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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.614 OF 1992

Shivaji Raghunath Dhadam,
Indian Citizen, Aged about 28 yrs.,
Occ. Agriculturist,
Residing at Dhadamwadi Mouje
Kumbhargaon, Taluka Patan,
District Satara

...Appellant.

versus

The State of Maharashtra
(to be served through
the Learned Public Prosecutor,
High Court, Bombay)

..Respondent.

.....

Mr. S.V. Kotwal with Mr. M.S. Mohite for the Appellant.
Mr. H.J. Dedhia, Addl. PP for the State.

.....

**CORAM : B.P DHARMADHIKARI &
A.S. GADKARI, JJ.**

23rd July, 2015.

JUDGMENT (Per A.S. Gadkari, J.) :

1 The appellant, original accused no.1, has challenged the judgment and order dated 29th August 1992 passed in Sessions Case No.188 of 1991 by the Joint District Judge and Additional Sessions Judge, Satara thereby convicting him for the offence punishable under Section 302 of Indian Penal Code and is sentenced to undergo imprisonment for life. By

the same judgment and order dated 29th August 1992, the Trial court was pleased to acquit the original accused nos.2 to 4 for offence for which they were charged. The appellant has impugned the said judgment and order herein.

2 The facts which can be enumerated from the record, may briefly be stated thus:

(i) Shri Chandru Bapu Waidande (PW-3), police patil of the village Chalkewadi who was also holding additional charge of Kumbhargaoon since 1982. That on 31.7.1991 one Vasant Vithal More came to his house and informed him that there was murder of Ramesh Pandurang Dhadam. The said More had also informed Shri Waidande that the offence took place because of the dispute over the land and further informed that the appellant had caused injury on the neck of deceased Ramesh with the help of tube light rod. Shri Chandru Waidande thereafter went to the house of deceased Ramesh and noticed that the dead body was lying in the vharanda (courtyard) of the house. He inspected the injury on the person of the deceased and saw that the blood was oozing from it. He then proceeded to the police station. On his way to Manyachiwadi he saw that the people had caught the appellant-Shivaji. Shiri Chandru Waidande took the appellant in his custody and took him to the police station along

with him. He noticed an injury on the left hand between thumb and left finger and there was swelling on the mouth of the appellant. He took the appellant to Dhebewadi police station. He produced the appellant in the police station and gave the report to police. The said first information report is at Exhibit 31.

(ii) Shri Rajaram Mahadev Manve (PW-9), the Assistant sub-Inspector was then attached to Dhebewadi police station since 1.4.1991. On 31.7.1991, at around 7.30 p.m. police patil of Chalkewadi i.e. PW-3 came to the police station and lodged a report about the murder of Ramesh Dhadam by the appellant with tube rod. Shri Rajaram Manve (PW-9) recorded the said report which is at Exhibit 31. Shri Rajaram Manve (PW-9) registered an offence on the basis of the said report as a crime no.55 of 1991 under Section 302. Station-diary entry to that effect was also recorded. PW-3 police patil had brought along with him the appellant to the police station. Shri Rajaram Manve took the appellant in custody. Shri Rajaram Manve noticed injuries on the person of the appellant. That one injury was between his thumb and index finger on his left hand. He also noticed other minor injuries. The appellant was sent to the Medical Officer, Public Health Centre for examination. Shri Rajaram Manve (PW-9) thereafter started investigation of the offence. He recorded inquest

panchanama of the dead body, drew the spot panchanama. He also recorded panchanama of the place where there was blood splashed. He also found blood soaked earth, a button and glass pieces of tube rod on the said spot which was seized by him. He also drew panchanama of the spot where the tube rod was allegedly broken and also seized from that spot the pieces of glass tube rod. He again found glass pieces of rod from the place of pool of blood which was upto distance of about 145 feet where deceased had gone on his his foot and had fallen down. He prepared the spot panchanama-cum-seizure memo which is at Exhibit 18. He thereafter handed over the investigation to PSI Shri Pandurang Y. Patil.

(iii) Shri Pandurang Y. Patil (PW-10), P.S.I., was then attached to Dhebewadi police station upto 2.6.1992 and has investigated the present crime. He took over the investigation of the present crime from A.S.I. Shri Manve on 1.8.1991. During the course of investigation, he recorded statements of witnesses. He seized a full pant of the appellant and also seized banian of the appellant from his house. He also seized clothes of father and uncle of the deceased. He arrested the original accused nos.2 to 4 on 6.8.1991 and seized saree and choli of the original accused no.2 Smt. Sonabai. He thereafter sent articles to the Chemical Analyser for examination. After receipt of report from the Chemical Analyser, he

submitted chargesheet against the original accused nos.1 to 4 in the Court of Judicial Magistrate First Class, Patan, District-Satara.

