

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.503 OF 2010

- 1) Balaji s/o Abaji Puyed,
Aged-31 years, Occu:Agri.,
(Orig. Accused No.1),
- 2) Kashinath s/o Maruti Puyed,
Aged-34 years, Occu:Agri.,
(Orig. Accused No.2),
- 3) Sitaram s/o Abaji Puyed,
Aged-32 years, Occu:Agri.,
(Orig. Accused No.3),
- 4) Nandaji s/o Nagaorao Puyed,
Aged-31 years, Occu:Agri.,
(Orig. Accused No.4),
- 5) Raosaheb s/o Ramji Puyed,
Aged-39 years, Occu:Agri.,
(Orig. Accused No.5),
- 6) Narayan s/o Ramji Puyed,
Aged-36 years, Occu:Agri.,
(Orig. Accused No.6),
- 7) Dnyaneshwar s/o Ramji Puyed,
Aged-30 years, Occu:Agri.,
(Orig. Accused No.7),
- 8) Digambar s/o Ramji Puyed,
Aged-43 years, Occu:Agri.,
(Orig. Accused No.9),

All R/o- Punegao, Dist-Nanded.

- 9) Balaji s/o Bhimrao Lakhe,
Aged-24 years, Occu:Agri.,
R/o-Jawla Murud, Dist-Nanded,
(Orig. Accused No.17),
- 10) Gajanan s/o Abaji Puyed,
Aged-22 years, Occu:Agri.,
R/o-Punegao, Dist-Nanded,
(Orig. Accused No.18),
- 11) Keshav s/o Tukaram Pawar,
Aged-61 years, Occu:Agri.,
(Orig. Accused No.25),
- 12) Shivraj s/o Keshav Pawar,
Aged-26 years, Occu:Agri.,
(Orig. Accused No.27)

Appellant Nos.11 & 12 are
R/o-Amdura, Dist-Nanded.

(All accused are in jail)

...APPELLANTS

VERSUS

The State of Maharashtra,

...RESPONDENT

...

Mr. Nitin Pradan Advocate along with Smt.
Shubhada Khot Advocate holding for Mr. Hemant
F. Pawar Advocate for Appellants.
Mr. B.L. Dhus A.P.P. for Respondent - State.
Mr. S.S. Choudhari Advocate assist to P.P.

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**CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.**

DATE OF RESERVING JUDGMENT : 10TH SEPTEMBER, 2015.

DATE OF PRONOUNCING JUDGMENT: 28TH SEPTEMBER, 2015.

JUDGMENT [PER A.B. CHAUDHARI, J]:-

1. Being aggrieved by the Judgment and order dated 6th December 2010 passed by the Additional Sessions Judge-I Nanded in Sessions Case No.123 of 2006, by which the Appellants, original Accused Nos.1-Balaji s/o Abaji Puyed, No.2-Kashinath s/o Maruti Puyed, No.3-Sitaram s/o Abaji Puyed, No.4-Nandaji s/o Nagorao Puyed, No.5- Raosaheb s/o Ramji Puyed, No.6-Narayan s/o Ramji Puyed, No.7-Dnyaneshwar s/o Ramji Puyed, No.9-Digamber s/o Ramji Puyed, No.17-Balaji s/o Bhimrao Lakhe, No.18-Gajanan s/o Abaji Puyed, No.25-Keshav s/o Tukaram Pawar and No.27-Shivraj s/o Keshav Pawar, were convicted for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and were sentenced to undergo

imprisonment for life with fine of Rs.2000/- each and in default to suffer further imprisonment of three months, and for offence under Section 120-B of Indian Penal Code and were sentenced to undergo imprisonment for three years and fine of Rs.1000/- each and in default to suffer further imprisonment for two months, and for offence under Section 147 of the Indian Penal Code and sentenced to undergo imprisonment for one year and fine of Rs.500/- and in default to suffer further imprisonment for 15 days each, and under Section 148 of the Indian Penal Code and sentenced to undergo imprisonment for one year and fine of Rs.500/- and in default to suffer further imprisonment for 15 days each, and under Section 427 of the Indian Penal Code sentenced to undergo imprisonment for three months and fine of Rs.500/- and in default to suffer further imprisonment for 15 days each, the instant Appeal was preferred by them in this Court.

FACTS:-

2. The prosecution was lodged by the State through Police Station Nanded Rural, in all against 27 accused persons of village Punegaon and Amdura. Out of 27 accused, one accused No.24 – Nagoba @ Naga Namdeo Puyed, age-75 years, died during trial. Following is the position in respect of the convicted persons and acquitted persons under the impugned Judgment:-

<u>Convicted Persons</u> (Name of the Person and age)	<u>Acquitted Persons</u> (Named of the Person and age)
Accused No.1 – Balaji s/o Abaji Puyed – 27 years	Accused No.8 – Sainath Venkat Puyed – 19 years
Accused No.2 – Kashinath s/o Maroti Puyed – 30 years	Accused No.10 – Prakash s/o Venkatrao Puyed – 30 years
Accused No.3 Sitaram s/o Abaji Puyed – 28 years	Accused No.11 – Venkat s/o Arjun Puyed – 65 years
Accused No.4 – Nandaji s/o Nagorao Puyed – 27 years	Accused No.12 – Saheb s/o Vishwanath Puyed – 19 years
Accused No.5 – Raosaheb s/o Ramji Puyed – 35 years	Accused No.13 – Vithal s/o Maroti Puyed – 24 years
Accused No.6 – Narayan s/o Ramji Puyed – 32 years	Accused No.14 – Bhagwan s/o Venkati Puyed – 30 years

Accused No.7 – Dnyaneshwar s/o Ramji Puyed – 26 years	Accused No.15 – Pandurang s/o Nagorao Puyed – 32 years
Accused No.9 – Digambar s/o Ramji Puyed – 39 years	Accused No.16 – Ashok s/o Madhavrao Puyed – 20 years
Accused No.17 – Balaji s/o Bhimrao Lakhe – 20 years	Accused No.19 – Vishwanath s/o Sambhaji Puyed – 55 years
Accused No.18 – Gajanan s/o Abaji Puyed – 22 years	Accused No.20 – Jijabai Abaji Puyed – 61 years
Accused No.25 – Keshav s/o Tukaram Pawar – 57 years	Accused No.21 – Abaji s/o Bhivaji Puyed – 65 years
Accused No.27 – Shivraj s/o Keshav Pawar – 22 years	Accused No.22 – Ramji s/o Arjuna Puyed – 70 years
	Accused No.23 – Baliram s/o Maroti Puyed – 40 years
	Accused No.24 – Nagoba @ Naga Namdeo Puyed – 75 years (died during trial, trial abated)
	Accused No.26 – Yuvraj s/o Keshav Pawar – 19 years

3. The State of Maharashtra preferred Appeal against acquittal of the aforesaid acquitted accused persons in this Court and this Court rejected grant of leave to Appeal vide Criminal Application No.1348 of 2011 decided on 26th June 2012. We quote Para 7 from the said Judgment of

dismissal of the appeal against acquittal, which reads thus:-

"7. After scrutiny of testimony of P.W.7 Sambhaji; what we have noticed is as follows:-

(a) The story deposed by P.W.7 varies from the description of incident narrated by him and/or in the F.I.R.

(b) The clothes of accused who have assaulted with deadly weapon, iron rod, did not show blood stains.

(c) The weapons allegedly used were not recovered from these accused persons.

(d) The sole testimony of P.W.7 was not supported by other circumstantial or ocular evidence.

(e) Though chilly powder is alleged to have been sprinkled by accused Jijabai, on none of the clothes or bodies of the victim or accused residues of chilly powder was found.

(f) Chilly powder was found on the soil, which cannot be seen in isolation constitute an

incriminating circumstance."

4. Thus, the acquittal of above acquitted persons has been confirmed by this Court. This Court is, therefore, required to examine the Appeal filed by the convicted persons, namely the Appellants herein.

5. Briefly stated, it is the case of the prosecution that original Accused Nos. 1 to 27 belong to one group as against another group led by PW-7 Complainant Sambhaji Parasram Puyed. Complainant PW-7 Sambhaji was Sarpanch of village Punegaon since the year 2000. In the year 2005 again there were elections of village panchayat Punegaon but the accused persons had prohibited entry of complainant Sambhaji and members of his political group in the village with threats that if Sambhaji attempted to enter the village, his legs would be cut and thrown in the river Godavari. The complainant PW-7 Sambhaji thus had

threat of his life and made several complaints against them with police station as well as District Superintendent of Police, Nanded, so also the Home Ministry.

