

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

CRIMINAL APPEAL NO. 87 OF 2013

Vinay @ Vinod s/o Prakash Kokare,
Age: 21 years, Occ: Education,
R/o. Snehnagar, Police Colony,
Nanded, Tq. & Dist. Nanded.

...Appellant
(Ori. Accused No.2)

versus

The State of Maharashtra

...Respondent

....

Mr. Vikram R. Dhorde, Advocate for appellant.
Mr. P.P. More, A.P.P. for respondent.

....

WITH
CRIMINAL APPEAL NO. 195 OF 2013

The State of Maharashtra,
Through Police Station,
Bhagya Nagar, Nanded (MS).

...Appellant

versus

Vijay @ s/o Prakash Kokare,
Age: 25 years, Occ: Education,
R/o. Snehnagar Police Colony,
Nanded, Tq. & Dist. Nanded.

...Respondent
(Ori. Accused No.1)

....

Mr. P.P. More, A.P.P. for appellant.
Mr. Vikram R. Dhorde, Advocate for respondent.

....

WITH
CRIMINAL APPEAL NO. 385 OF 2013

Shivanandabai w/o Vidyasagar Jondhale,
Age: 40 years, Occ: Household,
R/o. Behind S.P. Office,
Quarter No.30, Police Colony,
Wazirabad, Nanded.

...Appellant

versus

1. The State of Maharashtra,
Through Bhagyanagar Police
Station, Nanded,
Dist. Nanded.
2. Vijay @ s/o Prakash Kokare,
Age: 25 years, Occ: Education,
R/o. Snehnagar Police Colony,
Nanded, Tq. & Dist. Nanded.

...Respondents
(Resp. No.2 is ori.
Accused)

....
Mr. M.V. Ghatge, Advocate h/f Mr. B.N. Gadegaonkar, Advocate for
appellant.

Mr. P.P. More, A.P.P. for respondent No.1.

Mr. Vikram R. Dhorde, Advocate for respondent No.2.

....

**CORAM : P. V. HARDAS AND
N.W. SAMBRE, JJ.**

DATE : 16th JUNE 2015

ORAL JUDGMENT : [PER P.V. HARDAS, J.]

Criminal Appeal No.87 of 2013 has been filed by the appellant/original accused No.2 Vinay, who stands convicted for the offence punishable under Sections 302 and 324 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs. 1000/-, in default to undergo further rigorous imprisonment for six months and rigorous imprisonment for one year and to pay fine of Rs. 1000/-, in default to undergo further rigorous imprisonment for three months by Sessions Judge, Nanded, by judgment dated 31/01/2013 in Sessions Case No. 150 of 2011.

2. Criminal Appeal Nos. 195 of 2013 and 385 of 2013 have been filed by the State and mother of deceased Vishal questioning the acquittal of original accused No.1 Vijay for the offence punishable under Sections 302 and 324 of the Indian Penal Code. Since all three appeals arise out of the same judgment of the trial Court, these appeals are being decided by this common judgment.

3. The facts, as are necessary for the decision of these appeals may briefly be stated thus :

PW-2 Police Constable Rajkumar Kamble, who was attached to police station, Bhagyanagar and who was on duty from 8-00 a.m. to 2-00 p.m. on 05/06/2011 was proceeding home after completion of his duty at about 3-00 p.m. PW-2 Police Constable Kamble was residing in police colony at Shrinagar. When he reached near his building, he noticed deceased lying by the side of the road near garden having sustained injuries with blood oozing from the injuries. PW-2 Kamble also noticed one person standing beside the injured, who informed PW-2 Kamble that the persons residing in police colony i.e. original accused Nos. 1 and 2 had caused injuries to deceased and accused were fleeing away from the scene of the incident. PW-2 also noticed the accused fleeing from the scene of incident from the distance of 15 to 20 feet. PW-2 then chased the accused and successfully nabbed the appellant, who was running with a blood stained dagger in his hand. The other accused i.e. accused No.1 Vijay successfully managed to evade PW-2 Kamble. According to PW-2