(iv) After the case was committed to the Court of Sessions, as contemplated under Section 309 of the Cr. P.C. the Trial Court framed charge below Exhibit 3. The said charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The defence of the appellant-Shivaji in his statement recorded under Section 313 of Cr. P.C. was that, there was scuffle between him and the deceased Ramesh and deceased Ramesh started beating the appellant with a stick, the appellant fell down. In the meanwhile, the father of Ramesh came with a tube rod. The appellant held the said tube rod. In the meanwhile, deceased Ramesh gave a blow with stick. There was scuffle between them. In the said scuffle the tube rod in his hand struck to the neck of the deceased Ramesh. That the appellant exercised his right of private defence. The learned Trial Court after recording the evidence and after hearing the parties to the said Sessions Case, was pleased to convict the appellant-Shivaji as stated hereinabove.

3 Heard Mr. S.V. Kotwal, the learned Counsel appearing for the Appellant and Mr. H.J. Dedhia, the learned APP for the State and with their assistance we also perused the entire evidence and record pertaining to the

present case.

4 The learned Counsel for the appellant submitted that the prosecution has failed to explain the injuries on the appellant. He has contended that though there were about 15 persons at the spot, the prosecution has not examined any independent witness. He further contended that there is only one injury on the body of deceased Ramesh and it might be due to an accident also, as it is the case of the appellant since beginning that there was a scuffle in which deceased Ramesh bet the appellant while appellant sustained various injuries and in the said scuffle the deceased Ramesh received said injury and due to which he subsequently died. The learned Counsel for the appellant further contended that the motive as put forth by the prosecution is very weak in nature, as the partition between the parties had already taken place. He lastly contended that the evidence on record discloses that the prosecution has suppressed the genesis of the incident and therefore the benefit of doubt has to be given to the appellant. He therefore urged before us that the present appeal may be allowed and the appellant may be acquitted from the charges levelled against him.

5 The learned APP for the State on the other hand supported the impugned judgment and order, and submitted that the evidence of PW-4

i.e. the father of the deceased Ramesh and PW-5 the brother of deceased namely Ganesh who is an eye-witness to the incident, is cogent and reliable. He further submitted that these two witnesses have given a specific version of the incident. He submitted that the version of PW-4 and PW-5 is corroborated by the evidence of PW-3, PW-6 and PW-7. He therefore submitted that in view of the reliable and trustworthy evidence of the witnesses, the conviction of the appellant may be sustained and appeal may be dismissed.

6 In order to effectively deal with the submissions advanced before us by the learned Counsel for the Appellant and the learned APP for the State, it would be useful to refer to the evidence in brief of the prosecution witnesses.

7 PW-1 Shri Ramchandra Tukaram More is the panch witness to the scene of offence i.e. panch to the spot panchanama. PW-1 in his testimony has stated that he was called by the police at about 8 to 9 p.m. on the date of incident and was taken to the scene of offence. That there was another panch namely Ramchandra Keshav More. The said spot was at Dhebewadi. It was near the house of deceased Ramesh. There was a tree of Sitaphal close to the house of the deceased. He saw blood there. There were pieces of tube light lying at that place. He saw the earth soaked with

blood. On the other side of the road there was house of Pandurang More. There was a log of babhul tree lying in front of the house. He was thereafter led at a distance of 145 feet on the eastern side. He saw blood on the floor near the house of Vasant Vithal More. He was thereafter taken to the house of the appellant which was on the western side of the house of deceased Ramesh. He saw pieces of tube rod and a stone. The said spot was near the house of the accused on the road. The police collected glass pieces, stone and earth soaked with blood. Police drew panchanama. The said Panchanama is at Exhibit 18.

In the cross-examination, this witness has admitted that a large piece of broken tube light rod which is Article 13 was found at a distance of 25 feet from the place where the blood was found. He has further admitted that the glass pieces were found near the stone and that stone was near the house of the accused i.e. appellant. That he has further admitted that the stone was at a distance of about 10 feet from the house of the appellant.

8 PW-2 is Shri Ganpat Bapurao More, the panch-witness to the seizure of the saree of original accused no.2 Smt. Sonabai. The evidence of this witness is not relevant as far as the present appellant is concerned and therefore we do not intend to discuss the same in the present appeal.