6. On the fateful day i.e. on 15th April 2006 at about 12.00 O'clock in the noon there was a function of engagement of Kumari Subhadra, the niece of complainant Sambhaji at village Amdura. The relatives and guests from Punegaon, Wadi Puyed, Nagapur, Sidhanath, Wadgaon, Pimpalgaon (Misri) had come to village Amdura by tractors, Jeep, motorcycles etc. Complainant Sambhaji had also gone for the said function along with the deceased Maroti Motiram Puyed and Devidas Datta Bhandarwar, and others. The function was over at about 3.00 p.m. and the guests started returning to their respective villages. Complainant Sambhaji, Bapurao— his brother, Sitaram, deceased Maroti Motiram Puyed and deceased Devidas Datta Bhandarwar, Chandu Kadam, Keshav Yadoji Puyed etc.

also undertook their return journey towards Punegaon. Deceased Maroti/ Marotrao Motiram Puyed and deceased Devidas Datta Bhandarwar were on one motorcycle, driven by Maroti and Devidas Datta Bhandarwar was pillion rider and other riders were following the said motorcycle. Since the date of marriage was fixed as 25th April 2006, the motorcyclists decided to stop at village Wajegaon on way for discussing about the invitation cards and the management of the marriage ceremony. After a brief halt, they proceeded from Wajegaon. The Motorcycle No.MH-26-B-2884 of Marotrao Motiram Puyed on which Devidas Datta Bhandarwar was pillion rider, both deceased, was ahead of all the motorcycles. At about 3.45 to 4.00 p.m. near the farm house of one Wani, one Jeep No.MH-24-C-832 came from behind of the motorcycle of Maroti and gave a cut to him. As a result, Maroti stopped his motorcycle, kept it on a stand and waited for a while. He saw one white coloured Mini-Door vehicle stopped there and from both the vehicles

the accused persons namely, Balaji Abarao Puyed, Kashinath Maroti Puyed, Nandaji Nagorao Puyed, Sitaram alias Dhondiba Abarao Puyed, Vithal Maroti Puyed, Raosaheb Ramji Puyed, Digamber Ramji Puyed, Narayan Ramji Puyed, Venkati Arjuna Puyed, Rama Arjuna Puyed, Dnyaneshwar Ramji Puyed, Bhagwan Venkati Puyed, Prakash Venkati Puyed, Gajanan Abarao Puyed, Ashok Mahadu Puyed, Vishwanath Sambhaji Puyed, Sainath Venkat Puyed, Nagorao Ramji Puyed, Abarao Bhivaji Puyed, Baloram Maroti Puyed, Keshav Tukaram Pawar, Yuvraj Keshav Pawar, Shivraj Keshav Pawar, Jijabai Abarao Puyed and Balaji Lakhe stepped down with swords, iron bars sticks, tommy, axe, stones, chilly powder etc. Realizing danger, deceased Marotrao turned back to right hand side and started running towards the field but was chased by them. Complainant Sambhaji and others apprehended that accused would kill Marotrao, therefore, other bike riders stopped and attempted to go ahead to prevent attack but Accused No.1 Balaji Abarao fired in the air from

the Revolver to terrorize them. Accused Nandaji, Sitaram alias Dhondiba gave a blow of sword on left side of the head of Maroti and on his leg and injured him. Other accused Vithal Maroti Puyed, Venkati Arjuna Puyed, Ramji Arjuna Puyed, Dnyaneshwar Ramji Puyed, Prakash Venkatrao Puyed, Ashok Mahadu Puyed, who were holding iron bars, also assaulted Maroti by iron bars. Accused Raosaheb Ramji Puyed, Digamber Ramji Puyed, Narayan Ramji Puyed, Bhagwan Venkatrao Puyed, Gajanan Abarao Puyed and Sainath were holding swords and they started assaulting Maroti. Accused Vishwanath started assaulting by axe. When complainant Sambhaji and others tried to save Maroti, accused Pandurang Nagoji Puyed and Saheb Vishwanath Puyed pelted stones towards them. During assault Kashinath told Balaji that Maroti would not die unless run over by the Jeep and told him to run over the Jeep on his body and accordingly Balaji brought the Jeep No.MH-24-C-832 and run it over the body of Maroti.

7. Prosecution case then is that the other deceased Devidas Datta Bhandarwar, the pillion rider of the motorcycle of Maroti was standing frightened. Nagorao Ramji Puyed, Baliram Maroti Puyed, Keshav Tukaram Pawar, Shivaji Keshav Pawar, Balaji Lakhe started assaulting him by iron bars. When Devidas was trying to run away, Jijabai Abarao Puyed threw chilly powder in his eyes. Again Sambhaji and others tried to save him but Abarao Puyed, Yuvraj Keshav Pawar and Shivraj pelted stones towards them. They had to stop. Devidas and Maroti, both, expired on the spot. The accused persons then damaged the motorcycle belonging to Maroti and broke it by means of stones, iron bars and tommy. One Mini-Door four wheeler was standing on the road. All the accused stepped inside and proceeded towards complainant Sambhaji and other witnesses but they ran away towards safer direction. Then the Mini-Door four wheeler went towards Punegaon.

8. It is then stated by the prosecution that in the year 2005 when complainant Sambhaji was candidate for the post of Sarpanch, accused No.1 Balaji Abarao Puyed was the candidate from the opposite camp. There was dispute and quarrel between them and Crime No. No.178 of 2005 was registered against complainant Sambhaji and his accomplices in Nanded (Rural) police station for the offence punishable under Section 307 of Indian Penal Code. They were arrested and thereafter released on bail. Sambhaji was elected as Sarpanch having contested election while in jail and Balaji was defeated. The enmity thus multiplied. It is the case of the prosecution, therefore, that conspiracy was hatched by the accused persons pursuant to which they committed murders of Maroti and Devidas.

9. After the incident of murder, complainant Sambhaji went to Nanded (Rural) police station and

gave oral information. P.S.O. Mr. Birla recorded his report and registered Crime No.85 of 2006 and transferred investigation to P.I. Mr. Perke. Spot Panchnama was made, so also the Inquest Panchnama. The Jeep, motorcycle, weapons lying on the spot here and there were seized, so also the other articles during the investigation. Dead bodies were sent for postmortem. On the same day, 17 accused persons were arrested. Statements of witnesses were recorded during investigation. Memorandum statements, also, were recorded. Recovery was made pursuant to the discovery statements made by the accused persons. The charge-sheet was, thereafter, filed in the competent Court and the trial was held. The prosecution examined number of witnesses. The charge was denied by all the accused persons. The defence of accused No.1 Balaji Abaji was that he was driving Jeep No. MH-26-C-832 at the relevant time and the Jeep suddenly dashed the motorcycle driven by Maroti, due to which both of them

expired i.e. the pillion rider Devidas also. But due to political enmity, complainant Sambhaji and others used their political influence and converted the case of accident into the one of murder by filing false F.I.R. Insofar as other accused persons are concerned, they stated that Sambhaji was prosecuted at their behest and they were the witnesses and therefore false case was filed by him. The incident in which complainant Sambhaji was accused under Section 307 of I.P.C., was a serious crime, inasmuch as in that assault, accused No.20 - Jijabai had lost her eye while accused No.23 - Baliram had lost his leg which was required to be amputated because of assault on him by Sambhaji and others. Accused No.27 Shivraj took the defence that he was serving in Adivasi Ashram School, Rajuri, 60 kms. away from the place of incident where there was a function of Dr. Babasaheb Ambedkar Jayanti which he attended and thus he took the plea of alibi. Learned trial Judge thereafter heard the evidence and convicted

the Appellants as above. Hence this Appeal.

ARGUMENTS:-

10. Mr. Nitin Pradhan, learned counsel with Mr. Pawar, learned counsel for the Appellants, in support of the Appeal made following submissions:-

(I) That evidence tendered by the prosecution before the trial Judge is only of the interested and interested witnesses and in the absence of any independent evidence, though was abundantly available, the same was not brought before the Court. The incident is stated to have taken place admittedly on the busy traffic road, that too in the broad day light in the afternoon, with hundreds of vehicles passing from the road from both the sides and the incident having taken place for quite some time, there was deliberate failure on the part of the prosecution to produce the independent witnesses before the Court in order to

suppress the genesis of the actual incident. The actual incident that took place was not of murder but was an accident, namely the Jeep driver Balaji dashing motorcycle which was being run with great speed and that the driver loosing the control of the Jeep and crushing the motorcyclists from the road and up-to some distance down below the road. The incident of accident was intelligently converted by complainant Sambhaji into the one of alleged murder of two persons, namely Maroti and Devidas.

