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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 90 OF 2010

Arjun Rangrao Patil
Age 37 years, Occ: Agriculturist
R/o Takari, Tal. Walwa,
District – Sangli

.. Appellant
(Org. Accd. No.5)

Vs.

State of Maharashtra

.. Respondent

WITH
CRIMINAL APPEAL NO. 89 OF 2010

Sambhaji Rangrao Patil
Age 40 years, Occ: Agriculturist
R/o Takari, Tal. Walwa,
District – Sangli.

.. Appellant
(Org. Accd.No. 6)

Vs.

State of Maharashtra

.. Respondent

WITH
CRIMINAL APPEAL NO. 91 OF 2010

1. Sandip Shankar Patil
Age 30 years, Occ: Agriculturist
R/o Takari, Tal. Walwa,
District – Sangli.
2. Bapu @ Pratap Pralhad Patil
Age 34, years, Occ: Agriculturist
3. Dhanaji Dilip Lohar,
Age 21 years, Occ: Agriculturist

4. Sachin Vijay Sutar
Age 22 years, Occ: Agriculturist
Nos.2 to 4 R/o Borgaon, Tal. Walwa,
District – Sangli.

.. Appellants
(Org.Accd.Nos.1 to 4)

Vs.

State of Maharashtra

.. Respondent

WITH
CRIMINAL APPEAL NO. 319 OF 2010
(For Enhancement of Sentence)

The State of Maharashtra
(Through Police Station,
Islampur, Taluka Walwa,
District Sangli (C.R.No.110/2006)

.. Appellant

Vs.

1. Sandip Shankar Patil
Aged 27 years, Occ: Agriculture
2. Bapu alias Pratap Pralhad Patil
Aged 30, years, Occ: Agriculture
3. Dhanaji Dilip Lohar,
Aged 21 years, Occ: Agriculture
4. Sachin Vijay Sutar
Aged 22 years, Occ: Agriculture
5. Arjun Rangrao Patil
Aged 33, Occupation – Agriculture
6. Sambhaji Rangrao Patil
Aged 37 years, Occ: Agriculture
Nos.1, 5 and 6 R/o Takari,
Taluka Walwa, Dist. Sangli,
Nos.2, 3 and 4 R/o Borgaon,
Taluka Walwa, District Sangli

.. Respondents
(Org.Accd.Nos.1 to 6)

Mr. Shirish Gupte, Senior Counsel a/w Mr. S. V. Kotwal, a/w Mr. Vinod Sangvikar a/w Mr. Umesh Mankapure for the appellants in Cri. Appeal Nos.90, 89 & 91 of 2010 and for respondents in Cri. Appeal No.319 of 2010.

Mrs. S. D. Shinde, APP for respondent-State in Cri.Appeal Nos.90, 89 & 91 of 2010 and for appellant in Cri. Appeal No. 319 of 2010.

Mr. Vikas Shivarkar i/by Mr. Vijay Killedar for original complainant.

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

JANUARY 16, 2015.

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

1. Criminal Appeal No. 90 of 2010 has been filed by Original Accused No.5, Criminal Appeal No. 89 of 2010 has been filed by Original Accused No. 6 and Criminal Appeal No. 91 of 2010 has been filed by Original Accused Nos.1 to 4. Criminal Appeal No.310 of 2010 has been filed by the State for enhancement of sentence. Since all these appeals arise from the same judgment of the trial court, these appeals are being decided by this common judgment.

2. Original Accused Nos. 1 to 4, who stand convicted for offence punishable under Section 302 read with Section 34 of the IPC and sentenced to imprisonment for life and each accused to pay a fine of

Rs.5000/-, in default of which to undergo further SI for six months, while accused no. 6 – Sambhaji Patil stands convicted for offence punishable under Section 304 Part-I of IPC and sentenced to RI for ten years and to pay a fine of Rs.3000/-, in default of which to undergo SI for three months, accused no. 2 – Bapu and accused no. 5 – Arjun, who stand convicted for offence punishable under Section 120-B read with Section 302 of IPC and sentenced to imprisonment for life and each accused to pay a fine of Rs.5000/-, in default of which to undergo further SI six months, by the Ad-hoc District Judge-1 & Additional Sessions Judge, Islampur, by judgment dated 28/01/2010, in Sessions Case No. 41 of 2006, by these appeals challenge their conviction and sentence. The State by filing Criminal Appeal No. 319 of 2010 has sought enhancement of the sentence passed against the accused.

3. Facts, in brief, as are necessary for the decision of these appeals may be stated thus:-

PW 13 – Police Head Constable Shankar Savant, who, on 21/7/2006, was attached to the Islampur Police Station and was on duty at the police station, received an anonymous telephone call at about 2.05 p.m.

The caller had informed PW 13 – Head Constable Savant that one Dilip Patil was murdered and his son was lying injured near the Borgaon S.T. Stand. On receipt of the said information, PW 13 – Head Constable Savant immediately informed Police Inspector Nitin Bhosale-Patil and took an entry in the station diary at Sr. No.22 at Exh.138. PI Nitin Bhosale-Patil, along with the police staff, left for going to the scene of the incident and a station diary entry was accordingly taken at Sr. No.23 at Exh. 138. At about 4.10 p.m. PI Nitin Bhosale-Patil inquired from PW 13 – Head Constable Savant the crime number and accordingly the crime number was informed as 110. At about 4.35 p.m. Police Constable Hindurao Patil came to the police station and produced the report of PW 3 – Vinayak Patil, on the basis of which an offence vide Crime No. 110 of 2006 under Sections 302, 307 read with Section 34 of the IPC was registered. After registration of the offence, PW 13 – Head Constable Savant took an entry in the station diary at Exh. 139. The FIR is at Exh. 101.

PW 18 – PI Nitin Bhosale-Patil, who was attached to the Islampur Police Station on 21/7/2006, was informed at about 2 p.m. by PW 13 – Head Constable Savant about receipt of an anonymous telephone call informing about the murder of Dilip Patil. PW 18 – PI Bhosale-Patil, along

with police staff, immediately proceeded to the scene of the incident, after an entry was taken in the station diary. They reached the scene of the incident within 10 minutes and noticed that a crowd had gathered there. One black coloured motorcycle was also lying there and near the motorcycle, the dead body of Dilip Patil was noticed . PW 3 – Vinayak, who was present there, informed PW 18 – PI Bhosale-Patil that deceased Dilip Patil was his father. PW 18 – PI Bhosale-Patil also learnt that the injured Vikram Patil had been removed to the Rajarambapu Research Centre at Islampur. In the presence of the panch witnesses, an inquest panchanama of the dead body of deceased Dilip was drawn at Exh. 96. The statement of PW 3 – Vinayak Patil was recorded at Exh. 101. The police station was contacted for ascertaining the crime number which was given as 110/06 and accordingly crime number was reflected in the inquest panchanama. The dead body of deceased Dilip Patil was referred to the Sub-District Hospital, Islampur for postmortem examination. The report of Vinayak Patil at Exh. 101 was forwarded to the Islampur Police Station for registration of the offence.

