

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 361 OF 2011.

- 1) Nagesh Chanavirgonda Patil,
Age 30 yrs, Occ: Business
- 2) Ganesh Chanavirgonda Patil,
Age 27 years, Occ: Service,
Both R/o. Ward No.10/1120
Tambe Mal, Kadapure Tal,
Ichalkaranji, Taluka Hathkanangale,
Dist. Kolhapur
- 3) Mahesh Suresh Patil
Age 24 years, Occ: Labour
R/o. Ghodke Nagar,
Ichalkaranji, Taluka Hathkanangale,
Dist. Kolhapur
- 4) Chandrakant Vishnu Shewale,
Age 23 years, Occ: Service,
R/o. 16/256 Ghodke Nagar
Ichalkaranji, Taluka Hathkanangale,
Dist. Kolhapur.. Appellant
(At present lodged in Kolhapur
District Central Prison, Kolhapur)

..Appellants
(Org. Accused)

v/s.

- 1) The State of Maharashtra .
- 2) Smt. Indumati Raghunath Malwekar
R.o. 16/551, Sangram Chowk,
Ichalkaranji, Tal: Hathkanangale,

District Kolhapur

..Respondents
(Respondent No.2 mother of
the deceased Malwekar)

Mr. Shirish Gupte, Sr. Counsel a/w. Mr. Anand Patil for the Appellant.
Mr.S.D.Shinde, APP for the Respondent/State.

CORAM : P.V.HARDAS &

SMT. ANUJA PRABHUDESSAI,JJ.

JUDGMENT RESERVED ON : 25th SEPTEMBER, 2014

JUDGMENT DELIVERED ON: 5th FEBRUARY, 2015.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.)

1. The appellants herein who were the accused in Sessions Case No.122 of 2009 have challenged the judgment dated 28.3.2011 whereby the learned Sessions Judge, Kolhapur has held them guilty of the offences under Section 302, 324 r/w. 34 of the IPC and sentenced each of them to undergo imprisonment for life and pay fine of Rs.10,000/- each i.d. to undergo RI for six months for offence under Section 302 of IPC and further to undergo RI for 6 months and pay fine of Rs.2000/- each i.d. RI for two months for offence under Section 324 of IPC. Both the sentences are ordered to run

concurrently. The fine amount, if recovered is ordered to be paid as compensation to the mother of the deceased Gajanan Malvekar.

2. The case of the prosecution in brief is as under.

The accused Mahesh Patil (A2) and Ganesh Patil (A3) had organized a cricket tournament on the play ground of Netaji Subhash Chandra High School at Mal, to celebrate the birthday of one Bhandari. The children from the locality had participated in the cricket match scheduled on 10.3.2007. Gajanan Malvekar (deceased), PW6 Rakesh, PW7 Ganesh Shinde, PW8 Sachin Parit and several other people had gathered at the playground to watch the cricket match. It is alleged that while the cricket match was in progress, the accused Mahesh Patil kicked one of the boys who was sitting at the boundary of the cricket ground. Gajanan Malvekar questioned the accused as to why he had kicked the boy. This led to an altercation between Gajanan Malvekar and the accused Mahesh and their respective supporters present at the playground. The riotous situation resulted in cancellation of the cricket match.

3. On 11th March, 2007 at about 2.00 a.m. deceased Gajanan

Malwekar, PW6 Rakesh, and some others were chit chatting at Sangram Chowk. Sometime later, the accused came to Sangram Chowk on two motor cycles. The accused parked the motorcycles and proceeded towards Gajanan and others. The accused were armed with swords and baton. The accused abused them and blamed them for calling off the cricket match. All the accused thereafter assaulted said Gajanan with swords and inflicted injuries on different parts of his body. When Gajanan fell down, the accused Mahesh picked up a stone and dropped it on his face. PW6 intervened and tried to prevent the accused from assaulting Gajanan but the accused assaulted him as well. PW6 and others raised an alarm and on seeing the people coming to the spot, the accused fled away from the spot.