Kamble, the accused are sons of police personnel and were also residing in police colony and therefore, was acquainted with them. After accused No.2/appellant was apprehended with the blood stained weapon, he was brought to Bhagyanagar police station. In the meantime, after arrival of PW-12 P.I. Tare, the accused was handed over to Police Constable Dhavale. PW-12 P.I. Tare instructed PW-2 Kamble and other police constable to produce the appellant alongwith weapon after arrival of Additional Superintendent of Police. The Additional Superintendent of Police arrived at police station at 07-50 p.m. and the appellant was produced before the Additional Superintendent of Police.

4. PW-12 P.I. Tare, who was also attached to Bhagyanagar police station, Nanded had been instructed to be on *bandobast* at I.T.I. T point, Nanded. While he was at I.T.I. T point, he received information from PW-2 Kamble about the incident, wherein two persons were assaulted and one of the injured was serious. He accordingly rushed to Snehnagar police colony and noticed one boy lying at right side on the road in police colony. He also noticed persons who had assembled there. The injured disclosed his name as PW-6 Nitul Chavan. The injured were then carried to medical hospital by PW-12 P.I. Tare. The Medical Officer pronounced one of the injured as dead. The other injured PW-6 Nitul was administered first aid in the hospital and was thereafter taken to police station for recording his statement. PW-12 P.I. Tare accordingly reached the police station at about 4-40 p.m. and took entry in station diary. He was informed by PW-2 Kamble that accused No. 2 Vinay had already been brought to police

station. The appellant/accused No.2 Vinay was in possession of a blood stained dagger. The statement of injured Nitul was recorded at Exhibit-49. On the basis of statement of PW-6-Nitul, offence vide Crime No. 142 of 2011 under Sections 302, 324 read with Section 34 of the Indian Penal Code and under Section 4(25) of Arms Act was registered. On 05/06/2011 Additional Superintendent of Police Paramjeetsing Dahiya had brought accused No. 1 Vijay to police station and entry was accordingly taken about his arrest. Simultaneously, entry regarding arrest of accused No. 2 Vinay was also taken in station diary.

5. PW-13 Additional Superintendent of Police had heard about the incident and immediately rushed to the scene of offence at about 3-25 p.m. He had noticed crowd as well as police personnel. He accordingly instructed PW-12 P.I. Tare to depute staff for protection of scene of offence and for detention of the accused. PW-13 ASP Paramjeetsing Dahiya then went to the hospital where he learnt that the injured has been declared dead. Statement of other injured was recorded and on the basis of which, offence was registered. Further investigation was accordingly taken over by PW-13 ASP Paramjeetsing Dahiya. He then returned to the police station and then drew inquest panchnama of the dead body of deceased Vishal in presence of panchas at Exhibit-32. The dead body was referred for post mortem examination and photographs of the dead body were taken by photographer which are at Exhibits-33 and 34. He thereafter proceeded to scene of the incident and in presence of panch witnesses drew scene of incident panchnama at Exhibit-69. At the scene of incident,

he noticed stone weighing about 2 Kg., which was blood stained, one black spectacle frame, broken pieces of glass. All these articles were accordingly seized including sample of blood stains from drainage cover.