In the presence of the panch witnesses, a scene of the incident panchanama was drawn at Exh. 111. From the scene of the incident, one

mobile hand-set of Nokia Company, one Pulsar motorcycle on which blood stains were noticed, three blood stained swords, one blood stained sickle, two pairs of blood stained chappals, one bicycle and one bullet motorcycle were seized. Sample of blood mixed mud and ordinary mud was obtained from the scene of the incident and seized. Sample of the blood stains was also drawn with the help of cotton swab and seized. A rough sketch of the incident was accordingly drawn and photographs of the scene of the incident were taken by the police staff which are Articles P-1 to P-18. The rough sketch is at Exh. 161.

At about 5.30 to 5.45 p.m. PW 18 – PI Bhosale-Patil learnt about the demise of injured Vikram Patil, on receiving a message on telephone from API Nighot. PW 18 – PI Bhosale-Patil directed API Nighot to draw the inquest panchanama and also to collect the medical papers. An inquest panchanama was accordingly drawn by API Nighot and the dead body was then referred for postmortem examination. The inquest panchanama of the dead body of deceased Vikram Patil is at Exh. 109 and the panch witness to the inquest panchanama is the eye witness PW 5 – Prakash Lokare.

The police staff was sent for arrest of the assailants and PW 18 – PI Bhosale-Patil reached village Takari at about 10 p.m. After the funeral of deceased Dilip and Vikram, he recorded the statements of Manoj Sapkal, PW 5 – Prakash Lokare and Mohan More. He returned back to the police station at about 12 mid-night. API Nighot produced the inquest panchanama of Vikram Patil and the medical papers and also produced the panchanama of the seizure of clothes of deceased Vikram Patil and other documents.

On 22/7/2006 at about 9 a.m., PW 11 – Mahadev Patil came to the police station and produced blood stained clothes worn by him and by one Dhanaji, which had been stained with blood while lifting and placing injured Vikram Patil in the jeep. In the presence of panchas, the clothes were seized under seizure memo at Exh. 98. Statement of Mahadev Patil was thereafter recorded. Statements of Dhanaji Patil, Jivan Patil and Mangal Patil were also recorded. Supplementary statement of PW 3 – Vinayak Patil was also recorded. On 23/7/2006 statement of Sarjerao Kadam was recorded.

On 24/7/2006, the police searched for the accused, but the

accused were not traced. On the same day, statements of PW 13 – Head Constable Savant and constable Hindurao Patil and other police staff were recorded. On 25/7/2006, PW 18 – PI Bhosale-Patil received information that Original Accused No.1 – Sandip Patil and accused no.3 – Dhanaji Lohar were at village Jakhale. Accordingly, accused no.1 – Sandip and accused no. 3 – Dhanaji were arrested and brought to the police station. On 27/7/2006, PW 18 – PI Bhosale-Patil received information about the presence of accused no.2 – Bapu @ Pratap Pralhan Patil and accused no.4 – Sachin Sutar. Both the accused were arrested at Miraj Railway Station and brought to the police station Islampur and arrested under an arrest panchanama.

During custodial interrogation, on 30/7/2006, accused no.1 – Sandip expressed his willingness to point out the place where his clothes and clothes of accused no. 3 – Dhanaji had been concealed. A memorandum was accordingly drawn in the presence of panchas at Exh. 135. Accused no.1 – Sandip led the police and the panchas to village Rethare-Harnax and from there to the Borgaon Bandhara Road and from a cattle shed produced two pants and two shirts. The said clothes were seized in the presence of panchas under seizure memo at Exh. 134.

On 1/8/2006, accused no. 3 – Dhanaji expressed his willingness to point out the machine on which the weapons had been sharpened. Accordingly, a memorandum of accused no.3 – Dhanaji was recorded in the presence of panchas at Exh. 104. Accused No.3 – Dhanaji led the police and the panchas to his house and from the mezzanine floor, produced an implement which was seized under seizure memo at Exh. 104A. On the same day, i.e. on 1/8/2006, accused no.2 – Bapu expressed his willingness to point out the place where his clothes and clothes of accused no.4 – Sachin had been concealed. A memorandum was accordingly drawn in the presence of panchas at Exh. 117. The accused led the police and the panchas and from the house, produced the clothes which were seized under seizure memo at Exh. 117A. Call details were called from Idea and BSNL and statements of Sampat Shamrao Patil and Shashikant Kamble were recorded.

On 6/8/2006, the seized property was referred to the Chemical Analyzer through police constable Dabade under requisition at Exh. 162. The seized property was returned back by the C.A. due to the discrepancy in the description under letter at Exh. 164. The seized property was then re-sent under the same requisition letter along with police constable Dabade

on 10/8/2006 under requisition at Exh. 165. Steps were taken for tracing the absconding accused but the absconding accused were not traced. Further to the completion of investigation, a charge-sheet against the accused was filed. On 5/1/2007, absconding accused Arjun and Sambhaji surrendered before the Magistrate at Islampur and a supplementary charge-sheet against them was filed on 29/1/2007. Those accused are accused no.5 – Arjun and accused no. 6 – Sambhaji.

Injured Vikram Patil was examined by PW 16 – Dr. Virendra Patil, who noticed that there were multiple injuries, in all 13 injuries, which have been described at Exh. 113.

At the time of examination, injured Vikram Patil was conscious, irritable with blood pressure 80/50 and pulse was not recordable. He ultimately succumbed to his injuries on 21/6/2006 at 5.30 p.m.

Postmortem on the dead bodies of deceased Dilip Patil and Vikram Patil was performed by PW 10 – Dr. Sanjay Patil, who noticed the following external injuries on the dead body of Dilip Patil:-

- (i) Incised wound on left wrist joint on medial aspect, cutting almost total wrist joint i.e. partial amputation of hand. Only lateral part of skin intact, measuring about 1 1/2", part of skin intact, measuring about 1 1/2". All major vessels cut. Bones radius and ulna exposed.
- (ii) Amputation of left little finger from base of first phalynx. The stump wound is incised one, oval in shape 1" x 1/2" in size.
- (iii) Incised wound on left ring finger near 2nd phalynx, oblique in direction on lateal side, 1"x1/2"x2cm. In size.
- (iv) Abrasion on right hypochondriac and lower chest region, 3 in number, horizontal in direction, 3" to 4" in size, skin deep.
- (v) Incised wound on right forearm anteriorly in lower 1/3 part, 3" x 1" x 1" in size, oblique in direction. Bones was exposed.
- (vi) Incised wound on right side of face and neck starting from lateral canthus of right eye, running obliquely and downwards and posteriorly to the posterior part of neck involving right ear, the pinna of right ear amputated, size 7"x1"x1", underlying bones exposed.
- (vii) Incised wound just below the right mandible starting from 1" lateral to mid line, running horizontally laterally to posterior triangle of neck and meeting the wound no.6, size 4" x 2" x 2" in size.

