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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 250 OF 1993

1. Lalaso Ramchandra Pawar
Age 28 years,
R/o Datewadi, Taluka – Khatav,
District – Satara.

2. Vaijayanta Rangnath Namdas
Age 40 years, r/o. Datewadi,
Tal. Khatav, Dist. Satara.

.. Appellants

Vs.

The State of Maharashtra

.. Respondent

Mr. Prakash Naik a/w Mr. Ranvir Shekhawat a/w Mr. Pawan Mali
a/w Mr. Jagdish Choudhary i/by Raj Legal for appellant.
Mrs. S. D. Shinde, APP for State.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

JANUARY 08, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.]:

1. The appellants, who stand convicted for offence punishable
under Sections 302 read with Section 34 and 201 read with Section 34 of

the Indian Penal Code and sentenced to imprisonment for life and each accused to pay a fine of Rs.5000/-, in default of which to undergo further RI for one year and RI for five years and each accused to pay a fine of Rs.1000/-, in default of which to undergo further RI for three months, by the Additional Sessions Judge, Satara, by Judgment dated 31/03/1993, in Sessions Case No. 165 of 1991, by this Appeal question the correctness of their conviction and sentence.

2. Appellant No.2/Original Accused No.2 Vaijayanta Rangnath Namdas expired and accordingly the Appeal filed by her in so far as it questions her conviction and sentence was dismissed as abated by order of this Court dated 26.9.2014. This Appeal is therefore restricted to questioning the conviction and sentence of Appellant No.1 Lalaso.

3. Facts as are necessary for the decision of this Appeal may briefly be stated thus :-

PW-10 Police Head Constable Bhiva Kamble, who, in 1991 was attached to Vaduj Police Station and was posted at the Mayani Out Post on 10.6.1991, recorded the report of PW-7 Gorakhnath, a Police Patil

at Exhibit 35. On the basis of the said report, he registered an Accidental Death at Serial No.22 of 1991. He proceeded to the scene of the incident and drew the inquest panchnama of the dead body of deceased Rangnath and forwarded the dead body for postmortem examination. He also drew the scene of the incident panchnama and after arrival of PSI Gopal Thube, informed him that it was a case of murder.

PW-11 PSI Gopal Thube, who on 11.6.1991 was attached to the Vaduj Police Station, learnt about the registration of accidental death of Rangnath. Head Constable Kamble, who was drawing the inquest panchnama informed him that the injuries had been sustained by the deceased and therefore, it was not an accidental death. Accordingly, PW-11 PSI Thube took over the investigation. He recorded the statements of witnesses and also the supplementary statement of PW-7 Gorakhnath, Police Patil. PW-11 PSI Thube therefore filed his report and registered an offence vide Crime No.58 of 1991 under Section 302 of the Indian Penal Code. The report filed by PW-11 PSI Thube is at Exhibit 42. He arrested the accused in the presence of panchas. The clothes of the deceased were also seized under seizure memorandum in the presence of panchas. On 12.6.1991, the accused were referred for medical examination to the

Primary Health Centre at Vaduj. Accused No.1 Lalaso, during custodial interrogation, expressed his willingness to point out the place where a knife had been concealed. A memorandum at Exhibit 24 was accordingly recorded in the presence of panchas. The Appellant led the police and the panch to a small stream near the Padal Road and from the stream produced a knife which was seized under seizure memorandum at Exhibit 25. The Appellant also expressed his willingness to point out the place where his clothes had been concealed. The Appellant led the Police and the panch to his house and produced his clothes which were seized by the police in the presence of panchas under seizure memorandum at Exhibit 11. PW-11 PSI Thube recorded the statement of wife of the Appellant. On the same day, in the evening, Accused No.2 Vaijayanta produced a saree which was seized in the presence of panchas under seizure memorandum at Exhibit 12. The seized property was referred to the Chemical Analyzer under requisition at Exhibit 30. Statements of witnesses were recorded and further investigation was then handed over to PSI Chavan, who then transferred the investigation to PSI Tivate. On completion of investigation, PSI Tivate filed a charge-sheet against the accused.

4. Postmortem on the dead body of deceased Rangnath was

performed by PW 4 – Dr. Dhondiram Jadhav, who noticed the following external injuries :-

(i) Wound over left side of chest, 3 inches below left nipple directing upwards lateral, in 6th and 7th intercostal space in between anterior axillary and mid axillary line measuring about 2 inches x ½ inch x 5 inch deep edge, sharp, intercostal muscle deep, bleeding plus.

