-2 Madhav Shankar Gawali, the youngest brother-in-law of deceased Ranba, is a school going boy. It is curious and surprising to mention here that, the police have recorded the statement of Madhav Gawali, after 2 and ½ months of the alleged incident. The FIR does not remotely disclose that, Madhav was present at the scene of offence when the alleged assault was going on. His testimony seems to be a tutored one and does not inspire much confidence. His testimony sounds improbable in nature and is false one. PW-2 Madhav

admits in cross examination that, though he knew that his parents were injured and were hospitalized, he never cared to see them by going to the Hospital till they were discharged. He claims to be almost in the company of police moving from place to place, yet he admits to have not disclosed about having seen the incident to anyone, except the Investigating Officer. No explanation came from the prosecution side for the reason of delayed recording of his statement. Thus, the evidence of this witness is unreliable. It is submitted that, PW-4 Shankar Eknath Gawali, is father-in-law of deceased Ranba. He claims to have been hospitalized for a long period, for the reasons not known. Though he was admittedly very much available to the PSI Kolekar in the Hospital at Nalegaon, by the side of his wife Muktabai, he was not interrogated at all by the PSI. The PSI also admits to have not recorded his statement during investigation at his hands. His statement was recorded in the Civil Hospital at Latur, by the police of Gandhi Police Chowk, Latur and then,

by the Investigating Officer, on the next date.

10. It is submitted that on the dead body of deceased Ranba Dadge, at the time of postmortem examination, the Medical Officer [PW-11] Dr. Banate, found in all 14 external injuries, out of which the injury no. 2 was an incise wound, over inter-scapular region, on right side of 1 & ½ x 1 & ½, in size, caused by sharp weapon. All other injuries, admittedly, according to the Medical Officer must have been caused by blunt objects. Injury nos. 9, 11, 14 are fractures, noted on the Tibia and Humerous of the Body and rest of the injuries were simple in nature. Dr. Banate [PW-11] admits in cross examination that, except injury no.2, other injuries were on non vital parts of the body of deceased and none of those injuries were dangerous to life. The fracture injuries were shown to be irregular in nature and there was no external injury noticed by the Medical Officer corresponding to the fracture injury. This shows that fractures may have been suffered by

the deceased by any other means other than blows inflicted upon those parts, by the weapons, as alleged by the prosecution. The Medical Officer admits in para no. 6 of his cross examination that, such injuries may often be possibly caused by objects like stones.

11. It is submitted that, injury no.2 though shown as an incised wound, admittedly, did not cause any internal damage, which was noticed by the Doctor on internal examination of the dead body and, therefore, it was a simple incise wound. The cause of death is shown 'hemorrhagic shock' and admittedly, the death was not instantaneous. On the contrary, the Medical Officer admits and has even shown in postmortem notes that the period involved between infliction of injuries and death of Ranba, covers a span of eight hours. This aspect of the medical evidence rules out any murderous assault by dangerous weapons by the assailants. As regards the injuries suffered by the alleged eye witnesses i.e. PW-1

Muktabai and PW-4 Shankar, it is submitted that, Muktabai suffered four injuries. Injury no. 2 is result of injury no. 1 and except the fracture on the wrist joint, other injuries are simple in nature and they being irregular in shape, must have been caused in stone pelting. The prosecution did not adduce any evidence to show that either of the injuries suffered by PW-1, Muktabai, was likely to result in her death. As regards the injuries suffered by PW-4, Shankar, one contusion over Occipital region, irregular and oblique and second injury was also a contusion, over right arm, irregular in nature. Injury no. 1 is shown to be grievous while injury no. 2 is simple in nature. Both the injuries are not testified to be of serious in nature and such injuries, according to the Medical Officer, can be caused by any blunt object like stick or stone.

12. It is submitted that, the prosecution adduced evidence of panch witness regarding seizure of the clothes from the person of accused nos. 1 to 10.

Admittedly, the Investigating Officer did not seize so called blood stained clothes from the person of the accused on the date of their arrest i.e. 21.08.1998. As admitted, the police could not seize the blood stains on their clothes, but claims to have seized those very clothes from the person of accused on 24.08.1998, which creates a great suspicion upon the alleged seizure of blood stained clothes. The panch witness, examined to prove the seizure of clothes, did not support the prosecution case and was declared hostile. No other panch witness was examined to prove the contents of the panchanama. The prosecution claims to have recovered different weapons with some blood stains belatedly from the field of accused no.11 -Trimbak Shivange at village Yelamwadi. This fact of recovery of weapons from the field of accused no.11 Trimbak, smacks of artificiality in drawing panchanama. It is come in the evidence of Investigating Officer Shri Latange that, all blood articles seized and recovered from the accused were kept in the custody of

the police of Police Station, Chakur, for some days before they were discharged for Chemical Analyzer's examination. No evidence is put forth on the point of custody of the articles showing that they were kept under seal. The Investigating Officer failed to obtain signature / thumb impression of the individual accused on the seizure panchanama exhibited in this case and hence the said panchanama cannot be taken into consideration for convicting the appellants.

13. It is submitted that, the trial Court has wrongly appreciated the contradictions and omissions brought on record by the defence, without discussing and appreciating the same, by observing that, they are not material in this case. It is submitted that, the trial Court in para 28 of the Judgment observed that, as the accused persons are having agricultural lands, naturally, they have grudge against the deceased. The trial Court referring to evidence of PW-2, Madhav in para 32 of the Judgment stated that, the statement of

Madhav was recovered 2 and ½ months after the incident and this was termed by trial Court to be an act of mischief by police. The trial Court while appreciating the evidence of PW-2, Madhav, observed that, why the Police Officer did not record Madhav's statement and further observed, any way his [Madhav's] evidence is not so much of importance, though he [Madhav] was cited as eye witness. The statements to be recorded under Section 313 of Cr.P.C. were not properly recorded and considered by the trial Court. On the point of FIR, the trial Court in para 45 of the Judgment observed that, the FIR does not mean a statement, but it is information given to the Police Officer of the incident in detail. On late receipt of FIR by the Court of Judicial Magistrate First Class i.e. after five days, the trial Court observed that, the FIR is registered on the very day, but it was received by the Court after five days and late receipt of FIR does not call for any help to the accused persons. The trial Court further replied the argument of the defence by stating that, anyway I

am not inclined to accept this contention.

14. It is submitted that, the trial Court did not offer clear cut findings, based on conclusions arrived at after a proper appreciation of evidence on record, regarding the guilt of the appellants and their conviction and sentence, for the offence for which they are convicted. There is no clear cut findings as regards the conviction under section 302 r/w. 149 of IP Code, in view of acquittal of rest of the accused persons, on the same prosecution evidence. The learned counsel appearing for the appellants-accused submits that, in view of the peculiar facts of this case, and the evidence on record, the conviction of the appellants under Section 302 of IP Code is wrong and illegal. Therefore, he submits that, the impugned order deserves to be set aside.

15. On the other hand, the learned Additional Public Prosecutor appearing for the State submits that,

when PW-1 and PW-4 and also PW-3 have stated the presence of all the accused and also stated that, they were holding the weapons, each member of unlawful assembly irrespective of overt act attributed to such member, is equally responsible for the murder of Ranba. It is submitted that, there is direct evidence of PW-1, PW-2 and PW-4 and also other witnesses, therefore, there was no reason for the trial Court to acquit some of the accused. It is submitted that, so far order of conviction to 7 accused is perfectly sustainable in law. Trial Court has discussed in detail the entire evidence and thereafter, recorded the cogent findings which need no interference. The learned Additional Public Prosecutor assisted by Mr. P.N. Kutty, the learned counsel appearing for the complainant also invited our attention to the notes of evidence and submits that, the appeal filed by the State deserves to be allowed and the appeal filed by the convicted accused deserves to be dismissed.