(II) The evidence relied by the trial Court, namely of PW-7 Sambhaji, PW-11 Chandu Kadam, PW-12 Sitaram, being all the interested witnesses coupled with serious infirmities in their evidence, was required to be rejected outright but the trial Judge did not follow the principles in the matter of appreciation and marshaling the evidence of interested witnesses and thus landed in error. PW-7 Sambhaji, PW-11 Chandu and PW-12

Sitaram are related witnesses to the deceased. PW-12 Sitaram is nephew of deceased Maroti and deceased Devidas Bhandarwar was close friend of deceased Maroti. PW-11 Chandu Kadam was also related, though distantly to them and therefore it was risky to rely on the testimony of these witnesses.

(III) It is not in dispute that PW-7 Sambhaji, deceased Maroti and Devidas, and the witnesses belong to one political group which was rival to the group of the accused persons for the last about 5 to 25 years as deposed by PW-7 Sambhaji. The enmity developed further when PW-7 Sambhaji and his relatives made a deadly attack on the accused persons. As a result, offence under Section 307 of I.P.C. was registered against PW-7 Sambhaji and others and in that incident accused No.20 Jijabai had lost her eye while accused No.23 Baliram had lost his leg and majority of the accused persons were witnesses in that crime

against the complainant Sambhaji and others.

(IV) The defence of the accused that the incident was one of the accident, was very well probabilized by the defence in as much as PW-1 Bapji Sambhaji Puyed proved the Spot Panchnama and his evidence if carefully read, clearly indicated that the bark of Babool tree was peeled off and tree was having scratches of the dash of the Jeep and Jeep had gone down the road towards brick furnace. The radiator of the Jeep was damaged from the front direction, so also the side indicators of the Jeep were damaged. The diesel tank of the Jeep had damaged, which clearly indicated that the accident had taken place. The Spot Panchnama and the sketch map Exhibit 119 if read carefully, will indicate the position that the description of the spot while recording Spot Panchnama shows every where that the incident was described as accident. The description in the Spot Panchnama shows the Jeep as well as Motorcycle damaged in the

accident. The sketch map also clearly probabalized the case of the accident due to the Jeep and therefore the learned trial Judge ought to have extended the benefit of doubt to accused persons by accepting the defence. It is settled legal position that the defence is only required to probabilize the same.

(V) The weapons allegedly found on the spot of incident, do not have any blood stains nor any such thing has been recorded in the Spot Panchnama or anywhere in the evidence. It is impossible that if the weapons were used and pool of blood was found, the weapons were found without blood stains. They were planted on the spot. The prosecution was under obligation to rule out the possibility of accident and it failed to do so by not referring the vehicle for technical examination from the R.T.O., since the I.O. admitted that vehicle was not referred for technical examination. The trial Judge should have

therefore, recorded a finding that there was an accident and at the most, in the alternative offence under Section 304-A of I.P.C. could be said to have been proved and nothing more. The case of prosecution that bodies were mangled due to running over Jeep, is falsified by the medical evidence as Doctor found no run over injuries on the bodies of Maroti or Devidas. The evidence of the witnesses, namely PW-7 Sambhaji, PW-11 Chandu Kadam and PW-12 Sitaram contradicted each other instead of corroboration. The comparison of the evidence of these material witnesses ought to have resulted into their rejection. The statements of these witnesses were recorded on 16th April 2006 when as a matter of fact, the witnesses admitted that they were on the spot when police visited spot on 15th April 2006 itself, but still they did not inform the police that they were eye witnesses, nor, according to them, police asked them about incident. The witnesses being on the spot, did not disclose about they being the eye

witnesses, shows that the prosecution story is concocted and they are not in fact the witnesses to the incident as claimed by them.

(VI) In the criminal case that was lodged against PW-7 Sambhaji and others, at the behest of the accused persons, conviction was recorded against them on the evidence of the accused persons as witnesses in that case. It was, therefore, risky to rely on the evidence of such witnesses. The learned counsel for the Appellants, therefore, finally contended that the benefit of doubt ought to be extended to the Appellants, who have been in jail since the date of their arrest on 15th April 2006.

11. Per contra, the learned A.P.P. supported the impugned Judgment and order and read out the evidence of the Panch witness so also Spot Panchnama as well as Sketch Map. Learned A.P.P. contended that the learned trial Judge has

carefully evaluated evidence of the witnesses and he also took the care that PW-7 Sambhaji and PW-12 Sitaram being close relatives of the deceased Maroti, their evidence was carefully scrutinized and scanned. Reading of the evidence of these eye witnesses, clearly shows that their evidence is trustworthy and believable. The trial Judge has rightly relied upon their evidence and therefore no fault can be found out with the appreciation of evidence made by the learned trial Judge. Referring to the Spot Panchnama, Sketch Map and evidence of Panch witnesses and evidence of Investigating Officer, the learned A.P.P. submitted that theory of accident is completely ruled out and is a false and bogus story. The weapons were found not only in that Jeep that was on the spot but also were lying spread over. The medical evidence also indicated chop wounds, which rules out the theory of accident. Chilly powder on the spot as well as in the Jeep clearly indicated that the accused persons had stored the weapons in

the Jeep before the assault. After they fled from the spot, some weapons were thrown near the dead bodies. The evidence of the eye witnesses is fully corroborated by the Spot Panchnama, Sketch Map and the evidence of Panch Witnesses as well as Investigating Officer and therefore there is no reason even remotely to believe the theory of accident projected by the defence. The learned A.P.P. then submitted that the evidence of the eye witnesses has been discussed by the trial Judge thread bare and the conclusions have been drawn based on the evidence and therefore no interference is required to be made with the conviction of all the Appellants. He finally prayed for dismissal of the Appeal.

CONSIDERATION:-

12. We have heard learned counsel for the rival parties at length. We have perused the entire record and proceedings. We have perused the

entire evidence with the assistance of the learned counsel for the rival parties. We have perused all the documents carefully. We have also seen the reasons recorded by the learned trial Judge , so also the omissions amounting to contradictions, contradictions as such, etc.

13. Undoubtedly, the case at hand is one of the brutal killing of two persons, namely, Maroti and Devidas or that the case is of double murder in broad day light. The question is whether as contended by the defence, the same was an accident or the murder. We think, it would be appropriate for us to first record a finding as to the theory of defence regarding accident. We proceed accordingly.

14. The defence did not examine any witness in support of its case about the accident, nor any accused entered the Witness Box to support the said case. It was Accused No.1 – Balaji Abaji who

stated in his statement under Section 313 of Cr.P.C. about the accident. With this preface, we find from the Spot Panchnama Exhibit 190 along with Sketch Map and the evidence of Panch witness thereof, namely PW-1 Bapji Sambhaji Puyed and PW-16 Manik Shivram Perke, the Investigating Officer who reached on the spot after P.S.I. Osman was sent on the spot, that two dead bodies were lying with some weapons nearby, one Jeep, one motorcycle. Chilly powder was spread all over the area of spot. One knife and Katti was found near the dead bodies. Blood stains were found near the dead body of Maroti. When Jeep was examined, there were small stones, eight sheaves (myans) of swords of different colours, chilly powder in the Jeep, Jambia, Katti and tommy near the dead body of Devidas. Learned counsel for the Appellants emphasized on the words mentioned in the Spot Panchanama at two places, brought by way of contradiction as "the Jeep as well as Motorcycle involved in the accident" and the disturbed earth

near the spot, to buttress his contentions that the inspection of the spot by the Police Officers itself shows that they opined that it was an accident. We think that Spot Panchanama if read in entirety would reveal otherwise. The Spot Panchanama shows the existence of weapons nearby the dead bodies, so also in the Jeep, chilly powder and the stones. The description about accident in the Panchnama will have to be read in the context of entire evidence in relation to the Spot Panchnama itself, so also the evidence of the eye witnesses. Apart from the weapons, blood etc. on the spot, there is evidence of PW-8 Ananda, who was working as a labour near the spot and he is an independent witness. His evidence reads thus in Paragraph 2 :-

"02. On 15th April, incident had taken place at about 3.45 to 4.00 PM. I was sitting below the tree after completing the work. The said tree was at a distance of 100 to 150 ft. from road. At that time, from Western direction one white

coloured vehicle (Jeep) came there. At the time, Motorcyclists came from Eastern direction. Jeep driver gave a cut to a motorcyclist. The motorcyclist stopped his motorcycle and was seeing towards the Jeep. Jeep also stopped there. About 10 to 12 persons got down from the jeep along with sticks, iron rod, swords in their hands. At the same time some persons were behind the bushes, they also come out with sticks, axe, and iron bars in their hands. The motorcyclist who had parked his motorcycle started running. But the persons there assaulted on him with sword and iron bar. Therefore, he had fallen down. Then those persons also assaulted on the another person who was sitting on a pillion seat on the said motorcycle. The Jeep came towards our brick furnace. The motorcycle was damaged by pelting stones on motorcycle by those persons."