(ii) Wound over right side of chest in anterior axillary line, measuring about 1 ½ inch x 1 inch x 2 inch deep bleeding plus muscle deep.

(iii) Wound over abdomen in right hypochondrial 3 inches from umbilicus directing obliquely on right side measuring about 2 ½ inch x ½ inch x 2 ½ inch deep, edge sharp, muscle deep injury to intestine coming out through wound approximately 5 cms. bleeding plus.

(iv) Left Arm on medical aspect middle ½ inches directing downwards medially measuring about 1 ½ inch x ½ inch x ½ cms. deep, bleeding plus, sharp edge.

(v) Wound over left arm on lateral aspect directing meidal wounds measuring 2 inches x 1 /2 inch x 1 cm. deep. Edge sharp muscle deep, bleeding plus.

(vi) Wound on right occipital region wound over right occipital region horizontal in direction measuring 2 inch x ½ inch x ½ cm deep. Skin and scalp cutting, edge sharp, bleeding plus clinically no evidence of fracture.

(vii) Wound over right ear, C.L.W. measuring 1 /2 cm x ½ cm. middle present in meddle of pinna, bleeding plus.

(viii) C.L.W. over right lower lid ½ cm below lid, measuring about 1 cm x ½ cm, skin deep, bleeding plus.

(ix) Multiple minor abrasion over right cheek measuring about 1 ½ inch x 1 ½ inch.

(x) C.L.W. below tragus of right ear about 1 cm x ½ cm. bleeding plus.

(xi) Wound over left middle finger proximal phalynx palmar aspect, measuring about 1 inch x ½ cm. bleeding plus.

(xii) C.L.W. over left forefinger middle phalynx on palmar aspect about 1 inch x ½ inch muscle deep, bleeding plus.

(xiii) C.L.W. over right middle finger prozimal phalynx palmar aspect, skin deep.

(xiv) Minor abrasion over right knee joint.

He opined that all the injuries were ante-mortem and on internal examination, noticed the following internal injury:-

(i) Wound over right occipital region horizontally measuring about 2 inch x ½ inch x ½ cm. deep, skin and scalp cutting edge, sharp, bleeding plus. Haematoma under scalp on right occipital parietal region. Clinically no evidence of fracture.

He therefore opined that the probable cause of death of Rangnath was due to haemorrhagic shock due to intra-abdominal haemorrhage and intra-peritoneal haemorrhage due to injury causing disruption right middle lobe of lung, left middle lobe of lung, injury to stomach, injury to transverse colon on right side due to sharp object. The postmortem report is at Exh. 28. The advanced death certificate is at Exhibit 27.

5. On the case being committed to the Court of Sessions, trial Court vide Exh. 3 framed charge against the accused for offence punishable under Section 302 read with Section 34 and 201 read with Section 34 of the IPC. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined 12 witnesses, while the accused in their defence examined 3 witnesses. The trial court, upon appreciation of the evidence of the prosecution witnesses, convicted and sentenced the accused as afore-stated. On account of death of Accused No.2, the Appeal in so far as it relates to Accused No.2 was dismissed as abated.

6. We have heard Mr. Prakash Naik, learned counsel for the

Appellants and the learned APP and in order to effectively deal with the various submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

7. Prosecution has examined PW-5 Shankar Shingade, a neighbour of Accused No.2, who deposes that Accused No.2 Vaijayanta is the wife of deceased Rangnath while Accused No.1 Lalaso is the son-in-law of Vaijayanta and deceased Rangnath. Saraswati, daughter of Vaijayanta and Rangnath was married to Accused No.1 Lalaso about 2 to 3 years prior to the incident. After marriage, Accused Lalaso was residing in the house of Rangnath alongwith his wife Saraswati. Accused No.1 was not employed but was engaged in practicing black magic. According to Shankar, there used to be frequent quarrel between Accused No.1 and deceased Rangnath as Accused No.1 Lalaso had illicit relations with his mother-in-law Accused No.2 Vaijayanta. According to Shankar, deceased Rangnath had personal knowledge about the illicit relations. About 5 to 6 months prior to the incident, there was a quarrel between Rangnath and Accused No.1 and Rangnath had thrown Accused No.1 Lalaso out of his house. Thereafter, there were quarrels between Rangnath and Accused

No.2 Vaijayanta who used to tell Rangnath that unless Accused No.1 Lalaso was brought back to the house, Vaijayanta would not cook food for Rangnath. After some days, Accused No.2 Vaijayanta brought back Accused No.1 Lalaso to her house.