4. PW9 Mansoor Momin took Gajanan and PW6 Rakesh to IGM Hospital by his Maruti van. PW13 Dr. Suvarnalata, the doctor on duty examined Gajanan and declared him dead. She examined PW6 Rakesh, gave him necessary treatment, and admitted him as an inpatient for further treatment. Vide letters at Exhibit 92 and 93 she informed the Shivaji Nagar police station, Ichalkaranji, that Gajanan

was brought dead to the hospital and that the injured Rakesh was admitted in the hospital.

5. On receipt of the said information, PW19 Babalal Sanadi, PW16 Head Constable Kumar and other police personnel visited the hospital. PW19 PSI Sanadi, upon confirming that PW6 Rakesh was in a fit state of mind, recorded his statement at Exhibit 70. Vide letter at EX. 107 he forwarded the statement to the Shivaji Nagar Police Station with instructions to register the crime.

6. PW16 Kumar, Police Head constable on duty at Shivaji Nagar police station, received the FIR at EX.70 and registered the crime no.26 of 2007 under sections 302, 324 r/w. 34 IPC. After registration of the crime, PW19 Babalal Sanadi conducted the inquest panchanama at Exh.57 over the body of the deceased Gajanan in presence of PW1 Sagar and forwarded the body for post mortem examination. PW13 Dr. Suvarnalata conducted the post mortem over the body of the deceased and recorded the injuries in PM Report at EX.95. PW13 opined that the cause of the death of Gajanan was due to intracranial hemorrhage as a result of the fracture of the skull.

7. PW19 proceeded to the scene of offence and conducted the spot panchnama at Exh.83 in presence of PW4 Baban. He attached a sword, tile, grip of the sword, chunk of hair and the sample of soil mixed with blood as well as control sample of soil the scene of offence. He recorded statements of the witnesses and arrested the accused. The interrogation of the accused led to recovery of clothes worn by them on the date of the incident, as well as recovery of swords, baton and a stone. The clothes and weapon were seized under panchanama at Exh.75/76 and Exh.99/C. PW19 forwarded the incriminating material to the CFSL for analysis and on completion of investigation; he filed the charge sheet against the accused for offences under Section 302, 324 504 and 201 r/w. 34 IPC.

8. Upon committal of the case to the Court of Sessions, Charge was framed and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried.

9. Prosecution, in support of its case examined 19 witnesses. The accused did not examine any witness in defence. Upon analyzing the evidence on record, the learned trial judge acquitted the accused of

offence under Section 201 and 504 of IPC but convicted them for the offences under section 302 and 324 r/w 34 IPC and sentenced them as stated above. Aggrieved by the conviction and sentence, the accused preferred this appeal.

10. Learned Senior Counsel Shri Gupte has argued on behalf of the accused. He has submitted that there are inherent contradictions and material omissions in the testimony of the injured and the other eyewitnesses as regards actual assault. Learned Senior Counsel Shri Gupte has submitted that PW6 had no reason to come out of the house at such odd hours when he could use the washroom in his house.

11. Learned senior Counsel Shri Gupte has further argued that there are material contradictions as regards the spot of the incident. Learned Senior Counsel Shri Gupte further urged that the alleged place of the incident was not visible from the house of PW6, consequently, PW6 could not have seen and joined his friends at Sangram Chowk . It is urged the presence of this witness at the place of the incident is highly unnatural and doubtful. He has further submitted that the entry at serial no.544 in the medical case paper, creates doubt about the time

of admission of PW6 in IGM hospital. He has submitted that the prosecution has failed to establish the nexus between the injury sustained by PW6 and the incident of assault.

12. Learned Senior Counsel Shri Gupte contends that it is difficult to believe that the accused would commit such heinous crime over such trivial issue. Learned Counsel Shri Gupte therefore contends that the motive attributed to the accused is unbelievable. He has submitted that Chandrakant Shelke who was a mastermind behind this incident has not been examined. It is submitted that non examination of this witness is fatal, more particularly in view of the defence taken by the accused that the wife of Chandrakant Shelke was a Counsellor and that the accused were falsely implicated due to political rivalry. It is urged that the prosecution has suppressed the real genesis of the offence and failed to establish the guilt of the accused beyond reasonable doubt. Sr. Counsel Shri Gupte therefore claims that the accused are entitled for benefit of doubt.