15. The evidence of PW-11 Chandu Kadam from Para 1 quoted hereunder , is also relevant, which reads thus:-

"At that time, one white coloured jeep came from Wajegaon side. The said Jeep gave a cut to

motorcycle of Marotrao. Therefore, Marotrao stopped his motorcycle at the side of the road, so also the jeep also stopped by going some distance ahead. I saw that some persons got down from the jeep, so also some persons were there behind the bushes. They also came out. The persons who got down from the jeep were having sticks, iron bars, axe, tommys in their respective hands. From the front side of jeep two persons got down. They were Balaji Abaji and Kashinath Maroti. Immediately after getting down Kashinath fired round from his Revolver. Balaji and Kashinath are present in the Court hall and sitting in the dock. Witness pointed out both of them sitting at as their serial numbers. The persons who got down from jeep and who came out from behind the bushes were, Abaji Bhivaji, who is present in the Court hall and sitting near the police constable in the Court, Dhondiba alias Sitaram, he is present in the court hall and is sitting near Kashinath in the dock, Jijabai Abaaji, she is present in the court hall and sitting at Sr. No.1 near Balaji. Rama Arjuna, is present in the court and is sitting in the dock, Raosaheb Rama, is present in the court and is sitting in the dock. He was asked to point out particular person, the witness pointed out two persons at sr. No.4. Both the accused persons sitting in two lines at Sr. No.4 were asked to stand up, but the

witness said that none of them is Raosaheb Rama.

-(Witness again pointed out the person at Sr. No.2 from the back row in the dock. The said person is asked to stand up and asked his name as Digamber Ramji Puyed.)

Narayan Rama Puyed was also there. Dnyaneshwar Ramji Puyed, Digamber Ramji Puyed, Venkati Rama Puyed, Bhagwan Venkati Puyed, Prakash Venkati Puyed, Sainath Venkati Puyed, Vishwanath Sambhaji Puyed, Sahebrao Sambhaji Puyed, Kashinath Puyed, Vithal Puyed, Baliram Puyed, Ashok Mahadu, Balaji Lakhe, Nagorao Namdeo, Pandurang Namdeo, Nandaji Naga, Pandurang Naga, Keshav Tukaram Pawar, Shivraj Keshav, Yuvraj Keshav were there. Barring Nagorao, other persons named above are present in the court hall and are sitting in the dock."

16. Similarly, the evidence of PW-12 Sitaram Puyed, we quote from Paragraph 2 as under:-

"02. Maroti Motiram Puyed was ahead of us on motorcycle. We all reached near Wanyacha Mala near Lal Wadi. At that time one white coloured jeep came from Wajegaon direction i.e. from

opposite direction. Its registration number was MH-24/C-832. The Jeep gave a cut to the motorcycle of my uncle Maroti and stopped the jeep on the spot. My uncle Maroti also stopped there with an impression that some unknown to him might be in the jeep. At that time, Balaji Abaji Puyed, Kashinath Maroti Puyed got down from the front door of the jeep. At that time the other occupants in the jeep got down from the jeep, simultaneously some persons who were sitting behind the bushes also came there."

17. We find that the above evidence that the Jeep gave a cut to the motorcycle and then stopped ahead has remained consistent.

18. PW-10 Pappu alias Athrasushi Giri who is again an independent witness, stated thus in Para 2:-

"02. On 15-04-2006 it was Saturday. I started from Wajegaon at about 3.30 p.m. as usual on my cycle. One Giridas Puyed was also with me on his cycle. We both reached up to Lal Wadi and then proceeded towards Wanyacha Mala and reached there. The road is known as

Shikarghat from Wajegaon towards Shikarghat. When we reached near Wanyacha Mala when vehicle of white colour came from our back side. It was a jeep. It was having registration number as 832. At that time, 6 to 8 motorcyclist came from the opposite direction. One of the motorcycle was being driven by Maroti Puyed of Punegaon. The Jeep came from Wajegaon direction. The Jeep gave a cut to the motorcycle of Maroti. Therefore, Maroti stopped his motorcycle, so also the jeep was stopped. Balaji Puyed and Kashinath Puyed got down from the jeep."

19. The above evidence, to our mind, is fully trustworthy and there is no reason for us to disbelieve the same. It clearly rules out the theory of accident propounded by the defence and therefore we hold accordingly and reject the defence theory. The submission that the Jeep was damaged or the radiator was damaged from the front side and that bark of the Babool tree had peeled off, also does not appeal to us as probabilizing the accident. The reason is that there is evidence on record that accused No.1 Balaji had run the

Jeep towards Babool tree when the call was given by Kashinath to run over the Jeep over the body of Maroti because he was not dying. Due to the dash given by Jeep to the Babool tree, the radiator of the Jeep and parking light must have been damaged and bark of the tree peeled off. As a result, we further hold that the defence that was taken was not at all probabalized and on the contrary false defence was projected before the Court by the accused persons. In fact we strongly feel that the Jeep was deliberately dashed with the Babool tree to make a show of accident.

20. Having disposed of the submissions about the defence theory, we now proceed to deal with the evidence tendered by the prosecution and accepted by the trial Judge. PW-7 Sambhaji is the person having major role in the entire case of the prosecution. In his examination-in-chief he stated that there was severe enmity with the rival group of the accused due to the elections of Gram

Panchayat, Punegaon, to which he was twice elected as Sarpanch. His panel had defeated the panel of Accused Balaji even in the election held in the year 2005 and before the said election a crime under Section 307 of the Indian Penal Code was registered against him for assaulting some of the accused persons. The deceased Maroti or Marotrao was his close relative i.e. his cousin. Devidas was close friend of Maroti who was pillion rider on the motorcycle driven by Maroti. This witness PW-7 Sambhaji as well as other witnesses had propagated two theories in their evidence. Theory No.1 was that Accused No.1 Balaji and Accused No.2 Kashinath, after alighting from Jeep, had taken out a Revolver and fired in the air. We have carefully seen the evidence of all the witnesses, namely, PW-7 Sambhaji, PW-8 Ananda, PW-11 Chandu Kadam and PW-12 Sitaram and the cross-examination of these witnesses on the said theory, so also the reasons given by the trial Judge for holding that the same was not proved by the prosecution. Upon

careful reading of the entire evidence, we agree with the findings of the trial Court that the said theory No.1 was not proved by the prosecution. We do not propose to record our reasons independently, but we would like to quote the reasons recorded by the trial Court in the impugned Judgment, with which we agree. We quote Para 81, 82 as under:

"81. PW-7 Sambhaji Puyed deposed that accused Balaji Abarao Puyued was driving the said Jeep and accused Kashinath Maroti was sitting by his side. Accused Balaji Abaji Puyed and Kashinath stepped down from the jeep. They fired in the air from the revolvers which were in their hands. PW-12 Sitaram Puyed has deposed that accused Kashinath fired from the revolver in his hand. Thus, the evidence by Sambhaji Puyed about fire from revolver by Balaji Puyed is not corroborated by Sitaram Puyed. During the cross examination, Sambhaji Puyed deposed that he had shown the place of firing to Mr. Perke, the I.O. Two to four empty cells of fire bullets were collected from the spot. Those were measured in his presence. It is pertinent to note that during

the cross examination, Mr. Perke, P.I. and I.O. has denied that empty cells of cartridges were found on the spot and were collected and seized. Moreover, in the panchnama of the spot, there is no such entry about seizer of empty cartridges. Therefore, the above evidence of PW-7 about firing by Balaji Puyed and Kashinath Puyed is not corroborated by the seizure of empty cartridges. Moreover, the I.O. Mr. Perke has also admitted that he did not seize revolvers from the accused Balaji and Kashinath. In such circumstances the evidence of PW-7 Sambhaji Puyed and Sitaram Puyed is not corroborated by the seizure of alleged weapon of offence. PW-10 Pappu alias Athrasushi also deposed that after stopping the jeep, Balaji Puyed and Kashinath Puyed got down from the jeep and fired a round from the revolver. His evidence remained unchallenged, as there was no cross examination by accused Nos. 1 to 6, 9, 13, 17, and 23. However, as discussed above, the evidence of PW-7 Sambhaji Puyed is not fully corroborated by the evidence of PW-12 Sitaram Puyed about seizure of empty cartridges and revolver, therefore it is not believable and accepted.