In respect of the incident, Shankar deposes that on the day of the incident he was sitting near the temple at about 6.00 p.m. He met deceased Rangnath, who informed him that he was going for bringing eggs. Shankar thereafter went to his house. When he was taking his dinner, he heard some noise from the house of Rangnath and therefore, went to the house of Rangnath and noticed that a crowd had gathered there. He entered the house of Rangnath and noticed that Rangnath had received bleeding injuries. Accused No.2 Vaijayanta informed him that Rangnath had sustained injuries because a wooden plank fell on his head. Shankar therefore went to village Vikhale and informed brother of Rangnath.

8. In cross-examination, omission has been elicited that he had not stated in his previous statement about a quarrel between the Appellant and deceased Rangnath 5 to 6 months prior to the incident. Omission is also elicited that he had not stated that deceased Rangnath had thrown the

Appellant out of his house. Omission is also elicited that thereafter, there used to be frequent quarrel between Rangnath and Vaijayanta who had insisted that the Appellant be brought back in the house otherwise she would not cook food for Rangnath. Omission is also elicited that he had not stated in his previous statement that at about 9.00 p.m. he had heard some noise from the house of Rangnath and therefore, had gone towards the house of Rangnath and had inquired from the persons as to what had happened. He was confronted with portion marked 'A' from his previous statement that the persons who had gathered there had informed him that Rangnath had sustained injuries as a wooden plank had fallen on his head. He has denied to have stated portion marked 'A' in his statement. He was confronted with portion marked 'B' from his statement that he had stated that when he entered the house of Rangnath, there was darkness and nothing was visible. He has denied to have stated portion marked 'B' in his statement. He was confronted with portion marked 'C' from his statement that the dead body of Rangnath was then kept in the corridor as it was dark inside the house. He has denied to have stated portion marked 'C' from his statement. He was confronted with portion marked 'D' from his statement that deceased Rangnath was not talking with the villagers. He has denied to have stated portion marked 'D' in his statement.

He has admitted that he has no personal knowledge about the illicit relations between Accused No.1 Lalaso and Accused No.2 Vaijayanta.

9. Prosecution has examined PW-6 Uttam, another neighbour, who also deposes on similar lines. In respect of the incident he deposes that on 10.6.1991, at about 9.00 p.m. he had heard cries of one Hariba and therefore, had come out of his house and had found Hariba going towards the house of Rangnath. This witness entered the house of Rangnath and noticed Rangnath lying in pool of blood. According to him, he had seen the dead body of Rangnath in the illumination of a lamp which was burning at that time. According to him, he had heard deceased Rangnath saying that Vaijayanta and Lalaso had stabbed him with knife. Vaijayanta then fell on the body of her husband and informed those present that Rangnath had sustained the injuries due to a wooden plank falling on him. This witness had noticed Accused No.1 Lalaso, who was standing in the room. Accused No.1 Lalaso then declared that he would call the Doctor and therefore, went for bringing the Doctor. A bed-sheet was wrapped on the body of Rangnath. Accused No.1 Lalaso did not return with the Medical Officer

and after some time Rangnath succumbed to his injuries. After about 2 hours, Accused No.1 Lalaso brought a Doctor. This witness has further deposed that Hariba Kamble had expired after the incident.

10. In cross-examination he has admitted that deceased Rangnath was his cousin. He has also admitted that Hariba was his cousin. In cross-examination he has admitted that he had personal knowledge about the illicit relations between the accused. He has also deposed that he was informed by Rangnath about the illicit relations. He has further deposed that he had seen both the accused sleeping on the cot like husband and wife. Omission has been elicited that he had not stated in his previous statement that there used to be quarrels between deceased Rangnath and accused Vaijayanta and that Rangnath had driven accused Lalaso from his house. Omission is also elicited that he had not stated that Vaijayanta had refused to cook food. He has further admitted that he had heard Hariba crying out that Rangnath was saying that the accused had stabbed him. He has also admitted that he had heard Hariba asking the accused to open the door and on hearing the cries of Hariba, this witness had come out of the house. He has admitted that he had informed the villagers who had assembled there that Rangnath had

informed him that the accused had stabbed him with a knife. He has also admitted that PW-5 Shankar and PW-7 Gorakhnath were present in the crowd.