He thereafter reached at Bhagyanagar police station and noticed that both the accused were present in the police station. He accordingly arrested the accused under arrest panchnamas at Exhibits-66 and 67. He also seized 14 inch long dagger, which was blood stained, from accused No. 2 Vinay in presence of panchas under seizure memo at Exhibit-38. The clothes of the accused which were found blood stained were also seized under seizure memo at Exhibit-39. The blood stained clothes of injured PW-6 Nitul were seized in presence of panchas under seizure memo at Exhibit-40. The statement of father of deceased and police constable PW-2 Kamble was recorded. Supplementary statements were recorded subsequently. He seized blood stained clothes from Rahul, the maternal uncle of deceased in presence of panchas under seizure memo at Exhibit-74. The statement of witnesses were recorded and motor cycle allegedly used by the appellant was seized under seizure memo at Exhibit-77. The Special Judicial Magistrate was requested for recording statement of witness Pankaj Bembarkar under Section 164 of Criminal Procedure Code. Under requisition at Exhibit-78, the blood sample of injured was obtained. On 09/06/2011 the seized viscera was referred for chemical analysis under requisition at Exhibit-55. The remaining seized articles were also referred to Chemical Analyzer under requisition at Exhibit-81. The reports of the Chemical Analyzer are at Exhibits-82 to 88.

Further to the completion of investigation which included recording of statement of witnesses and their supplementary statements, charge sheet against the accused was filed. The injured PW-6 Nitul was examined by PW-8 Dr. Padmavati Edpalwar, who noticed the following external injuries :-

1. Contusion over left side back upper part, 4 teeth mark (bite)
2. CLW 1x1x1/2 over little finger base (left hand). That injury was stitched.
3. CLW 1x1x1/2 cm on left palm.

The Medical Officer opined that, the injuries were simple in nature. Injury No. 1 would have been caused by teeth bite, while injury Nos. 2 and 3 might have been caused by blunt object. All the injuries were fresh. The injury certificate of PW-6 Nitul is at Exhibit – 59.

6. The post mortem of dead body of the deceased Vishal was conducted by PW-5 Dr. Maroti Dake, who noticed following external injuries:-

1. Contused abrasion present on right side of neck 2 cm lateral to mid line, 1 cm x 1 cm, red in colour.
2. Scratch abrasion present on left side of neck, horizontally placed, 5 cm below mandible, of size 7 cm length red in colour.
3. Incised wound present on front of chest right side, horizontally placed 3 cm medial to right nipple of size 2 cm x 1 cm x muscle deep, tailing present at medial end.

4. Stab injury present on left subcostal margin, vertically placed, 3 cm lateral to mid line of size 5 cm x 2 cm x cavity deep, directed upwards, backwards and medially, both margins sharp, lower angle acute, upper angle blunt.
5. Multiple old healed incised wounds present on chest and both arms.

He opined that, all the injuries were fresh and were ante-mortem in nature.

On internal examination, he noticed following injuries :-

1. Stab present on pleura on right side, about 2 liters of blood present in right pleural cavity, stab corresponding to injury no. 4 in column no. 17.
 2. Stab present on medial aspect at hilar region corresponding to injury no. 4 in column no. 17.
 3. Pericardium – stab present through and through corresponding to injury no. 4 in column no. 17.
 4. Heart – Stab present at base and inferior vena cava through and through corresponding to injury no. 4 in column no. 17.
 5. Large vessels empty.
 6. Through and through stab present on diaphragm, corresponding to injury no. 4 in column 17. About 1 liter of blood present in abdominal cavity.
 7. Through and through stab present on left lobe corresponding to injury no. 4 in column no. 17.
 8. Other organs were intact and pale.
7. He obtained the sample of viscera and gauze piece soaked in blood and viscera sample were sealed and handed over to Police

Constable. He opined that, cause of death of deceased Vishal was hemorrhage and shock due to stab injury to heart, right lung and liver. According to him, external injury No. 4 alongwith corresponding internal injuries were sufficient in ordinary course of nature to cause death. External injury Nos. 1 and 2 were possible due to fall over hard and blunt object, while injury Nos. 3 and 4 were possible by pointed sharp edged weapon. Post mortem report is at Exhibit-45.