9 PW-3 is Chandru Bapu Waidande, police patil of the village

Chalkewadi who was also holding additional charge of Kumbhargaon. The facts mentioned by this witness in his examination-in-chief has already been narrated in the forgoing paragraph 2(i) hereinabove and for the sake of brevity, repetition of the same is avoided here. PW-3 Shri Waidande in his testimony has further stated that the distance of Dhebewadi from Manyachiwadi is about 3 kms. On way to Dhebewadi police station, there was out-post of Talmavale. There was nobody in the out-post and therefore he went to Dhebewadi police station at about 7.45 p.m. He has further stated that he knew deceased Ramesh as well as accused family. Appellant-Shivaji was residing with his brother and his wife while deceased Ramesh residing with his parents, wife and children. That Ramesh's father and Shivaji's father i.e. appellant's father were real brothers. One and half months prior to the date of incident, there was partition of the property between Pandurang i.e. father of deceased Ramesh, Shamrao, and Ananda. That PW-3 was present at that time. At the time of said partition proceeding, the appellant-Shivaji and Ananda were not present. That appellant's mother Smt.Sonabai and his sister-in-law Shalan were present.

In the cross-examination of this witness, he has admitted that he did not hear any grumbling from any side with regard to the partition or the share therein. That the field was partitioned in three equal parts. He

has further admitted that one part was given to Pandurang, the middle part was given to Shamrao and the third part on which side the house of the appellant was situated, was allotted to his share. The appellant was given his $1/3^{\text{rd}}$ share plus another $1/3^{\text{rd}}$ which he had purchased from Shamrao. That after reaching to the said spot, he asked people to accompany him, however, nobody was prepared to come with him to the police station. This witness has further admitted that when he reached Manewadi, the appellant was found sitting there alone by the side of road. That the appellant told him that he (appellant) sustained bleeding injuries on account of scuffle with deceased. He also saw swelling on both the sides of face of the appellant and also swelling below the neck.

10 PW-4 is Pandurang Tukaram Dhadam, the father of deceased Ramesh. PW-4 in his testimony has stated that the appellant is his brother's son. That the house of the accused persons was close to his house. He had four brothers. All his four brothers are dead. The property was in the name of Raghunath. He died five years ago. After his death the property was recorded in the name of his son i.e. accused no.1-Shivaji. That one year ago there was partition in the property. That some villagers and police patil Shri Chandru were present at the time of partition. That the incident took place on Wednesday 31.7.1991. That at about 3.00 p.m. the appellant-Shivaji

was noticed on the road near his house and appellant was saying that he would commit murder. At that point of time, one Ramchandra Chavan was also present near his house. Ramchandra asked the appellant not to disturb and asked him to go home. The appellant then left. At about 5 O'clock in the evening deceased Ramesh was playing with his younger brother Ganesh near the house close to Sitaphal tree. PW-4 was at home with his wife. There was a commotion outside the house and his younger son Ganesh called his wife. After hearing shouts, his wife and PW-4 also went to see what had happened. On coming out of the house, PW-4 saw that his son Ramesh was lying on the floor and the appellant was sitting on him. That the original accused no.2-Smt. Sonabai, accused no.3 Smt. Shalan and accused no.4-Smt. Kusum were also present. The lady accused nos.2 to 4 left the scene on his arrival. That he tried to separate the appellant by pulling him, however, he did not succeed in his attempt to pull appellant-Shivaji. Ramchandra and Vithal both helped him and they separated appellant from Ramesh. Ramesh had injuries on his neck. There was blood oozing and clothes of Ramesh were stained with blood. Ramesh got up and started running to the hospital. Ramesh went upto the distance of about 145 feet. He stopped near the house of Vasant More and asked for water and sat there. Somebody gave water to Ramesh. Thereafter Ramesh was

taken to hospital in jeep. Doctor after examining Ramesh declared him dead. He thereafter came back to home.