11. Prosecution has examined PW-7 Gorakhnath, Police Patil of village Datewadi, who also deposed about quarrel between the accused and the deceased on account of illicit relations between the accused. He also deposed about deceased Rangnath driving away Accused No.1 Lalaso. In respect of the incident he deposed that on the day of the incident he was present at his house and Vilas Mahipati Jave and PW-5 Shankar had come to his house at about 11.00 in the night and had informed him about death of Rangnath due to fall of a wooden plank on him. According to him, he went to the house of Rangnath and noticed Rangnath lying in pool of blood. He also noticed that Rangnath was wrapped in a bed-sheet. He also noticed a sewing machine lying on the ground. He wanted to remove the bed-sheet from Rangnath but accused Vijayanta told him that Rangnath had sustained the injury because of fall of a wooden plank. He, thereafter, went to the Police Station and submitted his report at Exhibit 35.

12. In cross-examination he has admitted as true that when he

went to the house of Rangnath, he had noticed the villagers assembled there. He has also noticed Hariba and Uttam i.e. PW-6 present in the crowd. He has also admitted that Hariba and Uttam had informed him that a wooden plank had fallen on Rangnath and therefore, he had died. Omission has been elicited that he had not stated about the earlier incident of Rangnath driving away Accused No.1 Lalaso and Accused No.2 Vaijayanta threatening deceased Rangnath not to cook food till Lalaso was brought back. Omission is also elicited that he had not stated in his report that he had noticed one sewing machine lying on the ground. He has denied portion marked 'A' from his report that as it was dark he could not see the dead body of Rangnath. He has denied to have stated portion marked 'A' in his report.

13. Prosecution has examined PW-8 Tai, wife of Hariba Kamble, who deposed about the illicit relations between the accused and also deposed about deceased Rangnath driving out Accused No.1 Lalaso and Accused No.2 Vaijayanta insisting that Accused No.1 be brought back. According to Tai, on the day of the incident, at about 9.00 p.m. she alongwith her husband and her daughter was present in the house. She had heard the cry of Rangnath and therefore, Hariba had gone out of the house

and returned back within a short time. Hariba informed her that Rangnath had informed him that the accused had stabbed Rangnath. Hariba then went for calling the other villagers. When Tai had gone to the house of Rangnath, she noticed that Rangnath was wrapped in a bed-sheet and Accused No.2 Vaijayanta was lying on the dead body of her husband Rangnath. Vaijayanta had informed those present that Rangnath had sustained the injury by fall of a wooden plank. Omission has been elicited that she had not stated in her previous statement about Accused No.1 Lalaso being driven out of the house and about Accused No.2 Vaijayanta insisting that Accused No.1 Lalaso be brought back.

14. Prosecution had examined PW-8 Saraswati, wife of Accused No.1 Lalaso, who did not support the prosecution and was declared hostile. In her examination-in-chief she has deposed that on 10.6.1991, she and her husband Lalaso were residing with her parents. On that day there was a quarrel between Vaijayanta and Rangnath. Accused No.1 Lalaso was not present but came when the quarrel started. Vaijayanta informed the Appellant about the quarrel. She has denied that there were illicit relations between her husband and her mother Accused No.2 Vaijayanta. In cross-examination on behalf of the accused she has admitted that on the day of

the incident the family was taking their dinner at about 9.00 to 9.30 p.m. Deceased Rangnath wanted to go to the house of Tai for consuming liquor. Accused No.2 Vaijayanta had objected to that. Despite the objection, Rangnath went out of the house and therefore, Vaijayanta caught his hand and dragged him inside the house. Rangnath was annoyed and therefore, started assaulting Vaijayanta and pushed her towards the sewing machine. Vaijayanta fell on the ground and sewing machine also fell on the ground. Hearing the cries of Vaijayanta, Accused No.1 Lalaso came there and attempted to rescue Vaijayanta. Deceased Rangnath abused Lalaso and attempted to assault Lalaso with a knife. Lalaso caught the knife in his right hand and there was a scuffle between Rangnath and Accused Lalaso. Rangnath thereafter snatched the knife from the hand of Lalaso and again attempted to stab Lalaso. Lalaso again caught the knife in his left hand and in the scuffle Rangnath received injuries and Lalaso also received injuries. Lalaso succeeded in disarming Rangnath. Rangnath started assaulting Lalaso and Lalaso then stabbed Rangnath with the knife. Vaijayanta had also sustained injuries in the scuffle as she had tried to intervene. Lalaso thereafter gone to bring the Doctor but by the time the Doctor arrived, Rangnath had expired.