- (viii) Incised wound on right supra-clavicular, area, oblique in direction, starting 2" lateral to mid line and meeting the wound no.6, size 3"x1"x1" in size.
- (ix) Incised wound on right side of forehead near hair-line, horizontal in direction, 5"x1/2"x1cm in size.
- (x) Incised wound on right side of head parallel to wound no.9, size 5" x 1/2" x 1 cm. in size.
- (xi) Incised wound just above the left gluteal region, oblique in direction, 4" x 2" x 2" in size.

According to him, all the injuries bleed profusely except No.4 and the age of all the injuries was within 24 hours, caused by sharp and long object.

The following injuries were also noticed:

- (i) Compound fracture of right radius and ulna lower 1/3rd.
- (ii) Fracture right frontal and parietal bone, 5" long.
- (iii) Fracture of right maxillary bone, 5" long.

On internal examination, following injuries were noticed:

- (i) Fracture of right frontal bone, 5 inch long and fracture of right parietal bone, 5 inch long.
- (ii) The brain was normal.
- (iii) There was no fracture of ribs.
- (iv) Both lungs were pale.

- (v) Heart pericardium was normal.
- (vi) Abdomen was normal.
- (vii) Stomach contains semi-digested food.
- (viii) Small and large intestine contain semi-digested food.
- (ix) Liver, pancreas and kidney were normal.

He, therefore, opined that the probable cause of death was hemorrhagic shock due to multiple incised wounds to head, neck and hand. The postmortem report is at Exh. 128. He also opined that the injuries were sufficient in ordinary course of nature to cause death.

The following external injuries were noticed on the dead body of deceased Vikram Patil :-

- (i) Incised wound on right side of face starting from lateral to right eye, running obliquely and downwards, upto pinna of right ear which was also cut, 5 ½ inch long, wound is sutured.
- (ii) Incised wound on right side of forehead 1" above the right eye, horizontal in direction, 3" long, wound is sutured.
- (iii) Incised wound on occipital region of head, oblique in direction, 8" long, wound is sutured.

- (iv) Incised wound 1" above the left ear, horizontal in direction, 4" long, wound is sutured.
- (v) Incised wound on left side of face 1 cm. above the left lip, horizontal in direction, 2" long x 1 cm. x 0.5 cm. in size.
- (vi) Incised wound on upper lip laterally, horizontal in direction, 2" x 1 cm x 0.5 cm. in size.
- (vii) Incised wound on right mandible, horizontal in direction, 1 ½" x 1 cm. x 0.5 cm. in size.
- (viii) Incised wound on sternum, oblique in direction, wound is sutured 4" long.
- (ix) Linear abrasion on left side of chest laterally starting from just above the left nipple running downwards, 4 1/2" long, skin deep.
- (x) Linear abrasion on left shoulder, 4" long, skin deep.
- (xi) Linear abrasion on left arm laterally 3" long, skin deep.
- (xii) Incised wound on left leg 2" below the left knee, oblique in direction, 2" long, wound is sutured.
- (xiii) Incised wound on left foot anteriorly starting from 1" above the lateral malleolus and running obliquely 5" long, wound is sutured.
- (xiv) The left hand amputated. The stump wound was incised, oval in shape, starting from base of thumb to left ring finger, 4" x 1" in size.
- (xv) Incised wound on left arm and forearm laterally exposing all muscles and bones 7" x 2" x 2" in size. The

left elbow joint was dislocated.

- (xvi) Incised wound on right index finger on lateral aspect starting from nail to base of finger, 3" long.
- (xvii) Two incised wounds on dorsal aspect of right palm, horizontal in direction, 2" x 0.5 x 0.5 cm. in size each.
- (xviii) Incised wound on right arm and forearm laterally involving right elbow joint 9" x 4" x 2 " in size.

Following fractures were also noticed on external examination:-

- (i) Compound fracture of right radius and ulna in middle 1/3rd part.
- (ii) Fracture of lower end of left radius bone.
- (iii) Fracture of right third metacarpal bone.

All the injuries bleed profusely, except injury nos.9, 10 and 11.

All the injuries were antemortem and could be caused by sharp and long object.

On internal examination, the following injuries were noticed:-

- (i) Fracture of occipital bone, linear 5 inch long.
- (ii) Brain was normal.
- (iii) No fracture of ribs.
- (iv) Both lungs were pale.

- (v) Heart and pericardium were normal.
- (vi) Abdomen wall and cavity normal.
- (vii) Stomach contains semi-digested food.
- (viii) Small and large intestine contain semi-digested food.
- (ix) Liver, pancreas, kidneys were normal.

He, therefore, opined that the probable cause of death was hemorrhagic shock due to multiple incised wounds to head, both upper limbs. The postmortem report is at Exh. 130. The provisional death certificate is at Exh. 131. According to him, the injuries, except nos.9, 10 and 11 were sufficient in ordinary course of nature to cause death.

4. On the case being committed to the Court of Sessions, trial court vide Exh. 2 framed charge against the appellants/accused for offence punishable under Sections 120-B, 143, 147, 148 and 302 read with Section 149 of the IPC. The accused pleaded not guilty and claimed to be tried. In support of its case, prosecution examined 18 witnesses, while the accused in their defence examined D.W. 1 – Shrirang Patil. The defence of the accused was of denial. Trial court, upon appreciation of the evidence of the prosecution witnesses, convicted and sentenced the appellants as afore-stated. The appellants, being thus aggrieved by their conviction and

sentence have filed Criminal Appeal Nos. 90, 89 and 91 of 2010, while the State has filed Criminal Appeal No. 319 of 2010 seeking enhancement of the sentence.

5. We have heard Mr. Shirish Gupte, learned Senior Counsel and Mr. Sarang Kotwal, learned counsel for the appellants and the learned APP for the State. In order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses. The entire prosecution case hinges on the testimony of two eye witnesses, namely, PW 5 – Prakash and PW 7 – Mansur. We propose to deal with the evidence of these two eye witnesses first and then advert to the other evidence available against the accused.