8. On the case being committed to the Court of Sessions, the trial Court, vide Exhibit-10 framed charge against the accused for the offence punishable under Section 302, 324 read with Section 34 of the Indian Penal Code and Section 4(25) of Arms Act. The accused denied their guilt and claimed to be tried. The prosecution in support of its case examined 13 witnesses. The defence of the appellant was of denial. The trial Court, upon appreciation of evidence, convicted and sentenced the appellant/original accused No. 2 Vinay as aforestated, while acquitted original accused No. 1 Vijay. The trial Court came to the conclusion that, in the light of omission on vital aspect of accused no. 1 Vijay sharing intention of accused No. 2 Vinay to commit murder of deceased Vishal as well as discrepant evidence regarding exhortation found that, no offence had been proved beyond reasonable doubt against accused No. 1 Vijay and accordingly acquitted accused No. 1.

The appellant/original accused No. 2 Vinay, being aggrieved by his conviction and sentence has filed appeal challenging the same,

while State and mother of the deceased have filed the appeals challenging the acquittal of original accused No. 1 Vijay. As aforesaid by us, all three appeals are being decided by this common judgment.

9. We have heard Mr. Vikram Dhorde, learned Counsel for the appellant in Criminal Appeal No. 87 of 2013 and for respondent/original accused Vijay in Criminal Appeal Nos. 195 of 2013 and 385 of 2013, learned A. P. P. and Mr. M. V. Ghatge, holding for Mr. B. N. Gadegaonkar, learned Counsel representing on behalf of mother of deceased Vishal. Upon considering the submissions advanced before us, it would be useful to refer the evidence of prosecution witnesses. As pointed out by us above, PW-2 Police Constable Kamble had apprehended accused No. 2 Vinay, who was fleeing from the scene of the incident. Accused No. 2 Vinay had been apprehended alongwith a blood stained dagger. In cross examination, PW-2 Kamble has admitted that, PW-12 P. I. Tare had seen him and accused No. 2 Vinay in the Police Station. According to him, PW-12 P. I. Tare had also seen dagger, which was being carried by accused No. 2 Vinay as well as clothes worn by the accused. According to PW-2 P. C. Kamble, he had also informed PW-12 P. I. Tare about the incident. He has admitted that, accused No. 2 Vinay was not arrested immediately on arrival at the Police Station, but was arrested after arrival of Additional Superintendent of Police. He has also admitted that, Additional Superintendent of Police i.e. PW-13 Paramjeetsing Dahiya had arrested that accused in his presence. He has admitted that, in his presence, police has not seized anything from the accused. Omission has been proved

that, he has not stated that he has seen the accused running with a blood stained dagger. The omission is only in respect of dagger being blood stained. The omission that he had not stated in his previous statement that, he has seen the accused from the distance of 15 to 20 ft. The omission is only in respect of distance of 15 to 20 ft. He has also admitted in his cross examination that, since the time he has taken the accused to the police station till arrival of Additional Superintendent of Police, he has not left the police station.

10. The prosecution has examined PW-3 Dhawale, Police Constable, who was attached to Bhagyanagar Police Station and who deposes that, at about 4.40 p.m. PW-12 P. I. Tare had informed him about PW-2 Kamble bringing accused No. 2 Vinay to the police station. He has also stated that, accused No. 2 Vinay had been brought to the police station and he was carrying a dagger. He further deposes that, he and P.C. Kamble then remained with the accused till arrival of Additional Superintendent of Police by 7.45 p.m. and on arrival of Additional Superintendent of Police, accused No. 2 Vinay was then handed over in his custody.

11. In his cross examination, an admission is elicited that, during 4.40 p.m. to 7.45 p.m. PW-2 Kamble had gone out and had brought accused No. 1 Vijay. PW-3 P.C. Dhawale has admitted that, his statement was recorded on the same day.