13. Learned APP Ms. Shinde has argued that the case of the prosecution is based on the direct evidence of PW6, PW7 and PW8 as

well as on the circumstantial evidence. PW6 had not only witnessed the occurrence but had sustained injuries in the attack made by the assailants. It is submitted that the testimony of PW6, which is duly corroborated by PW7 and PW8 and the medical evidence, has rightly been relied upon by the trial court. Learned APP has submitted that contradictions and omissions are trivial in nature. She has submitted that the testimonies of these witnesses were recorded three-four years after the incident. Therefore, it is possible that there would be some lapses in memory and some details would be omitted.

14. Learned APP has further submitted that direct evidence of the injured and the other eye witnesses vis-à-vis the spot panchanama at Exh.97 proves that the incident had taken place on Veer Shaiv Bank road leading to Sangram Chowk. She has further argued that the finding of the blood on the road, blood stained stone as well as the weapon at the spot of incident further proves that the incident had occurred at the place as stated by the witnesses and described in the spot panchanama.

15. Learned APP Mrs. Shinde has argued that the prosecution has

established the motive. The fact that the accused had come armed with sword further proves that the accused had every intention of causing the death of Gajanan. She has further argued that considering the overall evidence adduced by the prosecution there can be no doubt that the death of Gajanan was caused by the accused.

16. The evidence of PW13 Dr. Suvarnalata, the Medical Officer on duty at IGM Hospital, Ichalkaranji reveals that Gajanan and Rakesh were brought to the hospital on 11.3.2007 at about 2.45 a.m, with history of assault. On examination, PW13 Dr. Suvarnalata declared Gajanan to be dead. She treated Rakesh and admitted him as an inpatient for further treatment. Vide Exh.92 and 93 PW13 gave written intimation of death of Gajanan and admission of PW6 Rakesh in IGM hospital as an inpatient to Shivaji nagar police station.

17. On receipt of the said written intimation at Exh.92 and 93, PW19 visited the hospital and recorded the statement of Rakesh. Subsequent to the registration of the crime, PW19 conducted inquest panchanama at Exh.57. PW1 is the witness to the inquest panchanama. The testimony of PW1 and PW19 vis-à-vis the inquest panchanama at

Exh.57 reveals that Gajanan had sustained injury on his face, neck, hands forehead etc.

18. The post mortem over the body was conducted by PW13. The testimony of PW13 vis-à-vis the post-mortem report at Exh.95 reveals that there were following injuries on the body of Gajanan:

External injuries :

- i) Incised wound over the wrist lt-side 3cm x 1 ½ cm muscle deep bleeding
- ii) Incised wound Rt. arm lat. aspect- just above elbow 2cm x 1/2cm, oblique, muscle deep bleeding.
- iii) Incised wound over lt. hand 4.5cm x ½ cm muscle deep, bleeding
- iv) Incised wound over neck- lt. Side from hyoid 9.5cm x 1.5cm, muscle deep bleeding
- v) Crush injury forehead-lt.side -CLW above lt. eye brow 5cm x 5 cm bone deep frontal bone
- vi) CLW lt. nostril 3cm x 1cm bleeding.
- vii) CLW near wound no.6 lt. Side 3 ½ cm x ½ cm bleeding.
- viii) IW below wound no.7, horizontal, muscle deep bleedings.
- ix) Incised wound rt. side of wound no.8- 3 ½ cm x ½

cm, horizontal, muscle deep bleeding.

x) CLW upper lip rt. side 2 cm x ½ cm bleeding.

xi) Incised wound Rt. parital 7cm x 1cm bone deep bleeding + rt. parietal bone

xii) Incised wound occipital 8cm x 3 cm bone deep bleeding, occipital bone.

Internal injuries:

(1) C.L.W. occiput horizontal 3 inch x ½ inch bone deep bleeding.

(2) Minor lacerations over right palm reddish there was no E.N.T. bleeding, pupils equal and reaching. His. B.P. Was 150/90.