82. The learned P.P. for the State argued that the fact that the I.O. did not seize revolvers from the accused Balaji Puyed and

Kashinath Puyed is not a reason to disbelieve the above evidence of PW-7 Sambhaji Puyed and PW-12 Sitaram Puyed. He relied upon the case 2010 All M.R. Cri. 1627 Supreme Court. In this case, the police custody of seven days was granted. Despite it, the accused did not raise a point that pistol was already recovered from him. In this circumstance, it was held by Their Lordships of Hon'ble Supreme Court of India that there was reason to draw adverse inference that the pistol was in possession of the accused and non recovery of the pistol was not ground to disbelieve the evidence of firing and causing death. It is pertinent to note that in this case it was proved that there was a bullet-fire injury on the chest of the deceased. In this case before me, there is no allegation of any injury. In this circumstances, the bare words that accused fired in the air do not attract the observations made in the case relied upon by learned P.P. In this circumstance, I do not believe the evidence of PW-7 Sambhaji Puyed, PW-12 Sitaram Puyed and PW-11 Chandu Gunaji that accused Balaji Puyed and Kashinath Puyed fired in air from the revolvers."

21. We, thus hold that the evidence that there was a fire from the revolver, is not

believable.

. There is another, namely, theory No.2 that the accused persons had pelted stones at the witnesses PW-7 Sambhaji and others when they had tried to save the deceased persons by advancing towards them. Again we have seen the evidence of all these witnesses on this theory No.2, so also the reasons recorded by the learned trial Judge and we are inclined to agree with the reasons recorded by the learned trial Judge to disbelieve the version about pelting of stones by the accused persons towards the witnesses when they attempted to save the life of the deceased persons. We, therefore, hold that the prosecution did not prove that accused persons pelted stones at the witnesses in their effort to save the life of Maroti and Devidas. We quote Para 83 from the Judgment in that context:-

"83. PW-7 Sambhaji Puyed has deposed that when

Maroti was frightened and tried to run away, and he try to save him by proceeding ahead near the spot, accused Abarao Bhivaji, Pandurang, Saheb Vishwanath and Yuvraj started pelting stones, in order to prohibit them for not coming near the spot. It is also mentioned in the FIR Exh.272. PW-11 Chandu Gunaji deposed that some of the persons from accused started pelting stones. However, there is no name of accused by him, who pelted stones. PW-12 Sitaram Puyed deposed that Pandurang Nagorao Puyed, Saheb Vishwanath, Abaji Bhivaji Puyed and Yuvraj Keshav Pawar pelted stones on them. It is pertinent to note that admittedly none of these persons have sustained any injury. Nobody was sent to medical officer for examination and treatment. The I.O. has admitted that no stones were found on the spot of the incident, at the time of the spot panchnama and no stones were seized. In view of these facts, the above evidence is not corroborated, therefore do not inspire my confidence. Therefore, I do not believe the evidence of above witnesses that stones were pelted when allegedly they attempted to go towards Maroti Puyed to save him."

22. Accused No.27 Shivraj took the plea of alibi. He did not examine himself or any witness

in support of his case. He also relied on the statement by I.O. Mr. Perke that he had recorded the statement of office bearer of the Ashram School where he said to have been present in the programme on 15th April 2006 and therefore he had submitted report under Section 169 of Cr.P.C. to discharge Accused No.27 Shivraj Keshav Pawar. On both these aspects we have carefully examined the contentions raised by Mr. Pradhan, learned counsel for the Appellants. We have also carefully perused the reasons recorded by the trial Court on both these aspects. It is true that Accused No.27 Shivraj casually claimed the plea of alibi when the burden of proof to prove such plea squarely was on him. It is the accused, who has to prove the plea of alibi by satisfactory evidence before the Court. Accused No.27 Shivraj failed to do so. His further reliance on the report under Section 169 of Cr.P.C. is of no consequence, we having seen the order made by the Magistrate on that report wherein the trial Judge had ordered in

operative Part 2 of the order to make further investigation under Section 156(3) of Cr.P.C. rather than discharging the accused No.27 Shivraj. Thus, both these contentions raised by Accused No.27 Shivraj do not appeal to us in addition for the reasons recorded by the learned trial Judge. Instead of we repeating those reasons, we would quote the same from Para 94 of the Judgment, which reads thus:-

"94. It is the defence of accused Shivraj Keshav Pawar that he was serving as a teacher in Adiwasi Ashram Shala at Arjapur, which is at about 60 kilometers away from the spot of the incident. On 15-4-2006 there was a function of Babasaheb Ambedkar Jayanti in his school. He had attended the said function. He was not present at Wajegaon, at the time of the incident. During the cross-examination I.O. Mr. Perke has admitted that during the investigation, he had visited the said Ashram Shala, recorded the statement of office bearers and had found that Shivraj Keshav Pawar was present in the programme on 15-4-2006 and therefore he had submitted a report under section 169 of Cr.P.C. to discharge

Shivraj Keshav Pawar under Section 169 of Cr.P.C. Fact remains that even thereafter Shivraj Keshav Pawar has been charge-sheeted. From this fact, it can be inferred that there was evidence to charge sheet him, therefore later on he was charge-sheeted. On the basis of evidence of I.O. Mr. Perke, the learned advocate of the accused argued that the accused has proved the defence of alibi. The learned advocate of the accused relied upon 2007 ALL MR Crimes 2004 State vs. Digamber Arjun. In this case, His Lordship has held that the burden of proof upon accused is no higher than that of party to the civil proceedings i.e. preponderance of probability alone is sufficient. He also relied upon 2002(8) S.C.C. 165 Jayantibhai vs. State of Gujrat. In this case, Their Lordships have held that the defence of Alibi taken since beginning, informing the necessary facts to the I.O. and reflected consistently in several documents is a plea of defence which can be undoubted. It is pertinent to note that in the case before me the accused though had taken this plea of alibi, and though under Section 169 of Cr.P.C. a report to discharge was made, he was prosecuted later on. Moreover, he has not examined any witness from the Ashram Shala. He has not caused production of any document, such as muster roll to show that he has signed

it on 15-4-2006. Moreover, he has not produced any other document to show that on 15-4-2006 there was function of Babasaheb Ambedkar Jayanti in the school and he was present in the school since before the time of occurrence of the incident and till it was over i.e. between 3.00 p.m. to 5.00 p.m. Therefore, I hold that the cases relied upon by the accused for defence of alibi are not useful to him."

23. A careful perusal of the evidence of PW-7 Sambhaji, to our mind shows that except for his evidence about information of the cognizable offence to the police station Nanded (Rural), his evidence claiming himself to be the eye-witness is untrustworthy. We are unable to accept his evidence on the incident proper because we find several infirmities in his evidence so also his or Investigating Officer's over doing. The broad feature seen in this connection with which we also got disturbed is that his statement that was recorded under Section 161 of Cr.P.C. by the police officer during investigation clearly

indicated that a space was left out at the end of the statement in which subsequently names of the accused persons were inserted in different ink and different font of handwriting. This fact was admitted by the Investigating Officer Mr. Perke also. In order to verify the correctness of this position, we have also seen the said statement and we find that portion marked "A" from the said statement clearly shows the said position about filling of the space by inserting names of some of the accused persons. The prosecution has not come out with any plausible explanation as to why this was done. Not only that, the trial Judge has discussed the said aspect of the matter, in his Judgment at the end of Para 75 thus:-

"PW-7 Sambhaji Puyed further deposed that at the same time some persons came from the bushes, which were at the same spot. They were Venkati Arjuna, Prakash Venkati, Sainath Venkati, Nagorao Namdeo, Balimram Maroti, Vithal Maroti, Vishwanath Sambhaji, Saheb Vishwanath, Keshav Tukaram, Shivraj Keshav,

Yuvraj Keshav and Balaji Bhimrao Lakhe. During the cross examination, he deposed that he had stated before police the names of these persons who came out of bushes, adjacent to the road. He could not say why it is not mentioned in his either of the statement. It is pertinent to note that admittedly supplementary statement of this witness was recorded by the I.O. and there are names of Balaji, Kashinath, Sitaram, Raosaheb, Pandu, Narayan, Digamber, Ashok, Nandaji, Vithal, Bhagwan and Jijabai as the persons who stepped down from the jeep. During the cross examination for accused Nos. 1 to 6, 9, 13, 17 and 23 the I.O. Mr. Preke was shown the supplementary statement of Sambhaji Puyed. His attention was drawn to the last but fourth and fifth lines in the said statement, regarding the names of the accused. He denied that these names were inserted later on. However, he admitted that the space between the last but fourth and fifth lines was less than other lines. He also admitted that remaining part of the paper under the writing is blank. Thus it is clear that there was sufficient space on the paper to write the names of those persons in the similar style. However, the perusal of the supplementary statement of Sambhaji Puyed shows clear cut insertion of names in different ink and different font of handwriting."