12. Mr. Vikram Dhorde, learned Counsel for the appellant, on the basis of evidence of these two witnesses, has urged before us that, for some inexplicable reason accused No. 2 Vinay was not arrested immediately by PW-2 Kamble when accused No. 2 Vinay was brought to the police station. It is therefore urged before us that, it is unbelievable that, accused No. 2 Vinay was taken from the scene of incident carrying blood stained dagger and was allowed to remain at police station clutching dagger till 7.45 p.m. i.e. till arrival of Additional Superintendent of Police. Learned Counsel for the appellant has therefore urged before us that, this part of the evidence of two witnesses is tasking human credulity for his acceptance. Learned A. P. P. as well as learned Counsel for the appellant in the companion appeal have urged before us that, the evidence of these two witnesses is wholly reliable and mere omission to arrest accused immediately on being brought to the police station would not adversely affect their credibility.

13. The evidence of PW2 Kamble clearly indicates that, when he had reached near garden, he had noticed the injured and also noticed PW-6 Nitul standing near the injured. PW-2 Kamble was informed about the incident by PW-6 Nitul and also noticed two accused fleeing from the scene of incident. PW-2 P.C. Kamble accordingly chased the accused and was successful in nabbing the appellant. The evidence clearly indicates that, the appellant was carrying blood stained knife, though there is omission about knife being blood stained. However, the aforesaid

omission, in our opinion, can not adversely affect the credibility of PW-2 P.C. Kamble, as the accused were acquainted with PW-2 P.C. Kamble. PW-2 PC Kamble has no reason to falsely state that he had arrested the appellant at the scene of the incident alongwith blood stained knife. The appellant, undoubtedly, was thereafter brought to the police station. As to the manner in which he was brought i.e. whether the appellant had surrendered to the custody of police constable or he was resisting is a matter which will remain in domain of speculation. There is no evidence as to the manner in which PW-2 PC Kamble brought the appellant to the police station. Suffice to state that the appellant was brought to the police station and as per the instructions of PW-12 PI Tare, the appellant was not arrested till arrival of PW-13 Additional Superintendent of Police. From the prosecution evidence, there does not appear to be any explanation for delayed arrest. The appellant was made to sit in the police station till arrival of Additional Superintendent of Police. The delay in arrest the appellant as well as seizure of knife at the time of arrest, in our opinion, would not and cannot adversely affect the credibility of PW-2 Kamble who claimed to have apprehended the appellant at the scene of incident. Though this is an irregularity, the said irregularity in the arrest would not, in our opinion, in any manner affect the credibility of PW-2 Kamble. Similarly, the statement made by PW-3 PC Dhavale that PW-2 Kamble had left police station, which is contradictory to the statement of PW-2 PC Kamble also, in our opinion, does not adversely affect the credibility of PW-2 Kamble. There is no evidence as to who arrested the original accused No.1 Vijay.

14. The entire prosecution case, therefore, revolves around the testimony of injured witness i.e. PW-6 Nitul. PW-6 Nitul deposes that deceased Vishal was person of his acquaintance and the deceased who had introduced the accused and Nitul. In respect of the incident, he deposes that on 05/06/2011 he had gone to police colony at Snehanagar for attending the marriage at the house of A.S.I. Kamble. He had gone there at about 1-30 p.m. and had noticed that the deceased was also present. After marriage was solemnized at 1-30 p.m, PW-6 Nitul alongwith deceased had taken their lunch at the marriage and were talking outside the pendol at about 2-30 p.m. At that time, the appellant came there on motor cycle and deliberately gave dash to deceased on his leg. Deceased Vishal questioned the appellant as to why he was driving motor cycle at such speed. A scuffle ensued between the deceased and the appellant, which resulted in exchange of blows by them. The other persons, who were present there, intervened the quarrel and thereafter accused No. 2 Vinay/appellant proceeded towards garden. While the deceased and PW-6 Nitul remained at the pendol. After some time deceased Vishal and PW-6 Nitul proceeded towards garden and had reached garden at about 3-00 p.m. When they reached Sharda building, they noticed the accused sitting on the bench in the garden. The accused were at the distance of 10 to 15 ft. At that point of time, accused No.1 Vijay informed accused No. 2 Vinay that deceased had arrived, 'show him'. The accused then came near the deceased. Accused No.1 Vijay held hands of the deceased, while accused No. 2 Vinay remove dagger and stabbed the deceased on left side stomach. Accused No. 2 Vinay was attempting to cause second injury and