6. Prosecution has examined PW 5 – Prakash Lokare, who deposes that he was working as a mason and was residing at village Takari. According to him, on 21/7/2006, he was working as a mason at a site at village Kapuskhed and, therefore, used to go to the site on his motorcycle. On the day of the incident, i.e. on 21/7/2006, he was present at his house as a guest had come. After taking his lunch at about 1 p.m., he

started for going by the Takari-Islampur Road to the site. When he was at Borgaon, near the bungalow of Manik Patil, deceased Dilip Patil and Vikram Patil overtook him on their motorcycle. The deceased were proceeding towards Islampur. PW 5 – Prakash was also proceeding in the same direction and was following the deceased. When the deceased had reached near Masuchiwadi Cross Road, PW 5 – Prakash noticed four persons standing on the tar road. Those persons signaled the deceased to stop. Deceased Vikram Patil stopped the motorcycle and PW 5 – Prakash also stopped his motorcycle. Accused No. 6 – Sambhaji cried out, exhorting others, to kill the deceased. Accused No. 4 – Sachin caught the motorcycle of deceased and had raised his sword. Thereafter accused no.2 – Bapu @ Pratap, accused no. 3 – Dhanaji, accused no.1 – Sandip removed sword and sickle, which they had concealed and started assaulting Dilip and Vikram. Dilip sustained injuries and fell down on the tar road. Injured Vikram, having sustained the injuries, was running from the scene of the incident. The accused then started assaulting deceased Vikram, due to which deceased Vikram fell on the ground. The accused then fled from the scene of the incident thinking that the deceased had succumbed to their injuries. While running, the accused threw the weapons at the scene of the incident. Accused No. 6 – Sambhaji attempted to start his motorcycle, but

the motorcycle could not be started and, therefore, accused no.6 – Sambhaji left the motorcycle and along with the other accused proceeded towards the Harijanwasti. The neighbouring persons had gathered there. PW 5 – Prakash had parked his motorcycle and went to the scene of the incident. He went near Dilip and then went towards injured Vikram, who was moaning due to injuries. PW 5 - Prakash waited there for some time and thereafter PW 11 – Mahadev Patil and one Dhanaji Patil arrived there in a jeep. PW 11 – Mahadev and Dhanaji then lifted Vikram Patil and placed him in the jeep and took him to the hospital. PW 5 – Prakash also waited there for about five minutes and then went to the hospital. When he went to the hospital, he noticed that first aid was being given to Vikram Patil. PW 5 – Prakash waited in the hospital and according to him, he narrated the entire incident to PW 11 – Mahadev and Dhanaji Patil. At about 5.30 p.m. he learnt that Vikram Patil had succumbed to his injuries.

He also learnt in the hospital that PW 3 – Vinayak Patil had lodged a complaint at the police. According to him at about 5.45 p.m. the police had called him for drawing the inquest panchanama of the dead body of deceased Vikram. He has admitted his signature on the inquest panchanama at Exh. 109. At about 9.30 p.m. he had gone to the house of

deceased as the dead bodies were brought to the house and at that time also narrated the incident to PW 3 – Vinayak Patil. According to him, he knows accused no. 2 – Bapu @ Pratap, accused no. 3 – Dhanaji, accused no.4 – Sachin, though they were residents of another village. According to Prakash these accused used to come to the house of accused no.1 – Sandip, where PW 5 – Prakash was working as a mason.

7. In cross-examination, he has admitted that since his birth, he was residing at village Takari. He has admitted that deceased Dilip and deceased Vikram were running a Dhaba at village Takari and the Dhaba was situated just at the entrance of the village from Borgaon. He has also admitted in cross-examination that there was no special reason to stop his motorcycle on seeing the incident. He has admitted that he was not frightened when the incident had started. He has admitted that he had not intervened in order to save the deceased, who were known to him. He has also admitted that he had not cried out for help. He has admitted that since the beginning of the incident till its conclusion, he was standing at one place. He has admitted that he had stopped at the spot of the incident for about ten minutes and during the period of ten minutes, he did not have a talk with anyone. He has admitted that Rajendra Patil arrived there after

about five minutes with the jeep. He has admitted that he had not talked with Rajendra Patil and Rajendra Patil also did not inquire from him as to how the incident had occurred. Prakash has admitted that he, on his own, also did not disclose the incident to Rajendra Patil. He has admitted that he had not talked with Mahadev Patil or Dhanaji Patil at the scene of the incident. He has admitted that he does not know if Mahadev Patil was employed at the Vikram Dhaba i.e. the Dhaba of deceased. He has admitted that he had made no attempts at assisting others in placing injured Vikram in the jeep. He has admitted that till he was at the scene of the incident, he had not intimated the police and the police had also not arrived at the scene of the incident. He has admitted that he did not consider it necessary to inform the police at the police station. He has admitted that one Arjun Anna Patil was present in the hospital. He has admitted that he had no talk with Arjun Anna Patil. He has admitted that he had not disclosed anything to the Medical Officer in the hospital. Prakash then admits that at about 2.30 p.m. 5 to 6 policemen had come to the hospital from the Islampur Police Station and were present in the hospital till about 6 p.m. He has admitted that he had not disclosed anything to the police who had come to the hospital. He has admitted that he, on his own, had not gone to the police station for disclosing the incident. He has admitted that

he was present in the hospital till 6 p.m. He has also admitted that when the inquest panchanama of the dead body of Vikram was being drawn by the police, he had not disclosed the police officer regarding the incident. He has admitted that even after completion of the inquest panchanama, he had not disclosed to API Nighot anything about the incident. He has admitted that while returning from the hospital, he did not stop at the Dbaba of the deceased. He has admitted that he had not disclosed the incident to his parents or brother.

He has admitted that he had attended the funeral of the deceased which was performed at village Takari. He has admitted that for attending the funeral, he had gone to the house of deceased Dilip Patil.

Omission has been elicited that he had not stated in his previous statement that accused no.2 – Bapu @ Pratap, accused no. 3 – Dhanaji and accused no. 4 – Sachin were visiting the house of accused no.1 – Sandip, where Prakash was doing construction work. He has admitted that he had not given the description of the weapons when his statement was recorded.

8. Learned counsel for the appellants have urged before us that

no reliance whatsoever can be placed on the testimony of PW 5 – Prakash. According to the learned counsel for the appellants, PW 5 – Prakash had associated himself with the inquest panchanama, yet had not disclosed the incident to the police, who were present in the hospital. The contention of Prakash that he had disclosed the incident to Mahadev Patil as well as Dhanaji Patil cannot be relied upon as the same is far-fetched. The learned APP has urged before us that the evidence of PW 5 – Prakash is the evidence of a reliable witness, who had witnessed the incident and thus can be made the foundation for sustaining the conviction.