19. PW13 has deposed that the stomach was congested and contained semi digested food material. PW13 has opined that the death of the deceased Gajanan had occurred about three hours after his last meal. She has deposed that the external injuries at serial number 1, 2 and 3 in column no.3 were possibly defence injuries and the said injuries as well as other incised wounds could have been caused by swords. PW13 has further deposed that the external injuries at serial nos. 6, 7 and 10 could be caused by hard and blunt object akin to the wooden baton at muddemal article no.20 whereas the crush injury at serial no. 5 could be caused by a stone. PW13 Dr. Suvarnalata Rawal

has opined that the death of said Gajanan was due to intracranial hemorrhage due to fracture to skull.

20. The testimony of PW13 vis-a-vis the post mortem report at Exh.95 therefore leaves no doubt that the death of Gajanan was homicidal. The accused have also not otherwise questioned the homicidal death of Gajanan but have disputed their involvement in the crime.

21. The prosecution has sought to prove the complicity of the accused through direct evidence of the injured PW6 Rakesh and the other eyewitnesses namely PW7 Ganesh and PW8 Sachin as well as the other circumstantial evidence. The evidence of PW6 Rakesh indicates that the accused had organized a cricket tournament on the ground of Netaji Subhash School. On 10.3.2007 at about 9.45 to 10.00 pm, he and others from the locality had gone to the school ground to see the cricket match. While the match was in progress, the accused no.3 kicked one of the boys who was sitting on the boundary of the ground. The deceased Gajanan questioned the accused about the said incident, which led to an altercation between the accused and the

deceased and their respective supporters. The riotous situation between the two groups resulted in calling off the match.

22. PW6 has deposed that thereafter he returned home, had dinner, and went to sleep. He has deposed that at about 2 a.m. when he had come out of the house to urinate, he saw the deceased Gajanan, Sanjay, Chandrakant and Ganesh standing at Sangram Chowk and joined them. As they were talking, the accused came to the spot on two motor cycles. They were armed with swords and wooden baton. He has stated that the accused abused and blamed them for stopping the cricket match. Thereafter, the accused Nagesh, Ganesh and Chandrakant rushed towards Gajanan with swords. Said Gajanan stepped back while resisting the attack. PW6 has deposed that the accused Nagesh, Ganesh and Chandrakant inflicted blows of swords on the head and neck of Gajanan and when he fell down, the accused Mahesh picked up a stone and dropped it on the head of Gajanan.

23. PW6 has stated that when he tried to intervene, the accused assaulted him by giving kicks and blows. He has deposed that the accused Chandrakant inflicted a blow of sword on his hand. He

shouted for help and on seeing the people coming to the spot, the accused fled away on their motorcycle. He has stated that he and Gajanan had sustained injuries. The people gathered at the spot shifted them to IGM Hospital by a Maruti Van. The doctor on duty examined Gajanan and declared him dead. He has further deposed that he was examined and thereafter admitted as an inward patient. He has further stated that sometime thereafter the police came to the hospital and recorded his statement, which is at Exh.70. He has further stated that the police had seized the clothes worn by him on the date of the incident.

24. It is pertinent to note that the testimony of PW6 clearly indicates that his house did not have a latrine but only had a bathroom in the kitchen. He had further stated that his brother and sister-in-law used to sleep in the kitchen. He has denied that the entrance to the bathroom was outside the kitchen and that he could have gone to the bathroom without entering the kitchen. In the light of this uncontroverted evidence, the conduct of this witness in not entering the kitchen and going out of the house to ease himself cannot be considered to be

implausible or unnatural conduct.

25. It is true that PW6 has admitted that his house is in the bylane. He has further admitted that there are no streetlights in the bylane and that Sangram Chowk is not visible from his house. This admission would not belie his statement that he had been to Sangram Chowk on seeing Gajanan and others. It is to be noted that PW6 does not claim that he had seen Gajanan and others from his house but claims to have seen them standing at Sangram Chowk, while he had gone to Sangram chowk to urinate. His evidence further indicates that Sangram Chowk was well illuminated with Mercury Vapor Street light. Though it is sought to be contended that there is material omission in this regard, it is seen that in the FIR as well as in his deposition before the court PW6 had stated that he had seen Gajanan and others standing in Chowk when he had come out of the house to urinate. The omission is only as regard going to Sangram Chowk for urination. The said omission in our view is not a material omission and does not render the testimony of PW6 incredible.