16. The prosecution examined Muktabai W/o Shankar Gawali as PW-1. In her deposition, she stated that, her elder daughter Prabhawati was married with Ranba Dadge (deceased), resident of Yellamwadi. Said Ranba had 15 to 20 acres land at village Yellamwadi. He had four sons. He himself with his family members used to cultivate the said land. It appears from the evidence of PW-1 that, in Yellamwadi, there are 52 to 60 houses and population might be 400 to 500 people. It further appears that, this witness knew Yeshwant Dadge and others, who according to her belong to her community. However, according to her version, the accused are not belonging to her caste. She further deposed that, the field of her son-in-law Ranba is adjacent to the field of Trimbak Shivage. Said Trimbak demanded half acre land to Ranba. However, Ranba refused to give half acre of land. Said Trimbak entered in the said field and started ploughing in the said land. The son of Ranba Dadge obstructed Trimbak. Trimbak bet Dharmraj and in that respect criminal case was

filed by Trimbak. Therefore, the relations between them were not cordial.

The incident in question took place one year prior to recording of evidence of PW-1. The said incident had taken place at about 9 a.m. According to PW-1, Ranba came to her house from field, on invitation of Manohar Patil. There was death anniversary of father of Manohar Patil. Husband of PW-1 and Ranba went for meal to the house of Manohar Patil. It further appears that, both of them returned back to the house, then PW-1 prepared tea for them and thereafter husband of PW-1 and Ranba started going to Nalegaon on foot. They crossed a distance of about 50 to 60 spaces. PW-1 heard commotion and she came outside. She rushed towards water tank. She saw that, the accused were beating Ranba. Their names are Babu Dadge, Padmakar, Kamlakar, Bapurao, Narsing, Yeshwant Dadge, Babruwan Dadge, Suresh Dadge, Sudhakar, Trimbak Shivange, Dilip Shivange, Vilas Shivange,

Sanjay Shivange, Balaji shivange, Shivaji Shivange. She stated that, accused - Babu Dadge bet by axe. Accused - Padmakar bet by Katti, Accused - Kamlakar bet by stick, Accused - Bapurao Dadge bet by iron bar. Accused - Narsing bet by Katti, Accused - Yeshwant bet by stick, Accused-Babruwan bet by sword, Accused - Suresh bet by stick and Sudhakar bet by iron bar. She further deposed that, she received bleeding injuries. Then accused pushed Ranba by using their legs. Then she went to Nalegaon Out-post. The police sent her to government Hospital, Nalegaon for treatment. P.S.I. came and recorded her statement and obtained thumb impression. She identified the contents of F.I.R. except portion mark 'A'. Portion mark 'A' as it appears in the First Information Report reads thus; "within short time, her husband Shankar came to house, at that time his turban was there, so he said give us and, he slept there". She was further examined and she stated that, she was in the hospital at Nalegaon for short time and then she was sent to Latur hospital. She was admitted

there. The treatment was given to her. Then Police came to her for enquiry. She was in hospital for 20 days. Her blood stained clothes were attached by the Police. Her statement was recorded by the Police twice. She identified weapons shown to her before the Court.

She was cross-examined by the Advocate of the accused. It appears that, certain questions were asked to her about caste of the accused persons and some persons from her community. She stated that, accused Shivange is from different caste. Her house and house of Shivange are having road in between and said road is of 2 ft. Infront of house, there are houses of Dadge, Survase, Kale etc. There is a road of 2 cubmits in between her own house and Maroti Temple. If one can stand in open court yard of their house, the idol of Maruti is visible. She stated that, the place where Ranba was lying, there was wall of loose stone, and the house of Dashrath Dadge was near to it. She further stated about adjoining houses of said spot. It appears

that, defence tried to elucidate from cross that, the place where Ranba was lying is crowded and visible place. It further appears that, during her cross-examination, she admitted that, her son-in-law Ranba has one brother by name Gyanoba. Deceased Ranba, Prabhawatibai and her sons are residing in the house, which is in the field. His field is less than 3 Kms away from the village. In one survey number, there are shares of Babu Dadge, Yeshwant Dadge, Gnyanoba Dadge and Bapurao Dadge and her son-in-law Ranba. The said survey numbers are divided north south, and from western side Babu and Yeshwant and on eastern side Ranba and Gyanoba have their shares. Gyanoba had executed the sale deed of his share to accused – Dilip Shivange. Said Shivange is in possession of the purchased land from Gnyanoba. Said land was purchased by Shivange 10 years back. She further stated that, there was dispute on common boundary in between field of Shivange and Ranba, and therefore, there was some misunderstanding. She further deposed

that, accused Shivange and Balaji are taking education at Ahmedpur and Latur. Shivange family had one Adat shop at Latur. Accused – Trimbak and Vilas are looking after the business. One or two months prior to incident, the dispute started between sons of Trimbak and deceased Ranba and his sons. There are civil and criminal proceedings pending in Ahmedpur court in between them. Family of PW-1 and said Shivange was not on talking terms. So far actual incident is concerned, she stated that, when commotion started, that time she was in her house. She was doing household work with her daughter-in-law inside the house. She denied suggestion that, at the relevant time it did not happen that her husband entered in the courtyard of house and he was bare headed and slept on the wooden plunk. She further denied the suggestion that, husband asked her to bring his turban. It appears that, the defence tried to elucidate from her cross-examination that, in first information report she stated that, her husband received injuries

and he entered the courtyard of house and she saw that, he was bare headed and slept on the wooden plunk. It appears that, aforementioned portion from the first information was confronted to this witness during cross-examination, which she denied. She further stated that, police officer, who wrote her complaint, did not reduce in writing said complaint as per her narration. There were 5-6 policemen with him. Her thumb impression was obtained in Latur. She did not know which police had taken thumb marks. She also stated that, she did not know the said police officers were from Latur or Chakur Police Station. She further stated that, the contents of the said first information report were not read over to her. She further deposed that, she did not tell the police that, except accused nos. 9 and 10, other accused were seen standing on the spot. The other accused standing there written in the complaint, is false. She did not tell the Police when she went to the spot. She saw her son-in-law Ranba lying in the injured condition near the house of Bapurao Dadge.

The said portion from her first information report, which is marked as portion mark `B', is false. It appears that, while recording the cross-examination, this witness stated in clause 15 of her cross examination that, "Today on 20.08.1998 at about 9.00 a.m. I was in the house and my husband Shankar came to the house, he received the injury to his head and he told me about it and he was standing in open court yard is not correct". She did not tell to the police of Latur. She did not know how and when he received injuries. She did not ask him how he received injury, and who caused it, and who bet him and for what reason. She denied the suggestion that, she herself and husband went outside near the Water-Tank. The portion mark "C" and "D", she did not state to police. It is wrongly written. She also denied portion mark `A' from her statement before the Police. She denied the suggestion that, there were 100 persons gathered at the place of incident. She denied suggestion that, she did not sustain injuries due to assault by sharp weapon by

the accused. She also denied the suggestion that, she did not know how her son-in-law was injured and by whom. She further denied suggestion that due to the earlier dispute between family of Ranba and Shivange, she tried to implicate the other members of the family of Shivange.