9. We find that the evidence of PW 5 – Prakash that on seeing the incident, particularly, the assault on deceased, he had stopped and witnessed the incident to be extreme by far-fetched. If PW 5 – Prakash had witnessed the incident as the deceased were known to him, we find it highly inexplicable and unbelievable that he did not inform the police, who were present in the hospital. The police were present in the hospital from 2.30 p.m. to about 6.45 p.m. Prakash associated himself with the drawing of the inquest panchanama and yet chose not to disclose to the police officer that he had witnessed the incident. The total stoic silence maintained by PW 5 – Prakash in these facts is inexplicable and is highly

suspicious. PW 5 – Prakash also does not disclose the presence of PW 7 – Mansur. The statement of Prakash was recorded after a delay of two days and there is absolutely no explanation for an eye witness not to disclose the incident to the police at the earliest opportunity which was available, particularly when the deceased were his acquaintance. We, therefore, find that no reliance whatsoever can be placed on the testimony of PW 5 – Prakash.

10. Prosecution has examined PW 7 – Mansur, as an eye witness to the incident. PW 7 – Mansur claims that he was working as a carpenter and on 21/7/2006 he was working at Islampur from 8 a.m. till 12 noon. Since it was a Friday, he left for Islampur for going to village Takari on the motorcycle for offering the Jumma prayer. According to him, he had reached the scene of the incident at about 1 p.m. and had noticed four persons standing on the road. One of them had raised the sword and had stopped persons on the motorcycle. One of the assailants exhorted others to kill them and Mansur identified him to be accused no. 6 – Sambhaji. Mansur further deposes that a bullet motorcycle was also parked there. All the four assailants then attacked the deceased, who were on the motorcycle and assaulted them with swords and sickles. He has identified the

assailants as accused no. 2 – Bapu @ Pratap, accused no. 3 – Dhanaji, accused no. 4 – Sachin and accused no.1 – Sandip. Dilip Patil, on sustaining the injuries, fell on the ground, while his son Vikram Patil, though having sustained the injuries, was running from the scene of the incident. The assailants chased him and assaulted him and Vikram also fell on the ground in a pool of blood. The assailants then threw their weapons. Meanwhile, accused no.6 – Sambhaji attempted to start his motorcycle but the motorcycle could not be started. Since the nearby residents were gathering there, the assailants fled from the scene of the incident. According to PW 7 – Mansur, he went near injured Vikram and Vikram, who was moaning, asked him to look to his father. When Mansur went towards Dilip, he noticed that Dilip had sustained several injuries and had succumbed to the injuries. Seeing the incident, Mansur felt frightened and, therefore, took his vehicle and went to his house. According to Mansur for about two to three days he was sick and after recovering his health, he went to the Islampur Police Station and narrated the incident, which was reduced into writing. Admittedly, statement of Mansur was recorded after four days of the incident.

11. In cross-examination, he too has admitted that since his birth he was residing at village Takari. He has admitted that he knows that the

deceased were running a Dhaba known as “Vikram Dhaba”. He has also admitted that since the beginning of the incident till its conclusion, he was standing at one place. He has also admitted that he had not cried out for help, nor did he try to intervene and stop the assailants. He has admitted that he did not have any conversation with the persons who were assembled there. He has admitted that he was present at the scene of the incident for about 10 minutes and till he was present there, no one had attempted to take either Dilip or Vikram to the hospital. He has admitted that he did not consider it necessary to inform the police. He has admitted that from the scene of the incident, he returned to village Takari alone but did not stop on way at the Vikram Dhaba. He has admitted that he did not inform anyone at the Vikram Dhaba. According to him, he also did not consider it necessary to go to the house of Dilip Patil and inform the inmates about the incident. He has admitted that prior to the railway station of village Takari, there is a police out-post, but he had not informed the police at the police out-post. He has admitted that he had not given any documentary proof to the police about he being indisposed for three days and taking medicines. He has admitted that his statement was recorded on 25/7/2006 by the police and till his statement was recorded, he had not disclosed anyone about the incident.

Omission has been elicited that he had not stated in his previous statement that he had noticed four persons standing on the road. Omission is also elicited that he had not stated in his previous statement that one of the assailants had raised sword and had stopped the motorcycle.

12. Learned counsel for the appellants have urged before us that no reliance can be placed on the testimony of PW 7 – Mansur as PW 7 – Mansur does not refer to the presence of PW 5 – Prakash, nor does he refer to the presence of PW 11 – Mahadev Patil or Dhanaji Patil. It is also urged before us that the conduct of this witness is highly unnatural that for four days he did not disclose the incident to anyone. It is also unnatural that he did not disclose the incident to the members of the family of the deceased. The learned APP has urged before us that admittedly PW 7 – Mansur was frightened and was indisposed for four days and, therefore, his statement could not be recorded. The delay in recording of the statement of PW 7 – Mansur, in the facts of the present case, therefore, would not be fatal to the prosecution case.

13. PW 7 – Mansur has admitted that he was residing at village Takari since his birth. Curiously, PW 5 – Prakash, a resident of Takari, also

claims that he was present at the scene of the incident, but makes no reference to the presence of PW 7 – Mansur. PW 7 – Mansur also makes no reference to the presence of PW 5 – Prakash. When the assault on deceased Dilip and Vikram commenced, the nearby residents had not gathered and, therefore, there is no reason as to why both these witnesses do not refer to the presence of each other at the scene of the incident. Mansur claims that he was present at the scene of the incident for ten minutes, yet makes no reference to the presence of Mahadev Patil and Dhanaji Patil, who had come in the jeep and had taken Vikram to the hospital. PW 7 – Mansur also has not stated as to the ailment with which he was suffering, nor has he placed on record any document to suggest that he was treated by a Medical Officer and was prescribed certain medicines and that his condition was so bad that he was confined to the house. Mere *ipse dixit* of this witness that he was indisposed for four days cannot be used as a ruse for overcoming the enormous delay of four days in recording the statement of this witness. This is not a case of delay simplicitor, but it is a case of an eye witness, who had witnessed the incident, yet chose to remain silent for four days. None of the prosecution witnesses referred to the presence of this witness and, in our opinion, therefore, for the reasons stated above, no reliance can be placed on the

testimony of PW 7 – Mansur.