15. Prosecution has examined PW-12 Dr. Ashokkumar Tasgaonkar, who had noticed the following external injuries sustained by the Appellant :-

- (1) Incised wound 1 cm. x skin deep, two in number, each over proximal and middle phlynx, ventral surface of Rt. Index finger, inflamed edges, no discharge.
- (2) Incised wound 2 cm x skin deep, over ulner border of Rt. Pam, inflamed edger, no discharge.
- (3) Incised wound 1 cm x skin deep, over palm, inflamed edger, no discharge.
- (4) Incised wound 1 cm x skin deep over proximal phlynx, ventral surface of left ring finger.
- (5) Incised wound 2 cm x skin deep over center of palm, inflamed edger, no discharge.
- (6) Incised wound 1 cm x skin deep ulnar border of left palm, clean cut

edger, no discharge.

Accused No.2 Vaijayanta had also sustained the following external injuries :-

- (1) Abrasion 1 x ¼ cm. x skin deep, over dorsom of Rt. wrist, semiparalent discharge in wound present. Edger inflamed.
- (2) Abrasion ¼ x ¼ cm over dorsom of Rt. Forearm reddish scab over wound present.
- (3) Abrasion ¼ x ¼ cm over tip of dorsom of left index finger.

In cross-examination, PW-12 Dr. Tasgaonkar has admitted that the injuries sustained by the Appellant were possible if a person holds the knife from its sharp side when another person is delivering blows to him and also when he tries to snatch the knife. He has also admitted that the injuries sustained by Accused No.2 Vaijayanta were possible by the tip of the knife.

16. The Appellant had examined himself as DW-1 . The Appellant has deposed that prior to his marriage, he was running a cycle shop and

was looking after the agricultural land at village Pingali. After his marriage he alongwith his wife resided at village Pingali for about 2 months and thereafter, started residing at village Datewadi. According to the Appellant, his parents in-law had taken him to village Datewadi as there was no one to look after their agricultural land. The Appellant further deposes that thereafter he began to look after the agricultural land and the cattle of his father in-law and began to reside at village Datewaid. According to him, deceased Rangnath used to quarrel with Accused No.2 Vaijayanta after consuming liquor. Accused No.2 used to prohibit deceased Rangnath from going to the house of PW-8 Tai for consuming liquor. On the day of the incident, according to the Appellant, he returned to the house of his parents in-law and noticed that deceased Rangnath had come to the house after consuming liquor. While dinner was being about to be served, deceased Rangnath insisted on going out for consuming liquor. Accused No.2 Vaijayanta asked him not to go for consuming liquor and despite that deceased Rangnath was going out of the house. Accused No.2 caught his hand and pulled him inside. Deceased Rangnath then pushed Accused No.2 and she fell on the sewing machine. On hearing the cries of Accused No.2, the Appellant came in the room and pushed aside deceased Rangnath. Rangnath became angry and started abusing the Appellant.

Deceased Rangnath was armed with a knife and had stated that he would kill both of them. According to the Appellant, he caught the knife which was wielded by his father-in-law. Rangnath removed the knife from the hands of the Appellant and intended to strike the Appellant with the knife. The Appellant again succeeded in snatching the knife from the hands of Rangnath. Rangnath became angry and rushed at the Appellant and the Appellant held the knife in front of him due to which deceased Rangnath received the injuries. According to the Appellant, during the scuffle, deceased Rangnath had sustained the injuries as the Appellant had apprehended that deceased Rangnath would kill him.

Though the Appellant has been cross-examined at length, nothing has been elicited in the cross-examination which would affect the credibility of the evidence of the Appellant.

17. The accused have also examined Accused No.2 Vaijayanta as DW-2, who has also deposed on similar lines as that of the Appellant. In cross-examination, apart from giving suggestions to Vaijayanta, nothing of substance has been elicited. The suggestions given by the prosecution have been denied by Vaijayanta. Though the accused in their defence have

examined Sharada, daughter of Accused No.2 and the deceased, as DW-3, in our opinion, no reliance can be placed on the testimony of this witness. In cross-examination on behalf of the prosecution, she has admitted that she did not want that her mother should be punished. Apart from that, DW-3 Sharada is a child witness and in our opinion, it is extremely unlikely that she was present in the house during the incident. This witness appears to us to be a tutored witness and therefore, no reliance can be placed on the testimony of this witness. The Trial court has also held that no reliance can be placed on the testimony of DW-3 Sharada.