at that time, the deceased held wrist of accused No. 2 Vinay, as a result of which, injury was caused on the right side of the chest to the deceased. Accused No.1 Vijay caught his neck. Accused No.1 Vijay also told accused No. 2 Vinay that since Nitul was eye witness, he should be killed. Accused No. 2 Vinay, therefore, tried to cause injuries by means of dagger and PW-6 Nitul successfully evaded by catching dagger. As a result of which, PW-6 Nitul sustained certain injuries on his palm and little finger. Since Nitul had held dagger, accused No.2 Vinay bit PW-6 Nitul on back. Accused No.1 Vijay asked PW-6 Nitul to release dagger and assured him that Nitul would not be killed. Nitul accordingly released dagger and accused went towards their house.

15. The deceased on sustaining injuries fell on the ground and at that time, PW-2 PC Kamble was proceeding. PW-6 Nitul informed him about the incident and PW-2 Kamble then chased the accused and successfully nabbed accused No. 2 Vinay, who was carrying dagger in his hand. PW-2 Kamble then took accused No.2 Vinay to the police station. After arrival of police, deceased and PW-6 Nitul were then taken to the hospital, where deceased Vishal was declared dead by the Medical Officer. The first aid was administered to PW-6 Nitul and his statement was scribed in the police station at Exhibit-49. He then deposes about recording of his statement under Section 164 of Criminal Procedure Code by the Magistrate.

16. In cross examination, omission has been elicited that PW-6 Nitul had not stated in his previous statement that accused No.1 Vijay had held hands of the deceased, while accused No.2 Vinay had stabbed the deceased by a dagger. Minor omission has also been elicited that he had not stated in his previous statement that after giving dash of motor cycle, the accused proceeded towards garden, while Nitul and deceased remained on the spot. The omission is also elicited that he had not stated in his previous statement that the deceased had held hands of the appellant and thereby an injury was sustained by the deceased on his chest.

17. In the cross examination of PW-5 Dr. Dake, he has admitted that stomach was empty, which indicated that the deceased must not have taken meal 4 to 6 hours prior to his death.

18. Mr. Dhorde, learned Counsel for the appellant has urged before us that the medical evidence completely belies testimony of PW-6 Nitul that he and the deceased had taken very lunch at the marriage. Learned Counsel for the appellant has therefore urged before us that this discrepancy would indicate that PW-6 Nitul was not present at the scene of the incident. Learned Counsel further urged before us that the evidence in respect of motive, particularly that the appellant had threatened the deceased is hearsay evidence as PW-9 Bhagyashri, sister of deceased does not refer any threats being given by the appellant to the deceased. Learned Counsel on behalf respondents have supported part of the

judgment, particularly findings arrived by the trial Court in respect of the appellant.

19. The medical evidence indicates that stomach of the deceased was empty and thus, would mean that the deceased had not taken his lunch at the marriage. According to PW-6 Nitul, he and deceased had taken their lunch. In our opinion, his contention that the deceased had also taken his lunch is erroneous as he may have possibly presumed that the deceased has taken his lunch. Merely finding of empty stomach would not lead to infer that PW-6 Nitul was not present at the scene of the incident. Presence of PW-6 Nitul is deposed by PW-2 PC Kamble and is also corroborated by the Medical Officer PW-8 Dr. Padmavati Edpalwar, who had noticed injuries to PW-6 Nitul. The evidence of PW-6 Nitul in relation to assault on the deceased, in our opinion, is the evidence, no doubt of solitary witness but inspires confidence for its acceptance. We find that the evidence of PW-6 Nitul is reliable and despite searching cross examination, nothing has been elicited which would affect his credibility. At the close of cross examination, PW-6 Nitul is emerged as reliable witness and thus, we see no reason whatsoever to doubt his presence as well as assault by the appellant on the deceased Vishal.