14. Prosecution has examined PW 11 – Mahadev Patil, who had arrived at the scene of the incident. PW 11 – Mahadev deposes that he was employed by the deceased to work at the Dhaba at village Takari. According to him, the owner of the Dhaba is PW 3 – Vinayak, while deceased Dilip and Vikram were the father and brother of Vinayak respectively. According to him, on 21/7/2006, he attended the Dhaba at 7 a.m. At about 8 a.m., accused no. 5 – Arjun and accused no.1 – Sandip came on the motorcycle at the Dhaba and took a couple of rounds of the hotel. At about 1 p.m. deceased Dilip and Vikram came to the hotel and informed PW 3 – Vinayak that they were proceeding to Islampur for some work. Deceased Dilip and Vikram went to Islampur on their motorcycle. Thereafter, PW 11 – Mahadev told Dhanaji Patil, nephew of deceased Dilip Patil that they too would go to Islampur for brining the clothes. PW 11 – Mahadev and Dhanaji left for Islampur on the motorcycle of Dhanaji. When they reached near the Masuchiwadi Cross Road, they saw a crowd gathered there and, therefore, stopped their vehicle to see what had happened. They noticed Dilip Patil lying in a pool of blood and also noticed Vikram lying in a pool of blood, but was moaning. PW 11 –

Mahadev, therefore, went near Vikram and noticed the injuries. For taking Vikram to the hospital, he began to search for a vehicle and noticed one jeep coming from the direction of village Takari. Said jeep was of Rajendra Patil and they requested him for taking Vikram to the hospital. Then Dhanaji and PW 11 – Mahadev placed Vikram in the jeep and inquired from Vikram as to who had assaulted him. With difficulty, Vikram informed Mahadev the names of the assailants who had assaulted him. Vikram was then taken to the Rajarambapu Patil research Centre, Islampur and admitted in the hospital. After some time, PW 5 – Prakash came to the hospital and informed him that he had witnessed the incident. At about 5 p.m. Vikram succumbed to his injuries and an inquest panchanama of the dead body of deceased Vikram was drawn. PW 11 – Mahadev accompanied by Dhanaji went to the house of Vinayak Patil and narrated the incident to Vinayak Patil. At that time, PW 5 – Prakash also came to the house of Vinayak Patil and narrated the incident to Vinayak Patil.

On the next day, PW 11 – Mahadev produced his blood stained clothes as well as the clothes of Dhanaji, which were seized. He has further admitted that since Vikram was serious, his signature had been

obtained by the Medical Officer on the medical case papers at Exhs. 113A and 113B.

15. In cross-examination, he has admitted that he was working as a Manager in the Dhaba of deceased and was required to sit at the counter and to look after the affairs of the hotel. He has also admitted that since his birth, he was residing at Takari. He has admitted that he along with PW 3 – Vinayak and the deceased and Dhanaji Patil are being prosecuted for offence punishable under Sections 326, 147, 148, 149 of IPC by the Islampur Police Station. He has further admitted that the reason for bringing clothes was not so important. He has then admitted that till he arrived at the scene of the incident, no one had stopped any vehicle. He has admitted that he was present at the scene of the incident for about 5 to 10 minutes and during that time, he had not talked with anyone. He has admitted that for reaching the hospital, it took about 10 to 15 minutes. He has admitted that after going to the hospital, Medical Officer had asked him and he had disclosed to the Medical Officer about assault. He has admitted that the Medical Officer had asked his name and he had disclosed his name. He has admitted that thereafter the Medical Officer informed the police. He has admitted that he has disclosed to the Medical Officer that he

was a friend of injured Vikram and accordingly it was noted. He has admitted that he was in the hospital till the inquest panchanama was drawn. He has admitted that he had not disclosed anything to the police after the police arrived in the hospital.

He has further admitted that the Medical Officer had told him, when he had reached the hospital, that condition of Vikram Patil is serious. He has admitted that the Medical Officer had noted down the injuries sustained by Vikram Patil and thereafter signature of PW 11 – Mahadev was obtained. He has admitted that it was read over to him and thereafter he had signed it as a friend of Vikram Patil. He has admitted his signature as well as the contents of the writing at Exh. 113C. He has further admitted in cross-examination that when PW 5 – Prakash came to the hospital, Mahadev did not ask Prakash to inform the incident to the police. Mahadev has admitted that he had not informed the police that PW 5 – Prakash had witnessed the incident. He has admitted that he had also not informed API Nighot, who had drawn the inquest panchanama, about the incident. He has admitted that he had also not telephoned PW 3 – Vinayak Patil in respect of the incident. He has admitted that while returning to village Takari, he had not informed the Islampur Police Station about the

incident. He has admitted that till his statement was recorded on the next day, he had not disclosed the incident to the police.

Omission has been elicited that he had not stated in his previous statement that at night he had gone to the house of PW 3 – Vinayak Patil and had narrated the incident. Omission is also elicited that he had not stated that PW 5 – Prakash had come to the house of Vinayak Patil and had narrated the incident.

16. Exhibit 113B, from the medical case papers, is a document signed by PW 11 – Mahadev. It states about the history of injury sustained by Vikram Patil. In the narration of history, it is stated that Vikram Patil either met with an accident or probably had sustained injuries by sharp and pointed weapon. The said statement bears the signature of PW 11 – Mahadev Patil.

17. Learned counsel for the appellants have urged before us that no reliance can be placed on the testimony of PW 11 – Mahadev Patil, particularly on the aspect of the oral dying declaration of Vikram Patil. The condition of Vikram Patil was critical and if at all a oral dying declaration

had been made by injured Vikram Patil to PW 11 – Mahadev, it is extremely curious that PW 11 – Mahadev did not disclose about the oral dying declaration to anyone till his statement was recorded. The police, undoubtedly, were present in the hospital from the afternoon till late evening, when the inquest panchanama was drawn, yet PW 11 – Mahadev chose not to make any disclosure to the police. PW 11 – Mahadev also does not refer to the presence of PW 5 – Prakash at the scene of the incident, nor does he refer to the presence of PW 7 – Mansur at the scene of the incident. Learned APP has urged before us that injured Vikram was in a fit condition at the scene of the incident to give his statement and accordingly had informed PW 11 – Mahadev about the incident. No fault, therefore, can be found with the narration of the incident by Vikram Patil to Mahadev.

18. If indeed PW 11 – Mahadev had heard the oral dying declaration of Vikram Patil, we find it extremely inexplicable that Mahadev did not disclose this to anyone. Mahadev was an employee working at the Dhaba of deceased, yet chose not to disclose the incident to anyone. Even when PW 5 – Prakash disclosed the incident to him, Mahadev took no steps at disclosing the incident to the police, who were very much present

in the hospital. In fact, PW 11 – Mahadev not referring to presence of PW 5 – Prakash and PW 7 – Mansur at the scene of the incident, the credibility of both these witnesses is badly shaken. A serious cloud of suspicion hovers over the testimony of PW 5 – Prakash and PW 7 – Mansur regarding their claim at having witnessed the incident. As pointed out by us above, PW 11 – Mahadev does not give any reason for not disclosing the oral dying declaration to anyone, including the police. Omission has been elicited that he had not stated in his previous statement about going to the house of PW 3 – Vinayak in the evening and informing the incident to Vinayak. Omission is also elicited that he had not stated in his previous statement that PW 5 – Prakash had also come to the house of PW 3 – Vinayak and had disclosed the incident to him. We, therefore, find that no reliance can be placed on the testimony of PW 11 – Mahadev that injured Vikram had disclosed to PW 11 – Mahadev about the incident.