In the cross-examination, this witness has admitted that they have been demanding from the appellant the physical possession of their share in the property. He has admitted that the partition took place about one and half months prior to the incident. He has further admitted that Ganesh, his younger son had gone for grazing sheep to the hills of Varekarwadi which is to the west of his house at distance of about 1 km. He has also admitted that his sons Ramesh and Ganesh were plying with marbles outside their house. That no marbles were found at the spot. An omission to the effect that he heard shouts and screaming of his wife and same has been stated before the police has been brought on record by the appellant. That piece of tube rod which was, Article 13 was found on the spot. This witness has denied the suggestion that he, Ramchandra or Vithal did beat Shivaji/appellant in an attempt to separate Ramesh. This witness has denied the suggestion that when he attempted to assault appellant, he sustained injuries between his index finger and thumb while defending himself. He has further denied the suggestion that the appellant used the piece of tube rod in order to defend himself and because of that deceased Ramesh sustained injuries. This witness has further denied the suggestion

to the effect that a stick was lying near the scene of offence and that the stick was removed subsequently by him.

11 PW-5 is Ganesh Pandurang Dhadam, the younger brother of deceased Ramesh and son of PW-4 Pandurang Dhadam. He is the sole eye-witness to the alleged incident of assault on deceased Ramesh. On the date of recording of his testimony i.e. 19.8.1992, he was about 12 years of age. The date of incident is 31.7.1991. PW-5 Ganesh in his testimony has stated that the incident took place in the evening at about 6 O'clock. It was Wednesday. That the incident took place near his house and close to the Sitafal tree. That he and deceased Ramesh were playing with marbles outside their house. That the marble fell at some distance towards the eastern side and therefore he went there to lift it. When he was about to return back, he saw that the original accused nos.2 to 4 had held his brother Ramesh. The original accused no.2 Smt. Sonabai had held Ramesh to his waist while the original accused nos.3 and 4 held him by hand and all of them fell Ramesh down on the ground. The appellant-Shivaji came with tube rod. He broke the tube and came running towards Ramesh (deceased). He then pierced a broken tube rod into the neck of Ramesh. PW-5 Ganesh therefore shouted and called his mother. His mother came out of the house followed by his father. By that time, the appellant was on

the body of deceased Ramesh. His father tried to pull the appellant away, but could not succeed. That in the meantime, his uncles namely Rama and Vitthal arrived. All of them separated the appellant from deceased Ramesh. That he did not see the other accused persons namely accused nos.2 to 4 after they fell Ramesh on the ground. His brother had bleeding injuries and his clothes were stained with blood. That his brother deceased Ramesh got up and started running towards the hospital. After going upto the house of Vasant More, he could not go further and sat there. Thereafter his father and uncles took Ramesh to the hospital. PW-5 Ganesh also accompanied them to the hospital. After examination, the doctor declared Ramesh as dead.

In the cross-examination, this witness has admitted that his brother was lying down facing the ground when he turned back after collecting his marble. He saw the appellant sitting on Ramesh. He has further admitted that the appellant had held tube rod in both the hands. An omission has been brought on record to the effect that though he had stated before the police that the appellant had a tube rod and that he broke it, however, the said sentence is not finding place in the statement recorded by the police. An omission by way of contradiction has been elicited to the effect that he had not stated before the police in his statement that the

appellant was sitting on Ramesh and that his father and uncles separated him. PW-5 Ganesh has categorically admitted that nobody assaulted the appellant before or after the incident. That he did not see the injuries on the person of the appellant. On the question put by the Court, this witness has stated that the appellant arrived with a tube and without having said anything assaulted the deceased. That he did not speak anything and he only shouted.

12 PW-6 Vitthal Dhadam is the neighbour of PW-4 Pandurang Dhadam. PW-6 Vitthal in his testimony has stated that he knew deceased Ramesh. Pandurang (PW-4) is his cousin. That on the day of incident he was at his house with his brother Ramchandra. He heard commotion outside the house of the appellant. He along with his brother went out to see what had happened. He saw the original accused no.2 standing in front of their house. That he saw blood stains on the passage and near Sitafal tree. That he saw Pandurang (PW-4) and the appellant there. He did not see Ramesh (deceased). That he came to know that Ramesh had ran towards Doctor's hospital. He saw the appellant sitting on Ramesh who was lying on the ground. Pandurang was trying to separate him. He helped Pandurang (PW-4) in pulling the appellant and separating them. That Ramesh had bleeding injuries on his neck. Ramesh got up and ran towards the doctor. That he

tied a scarf on injury of Ramesh (deceased).

In the cross-examination, this witness has admitted that he saw Ramesh (deceased) near the Sitafal tree. That Shivaji (appellant) was standing there. He saw Pandurang (PW-4) standing. He has further admitted that no scuffle took place in between Pandurang (PW-4) and Shivaji (appellant). He has further admitted that people gathered there and were watching the incident from distance. That there were about 10 to 15 persons.