24. The trial Judge however, did not give any importance to the said serious infirmity but still choose to rely on the evidence of PW-7 Sambhaji on the incident proper. We do not approve of it. We then find from careful perusal of evidence of PW-7 Sambhaji that Sambhaji while describing the incident proper, was confronted with the omissions and contradictions in his previous statement. We have clearly seen his evidence regarding these omissions and contradictions to find out whether they were material on the incident of assault claimed to have been seen by him. The trial Judge has again not given any importance to these omissions and contradictions but then we find that omissions in his evidence are on material aspects, so also the contradictions brought on record. The omissions are on the incident proper of the assault and it is impossible for us to ignore all those material omissions and contradictions duly proved. We quote the relevant evidence from his

cross-examination:-

"9. It is true that by giving a cut by one vehicle to another vehicle is that vehicle passing through closely to the another vehicle. After stopping both the vehicle by giving a cut, the distance between the motorcycle and Jeep was 15 ft. It is not correct to say that, in case Maroti would have decided to proceed ahead without stopping he could have easily done so. There were total 6 motorcycles in fleet. It did not happen that my motorcycle was the last motorcycle in the line. It did happen that the motorcycle of Maroti and Devidas was ahead of us, thereafter there was a motorcycle of Balaji and Gajanan, then after motorcycle of Sitaram and Sambhaji Jadhav, then after there was motorcycle of Chandu and Keshav and then after my motorcycle at the last. It did not happen that a Mini-door of white colour came on the site and the accused persons got down from the said Mini-door. I have not stated before the Police that a Mini-door came there and accused got down from the said Mini-door, while lodging the FIR portion marked A in the complaint is now read over to me. On the first day I have narrated the said portion A while lodging my complaint. I have stated before the police that since

2004 myself and my party men were prohibited by Balaji etc. from coming in the village. I cannot assign any reason as to why police have not recorded the above referred statement in my complaint as well as in my supplementary statement. I have stated before the police about my going to the school and the assault on me by the accused with slaps and fist blows and presence of accused at the outside of the school. I cannot assign any reason as to why police have written so in my complaint. I had also stated before the police that accused gave me threats to cut my legs and also cut me into pieces if I will come in the village. I cannot assign any reason as to why police have not recorded the above said statement. I had stated before the police that on my lodging the complaint no cognizance was taken by the police and thereafter I came to Nanded. I cannot assign any reason as to why it is not there in either of my statements. I had stated before the police that when back at village I found that Balaji and others were sitting in the hotel while taking tea, and that Balaji gave me threats by asking me as to how I come in the village when I was warned by him that I should not come in the village. I cannot assign any reason as to why it is not there in either of my statements. I had stated before the police that on 12-07-2005 I had given an

application to S.P. and Collector. I cannot assign any reason as to why it is not there in my either of the statements. I had stated before the Police that I was kept behind the bars by filing a false accusation against me in order to prohibit me from contesting election. I cannot assign any reason as to why that part is not there in either of my statements. I had not stated before the police that at the time of filing nomination forms accused came there with weapons but they were apprehended some of the accused and remaining managed to run away. I had stated before the police that after I becoming Sarpanch the opposite party started harassing me. I had stated before the police that Balaji etc. were chasing my brothers and that my brothers had made complaint before me that Balaji etc. are chasing them and beating them. I cannot assign any reason as to why it is not there in either of my statements.

10. I have stated before the police during the course of investigation that myself and Maroti had gone to the office of S.P., Nanded seeking police protection and also to the police station on 29th March 2006. I have also stated before the police that I had been to the Collector Nanded and filed an application signed by myself and by Maroti. I had also

stated before the police during the course of investigation that a copy of application has been sent by me to the Home Minister. I cannot say any reason as to why it is not therein my either of the statements. I had stated before the police that Maroti and Devidas were on one motorcycle and myself and Bapurao were on another motorcycle and that myself and Maroti were driving the motorcycles. I cannot state why it is not there in my police statement. I cannot assign any reason as to why it is there in my statement about the names of those who were the other persons driving the motorcycle and the names of the other persons who were on pillion seat of the motorcycle. I had stated before the police that Arjun was with us and was driving the motorcycle. I cannot assign any reason why it is not there in my statement. I had stated before the police that we have decided to go to Wajegaon for preparation of the marriage of Subhadra and also to purchase the articles for the marriage ceremony of Subhadra. I cannot assign any reason as to why the portion regarding the purchase of the articles is not there in my statement before the police dated 15-4-2006. I had stated before the police that Arjun alias Bapurao was with us on motorcycle and he drove his motorcycle ahead of us. I cannot assign any reason as to why it is not there in either

of the statements. I had stated before the police the names of those who alighted from jeep by giving their names as Balaji Abarao Puyed, Kashinath Puyed, Sitaram Abarao Puyed, Nandaji Nagorao Puyed, Raosaheb Ramji Puyed, Digamber Ramji Puyed, Narayan Ramji Puyed, Pandurang Nagorao Puyed, Ashok Mahadev Puyed, Bhagwan Venkatrao Puyed and Jijabai Abarao Puyed. I cannot assign any reason as to why police have not specifically mentioned the names of the above said persons having alighted from the jeep. I had stated before the police that persons by name Venkati Arjuna, Prakash Venkati, Sainath Venkati, Nagorao Namdeo, Baliram Maroti, Vithal Maroti, Vishwanath Sambhaji, Saheb Vishwanath, Keshav Tukaram, Shivraj Keshav, Yuvraj Keshav, Balaji Lakhe had come out from bushes adjacent to the road. I cannot assign any reason why the same is not in my statement. I had stated before the police that Maroti tried to run away towards southern direction. I cannot assign any reason as to why police have not specifically mentioned the direction as southern direction in my statement dated 15-4-2006. I have stated before the police that after sustaining the assault from Nandaji and Sitaram, Maroti had fallen down. I cannot assign any reason as to why it is not there in either of my statements.

11. I have stated before the police that Devidas was assaulted on his leg and hand. I cannot assign any reason as to why it is not there specifically in my statement before the police. I had stated before the police the names of Pandurang and Sahebrao that they pelted stones when we tried to rescue Devidas. I cannot assign any reason as to why their names have not been specifically mentioned. I had stated before the Police that Sitaram started running and Nandaji Nagorao, Balaji Abarao and Kashinath chased him by his motorcycle but Sitaram succeeded in running away. I cannot state any reason as to why it is not there in the statement before the police. I had stated before the police that the distance between ourselves and the incident was 50 to 60 ft. I cannot assign any reason as to why it is not there in my police statement. I had stated before the police that at that time one Mini-door came there and Balaji etc. accused stopped the Mini-door and forcibly entered in the Mini-door and proceeded ahead by the said Mini-door by putting their swords, tommy and iron bar in the said Minidoor. I cannot assign any reason as to why it is not mentioned there in my police statement. I have also stated before the police that those persons were seen coming

towards us, therefore, we keep ourselves aside. I cannot assign any reason as to why it is not there in my police statement. I have stated before the police that we came back and saw that Maroti and Devidas were lying in pool of blood. I cannot assign any reason as to why it is not there in my police statement. I had stated before the police that Balaji was driving the jeep and Kashinath was sitting in the adjacent seat. I cannot assign any reason as to why it is not there in my either of the police statements.

12. I am not aware as to whether it happened so that after the death of Maroti he was crushed below the jeep. I have not stated so before the police that after the death of Maroti he was crushed below the jeep. Portion marked 'B' in the complaint now read over to me. I cannot assign any reason why and how it is mentioned in the complaint. "

. The above evidence in the cross-examination showing serious infirmities, compels us to hold that PW-7 Sambhaji's evidence on the incident of assault on the deceased persons will have to be rejected, which we do.

25. Next, examining the evidence of PW-8 Ananda, we find that except for ruling out the theory of defence about the accident of Jeep with the motorcycle, as discussed by us in the earlier part of the Judgment, his evidence is of no help to the prosecution. He neither described any accused assaulting the deceased persons nor identified anybody. Therefore, his evidence is of no assistance to the prosecution and thus must be kept out of consideration.