20. The infirmity is relating to arrest of the accused as well as fact that dagger which was seized was found to be stained with human blood and absence of blood stains on the clothes of the accused would not assist the appellant when urging before us that the appellant was not assailant.

The appellant has been duly identified by PW-6 Nitul as well as PW-2 PC Kamble, who had nabbed him at the scene of the incident. We, thus, see no ground whatsoever for coming to a conclusion contrary to the conclusion arrived at by the trial Court in respect of assault by the appellant on deceased Vishal. The appeal filed by the appellant being Criminal Appeal No. 87 of 2013 is sans merit and in our opinion, deserves to be dismissed.

21. Coming to the appeal against the acquittal filed on behalf of the State as well as mother of the deceased, it would be useful to refer to the findings recorded by the trial Court from Paragraph No. 45 of the judgment. Incidentally, we may state that the evidence of PW-6 Nitul that accused No.1 had held hands of the deceased has been elicited by way of omission. It is common ground that on account of enmity, there is always a tendency of eye witnesses of roping as many accused as is possible. In the present case, accused No.1 Vijay is real brother of accused No.2. There is no evidence on record to indicate that accused No.1 was present at the scene of the incident. There is also no evidence to indicate that there was any meeting of mind between accused Nos. 1 and 2 or that accused No.1 Vijay was aware that accused No.2 Vinay was carrying dagger with him. None of the prosecution witnesses have deposed that accused No.2 Vinay had carried dagger in his hand before stabbing deceased Vishal. If dagger was carried by accused no. 2 in his pocket, there has to be some evidence to indicate that accused No. 1 Vijay was aware that accused No. 2 was carrying dagger. In that back ground, therefore, merely exhorting accused

No.2 'show him' (deceased) would not necessarily indicate that both the accused had shared intention of committing the murder of deceased. The trial Court further found in the light of omission about accused No.1 Vijay holding hands of deceased and coupled with the fact that accused No. 1 Vijay though has exhorted accused No. 2 Vinay to kill PW-6 Nitul as eye witness, yet declared to PW-6 Nitul that he would not be killed. The very evidence certainly would indicate that accused No.1 Vijay had not shared nor had exhorted accused No. 2 Vinay to commit the murder of deceased Vishal or PW-6 Nitul. Learned trial Court in paragraph No. 47 has recorded the finding, which we reproduce below.

“After he released the Dagger both the accused went away on the say of accused. no. 1 Vijay. If accused no. 1 Vijay had really exhorted to kill him then accused no. 1 Vijay would not have stated that they will not kill him. As such this aspect coupled with material omission in FIR Exhibit-49 about the catching of hand of deceased Vishal by accused no. 1 Vijay creates very much doubt about the complicity and involvement of accused no. 1 Vijay with the aid of section 34 of I.P.C.”

22. It is no doubt true that, in appeal against the acquittal, the appellate Court has power of re-appreciating the evidence. The appellate Court, however, would be slow in disturbing the findings arrived at by the trial Court, if the view taken by the trial Court is of possible view to be taken on the basis of evidence on record and Court does not notice any perversity in the reasoning. The view of the trial Court, in our opinion, appears to be possible view to be taken on the

basis of evidence on record. False implication of accused No. 1 in the said crime by attributing certain exhortation to him would certainly appear to be probable. Accused No. 1 Vijay was not armed with any weapon nor he had attempted or struck the deceased or PW-6 Nitul. Thus, in our opinion, the view taken by the trial Court, being a possible view, no interference is called for in the appeals against the acquittal.

23. Consequently, Criminal Appeal No. 87 of 2013 is dismissed confirming the conviction and sentence of accused No. 2 Vinay. Criminal Appeal Nos. 195 of 2013 and 385 of 2013 are dismissed confirming the acquittal of original accused No. 1 Vijay.

[N.W. SAMBRE, J.]

[P. V. HARDAS, J.]

Tupe/