13 PW-7 is Dr. Sambhaji Shinde who conducted the autopsy on the dead body of deceased Ramesh. PW-7 in his testimony has stated that he was working as a Medical Officer in the Cottage Hospital, Karad since 1988. That he conducted postmortem examination on the dead body of Ramesh Pandurang Dhadam on 1.8.1991. He has stated that there was injury on the right side of the neck of the deceased. It was a deep penetrating wound. He described the said injury in his report in Column No.17. That the said injury was ante mortem. That because of the injury on the right side of the neck, there was rupture of carotid- artery and vein with blood clots. He has further stated that on account of this rupture person dies immediately. He opined in his report that the death of the deceased was on account of cardio respiratory failure due to hemorrhagic

shock due to right sided carotid artery and vein, rupture. He accordingly, prepared the postmortem note and issued death certificate. The postmortem note is at Exhibit 39 and the death certificate is at Exhibit 40.

In the cross-examination, this witness has admitted that the injury was 2 and half inch in depth and it had gone upto the neck bone. He has admitted that while examining the injury of the neck of the deceased, no glass pieces or any other material was found.

14 PW-8 is Vasant Karanjvadekar, the Medical Officer who examined the appellant Shivaji on 31.7.1991 at about 10.30 p.m. PW-8 in his testimony has stated that he was working as a Medical Officer, Public Health Centre, Dhebewadi and examined the appellant. He found injuries on the person of the appellant. That after examination, he issued certificate. He noticed in all seven injuries. He opined that injuries were caused by hard and blunt object. He also opined that the age of the injury was about six hours. The said injury certificate is at Exhibit 42. PW-8 opined that injuries which were found on the person of the appellant were of simple in nature. The injuries as per injury certificate which is at Exhibit 42 are as under:

“1. CLW at the base of left thumb ventral aspect, 1” x 1/6” muscle deep- bleeding.

2. Contusion below right eye.

3. Abrasion over right forearm 2" below elbow
4. Weal marks over back of right side, two in number below scapular region radish colour aton (illegible) 4" x 1/2" and 5" x 1/2".
5. Impression mark over left scapular ave, 2" x 1/2".
6. Contusion over right buttock tender on touch.
7. Impression mark over left elbow 1" x 1/2"

In the cross-examination, this witness has stated that Injuries described at serial no.1 in his report at Exhibit 42 would have been caused by article 13 (stick/tube rod) which was shown to him. He has further admitted that in case the persons sustained this injury was to ward off the attempt by someone who gave a blow with article 13.

15 PW-9 is Rajaram Mahadev Manve, Assistant Senior Inspector, Dhebewadi who had recorded the first information report and conducted the initial stage of investigation into the present crime.

16 PW-10 is Pandurang Y. Patil, P.S.I., Koynanagar police station who took over the investigation from PW-9 A.S.I. Manve on 1.8.1991 and completed it. The facts which have emerged from his testimony have been briefly stated in the forgoing paragraph number 2(iii) and for the sake of brevity repetition of the same is avoided herein.

In the cross-examination, this witness has admitted that he

recorded statements of Ganesh (PW-5) on 1.8.1991. That in his statements Ganesh (PW-5) did not state that the appellant had tube rod and he broke it. He has further admitted that Ganesh (PW-5) did not state in his statement that deceased Ramesh got up and ran towards the hospital and fell in front of house of Vasant More. Apart from this, no material has been elicited in the cross-examination of this witness.

17 Mr. S.V. Kotwal, learned Counsel for the appellant submitted that the prosecution has utterly failed to give explanation about the injuries on the person of the appellant which have been noticed by PW-8 Dr. Vasant Karanjvadekar. He further submitted that the prosecution has failed to prove the genesis of the incident. In support of his contention, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Lakshmi Singh & Ors. Vs. State of Bihar [(1976) 4 SCC 394]***. In the said judgment, the Supreme Court has held that if the prosecution does not choose to put forward the true version of the incident, it is to be itself squarely blamed for the failure of the case. He relied on paragraph no.12 in particular. The relevant excerpt of the said paragraph no.12 is reproduced here under:

“It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance from which the court can draw the following

inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

18 Thus, after analysing the entire evidence on record, it is noticed that the prosecution has firstly failed in its totality in placing true version of the incident before the Court i.e. genesis of the incident, and secondly the prosecution has not explained about the injuries which were found on the person of the appellant who was immediately apprehended by the people in the village. We have also noticed that the evidence of PW-6 Vitthal Dhadam, uncle of deceased Ramesh is wholly unreliable, as it is full of contradictory statements made by the said witness in his examination-in-chief and the admissions elicited by the defence in the cross-examination. It is to be noted here that the evidence of PW-6 is full of contradiction and as a matter of fact in his examination-in-chief itself he has given contradictory statements and also given substantive admission in

favour of appellant, which creates strong doubt in the mind of this court about its reliability. We find that the evidence of this witness is not at all reliable.