26. The next evidence relied by the trial Court is of PW-9 Devidas Dattaram Khansole. This witness is owner of grocery shop at Wajegaon, namely, Murli Kirana Store, who had sold chilly powder to the accused persons. His evidence is of no material assistance to the prosecution except for the finding of chilly powder on the spot and elsewhere.

27. The next witness is PW-10 Pappu alias Athrasushi Giri. Like PW-8 Ananda, his evidence is also useful only for ruling out theory of accident propagated by the defence. He did not identify any accused persons nor named any accused persons. His evidence is also of no use.

28. The next evidence is of PW-11 Chandu Kadam. PW-11 Chandu Kadam stated in his evidence the prosecution case as stated by us. In his evidence on the incident proper of assault, he stated thus:-

"... At that time, one white coloured jeep came from Wajegaon side. The said Jeep gave a cut to motorcycle of Marotrao. Therefore, Marotrao stopped his motorcycle at the side of the road, so also the jeep also stopped by going some distance ahead. I saw that some persons got down from the jeep, so also some persons were there behind the bushes. They also came out. The persons who got down from the jeep were having sticks, iron bars, axe, tommys in their respective hands. From the

front side of jeep two persons got down. They were Balaji Abaji and Kashinath Maroti. Immediately after getting down Kashinath fired round from his Revolver. Balaji and Kashinath are present in the Court hall and sitting in the dock. Witness pointed out both of them sitting at as their serial numbers. The persons who got down from jeep and who came out from behind the bushes were, Abaji Bhivaji, who is present in the Court hall and sitting near the police constable in the Court. Dhondiba alias Sitaram, is present in the court hall and is sitting near Kashinath in the dock, Jijabai Abaaji, she is present in the court hall and sitting at Sr. No.1 near Balaji, Rama Arjuna, is present in the court and is sitting in the dock, Raosaheb Rama is present in the court and is sitting in the dock. He was asked to point out particular person, the witness pointed out two persons at sr. No.4. Both the accused persons sitting in two lines at Sr. No.4 were asked to stand up, but the witness said that none of them is Raosaheb Rama.

-(Witness again pointed out the person at Sr. No.2 from the back row in the dock. The said person is asked to stand up and asked his name as Digamber Ramji Puyed.)

Narayan Rama Puyed was also there. Dnyaneshwar Ramji Puyed, Digamber Ramji Puyed, Venkati Rama Puyed, Bhagwan Venkati Puyed, Prakash Venkati Puyed, Sainath Venkati Puyed, Vishwanath Sambhaji Puyed, Sahebrao Sambhaji Puyed, Kiashinath Puyed, Vithal Puyed, Baliram Puyed, Ashok Mahadu, Balaji Lakhe, Nagorao Namdeo, Pandurang Namdeo, Nandaji Naga, Pandurang Naga, Keshav Tukaram Pawar, Shivraj Keshav, Yuvraj Keshav were there. Barring Nagorao, other persons named above are present in the court hall and are sitting in the dock."

. Careful reading of the above evidence shows that this witness stated that Balaji and Kashinath got down from the Jeep. Kashinath fired a round from his Revolver. The persons who got down from the Jeep and from the bushes have also been named by him. But then he has not stated that those accused persons who came out from the bushes had any weapons in their hands. Therefore, the only thing that could be deduced from the above part of the evidence is that he saw accused persons coming out from the Jeep with weapons and

other accused persons simply coming out from the bushes and nothing more. But then in Para 2 and 3 of his evidence, he stated thus:

"2. Marotrao under apprehension of assault started running away. At that time Nandaji Nagorao was having sword in his hand. Sitaram alias Dhondiba was also having a sword in his hand. Both the above said persons assaulted on Marotrao with the swords in their hands. They gave blow with the sword on Marotrao's head, back, and on his legs. Marotrao had fallen down and thereafter he started shouting loudly. He was telling us to save ourselves and that he is now finished. We tried to save Marotrao by going ahead towards him but some of the persons named above gathered there started pelting stones towards above. Some of them rushed on us with the sticks in their hands and some with swords in their hands rushed towards us. Therefore, we kept ourselves in a backward position without proceeding ahead. We saw that Kashinath was assaulting on Marotrao with a tommy in his hand. Kashinath also asked Balaji that Marotrao is not dying by such assault and therefore he should bring a jeep and crush him. Therefore, Balaji brought a jeep took it towards a brick furnace.

3. The person with Marotrao by name Bhandarwar was requesting those persons not to beat. At that time a lady was present there, put chilly powder into his eyes. Therefore, Bhandarwar stood there only as he frightened. Nagorao Namdeo, Bali Maroti, Balaji Lakhe, Keshav Tukaram, Shivraj Keshav, came there and started assaulting on Bhandarwar with iron rods. Due to such assault, Bhandarwar died on the spot."

. From the reading of Para 2 and Para 3 of his evidence, what is clear is that Accused No.4 Nandaji, Accused No.3 Sitaram assaulted Marotrao with swords in their hands, Accused No.2 Kashinath was assaulting Marotrao with tommy in his hand. Accused No.2 Kashinath asked Balaji to drive Jeep on Maroti and crush him and Accused No.1 Balaji accordingly brought the Jeep, took it towards brick furnace. In Para 3 he stated that Nagorao – Accused No.24 (who died during trial), Accused No.23 Baliram Maruti, Accused No.17 Balaji Lakhe, Accused No.25 Keshav Tukaram and Accused No.27

Shivraj Keshav came towards Bhandarwar (i.e. Devidas) and started assaulting him with iron rods, due to which he died on the spot. It is, thus clear that he has named Accused No.1 Balaji, Accused No.2 Kashinath, Accused No.3 Sitaram, Accused No.4 Nandaji, Accused No.17 Balaji Lakhe, Accused No.23 Baliram (acquitted), Accused No.24 Nagorao and Accused No.27 Shivraj Keshav. We have perused his cross-examination and we have considered the submissions made by Mr. Pradhan, the learned counsel for the Appellants. We have also perused the contradictions and omissions brought in his cross-examination. Assuming that PW-11 Chandu Kadam is distantly related to the complainant, upon perusal of the evidence of this witness, we find that his evidence in so far as above accused persons is concerned, is consistent and has not been shaken in the cross-examination on those material particulars or material aspects. The contradictions 'A', 'B' and 'C' are not material. Even if it is taken that motorcycle was

stopped at about 150 to 200 ft., it is not the case of the defence that in the broad day light witnesses could not see the accused persons assaulting the deceased persons from 150 to 200 ft. The contradiction 'D' that Balaji drove the Jeep on the body of Marotrao or on the motorcycle, may be some what material but then the medical evidence does not corroborate the same and therefore, we do not accept the theory that the Jeep was driven on the body of Marotrao. As to contradiction 'E' about the traffic on the road, the same is not material, in the sense that the prosecution has examined the independent witnesses and it is for the Court to find out whether the testimony of the witnesses is required to be believed or not. We have already taken care to examine the evidence of the related witnesses with caution. The prosecution is not expected to examine large number of witnesses who could be on the road. The omissions in the evidence of this witness are also not material. We, therefore, hold

that the evidence of this witness, insofar as above accused persons are concerned, is believable and trustworthy.

29. The next is the evidence of PW-12 Sitaram Govindrao Puyed. Deceased Maroti was his uncle. His evidence has to be carefully examined and with caution. We applied the rigours required for examining the evidence of interested witness in this case. We find from his evidence that he stated thus in Para 3, Para 4 and Para 5:-

"3. My uncle Marotrao was under impression that these persons will assault on him, therefore he took a turn and was about to run away from the spot. At that time Kashinath and Balaji Puyed fired round from the revolver. Therefore, my uncle Marotrao started running but two persons by name Dhondiba alias Sitaram and Nandaji Puyed started chasing him. They caught hold of him and they assaulted him with swords and axe in their hands. My uncle had fallen down and started shouting loudly asking as you should save your life as he is

finished. After his falling down 10 to 15 persons started assaulting on him with iron bars, swords, tommy, and axe and sticks. We tried to proceed ahead to save him. However, out of the persons gathered, they started pelting stones towards us. They were Pandurang Nagorao Puyed, Saheb Vishwanath Puyed, Abaji Bhivaji Puyed and Yuvraj Keshav Pawar. Therefore we could not proceed ahead and stopped there on the spot itself. Devidas was standing near the motorcycle in a frightened condition. He was requesting those persons that they should not beat him and assault on him. When the assailants started coming towards him, he also tried to run away. At that time Jijabai Puyed poured chilly powder into his eyes. Out of the assailants, five persons assaulted on him with iron bars. Those five persons were Nagorao Namdeo, Baliram Maroti Puyed, Keshav Tukaram Pawar, Shivraj Keshav Pawar, Balaji Bhimrao Lakhe, assaulted on Devidas with iron bars and thereby caused his death by such assault.