18. Mr. Prakash Naik, learned Counsel for the Appellants has urged before us that the Appellant and Accused No.2 had examined themselves as defence witnesses and had subjected themselves to cross-examination on behalf of the prosecution. However, nothing has been elicited in the cross-examination to discard the evidence of the accused. It is further submitted that there are no eye-witnesses to the incident and in the light of the evidence of the Appellant and Accused No.2 coupled with the injuries sustained by both of them, the Appellant had exercised his right of private defence as he was apprehending grievous injury being caused to him by the Appellant. The learned APP has supported the findings arrived

at by the Trial Court.

19. The evidence of PW-8 Tai, wife of Hariba Kamble deposes that her husband Hariba on his return had informed her about the dying declaration of Rangnath that he had been stabbed by the accused. PW-6 Uttam also deposes that Rangnath had disclosed to him that the accused had stabbed him with a knife. In the cross-examination it is elicited that he had disclosed this fact to the persons who were in the crowd and particularly, it is brought on record that PW-5 Shankar and PW-7 Gorakhnath were present outside the house of deceased Rangnath. If indeed the deceased had disclosed to Uttam and Hariba that the accused had stabbed him and this fact was narrated to PW-7 Gorakhnath, we find it inexplicable that PW-7 Gorakhnath in his report had stated that deceased Rangnath had sustained injuries due to the fall of the wooden plank. In our opinion therefore, no reliance can be placed on the oral dying declaration alleged to have been given to these prosecution witnesses.

20. Prosecution has not examined any eye-witnesses to the incident and therefore, the evidence against the accused is of circumstantial nature. The circumstances are : (1) the presence of both the accused in the

house of deceased Rangnath at the time of incident; (2) after quarrel the dead body of deceased Rangnath was found in the house where the accused were present; and (3) deceased Rangnath had died a homicidal death. In respect of all the three circumstances, the accused have examined themselves and have led evidence to indicate that the deceased was enraged as his wife – Accused No.2 Vaijayanta had not permitted him to go out for consuming liquor. The evidence further discloses that the deceased who was armed with a knife rushed at the Appellant in order to stab him. The Appellant had clutched the blade of the knife and in the process had sustained injuries to his hand. Ultimately, he was successful in disarming the deceased. However, in the process deceased had sustained injuries and despite that the deceased rushed at the Appellant. The Appellant apprehending that the deceased would cause injuries to him, held the knife in front of him and in the scuffle the deceased sustained injuries which proved to be fatal and he succumbed to the injuries. Though the accused have been cross-examined at length, nothing has been elicited in the cross-examination to doubt the correctness of what is deposed to by the accused. There is no presumption that the defence witnesses are liars and no reliance can be placed on their testimony. The evidence of a defence witness has to be appreciated like that of other witnesses. There is no evidence on record

which would contradict the evidence of the accused and establish the falsehood of their testimony. As pointed out by us above, the cross-examination does not demonstrate that these witnesses are liars. In our opinion therefore, there are no grounds whatsoever for discarding the evidence of the Appellant and Accused No.2. The evidence of both these defence witnesses therefore establishes the right of private defence and about the injuries being sustained by the deceased in the scuffle. The evidence further establishes that it was the deceased who was armed with a knife and who had rushed at the Appellant. In the face of this evidence therefore, the evidence of the prosecution witnesses that the Appellant and Accused No.2 had illicit relations would pale into insignificance and that circumstance cannot wipe out the evidence of the defence witnesses. Existence of a right of private defence is certainly spell out from the evidence of the Appellant and Accused No.2. The evidence further discloses about the injuries being caused to the deceased in the exercise of right of private defence. Thus, in our opinion, the Appellants are entitled to be given the benefit of doubt.

21. The prosecution witnesses have deposed that Accused No.2 had informed them that deceased Rangnath had died as a wooden plank

had fallen on him and therefore, a false explanation was given by Accused No.2. The aforesaid explanation, even if it is presumed was deliberately given by Accused No.2, was given by Accused No.2 and since Accused No.2 had expired during the pendency of the Appeal, the conviction of the Appellant for offence punishable under Section 201 r/w. 34 of the Indian Penal Code would be wholly unjustifiable.

22. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellant/Original Accused No. 1 – Lalaso Ramchandra Pawar is hereby quashed and set aside and he is acquitted of the offence with which he was charged and convicted. Fine, if paid by him, be refunded to him. Since the appellant/Original Accused No.1 is on bail, his bail bonds stand cancelled.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)