19. Prosecution has examined PW 3 – Vinayak Patil, the first informant, who deposes that deceased Dilip Patil was his father, while deceased Vikram Patil was his younger brother. Vinayak further deposes that he was running a Dhaba at village Takari, known as “Hotel Vikram”. According to him, about 5 to 6 months prior to the incident, there was an

incident of eve-teasing of his sister Vaishali and due to which there was an incident of assault between Vinayak and others and accused no.1 – Sandip, accused no. 6 – Sambhaji and accused no.4 – Sachin. An offence was registered at the Islampur Police Station against each other.

According to Vinayak, on 21/7/2006, he was present in the hotel at 7.30 a.m. At about 8 a.m., he had noticed accused no. 5 – Arjun and accused no. 1 – Sandip taking a round of the hotel on the motorcycle. At about 1 p.m. his father Dilip Patil and his brother Vikram Patil went to Islampur for depositing the cheque in the bank on the motorcycle. The motorcycle was being driven by Vikram Patil, while deceased Dilip Patil was the pillion rider. Vinayak further deposes that while he was in his hotel, his friend Manoj Sakpal came to the hotel at about 1.45 p.m. and informed him that his father and brother were lying near the Borgaon Bus Stand and someone had assaulted them. Manoj Sakpal further informed him that his brother Vikram had been taken to the Islampur Hospital. PW 3 – Vinayak, therefore, accompanied by his uncle Mohan came near the Borgaon Bus Stand and noticed his father lying in a pool of blood on the road. Seeing the weapons and the other articles at the scene of the incident, PW 3 – Vinayak concluded that on account of previous quarrel, accused no.

5 Arjun and his companions must have committed murder of deceased Dilip Patil and assaulted his brother Vikram. The police arrived at the scene of the incident at about 2 to 2.15 p.m. and till that time PW 3 – Vinayak was present at the scene of the incident. According to him, after drawing of the panchanama, his report was scribed at Exh. 101. The police thereafter drew the scene of the incident panchanama and at about 5.45 p.m. he returned to Takari, where the dead bodies were brought to the house. The funeral was then performed at about 10 p.m.

PW 3 – Vinayak further deposes that PW 5 – Prakash, PW 11 – Mahadev and Dhanaji Patil had informed him that the accused/appellants had assaulted the deceased.

20. In cross-examination, he has admitted that Dhanaji Patil and PW 11 – Mahadev Patil were residents of village Takari. He has further admitted that on the basis of the complaint of one Shankar Patil, an offence was registered at the Islampur Police Station under Sections 326, 143, 147, 149 of the IPC against him, his father, his brother and his cousin Dhanaji, PW 11 – Mahadev and others. He has further admitted that on the basis of the report of accused no.1 – Sandip, an offence was registered at the

Islampur Police Station. He has further admitted that he had informed the police that accused no. 6 – Sambhaji and accused no. 1 – Sandip had assaulted the deceased. Omission has been elicited that he had not stated in his report that he was informed by Manoj Sakpal at 1.45 p.m. Said Manoj Sakpal has not been examined by the prosecution as a witness. Even according to PW 3 – Vinayak, Manoj Sakpal had informed him about the dead bodies of Dilip and Vikram lying at the scene of the incident and that Vikram was shifted to the hospital. Thus, there was no information at the scene of the incident till injured Vikram was shifted to the hospital as to who the assailants were. Admittedly, two eye witnesses, namely, PW 5 – Prakash and PW 7 – Mansur claim to be present.

21. The evidence of the prosecution, therefore, indicates that PW 11 – Mahadev Patil does not refer to the presence of either PW 5 – Prakash or PW 7 – Mansur at the scene of the incident. Both these eye witnesses claim that they were present for about ten minutes and, in fact, PW 5 – Prakash claims that he was present at the scene of the incident till Vikram was shifted to the hospital and yet PW 11 – Mahadev Patil does not refer to the presence of PW 5 – Prakash. PW 5 – Prakash or PW 7 – Mansur do not refer to each other's presence, though they are residents of the same village

and were present at the scene of the incident, more or less, at the same time. As pointed out by us above, the total silence maintained by PW 5 – Prakash and PW 7 – Mansur is not only unnatural, but is incredulous in the facts of the case. PW 11 – Mahadev Patil was an employee of PW 3 – Vinayak Patil and yet he does not inform PW 3 – Vinayak about shifting the injured to the hospital or about the disclosure made by the injured to him. PW 3 – Vinayak makes no reference that PW 11 – Mahadev had informed him that he was going for purchasing the clothes. Thus, the entire prosecution case, particularly the evidence of the prosecution witnesses, is shrouded in suspicious circumstances and the cloud of suspicion hovering over the prosecution case has not been dispelled by the prosecution evidence.

22. The other circumstance, on which the prosecution relies, is the discovery of clothes of accused no.1 and accused no.2 at the behest of the disclosure memorandum. The report of the Chemical Analyzer indicates that the clothes of Accused No.1 were stained with blood of “A” group, while the pant of Accused No.2 was stained with blood of “A” group. Clothes of Accused No. 3 were found stained with blood of “A” group. In respect of clothes of Accused No. 4, the report of the C.A. indicates that the

shirt of Accused No. 4 was found stained with blood of “A” group. The clothes of one of the injured were found stained with blood of “A” group. The blood group of the accused, excepting Accused No. 3, could not be determined as the results were inconclusive.

23. We find that no reliance can be placed on the aforesaid circumstance as there is no satisfactory evidence that the clothes on their seizure were immediately sealed with the same seal and were in the same condition in which they were received by the C.A. The panch witness has admitted that the wax seal had not been put on the clothes which have been seized. The prosecution, therefore, does not rule out the possibility of the clothes being tampered with. Apart from it, we find that there is no evidence on record to indicate that the clothes, which were seized, were, in fact, the clothes belonging to the accused and were the same clothes which had been worn by the accused at the time of the incident. None of the eye witnesses have identified the clothes of the accused to be the same clothes which were worn by the accused at the time of the incident. Mere discovery of the clothes would not lead to an irresistible inference or hypothesis that there were the same clothes which the accused had worn at the time of the incident. As pointed out by us above, in the absence of

strong and satisfactory evidence regarding sealing of the clothes, implicit reliance on the report of the C.A. cannot be placed.

Learned APP has referred to the judgment of the Supreme Court in *Khujji @ Surendra Tiwari vs. State of Madhya Pradesh* [(1991) 3 SCC 627]. The Supreme Court observed that finding of human blood on weapon and clothes of the accused is a material circumstance even in the absence of determination of the blood group. The Supreme Court further found that finding of blood stains lent corroboration to the direct testimony of the eye witnesses.