26. The testimony of PW6 not only proves his presence at the place

of the incident but also proves that he was injured in the said incident.

It is well settled that the testimony of the injured witness is accorded a special status and stands on a higher pedestal than any other witness.

The law on this aspect has been detailed in the judgment *State of Uttar Pradesh vs. Naresh and ors., (2011) 4 SCC 324* as under :

"27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh v. State of Punjab*, *Balraje v. State of Maharashtra* and *Abdul Sayeed v. State of M.P.*)"

27. In the case of '*Abdul Sayed vs. State of Madhya Pradesh*', (2010) 10 SCC 259, the Apex Court has observed that :

"28. The question of the weight to be attached to the

evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh & Ors. v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, 16 AIR 1988 SC 696; Bonkya @ Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra), Mohar & Anr. v. State of U.P. (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan, (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261; and Balraje & Trimbak v. State of Maharashtra, 2010 6 SCC 673]...

Upon considering its previous decisions in the case of Jarnail Singh vs. State of Punjab (2009) 9 SCC 719 and State of U.P. vs. Kishan Chand the Apex Court held that :

“ The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission

of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

28. A similar view has been also reiterated in *Mano Dutt vs. State of U.P. (2012) 4 SCC 79* and in the more recent decision of the Apex Court in *Balwan & ors. v/s State of Haryana 2014 STPL(Web) 540 SC*.

29. Reverting to the facts of the present case, the testimony of PW6 proves that he was present at the place of the incident and that he had seen the accused assaulting Gajanan. His testimony further proves that the accused had inflicted injuries on him while he had tried to intervene and prevent the accused from assaulting Gajanan. The testimony of this witness is consistent with FIR in all material aspects and does not suffer from material contradictions or omissions. He is an independent witness, who had no animosity towards the accused and had no plausible reason to falsely implicate the accused. Furthermore, the testimony of PW6 is also corroborated by the testimonies of PW7, PW8, PW9 and the medical evidence.

30. In this regard P.W.7 Ganesh Shinde has deposed that on 10.3.2007 he had gone to Netaji Subhash Chandra Bose School Ground to watch the cricket match wherein the young boys from his chowk were playing. Gajanan, Rakesh, Sanjay and many others from the said locality were present at the ground. He has deposed that the accused Mahesh had kicked a young boy who was sitting at the boundary. Gajanan had questioned the accused Mahesh as to why he had kicked the boy. The said incident led to a riotous situation, which resulted in cancellation of the match. They waited at Sangram Chowk for about 5 minutes and thereafter proceeded to their respective houses.

31. PW7 has deposed that he returned to Sangram Chowk at about 11.45 p.m and joined Gajanan, Sanjay and Chandrakant. PW6 Rakesh also joined them at about 1.45 to 2 a.m. As they were discussing the days' events that led to calling off the cricket match, the accused came on two motorcycles, armed with swords and wooden baton, and started abusing Gajanan for stopping the cricket match. Accused Nagesh parked the motorcycle, took the sword from his brother, and rushed towards Gajanan. Gajanan tried to prevent the attack and in the process

received injuries on his hands. In the process of resisting the attack, Gajanan stepped back to the extent of about 20 to 25 feet, towards the eastern side.

32. PW7 has deposed that the accused Nagesh, Ganesh and Chandrakant gave blows of sword on the head, hand, face and neck of Gajanan. As a result, Gajanan sustained injuries and fell on the ground. He has deposed that PW6 Rakesh had intervened and tried to prevent the accused from assaulting Gajanan but the accused Chandrakant wielded a blow of sword on his head. This witness has deposed that while Gajanan had fallen on the ground, Mahesh picked up stone and dropped on the head of Gajanan. PW7 has deposed that he and others present at the scene of offence cried for help. Hearing their cries, people came to the chowk and the accused fled away with the weapons. He has stated that while the accused were trying to run away, one of the swords and the grip fell at the scene of offence.