19 The Trial Court while acquitting the original accused nos.2 to 4 has disbelieved the version of PW-5 Ganesh to the effect that the presence of original accused nos.2 to 4 was doubted on the basis of an omission which was elicited from PW-5 Ganesh. PW-5 Ganesh, an eye-witness, in his testimony has stated that the appellant came with a tube rod and broke it and came running towards Ramesh (deceased) and then pierced the broken piece of tube rod into the neck of Ramesh. However, it is to be noted here that PW-1, panch-witness to the incident in his testimony has stated that he saw pieces of tube rod near Sitafal tree and also blood soaked earth near it. PW-1 the panch-witness to the spot panchanama in his examination-in-chief has stated that he saw pieces of tube rod and a stone near the house of the appellant which was situated on the road. The prosecution has failed to give any explanation about finding of pieces of tube rod at three different places and there is no consistency in the version of PW-5 Ganesh and PW-1 Ramchandra More about finding of glass pieces at the said place and the breaking of the tube rod at a particular spot. The version of PW-5 Ganesh directly contradicts the testimony of PW-1 who has

stated that he noticed the tube rod pieces at two different places. The prosecution has failed to bring on record the substantial evidence about the fact from where the appellant procured the said tube rod, the place where he broke it and came at the scene of offence. This creates suspicion about veracity of the testimony of PW-5 Ganesh. As far as the testimony of PW-5 Ganesh, an eye-witness, is concerned he is not clear about the actual incident which took place. PW-5 Ganesh at one place stated that original accused nos.2 to 4 had caught hold the deceased Ramesh and made him to fall on the ground, Ramesh was sitting on his body and at another place he stated that the appellant came running towards Ramesh by holding tube rod in both his hands, broke it and pierced it in the neck of deceased Ramesh. PW-5 Ganesh has stated that he had gone to collect marble from near Sitafal tree and by the time he came back he saw that the appellant was sitting on the body of Ramesh. Thus no tubelight pieces could have been seen near Sitafal tree. The inconsistent version of PW-Ganesh creates strong suspicion about his presence at the spot and assuming that Ganesh was present at the spot, whether he has really seen the incident of inflicting tube rod by the appellant in the neck of Ramesh. It may further be noted that PW-Ganesh contradicts the testimony of PW-4 Pandurang on all material counts. If deposition of PW-4 Pandurang is correct, he has not seen

the actual incident rather he has seen nothing about the infliction of tube rod by the appellant to Ramesh. If Ganesh is correct and his deposition to the extent it corroborates his police statement is to be accepted, Pandurang can not be relied upon. Converse of this may also be truth. Here it is not possible to find out whether Ganesh or the Pandurang are telling truth or then both are lying.

20 As stated hereinabove, the prosecution has not given any explanation about the origin of tube rod i.e. from where the appellant has procured the said tube rod before breaking it and subsequently piercing in the neck of Ramesh. The appellant was apprehended by police patil PW-3 immediately after the incident while he was going to report the incident to the police station.

21 As stated above, PW-8 Dr. Vasant Karanjvadekar examined the appellant immediately at 10.30 p.m. on 31.7.1991 and found seven injuries on his person. It appears to us that the prosecution has chosen, not to put forward the true version and in view of the ratio laid down by the Supreme Court in the case of Lakshmi Singh & Ors. Vs. State of Bihar (supra), the prosecution is to be itself squarely blamed for the failure of the case.

22 For the reasons recorded above, we are inclined to give benefit of doubt to the Appellant. Accordingly, the judgment dated 29th August,

1992 in Sessions Case No.188 of 1991 delivered by the Joint District & Additional Sessions Judge, Satara convicting him is set aside and he is acquitted of offence punishable under Section 302 of the Indian Penal Code.

23 The bail bond furnished by him stands cancelled. Muddemal property be destroyed after expiry of the appeal period.

(A.S. Gadkari, J.)

(B.P. Dharmadhikari, J.)