In the present case we have found that no reliance can be placed on the testimony of the two eye witnesses, namely, PW 5 – Prakash and PW 7 – Mansur. We have also recorded a finding that no reliance can be placed on the evidence of PW 11 – Mahadev regarding the oral dying declaration alleged to have been made by the injured Vikram to him. In the face of the substratum of the prosecution case being disbelieved, mere seizure of the blood stained clothes would not be a circumstance for sustaining the conviction of the accused. Even otherwise, we have found that there is no evidence to establish that the clothes which were seized

were, in fact, the clothes belonging to the accused and had been worn by them at the time of the incident. The said clothes had been seized after more than seven days of the incident and, therefore, the discovery would lose its value as the said clothes were alleged to have been found by the police on the basis of a diligent search of the house. The ratio of the judgment of the Supreme Court, therefore, in our opinion, would not be applicable to the facts of the present case.

24. The accused, in their defence, have examined DW 1 – Shrirang Patil, who claims that he was also known as Rajendra. According to him, on the day of the incident, he was proceeding from Takari to Islampur in his jeep. DW 1 – Shrirang and his driver were present in the jeep and when he neared village Borgaon, he noticed a crowd and the crowd stopped his jeep. He alighted from the jeep and noticed deceased Dilip lying on the left side of the road in a pool of blood, while injured Vikram was lying on the right side of the road. The people lifted Vikram and placed him in his jeep. DW 1 – Shrirang then brought injured Vikram to the Rajarambapu Patil Hospital, Islampur. He further deposes that one Arjun Anna Patil then admitted injured Vikram in the hospital as Arjun

Anna Patil had also accompanied Shrirang in the jeep. He further deposes that at the hospital, PW 11 – Mahadev came at about 2 p.m. At about 4 p.m., PW 3 – Vinayak Patil had also come to the hospital and subsequently Vikram Patil was declared dead. According to DW 1 – Shrirang the dead body of Vikram was taken in his jeep for postmortem examination. He further deposes that the dead bodies of the deceased were then taken in his jeep to village Takari. He has admitted that he knows PW 5 – Prakash.

25. In cross-examination, on behalf of the State by the Additional Public Prosecutor, he has admitted that he had seen a crowd of about 200 to 400 people at the scene of the incident. He has identified the photographs to be the photographs of his vehicle. He has admitted that the people, who had gathered on the spot, had stopped his jeep and had requested him to carry the injured to the hospital. He has admitted that he does not know if the clothes of the persons who had lifted Vikram and had placed him in the jeep were blood stained. He has admitted that he does not know Dhanaji Patil. He has denied the suggestion that Mahadev Patil and Dhanaji Patil had placed Vikram in his jeep. He has denied the other suggestions which were put by the Additional Public Prosecutor.

26. Thus, at the close of the cross-examination, DW 1 – Shrirang has emerged as a reliable witness. The cross-examination of this witness has not made any dent to his examination-in-chief that PW 11 – Mahadev Patil was not present and had not assisted in placing injured Vikram in the jeep. The defence witnesses do not carry a label that they are deposing falsehood. The evidence of defence witness has to be appreciated like that of any other witness and there is no presumption that a defence witness always states a lie. In the present case, we find that the cross-examination of DW 1 – Shrirang is not only most perfunctory, but has not been able to shatter and affect his credibility. If the evidence of DW 1 – Shrirang is accepted, then it clearly establishes that PW 5 – Prakash was not present at the scene of the incident nor was PW 11 – Mahadev present at the scene of the incident. It would thus render the eye witness account as well as the evidence of oral dying declaration as false.

27. The evidence of conspiracy is based on the testimony of PW 8 – Arun, who deposes that he was working as a vendor selling fruits at Takari Bus Stand. He used to attend to his stall at 8 a.m. and used to be present till 7 p.m. According to him, on 21/7/2006 he was present at the ST Stand in the morning and at about 12 noon his friend Vijay Devare met

him at the ST Stand. Vijay Devare had come from Islampur. PW 8 – Arun and Vijay then went to Datta Hotel for taking tea. After taking tea, they came out of the hotel and noticed accused no.5 – Arjun, who was speaking on telephone from the coin box. The conversation of accused no. 5 – Arjun was to the effect that work of “Dilpya” and his son should be done today. Accused No. 5 -Arjun then left on his motorcycle, while PW 8 -Arun returned to his stall.

28. In cross-examination, he has admitted that he was alone present at the shop and Vijay Devare had come to meet him in connection with the business. PW 8 – Arun has admitted that on that day he was some difficulty in calling for tea from the hotel. He has admitted that customers to his stall may come at any time. He has admitted that the coin box is installed at the counter of the hotel. He has admitted that there was no reason for him to see as to who was making a telephone call from the coin box.

29. The evidence of this witness, to say the least, really tasks our credulity for its acceptance. It is inconceivable that the accused would speak on the telephone in such loud tone as would be audible to all others.

Moreover, the conversation, which has been reproduced by PW 8 – Arun, does not even remotely connect the deceased and their murder with the conversation as deposed. All that is referred to is that the work of Dilpya and his son should be done on that day. There is not a slightest reference to the full names of two deceased, nor is there any reference that the work would mean only committing murder of deceased. The statement of this witness was recorded after three days of the incident. It is difficult to believe that he was eaves-dropping on the conversation of accused no. 5 – Arjun. This evidence, in our opinion, is wholly insufficient for establishing beyond reasonable doubt the charge of conspiracy.

30. Thus, upon appreciation of the evidence of the prosecution as well as of the defence witness, in our opinion, the prosecution has utterly failed to prove the offence against the accused beyond reasonable doubt. The appellants/accused, in our opinion, therefore, are entitled to be given the benefit of doubt. The identity of the appellants as the assailants, who had committed murder of deceased Dilip and deceased Vikram has not been established beyond reasonable doubt.

31. Since, in our opinion, the appeals filed by the appellants/

accused deserve to be allowed, the appeal filed by the State seeking enhancement of the sentence, is liable to be dismissed.

32. Accordingly, Criminal Appeals are allowed and the conviction and sentence of the appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants, be refunded to them. Since the appellants in Criminal Appeal No. 91 of 2010 i.e. Original Accused No.1 – Sandip Shankar Patil, Accused No.2 – Bapu @ Pratap Pralhad Patil, Accused No. 3 – Dhanaji Dilip Patil and Accused No. 4 – Sachin Vijay Sutar and appellant in Criminal Appeal No. 90 of 2010 i.e. Original Accused No. 5 – Arjun Rangrao Patil are in jail, they be released forthwith, if not required in any other case. Bail bonds of Original Accused No. 6 – Sambhaji Rangrao Patil, appellant in Criminal Appeal No. 89 of 2010, stands cancelled.

Criminal Appeal No. 319 of 2010 filed by the State for enhancement of sentence is consequently dismissed.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)