17. Upon considering the evidence of this witness in its entirety, it appears that, she herself did not witness the said incident of killing Ranba. It appears that, portion marked from her police statement and also complaint was confronted to her during her cross-examination and the defence is successful in bringing on record that, there is substantial improvement in her deposition before the Court about witnessing of actual incident of killing of Ranba. It is brought on record by the defence through cross-examination of Investigating Officers that, the said portion marks 'A', 'B', 'C', 'D' and 'F' from the police statement was stated by her while recording her

statement. However, the fact remains that, she immediately went to the spot of the incident, wherein she saw Babu Dadge, Padmakar, Kamlakar, Bapurao, Narsing, Yeshwant Dadge, Babruwan Dadge, Suresh Dadge, Sudhakar, Trimbak Shivange, Dilip Shivange, Vilas Shivange, Sanjay Shivange, Balaji shivange, Shivaji Shivange standing there. As a matter of fact, when she went on spot of the incident, she was assaulted and sustained injuries, and was hospitalized. As stated by her, she was in the hospital for 20 days. In her evidence, she categorically deposed that, accused Babu Dadge assaulted her by axe. Accused -Padmakar and Bapurao Dadge assaulted by iron bar. Therefore, so far as aforementioned accused are concerned, it is abundantly clear that, overt acts are attributed to them and, presence of accused at the spot is clearly established through evidence of this witness.

18. The prosecution examined Madhav Shankar

Gawali as PW-2. Since his statement was recorded after 2 and 1/2 months by the police, after the date of incident, the trial Court did not place reliance on the said statement.

19. The prosecution has examined Digambar Madhavrao Biradar as PW-3. He is a witness for inquest panchanama. His evidence inspires confidence. He stated about injuries on dead body of Ranba.

20. The prosecution examined Shankar Eknath Gawali as PW-4. In his examination-in-chief, he stated that, deceased Ranba Dadge was his son-in-law. He was resident of Yellamwadi. He died last year on the 'Khand Malni' day i.e. during the period of 'Pola Festival'. On that day there was invitation to attend death anniversary of father of Manohar Patil at about 8.00 a.m. Therefore, he himself and deceased Ranba went there, taken meal and came back to his house. His wife served tea to them. Thereafter, he himself and

Ranba, proceeded for Nalegaon with milk can for selling the same. At about 9.00 a.m. they came near Water-Tank. Accused Babu Dadge and other accused came there. Accused Babu gave blow of axe on the neck of Ranba. Accused Bapurao bet by iron bar, accused – Dilip Shivange bet by axe, accused- Babru Dadge hit by sword. Shankar tried to rescue Ranba, when accused Babu Dadge hit him by axe on his head and Bapurao bet him by iron bar, then they pushed him. In meanwhile, his daughter-in-laws came there and took him in the house. He received bleeding injuries to his head. Then his wife went towards Ranba and she was also beaten by accused persons. He fell down on the wooden plank. Then the police came there and he went with them at Nalegaon. Then they sent him to the Hospital at Nalegaon. The Medical Officer sent him at Latur Hospital. He was in the hospital for 10-12 days. The policemen from Latur came in the Hospital and recorded his statement. the policemen seized his clothes. He identified the shirt article No.11. He further

stated that, the name of other accused are Trimbak, Dilip, Bapu, Babru Dadge, Sanjy, Vilas, Balu, Shivaji, Atnoore, Padam Dadge, and they were possessing sticks and axe. They were beating to Ranba. He identified the accused present in the Court. (Underlines supplied)

21. In cross-examination this witness stated that, Maroti temple is adjoining to his house. Police from Latur interrogated him in the hospital at Latur. He denied the suggestion that, 5-6 persons, who assaulted son-in-law Ranba, were unknown to him. He stated that, the statement that, 5-6 persons were unknown to him, recorded by the Police is not correct. He denied suggestion that, he did not tell before the Police that, accused Babruwan bet by sword. He reiterated his version in examination-in-chief that, the accused persons, who are named in the examination in chief assaulted him by axe and iron bar. He denied the suggestion that, except accused nos. 8, 9 and 10, other

accused persons were simply found present on the spot. He denied the portion mark 'A' from the police statement. He stated that, manner in which portion mark 'A' is written by the police was never stated by him. Upon careful perusal of his examination in cross, nothing substantial has been brought on record by the defence, so as to disbelieve his version. On the contrary, he has stated presence of accused persons on the spot and also he has attributed the overt act to the some of the accused. He himself is injured witness, and therefore, his testimony inspires confidence and is totally believable, and therefore, same can be safely relied upon. He has in detail stated the manner in which the incident had taken place. He attributed overt act to the some of the accused. He has stated names of accused, who were armed and present on the spot. He has stated name of Trimbak, Dilip, Bapu, Babru Dage, Sanju, Vilas, Balu, Shivaji, Atnoore, Padam Dadge in his examination-in-chief. He stated that, they were holding the arms. It is also stated by him that, all the

above accused, whose names are mentioned, were also beating Ranba though he has not attributed specific overt act to them. However, in his evidence, he has fairly stated that, his daughter-in-law came on the spot and took him to the house.

22. Prosecution examined Angad Nivruttirao Halgare as PW-5. In his deposition, he stated that, he was P.S.I. attached to Police Station, Chakur was on duty, on 20th August, 1998, from 10 a.m. till 10 a.m. on next day i.e. 21.08.1998. On 20th August, 1998 the Out Post Nalegaon recorded the complaint of Muktabai. Said complaint was brought to PW-5 by Police Constable Sonhivare. PW-5 read the complaint. He registered the offence being Crime No. 134/98 under sections 302, 307 etc of I.P.C. Accordingly, he made endorsement on the said complaint. He identified his signature. He also identified the complaint dated 20.08.1998, which bears his signature. He further

stated that, after registering the offence, he handed over the papers for investigation to P.S.I. Kolekar, Nalegaon.

During his cross examination, he denied the suggestion that, he did not receive the complaint at about 1 p.m. on the date of incident nor he has registered the offence nor sent the First Information Report to the Court.

23. Prosecution examined Uttam Raghunath Jadhav as PW-6. In his deposition, he stated that, on 04.09.1998 he was given duty to deposit the muddemal property in Cr. No. 134/98. C.P.I. Latange given him the letter. He further stated that, he received the muddemal property in sealed condition. On 07.09.1998, he deposited the muddemal property in the C.A. office, Aurangabad. He obtained the signature on Exhibit-61.

24. The defence counsel cross-examined PW-6. In his cross-examination, he stated that, each items were properly sealed. They were kept in one box. Chakur-Latur road is 4 Kms. He left Chakur Police Station on 6th September, 1998 at about 00.25 hours. Latur road to Aurangabad is 7 hours journey. On 4th September, 1998, he received muddemal property in Police Station at about 8.00 p.m. Those articles were in his custody in the Police Station for two days.

25. The learned counsel appearing for the convicted accused argued that, since the articles were lying in the custody for two days, there was possibility of tampering with the said articles. Therefore, the said recovery is not believable. In fact, this witness has stated in his cross examination that, each items were sealed and they were kept in one box. Therefore, though those articles were in custody for two days in the Police Station, it cannot be said that, those were lying without sealing and there was possibility of

tampering with the said articles.