33. PW7 has stated that a Maruti van was called and Gajanan and PW6 Rakesh were shifted to IGM hospital. He has deposed that upon examination, Gajanan was declared dead while PW6 Rakesh was given

necessary treatment. In his cross examination PW7 has stated that they used to routinely meet at Sangram Chowk between 9.00 to 11.00 p.m. He has stated they were standing near the house of Dhawale when PW6 Rakesh had joined them. He has categorically deposed that PW6 Rakesh had sustained bleeding injury.

34. PW8 Sachin has deposed that he resides at Sangram Chowk. He has deposed that he had accompanied Gajanan and others to the school ground to watch cricket match between Chaser Team and Jata Jata Team. He has further deposed that the accused Mahesh had kicked one boy by name Rohit, who was sitting near the boundary line. This led to an altercation and resulted in calling off the match. He has deposed that thereafter he, Gajanan and Rakesh returned to the chowk and sometime later they proceeded to their respective houses.

35. PW8 has deposed that about 2 a.m. he heard some commotion outside his house. When he came out of the house, he saw Gajanan lying below the almond tree in the chowk. He also saw Mahesh Patil assaulting Gajanan with a baton and thereafter lifting a stone from the spot and dropping it on the face of Gajanan. He has deposed that he

had seen pool of blood at the place where Gajanan had fallen. He has deposed that he had seen Nagesh and Ganesh holding swords in their hands. He has deposed that Chandrakant had inflicted a blow of sword in the head of Rakesh and as a result Rakesh had fallen on the ground. He has deposed that Chandrakant, Ganesh had raised alarm and on seeing the people from the locality proceeding towards the spot, the accused fled away from the spot on motorcycles. PW8 has deposed that Gajanan and Rakesh were shifted to IGM Hospital by a Maruti Van of one Mansoor Momin. He has deposed that sometime later he went to IGM Hospital and learnt that Gajanan had expired. He has denied in the cross examination that he was not residing near Sangram Chowk at the time of the incident.

36. PW9 Mansoor has deposed that he resides near Sangram Chowk at Ichalkaranji. On 10.3.2007 at about 2.00 hours, he heard some noise outside his house followed by knock on his door. He opened the door and saw Chandrakant Shelke and Sanjay Shelke at the door. They informed him that Mahesh Patil, Ganesh Patil and Chandrakant Shewale i.e. the accused herein had assaulted Gajanan Malvekar and

Rakesh Shetye and that the injured were required to be taken to the hospital. PW9 deposed that he owned a Maruti van bearing No. MH 01 N 9216. He went to Sangram Chowk by his Maruti Van. He saw Gajanan fallen on the road and Rakesh Shelke sitting near him. He stated that he, Chandrakant Shelke, Sanjay Shelke and others from the said locality lifted Gajanan and put him in his Maruti Van and took them to the IGM Hospital. He has stated in the cross examination that Gajanan was lying near the STD booth opposite Prateek General Stores. He has further stated that he had reached the hospital by about 2.15 to 2.30 am.

37. The evidence of PW7 and PW8 not only proves the presence of PW6 at the place of the incident but also confirms that the accused had inflicted injuries on Gajanan as well as PW6 Rakesh. The testimony of PW9 also corroborates that Gajanan and PW6 were injured and that they were taken to IGM hospital for treatment. The evidence of PW13 Dr. Suvarnalata also fortifies that Gajanan and PW6 Rakesh were brought to the hospital on 11.3.2007 at about 2.45 am. PW6 Rakesh had

given history of assault, which was recorded by her in the medical case papers. She had examined PW6 and noted the following injuries :

- i) CLW in occipital region which was horizontal, 3 x ½ inch x bone deep and was bleeding.
- ii) Minor reddish lacerations over right palm.

She has deposed that the injuries were fresh and were caused by hard and blunt object. PW13 had deposed that the injury no.1 sustained by Rakesh could have been caused by the blunt edge of the sword being muddemal article 19. She has further deposed that the injury no.2 is a defence injury. She had issued the medical certificate at Exh. 91 and had produced the medical case papers of PW 6 Rakesh, which are at Exh. 94.