4. The assailants were assaulting on Marotrao near the trunks of Babool tree. Kashinath was giving blows with tommy even though Marotrao had already fallen down. Kashinath asked Balaji that Marotrao will not die by such assault therefore he should be

crushed under a jeep and asked him to take the jeep. Then Balaji took the jeep and proceeded towards the dead body of Marotrao and passed the dead body and left the jeep towards the brick furnace.

5. The registration number of my motorcycle is MH-26/A-3785. I left my motorcycle there and stood aside from the spot. On seeing me, the persons there took my motorcycle and started chasing me. They were Balaji Abarao Puyed, Nandaji Nagorao Puyed, Kashinath Maroti Puyed. I started running ahead and escaped myself. Since those three persons could not get me, therefore, they left my motorcycle there only and gave blows of the swords in their hands on my motorcycle. Those persons came on the spot. At that time one Mini-door came there, they stopped said Mini-door forcibly and by sitting in the said Mini-door they proceeded to their village along with the weapons in their hands. I again came by running on the spot, and saw that my uncle Maroti and Devidas were found dead on the spot. I found chilly powder at various places. I also found one Kattha, one tommy, and one dagger there on the spot. The back side door of the jeep was opened. There I found 7 to 8 sheaves (Myan) in the jeep. So also I found stones and chilly powder."

30. It is clear from reading of the above Paragraph No.3 that PW-12 Sitaram Govindrao Puyed stated that Accused No.3 Sitaram s/o Abaji Puyed and Accused No.4 Nandaji s/o Nagorao Puyed chased his uncle Marotrao, caught hold of him and assaulted him with swords, axe in their hands. Then 10 to 15 persons started assaulting him with iron rods, swords, tommy, axe and sticks. But then he has not stated names of those 10 to 15 persons nor he identified anybody from the accused persons as to those 10 to 15 persons. The second part of Para 3 above shows that five persons assaulted Devidas and they were Nagorao Accused No.24 (dead), Accused No.23 Baliram s/o Maroti Puyed (acquitted), Accused No.25 Keshav Tukaram Pawar, Accused No.17 Balaji s/o Bhimrao Lakhe and Accused No.27 Shivraj Keshav Pawar. In Para 4 he has stated that Accused No.4 Kashinath was giving blows with tommy even though Maroti had already fallen down and then Accused No.1 Balaji took the Jeep towards the dead body of Marotrao. From his

evidence thus, it is clear that he has only named and identified the assailants of Maroti and Devidas namely, Accused No.1 Balaji, Accused No.2 Kashinath, Accused No.3 Sitaram, Accused No.4 Nandaji s/o Nagorao Puyed, Accused No.17 Balaji Bhimrao Lakhe, Accused No.25 Keshav Tukaram Pawar and Accused No.27 Shivraj Keshav Pawar. We have carefully perused the cross-examination of this witness. We find that some omissions and contradictions brought in his evidence are not material to reject his evidence as infirm. On the contrary, his evidence is consistent and also corroborated by medical evidence. The omissions do not pertain to the material aspect regarding assault on Maroti and Devidas by the accused persons named above. The evidence of PW-11 Chandu Kadam also corroborates the evidence of this witness PW-12 Sitaram. The contradiction 'A' about running of the Jeep over the dead body of Marotrao, is immaterial since it is not proved that in fact dead body was crushed. The

contradiction 'B', 'C', 'D' and 'E' examined by us are also not material and on the same line as PW-11 Chandu Kadam, for which we have given reasons, which we need not repeat here. We therefore find that the evidence of this witness PW-12 Sitaram though he is closely related to deceased Maroti, is trustworthy, truthful and without any infirmity. It is noteworthy that he has not involved all or so many accused persons in the act of assault like PW-7 Sambhaji, as noted by us above, which shows the honesty with which he deposed before the Court. We find that PW-11 Chandu as well as this witness PW-12 Sitaram are honest witnesses as to who made assault and must be believed.

31. The up-shot of the above discussion is that the prosecution proved its case beyond any doubt against Accused No.1 Balaji Abaji Puyed, Accused No.2 Kashinath Maroti Puyed, Accused No.3 Sitaram Abaji Puyed, Accused No.4 Nandaji Nagorao

Puyed, Accused No.17 Balaji Bhimrao Lakhe, Accused No.25 Keshav Tukaram Pawar and Accused No.27 Shivraj Keshav Pawar. The trial Judge, however convicted Accused No.5 Raosaheb Ramji Puyed, Accused No.6 Narayan Ramji Puyed, Accused No.7 Dnyaneshwar Ramji Puyed, Accused No.9 Digamber Ramji Puyed and Accused No.18 Gajanan Abaji Puyed in the absence of any evidence regarding their overt act or participation in the crime along with the other convicted accused persons. We, therefore, do not find any justification in convicting them. However, as stated earlier, the conviction of Accused No.1 Balaji Abaji Puyed, Accused No.2 Kashinath Maruti Puyed, Accused No.3 Sitaram Abaji Puyed, Accused No.4 Nandaji Nagorao Puyed, Accused No.17 – Balaji s/o Bhimrao Lakhe, Accused No. 25 – Keshav s/o Tukaram Pawar and Accused No.27 – Shivraj s/o Keshav Pawar, will have to be confirmed.

32. The next question is about proof of

conspiracy under Section 120-B of the Indian Penal Code. We find that there is absolutely no evidence about conspiracy. There is finding recorded by the learned trial Judge to show that there was conspiracy which was hatched or that there was prior meeting of the minds for commission of the offence. We, therefore, set aside the conviction under Section 120-B of the Indian Penal Code.

33. In the result, we make the following order:-

O R D E R

(I) Criminal Appeal No.503 of 2010 is partly allowed.

(II) The impugned Judgment and Order of conviction of all the Appellants in the above Appeal for offence under Section 120-B of the I.P.C. recorded by the learned trial Judge so also the sentence, is set

aside.

(III) The conviction of the Appellant – original Accused No.5 – Raosaheb s/o Ramji Puyed, Accused No.6 Narayan s/o Ramji Puyed, Accused No.7 Dnyaneshwar s/o Ramji Puyed, Accused No.9 Digamber s/o Ramji Puyed and Accused No.18 Gajanan s/o Abaji Puyed for offence under Section 302 I.P.C. read with Section 149 I.P.C. And 147, 148 and 427 of I.P.C. is set aside and the Accused No.5 – Raosaheb s/o Ramji Puyed, Accused No.6 Narayan s/o Ramji Puyed, Accused No.7 Dnyaneshwar s/o Ramji Puyed, Accused No.9 Digamber s/o Ramji Puyed and Accused No.18 Gajanan s/o Abaji Puyed are acquitted of the said charges levelled against them. They be released forthwith, if not required in any other crime.

(IV) The impugned Judgment and Order

convicting the Appellants – original
Accused No.1 Balaji s/o Abaji Puyed,
Accused No.2 Kashinath s/o Maroti Puyed,
Accused No.3 Sitaram s/o Abaji Puyed,
Accused No.4 Nandaji s/o Nagorao Puyed,
Accused No.17 – Balaji s/o Bhimrao Lakhe,
Accused No. 25 – Keshav s/o Tukaram Pawar
and Accused No.27 – Shivraj s/o Keshav
Pawar for the offences punishable under
Sections 302 read with 149, 147, 148 and
427 of I.P.C. and sentence awarded to them
thereunder by the learned trial Judge,
namely of life imprisonment etc. is
confirmed and consequently their Appeal is
dismissed.

(V) All the sentences awarded by the
trial Court to these Appellants- original
Accused No.1 Balaji s/o Abaji Puyed,
Accused No.2 Kashinath s/o Maruti Puyed,
Accused No.3 Sitaram s/o Abaji Puyed,

Accused No.4 Nandaji s/o Nagorao Puyed,
Accused No.17 – Balaji s/o Bhimrao Lakhe,
Accused No. 25 – Keshav s/o Tukaram Pawar
and Accused No.27 – Shivraj s/o Keshav
Pawar shall run concurrently, except the
imprisonment in default of payment of fine.

(VI) Benefit of set off under Section
428 of Cr.P.C. shall be extended to them.

(VII) Rest of the Judgment and order of
the trial Judge about the disposal of the
property is confirmed.

[INDIRA K. JAIN, J.]
asb/SEP15

[A.B. CHAUDHARI, J.]