26. The prosecution examined Gowardhan Dhanaji Kolekar as PW-7. In his examination-in-chief, he stated that, on 20.08.1998, he was attached to Police Station Chakur. On that day at about 5.00 a.m., he himself and his staff went to Ghute Ghugi Tanda and Wadwal and Janwal for prohibition raid. At about 10.45 a.m., he was returning after completing the prohibition raid. He came to village Gharani. He received message on wireless about incident on that day. Accordingly, he proceeded towards Yellamwadi. Some of the staff went to Police Station, and some of the staff members accompanied him, and they came to Yellamwadi in a Jeep. He came to the Chowk of Nalegaon and learnt that, one woman injured was sent to Nalegaon Hospital. He went straight way to the Government Hospital, Nalegaon. One injured woman was admitted there. He saw her. He made an inquiry to the Doctor about her condition. The Doctor told him

that, she is serious, but in conscious condition. He asked her name and she told that her name is Muktabai w/o. Shankar Gawali, aged 60 Years, Resident of Yellamwadi. He recorded her complaint as per her say. It was read over to her. He obtained her thumb mark on it. He signed on it. He identified Exhibit 52 and stated that, the contents thereof are correct.

27. He further stated that, he gave letter to the Photographer namely Sanjay Shrangare, resident of Nalegaon. The photographs were shown to him and he identified the same. He further stated that, thereafter, he sent the complaint [Exhibit-52] to the Police Station Chakur through the Police Constable B. No.474. Then, he sent some constables to the spot. The constable brought Shankar Gawali in a Hospital, who received serious injury. Then, he was referred to Nalegaon Hospital. He was given treatment. Thereafter, Muktabai and Shankar were sent to Latur Hospital by the Medical Officer in the Police Jeep. Thereafter, he

went to the spot at Yellamwadi. He drew panchanama. He saw the mother of deceased was weeping there. Some persons had come there to see the dead body, so he called two panchas namely Digamber and Sitaji Raghu Jadhav. He drew the inquest panchanama at Exh.55. The inquest panchanama was signed by him and the panch witnesses. Thereafter, the dead body was sent to the Hospital. Thereafter, he drew the spot panchanama at Exh.56, which is attested by him and signed by the panchas. From the spot, one blood mixed stone, cap having blood stain, shoes, catali, blood mixed earth, plain earth were attached under the same panchanama. He obtained the signatures of panchas. Then he sealed the stone and earth in a pocket. He identified property and also identified the shoes article no.2, catali article no.4, stone article no.3 and cap article no. 1.

28. He further stated that, then he sent the police staff to take the search of accused. But they could not arrest accused since they were not found.

Then he recorded the statements of witnesses. The Police Constable Pandharge brought the clothes of the deceased after postmortem, same were seized and attached under the panchanama. He identified the panchanama at Exhibit 67. Then, Deputy S.P. Shankarrao had come there and asked him to transfer further investigation to Shri Latange. He further stated that, he was at Chakur for two years. In the month of June, six months back one rioting offence was happened and the complaint was filed by Dharma Ranba Dadge. It was filed against Trimbak Shivange and others. He submitted charge sheet against 8 persons. Again the son of Trimbak Shivange namely Dilip lodged complaint against Ranba and Dharmaraj. He investigated the case and submitted the charge sheet. Ranba and his son had burnt the heap of fodder belonging to Trimbak Shivange, so his son had filed complaint under Section 435 of IP Code. He did the investigation. Thereafter, he called both the parties and told them not to quarrel and thereby he gave

understanding to both the side. He has filed the case under Section 107 of Criminal Procedure Code against both the parties. From 19.08.1998 to 02.09.1998, there was prohibitory orders under Section 37 [1] [3] of B.P. Act.

29. During his cross-examination, he stated that, he was in Police Station, Chakur for two years and 9 months. He went for investigation in village Yellamwadi. Ranba was residing in the field with cattle and implements etc. There was one well and sugar cane crop in his field. He received message at about 10.45 a.m. that, Ranba was assaulted by Baburao, Trimbak and other accused. He denied that, he brought two injured persons for further treatment in the hospital at Latur. He denied the suggestion that, the complaint was not sent immediately to the Judicial Magistrate, First Class Court. When this witness was confronted with portion mark 'B' from the statement of PW-1 – Muktabai, he stated that, she did state the said portion

and accordingly, the same was recorded.

30. The prosecution examined Gunwant Govindrao Jankar as PW-8, but he was declared hostile and therefore, his evidence is of no use to the prosecution.

31. The prosecution examined Devidas Sambappa Patale as PW-9. This witness was declared hostile, therefore, his evidence is of no use to the prosecution case.

32. The prosecution examined Prabhakar Gopinath Latange as PW-10. In his examination-in-chief, he stated that, on 20th August, 1998 he was Circle Inspector at Chakur. On 21.08.1998, he received the investigation papers from Kolekar as per order of Deputy Superintendent of Police in writing. The complaint of Muktabai [Exhibit-52], spot panchanama, inquest panchanama [Exhibit-53], the

blood stains clothes of the deceased with panchanama and 13 statements of the witnesses and case diary was received by him. Thereafter, he learnt that, the house of Ranba was damaged. Similarly, he learnt that, there was damage of electric motor and pipe in Shankar Gawali's land. He took 2 panchas namely Dattu Kashinath Khandade and Shivaji Laxman Shelar and went in the field of Ranba. He saw his house. The house of Ranba was shown by one Venkat Gawali, who is brother-in-law of the deceased. He saw the said house and drew panchanama in presence of the panchas. The said house was damaged worth Rs.200/-. Accordingly, the panchanama was drawn. He identified the said panchanama and he stated that, the same is true.

33. He further stated that, he went in the field of Shankar Gawali along with the said panchas. Venkat Gawali had shown the spot to them and he drew panchanama. He noticed that, the PVC pipe was

broken worth Rs.800/-. He identified the said panchanama at Exhibit-80. He further stated that, then, he recoded the statement of some of the witnesses. Then he arrested 10 accused on the very same day. He drew the arrest panchanama. Yeshwant Annarao Kasale and Shaikh Hamid Shaikh Maheboob are the panch witnesses, they signed on the panchanama. He identified the said panchanama at Exhibit-81. He further stated that, on 22.08.1998, he received the postmortem notes and he enclosed the same in the file. On 23.08.1998, he recorded the supplementary statement of Shankar Gawali. On the very same day, he seized the blood stained cloth under panchanama, which is signed by the panchas and attested by him. He identified the said document Exhibit-64. On the very day, he recorded the supplementary statement of Muktabai. Similarly, he seized the blood stained clothes and attached under panchanama at Exh.63. It is attested by him and signed by the panchas. He recorded the statements of

three witnesses.

34. He further stated that, on 24.08.1998, he seized the blood stained clothes of 8 accused by drawing separate panchanamas. The said panchanamas at Exhibit 82 to 89 are signed by the panchas and those are attested by him. He further stated that, on 25.08.1998, he interrogated the accused in presence of the panch witnesses namely Sham Sitaram Dhondge and Devidas Sambhappa Patale. Accused Yeshant Limbaji, Dadge disclosed that he will produce the stick from the field. Accordingly, the memorandum panchanama was drawn. He identified the said panchanama at Exhibit-90. He further stated that, on the very same day, the accused Babu was interrogated by them and agreed to produce the axe from the field of Trimbak Shivange. Accordingly, the memorandum panchanama was drawn. He further stated that, the accused Suresh @ Suryakant Dadge was interrogated and on interrogation, he agreed to produce the iron bar from the field of Trimbakrao

Shivange. Accordingly, the memorandum panchanama was drawn.

35. He further stated that, then, the accused Babruwan Yeshwant Dadge was interrogated by them and he agreed to produce the sword from the field of Trimbak Shivange. The memorandum panchanama was drawn accordingly. He further stated that, then the accused Padmakar Bapu Dadge was interrogated and on interrogation, he agreed to produce *Katti* from the field of Trimbakrao Shivange. Accordingly, the memorandum panchanama was drawn. He further stated that, then, he himself, panchas and 5 accused persons went at Yellamwadi in police vehicle in the field of Trimbak Shivange. Then accused Yeshwant Limbaji Dadge produced the stick, iron from the heap of fodder. The said stick was attached under the panchanama. The label of signatures of panchas were pasted on the stick.

36. He further stated that, the accused Babu

Limbaji Dadge produced the axe from the fodder. Accordingly, the panchanama was drawn. He also identified the axe article no. 30 which had blood stains. The labels of signatures of panchans were pasted on it. He further stated that, the accused Suresh Dadge produced the iron bar under the heap of fodder. Accordingly, the panchanama was drawn and same was signed by panchas and attested by him. He identified the iron bar article no. 31, which had blood stains. The labels of signatures of panchas were pasted on it. He further stated that, accused Babruwan Dadge produced the sword, which was hidden by him under the fodder heap. The sword was rusted. He also identified the sword article no. 32. It is pasted by slip of signatures of panchas. He further stated that, accused Padmakar has produced the *Katti* from the heap of fodder. It had blood stained. Accordingly, the panchanama was drawn.

37. He further stated that, on 26.08.1998, he called panchas namely Sham Sitaram and Devidas

Sambhappa Patale. Accused Narsing Bapurao Dadge was interrogated by them and on interrogation, he agreed to produce *Katti* from his house at Yellamwadi. Then, the memorandum panchanama was drawn at Exhibit-95. He further stated that, the accused Bapurao Amruta Dadge was interrogated by him and on interrogation, he agreed to produce iron bar and *Jambiya* which was kept in his house. The memorandum panchanama was drawn. He further stated that, accused Sanjay interrogated by them and on interrogation, he agreed to produce the axe, which was hidden by him in his field. Accordingly, the panchanama at Exhibit – 97 was drawn. He further stated that, accused Dilip Shivange was interrogated by them and on interrogation he agreed to produce the axe from his cattle-shed. Accordingly, the panchanama was drawn at Exhibit 98. He further stated that, then, accused Sudhakar Atnure was interrogated by them and on interrogation, he agreed to produce the iron bar from the field of Trimbak Shivange. Accordingly, the

panchanama was drawn at Exhibit-99. He further stated that, they themselves, panchas and accused went to Yellamwadi in a Jeep and the accused Narsing stopped the jeep in front of his house. They got down. Then, accused Narsing went in the house and he produced the *Katti*. It was seized and attached under the panchanama at Exh.95/A. The *Katti* is marked by signature of the panchas and then took in their custody.

38. He further stated that, accused Bapurao had produced the iron bar and *Jambiya* from his house and it was produced before them. Accordingly, the panchanama was drawn at Exh.96/A. He identified the iron bar article no. 39. He also identified the *Jambiya* article no. 35. He further stated that, accused Sanjay took them in his field. He produced the axe from his cattle-shed. It had blood stained. It is seized and attached under the panchanama at Exh.97/A. He identified the axe article no. 36, which was signed by the panchas on paper label. He further stated that,

accused Dilip took them in his field and he produced the axe from the cattle-shed. It had blood stained. Accordingly, the panchanama was drawn at Exh.98/A. He further stated that, accused Sudhakar took them in the field of Trimbakrao Shivange and he produced the iron bar from the heap of fodder, which was lying under the mango tree. It was seized and attached under the panchanama. The panchas have signed on it and it is attested by him. He further stated that, he recorded the statements of some witnesses. Then, they came to the Police Station with muddemal and gave to writer Police Head Constable. He also gave the muddemal property, which was attached on 25.08.1998 under the panchanama.

39. He further stated that, on 29.08.1998, he recorded the supplementary statement of Muktabai and other six witnesses. On 02.09.1998, again he recorded the statements of 10 witnesses. He seized the blood of Shankar Gawali, who was injured, from Doctor. On 03.09.1998, again he recorded supplementary

statement of Shankar Gawali. Then he came to Latur and collected the blood sample of Muktabai. On 04.09.1998, he sent muddemal property to C.A. for analysis by letter at Exh.100 through the Police Constable Jadhav. He identified the said letter, which bears his signature. The C.A. received the property on 07.09.1998 and accordingly he put endorsement. He further stated that, on 13.11.1998, he recorded the statement of Mahadeo Shankar Gawali as per his say. On 17.11.1998, he drew the spot map through Tahsildar Chakur. He sent letter to Tahsildar Chakur to draw the map of the spot and same was put in the file. On 18.11.1998, he submitted the charge sheet in the court. Then on 15.12.1998, he arrested the 4 absconding accused. On 18.12.1998, he arrested accused Balaji Trimbak Shivange. On 19.12.1998, he submitted the supplementary charge sheet against the five accused. He received two C.A. reports, which he identified at Exh.102 and 103.

40. During cross-examination of PW-10, the defence has brought on record that, when the accused were arrested, the blood spot on their clothes, on their person were not mentioned in the panchanama of arrest. PW-10 stated in cross-examination that, portion marked by letters 'A', 'B', 'C' and 'D' from the statement of PW-1 Muktabai was stated by her. Similarly, the portion marks by letters 'A', 'B', 'C' and 'D' from the statement of Shankar Eknath Gawali was also stated by him.

41. The prosecution examined Dr. Bhaskarrao Shankarrao Banate as PW-11. In his examination-in-chief, he stated that, he passed MBBS in the Year 1979 from Marathawada University, Aurangabad. He was in Government Service since 17.08.1981. He was serving at PHS Nalegaon since 20.08.1998. The PSI Chakur Police Station referred the dead body of Ranaba s/o. Dattu Dadge of Yellamwadi for conducting the postmortem along with the Police Constable No.316

Shri R.B.Pandhare, Police Station Chakur. He has brought the letter dated 20.08.1998. He has made an endorsement on it. He identified the letter at Exh.113. On the very same day, he has performed the postmortem examination from 5.00 p.m. to 6.20 p.m. and noticed the following injuries:

1. C.L.W. over left scapular region of size 1 ½ x ½" x ½", irregular and oblique.
2. Incised wound over inter scapular region right side of size 1 ½" x ½" x 1 ½", sharp and oblique.
3. Contusion over left scapular region below the injury of size 1 ½" x 1 ½" linear and oblique.
4. Contusion over left shoulder joint of size 1" x ½" irregular and oblique.
5. Contusion over left groin of size ½" x ½", irregular and oblique.
6. Contusion over left thigh of size ½" x ½", irregular and oblique.
7. Contusion over the left thigh just above the

knee joint of size 1" x ½", irregular and oblique.

8. C.L.W. behind and above the left malleolus of size 1" x ½" x ½", irregular and oblique.
9. Fracture of left tibia fibula just 3" above the ankle joint.
10. C.L.W. over left arm midway and outside of size 1" x ½" x ½" transverse and irregular.
11. Fracture of left humerus [midway].
12. C.L.W. over right arm outside of size ½" x ½" x ½", oblique and irregular.
13. C.L.W. over right leg of the lower 1/3rd of upper 2/3rd junction of size 1 ½" x ½" x ½", irregular and transverse.
14. Fracture of right tibia fibula at the junction of lower 1/3rd of upper 2/3rd.

He opined that, all the injuries were caused within 0 to 8 hours. The injuries were caused by hard and blunt, sharp and hard weapons. All the injuries are ante-mortem, they are shown in column no. 17 of

the post mortem report. Injuries no. 1, 2, 9, 11 and 14 are grievous in nature and other injuries are simple in nature.

42. Accordingly, he issued the postmortem report in his own handwriting and signatures. He identified the postmortem report at Exh.114. He opined the cause of death is haemorrhagic shock due to incised wound over medial part of right scapular with multiple fracture injuries with multiple C.L.Ws. He has issued immediately the provisional death certificate, which is at Exh.115. He identified the same. He further stated that, injury no.1 could be caused by back side of the axe. Injury no.2 could be caused by axe, sword, Jambiya. The injury no.3 could be caused by stick. All other injuries are possible by stick and head of the axe. The death was caused immediately.

43. On the very same day, the injured Smt. Muktabai w/o. Shankar Gawali was referred to him for her examination. He noted down the following injuries.

1. Contusion near the left wrist joint, irregular and transverse of size 2" x 1".
2. Fracture radio ulna, both bone lower end near to the left wrist joint.
3. C.L.W. over left temporal region, irregular and oblique, of size 4" x ½" x up to the scalp.
4. Contusion over left shoulder joint, irregular and oblique of size 2" x 1".
5. C.L.W. over right forearm dorsom, irregular and oblique of size ½" x ½" x ½".

The age of all injuries was 0 to 8 hours. The injuries no. 2 and 3 are grievous and rest of the injuries are simple. The injuries no. 2 and 3 could be caused by head of the axe and other injuries are caused by blunt and hard weapon. Accordingly, he issued the certificate in his own handwriting and signature. He identified the certificate at Exh.116. He also identified the injured before the Court.

44. He examined Shankar Eknath Gawali on the

very same day and found following injuries.

1. C.L.W. over occipital region, irregular and oblique, of size 3" x ½" and upto the scalp.
2. Contusion over right arm dorsom, irregular and transverse of size 2" x ½".

Injury no. 1 is grievous injury, caused by back side of the axe and injury no.2 is simple injury, caused by stick. Age of injuries was within 0 to 8 hours. Accordingly, he issued the certificate at Exh.117 in his own handwriting and signature and same was identified by him. The injured before the court is the same.

During cross-examination of PW-11, the defence has brought on record his admission that, except injury no.2 rest of the injuries can be caused by hard and blunt object and barring fracture injuries are simple in nature and except injury no.2, the other injuries are on non-vital part of the body. It is also

brought on record that, all the injuries mentioned in the certificate Exhibit-116 may be caused by stone pelting. However, the fact remains that, PW-11 in his evidence has referred to as many as 14 injuries and opined that, all the injuries are ante-mortem. Injury nos. 1, 2, 9, 11 and 14 are grievous in nature. He has also expressed his opinion that, cause of death is haemorrhagic shock due to incised wound over medial part of right scapular with multiple fracture injuries with multiple C.L.Ws.

45. The prosecution examined Madhav Prabhakar Rao Dhere as PW-12. In his examination-in-chief, he stated that, on 20.08.1998 he was attached to Gandhi Chowk Police Station, Latur. On that day, he received the phone of his superior officer to go to the Hospital at Latur and record the statement of Shankar Eknath Gawali. Accordingly, he went to the Hospital and recorded his statement as per his say. Before that, he obtained the endorsement of Medical Officer,

recorded the statement and obtained the thumb impression of Shankar Eknath Gawali. Then he sent the statement to Police Station Chakur. He also recorded the statement of Muktabai Shankar Gawali, as per her say.

During his cross examination, he stated that, the portion mark by letters "C" and "D" in the statement of Muktabai recorded by him in the hospital at Latur on 20th August, 1998 is correct and she has stated the same. He also stated that, portion mark by letters "A" and "B" from the statement of PW-4 Shankar Gawali is as per his version.

46. We have referred and discussed evidence of all the witnesses. The prosecution has proved inquest panchanama and also the spot panchanama. PW-3, panch witness, has stated about injuries noticed by him on the person of deceased Ranba. The panch witnesses were examined. The evidence of panch witnesses and the Investigating Officer has convincingly

proved inquest as well as spot panchanama. There is detailed discussion by the trial Court in para 34 about the inquest panchanama at Exhibit-55 and spot panchanama in para 35. The Investigating officer did seize blood mixed earth, jerman can, shoes and clothes having blood stains from the spot. Investigating Officer also seized cap having blood stains, two plastic boot, one Jerman can having smell of milk, small stones having blood stains, plane earth, blood mixed earth. C.A. report also supports the prosecution case. Some of the articles having blood stains sent to chemical analyzers, wherein it is found that, the said articles are having blood group of PW-1 and PW-4.

47. Upon reading of evidence of PW-1 and PW-4 in its entirety and considering even contradictions/improvements and omissions appearing in their evidence, their evidence is completely reliable. PW-4 has stated in detailed, the manner in which incident has taken place, and which gets corroboration from the

evidence of PW-1. It is true that, so far actual assault on Ranba is concerned, PW-1 might not have seen the said assault, however, looking to the distance between the house of PW-1 and spot of incident, her evidence can safely be believed that, immediately she went to the spot. She has named the accused, who were present armed with the weapons. Since the prosecution case is that, the accused persons formed unlawful assembly with an unlawful object to cause grievous hurt to Ranba and ultimately killed him, therefore, irrespective of which accused was actually involved in the assault on Ranba or to the prosecution witnesses is not material. Upon careful perusal of the evidence brought on record by the prosecution, it is abundantly clear that, the accused persons by forming unlawful assembly with an object to cause grievous hurt to Ranba and ultimately kill him gathered on a public place in the village and killed Ranba and assaulted PW-1 and PW-4, who are injured witnesses, who were treated as indoor patients in the hospital for

considerable period. Evidence of PW-1 and PW-4 has to be believed for the simple reason that, since Ranba was their son-in-law, they will not unnecessarily rope in the other persons leaving aside the real culprits. The evidence, which is brought on record and, more particularly, the evidence of PW-1, PW-4 and PW-10 unequivocally indicate that, unlawful assembly was formed, and members of said assembly killed Ranba as stated by PW-4. It has come on record that, Ranba's house was destroyed, even pipelines laid for watering the land were also destroyed by accused persons. Therefore, by any stretch of imagination, it cannot be said that, the members of unlawful assembly had no knowledge for what purpose they have assembled, and why they were carrying the weapons in their hands. The prosecution has proved beyond reasonable doubt that, the members of the unlawful assembly had knowledge about the fact that, they have assembled with unlawful object of causing grievous hurt to Ranba and ultimately killed him. It clearly emerged on record

through the evidence of PW-1 and PW-4 that, members of unlawful assembly in furtherance of their common object to kill Ranba, assembled together with weapons and killed Ranba and in the process also assaulted PW.1 and PW-4. The medical evidence on record clearly indicates that, death was homicidal and injury nos. 1, 2, 9, 11 and 14 were grievous in nature, which were sufficient to cause death. Medical evidence also shows, how brutally Ranba was assaulted. The version of PW-1 and PW-4 gets complete corroboration from the medical evidence. It is necessary to note that, it was not necessary for the prosecution to prove overt act by each accused, since each member of the unlawful assembly was equally responsible for killing of Ranba irrespective of specific overt act attributed to them. Therefore, even if the PW-1 has not actually seen assault on Ranba, she saw accused persons holding weapons in their hands, Ranba lying on spot when she went to the spot of the incident, which is 50 to 60 paces from her house, Accused said her "Do you come there to lift the dead-

body of Ranba and hurry up, lift his dead-body”. (आता काय रानबाच मढं उचलाय आली का ? उचल त्याच मढं) and also she was assaulted by accused. Therefore, the case in hand is case of unlawful assembly, her evidence lends support and gives corroboration to the version of PW-4 in his evidence before the Court, and evidence of both these witnesses gets corroboration from the medical evidence.

48. The main criticism by the defence qua the evidence of PW-1 and PW-4 is that they are partisan or interested witnesses inasmuch as, deceased was their son-in-law. In this respect, at this juncture, it would be apt to make reference to the judgment of the Supreme Court in the case of **Masalti vs. State of Uttar Pradesh**¹. The Supreme Court in the case of **Masalti** (supra) has made it clear that it is, no doubt, the quality of the evidence that matters and not the number of witnesses who give evidence. The Supreme Court in para 14 of the judgment in case of **Masalti**

1 AIR 1965 SC 202;

(supra) 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 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.”

49. In the light of the observations of the Supreme Court in paragraph 14 quoted above, we have discussed the evidence of PW-1 and PW-4 who are injured witnesses. Therefore, in our opinion, merely because the injured witnesses are relatives of the deceased, is no ground to

disbelieve their evidence. The prosecution has placed on record satisfactory evidence showing the involvement of accused persons in commission of offence. There is overwhelming medical evidence which would unequivocally suggest that, the deceased Ranba was brutally murdered by the accused persons by using deadly weapons like sword, axe and also stick and iron rod.

50. Further argument advanced by the defence is that, the prosecution has not placed on record satisfactory evidence to prove that the accused persons did form an unlawful assembly either prior to commission of offence or at the time of commission of offence. It is common contention of the learned Counsel appearing for the accused that the ingredients of sections 141, 142 and 149 of the IPC are not attracted in the light of evidence brought on record and, therefore, it cannot be held that the accused persons formed an unlawful assembly in furtherance of their common object to assault / cause grievous hurt in order to kill Ranba.

51. In this respect, in order to hold that the

assembly was unlawful, it is necessary to meet the ingredients of sections 141 and 142 of IPC. In the present case, the prosecution has established beyond doubt that there was assembly of more than five persons and the case in hand would be covered by the provisions of section 141 of IPC. Section 141 of IPC reads, thus:

“ 141. Unlawful assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, or the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

Upon careful perusal of the provisions of section 141 of IPC, the present case is covered under "Clause Third" and to some extent "Fourth".

52. Section 142 of IPC reads, thus:

" 142. Being member of unlawful assembly.--Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly."

As already observed, members of the unlawful assembly were aware as to for what purpose they have assembled. Therefore, in the present case, the prosecution has proved that in furtherance of the common object, the accused persons formed an unlawful assembly and they killed Ranba and injured PW-1 and PW-4.

53. At this juncture, it would be relevant to refer the provisions of section 149 of IPC which read. Thus:

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the

same assembly, is guilty of that offence.”

54. At this juncture it would be apt once again to make reference to the exposition of the Supreme Court in case of **Masalti** (supra) wherein the Supreme Court while explaining scope of sections 141 to 149 of IPC and also section 302 r/w 149 of IPC, in paragraphs 16, 17 and 20 held, thus:

“16. Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But, sometimes it is useful to adopt a test like the one which the High Court has

adopted in dealing with the present case.

17. Mr. Sawhney then attempted to argue that the High Court failed to give effect to the principles enunciated by this Court in the case of *Baladin v. State of Uttar Pradesh* (S) AIR 1956 SC 181. In that case, it was observed by Sinha, J., who spoke for the Court, that it is well-settled that mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under s.142, I.P.C. The argument is (1) A.I.R. 1956 S.C. 181 148 that evidence adduced by the prosecution in the present case does not assign any specific part to most of the accused persons in relation to any overt act, and so, the High Court was in error in holding that the appellants were members of an unlawful assembly. The observation of which Mr. Sawhney relies, *prima facie*, does seem to support his contention; but, with respect, we ought to add that the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr. Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of *Baladin* (S) AIR 1956 SC 181, the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly, and he entertained along with the other members of the

assembly the common object as defined by s.141, I.P.C. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of s. 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by S.141. While determining this question, it becomes relevant....to consider whether the assembly consisted of some persons.....who were merely passive witnesses and had (1) A.I.R. 1956 S.C. 181 149 joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin (S) AIR 1956 SC 181 assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by s.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of Baladin(l) must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition of law such as Mr.

Sawhney suggests.”

55. While considering various provisions of IPC and in particular, sections 148, 149 and 302 IPC, the Supreme Court, in case of **Ranjit Singh** (supra), in paragraph 22 held, thus:

“22. Thus, from the above, the law on the issue remains that in a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the court is of the view that the testimony of such sole eye-witness is not reliable. Though, generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident in a fit case the court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot.”

56. Recently, the Supreme Court in case of **State of U.P. vs. Chandrika**², in the facts of that case held that, there was prompt lodging of F.I.R. common object of unlawful assembly armed with Gun was to commit murder. Testimonies of injured witnesses present at spot could not be doubted being corroborated with eye witnesses as well as

² 2014(2) ACR 1756;

medical evidence. Finding of acquittal recorded by trial Court ignoring materials on record oral as well as documentary evidence fully supported by medical evidence. Acquittal of accused found to be based basically on dying declaration whose maker was alive. Said statement was not admissible in evidence. On appraisal of evidence on record it was amply clear that prosecution had fully proved its case beyond doubts. Judgment and order of acquittal reversed and all the accused were convicted by allowing government appeal.

In case of ***Phodol vs. State of C.G.***³, Chhattisgarh High Court, in the facts of that case, held that injuries found over bodies of deceased were incised wounds, lacerated wounds and depressed fracture of head. Appellants were holding battleaxe and other weapons and they had caused homicidal death of three persons and also caused fatal injuries to prosecution witness by battleaxe and other weapons. Evidence adduced on behalf of prosecution and defence taken by appellants were sufficient to establish fact that appellants had formed unlawful assembly having its common object to commit murder of

³ 2014 CRILJ.4704;

deceased and in furtherance of common object of assembly, they were armed with deadly weapons. Therefore, Chhattisgarh High Court maintained order of conviction of the accused therein.

In case of ***Manilal vs. State of Kerala***,⁴ the Kerala High Court while explaining scope of section 149 of IPC, held that even if the identity of some of the accused forming part of the unlawful assembly is not established or even if one or more of the accused are acquitted granting benefit of doubt, that does not absolve the other accused from being proceeded against under Section 149 of the Indian Penal Code.

The facts in the case in hand and those in case of *Om Prakash vs. State of Haryana*,⁵ are almost similar. In the said case, the Supreme Court, while considering the provisions of Section 141, 142, 148 and 149 and also sections 302 and 319 of IPC, held that there was no delay in lodging FIR. Ocular testimony gets corroborated from medical evidence. All accused persons came together armed with lathis and gun. Eye witnesses who are natural

⁴ ILR2014(2)Kerala871; 2014(2)KLT800;

⁵ (2014) 5 SCC 753;

witnesses, being brothers, have deposed in unequivocal manner about assault by all accused persons. Common object is clearly evident. In such situation, attribution of specific individual overt act has no role to play. All requisite tests to attract section 149 established by prosecution and the contentions raised by appellants therein were rejected and the Supreme Court upheld the order of conviction passed by the High Court. If the evidence in the present case is considered in the light of the judgment of the Supreme Court in case of *Kuldeep Yadav and Ors. vs. State of Bihar*,⁶ that there is cogent, trustworthy, clinching and reliable evidence of the eye witnesses.

57. We have discussed the evidence of the prosecution witnesses in detail and the overt-acts attributed to them qua each accused and also the medical evidence. Upon re-appreciating the entire evidence, inevitable conclusion is that above mentioned accused persons named by witnesses and to whom overt act is attributed formed an unlawful assembly, they were aggressors, they had knowledge, they went to the spot and killed Ranba and

⁶ (2011) 5 SCC 324;

injured PW-1 and PW-4. Therefore, evidence led by the prosecution in the present case even satisfy the tests laid down in the case of **Kuldeep Yadav** (supra). However, it would be relevant to mention at this juncture that, it appears that the judgment in case of **Masalti** (supra), which is by the larger Bench consisting four Honourable Judges, was not brought to the notice of the Hon'ble Supreme Court in case of **Kuldeep Yadav** (supra).

58. Upon considering the evidence of PW-1 and PW-4, in nutshell PW-1 in her evidence stated that, accused persons were standing at the spot, armed with weapons. When she went to the spot, she saw Ranba lying in seriously injured condition. She specifically attributed overt act to accused Babu Dadge, who assaulted deceased Ranba by axe, accused Padmakar, who assaulted by Katti, accused Kamlakar assaulted by stick, accused Bapurao Dadge assaulted by iron bar, accused Narsing bet by Katti, accused Yeshwant assaulted by stick, accused Babruwan assaulted by sword. accused Suresh assaulted by stick and accused

Sudhakar assaulted by iron bar. She further deposed that, Babu Dadge assaulted her by axe, accused Padmakar and Bapurao Dadge assaulted her by iron bar. She was seriously injured. She was in hospital for 20 days. PW-4 – Shankar Eknath Gawali in his evidence stated that, accused Babu gave blow of axe on the neck of Ranba, accused Bapurao bet by iron bar, accused Dilip Shivange assaulted by axe, accused Babru Dadge assaulted by sword. When he tried to rescue Ranba, when accused Babu Dadge hit him by axe on his head and accused Bapurao assaulted him by iron bar and then they pushed him. PW-4 is injured witness in the main incident of killing Ranba by accused persons. Therefore, taking into consideration the evidence of PW-1 and PW-4 together, the safe conclusion can be reached that, the prosecution has proved beyond reasonable doubt, the presence with deadly weapons and overt acts, as alleged by two witnesses namely PW-1 and PW-4, qua accused Babu Limbaji Dadge, accused Bapurao Amrata Dadge,

accused Deelip Trimbak Shivange, accused Babruwahan Yeshwant Dadge and accused Padmakar Baburao Dadge. We have accepted the evidence of PW-1 and PW-4 in respect of those accused against whom both witnesses have stated about their presence and overt acts. So as to make sure that, in case of unlawful assembly, there should be minimum two witnesses, stating presence of the accused, holding weapons and attributing overt acts to the accused persons, as laid down in the case of **Masalti** (supra).

59. The trial Court in para 64 observed that, the names of accused no.1 Yeshwant, accused no.5 Sanjay, accused no.6 Shankar, accused no.11 Trimbak, accused no.12 Vilas, accused no.13 Shivaji, accused no.14 Kamlakar and accused no.15 Balaji are included without any reason. It appears that, the trial Court after appreciation of evidence on record has granted benefit of doubt to aforementioned accused.

60. Upon considering and reappreciating the

evidence in its entirety, we are of the considered view that, on assessing the entire evidence on record and after observing demeanor of the witnesses, the trial Court has taken a possible view in acquitting the respondents in Criminal Appeal No. 79 of 2000. Therefore, we do not wish to interfere in order of the trial Court acquitting them.

In our considered view, if the case of accused No.4 Suryakant S/o Yeshwant Dadge and accused No.8 Narsing S/o Baburao Dadge is considered, in the light of evidence of PW-1 and PW-4, out of two witnesses i.e. PW-1 and PW-4, only one witness has attributed the overt act and not the other witness. Therefore, in our considered view, appellant – Suryakant Yeshwant Dadge and Narsing S/o Baburao Dadge are required to be given benefit of doubt like accused who are acquitted by the trial Court.

We are aware of the legal position that, every member of unlawful assembly guilty of offence committed in prosecution of common object. If an

offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. However, in the present case, the incident had taken place at about 9 a.m. in the village, and having minutely considered evidence of PW-1 and PW-4, the possibility of presence of other accused as mere spectators, without knowledge and intention of object of unlawful assembly, cannot be ruled out. Therefore, applying the test laid down in the case of **Masalti** (supra) and in the case of **Kuldeep Yadav** (supra), we hold that, the aforementioned accused Babu Limbaji Dadge, accused Bapurao Amrata Dadge, accused Deelip Trimbak Shivange, accused Babruwahan Yeshwant Dadge and accused Padmakar Baburao Dadge are guilty for commission of offence, as proved by the prosecution and convicted by the trial

Court. Therefore, their appeal deserves to be dismissed.

61. In the result, we pass the following order:

I) Criminal Appeal No.79 of 2000 filed by the State against order of acquittal of the respondents therein, stands dismissed. Their bail bonds stand cancelled;

II) Criminal Appeal No. 459 of 1999 filed by the appellants / accused against their conviction and sentence is partly allowed;

Criminal Appeal No.459/1999 as regards accused No.4 Suryakant s/o Yashwant Dadge and accused No.8 Narsing s/o Baburao Dadge is allowed and they stand acquitted of the charges levelled against them; Their bail bonds stand cancelled. Fine, if any, paid by them shall be refunded to them.

Criminal Appeal No.459 of 1999 as regards appellants / accused No.10 Babu Limbaji Dadge, accused No.9 Bapurao

Amrata Dadge, accused No.3 Deelip Trimbak Shivange, accused No.7 Babruwahan Yeshwant Dadge and accused No.1 Padmakar Baburao Dadge stands dismissed. They shall surrender to their bail bonds forthwith. They are given set off under Section 428 of Cr.P.C., if already they were in jail as under trial prisoners.

III) The trial Court to ensure that, the aforementioned five accused shall surrender themselves forthwith and send the compliance report to the Registry to that effect. The copy of this judgment be sent to the Superintendent of Police, Latur by fastest mode.

Sd/-

(**A.I.S. CHEEMA, J.)**

Sd/-

(**S.S. SHINDE, J.)**

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sga/-