38. The medical papers at Ex 94 reveals that PW6 was admitted as an indoor patient from 11.3.2007 at 2.45 am till 13.3.2007. The said medical case papers contain the record of the medical examination as well as the treatment prescribed to the patient during his admission in the hospital. The fact that the doctor who had examined PW6 on 12.3.2007 at 12.05 p.m. had again recorded the history given by the

patient is no ground to disbelieve that PW6 was admitted in the hospital on 11.3.2007 at 2.45am, more so, when there is no inconsistency in the history given.

39. The evidence of PW13 vis-à-vis the medical certificate at Exh.91 and the medical case papers at EX. 94 and the postmortem report at Exh.95 proves that Gajanan and PW6 were brought to the hospital on 11/3/2007 at 2.45 pm with history of assault. The post mortem report at Exh.95 and the hurt certificate at Exh.91 give a detail narration of the nature of injuries inflicted on Gajanan and PW6 Rakesh. PW13 has categorically stated that the injuries sustained by Gajanan could be caused by sword, baton, and stone whereas the injuries sustained by PW6 could be caused by sword. The postmortem report states that the stomach contained semi digested food. PW13 has opined that the death of Gajanan was within three hours from the last meal. The medical evidence therefore corroborates the testimony of PW6 and PW7 that the deceased had gone home after the match was called off and had returned to the place of the incident after having had his dinner. The medical evidence therefore is in total harmony with the ocular

testimony of PW6, PW7 and PW9 as to the manner and time of the assault as well as the weapons used in the assault.

40. It is also pertinent to note that the evidence of PW16 Kumar Pawar, indicates that on 11.3.2007 at about 3.25 am while he was on duty at Shivaji Nagar Police Station at Ichalkaranji, the medical officer of IGM Hospital, had intimated that the injured Rakesh was brought to the hospital with history of assault while another person by name Gajanan was brought dead by the residents of Sangram Chowk. PW16 made an entry in the station diary and conveyed the information to the police inspector as well as to PW19 PSI Babalal Sanadi. On receipt of the said information, PW19 visited IGM hospital and after confirming that PW6 Rakesh was in a fit condition to give statement, he recorded the FIR at Exh.70.

41. Learned Senior Counsel Shri Gupte has drawn our attention to the statement of PW7 in his cross-examination, wherein he has stated that he had met the police in the hospital and narrated the incident. Learned Counsel has sought to contend that the information given by

PW7 was first in point of time and ought to have been recorded as FIR. Needless to state that the officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic information about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation. In the instant case, there is nothing on record to indicate that PW7 had disclosed all the material facts about the offence to PW19 P.I. Sanadi. Hence P.I. Sanadi cannot be faulted for not recording the FIR on the basis of the information given by PW7 and instead seeking detail information from the injured PW6 Rakesh.

42. It is pertinent to note that the FIR at Exh. 70 was recorded immediately after the incident. The FIR at Exh. 70, which has been duly proved through PW6 Rakesh, contains a detail narration of events specifying role of each and every accused. The accused were previously known to PW6 and there was no possibility of mistaken

identity. There is nothing on record to indicate that the injured Rakesh had any plausible reason to falsely implicate the accused. Prompt lodging of the FIR rules out the possibility of false implication and gives an assurance of its true version. Under the circumstances, there is absolutely no reason to doubt the testimony of the injured witness.

43. There is no evidence on record to probablize the defence of the accused that there was political rivalry between them and Chandrakant Shelke or that the deceased was in any manner concerned with the said political rivalry. Under the circumstances, we are of the considered view that non-examination of Chandrakant Shelke does not dent the case of the prosecution. It is well-settled principle that the evidence has to be weighed and not counted. In the instant case, the testimony of the injured witness, which is wholly reliable, proves the guilt of the accused beyond reasonable doubt. The testimony of PW6 also finds substantial corroboration from the other ocular evidence as well as medical evidence. The quality of evidence adduced by the prosecution therefore dispenses the need for multitudinal evidence.

44. As regards the location of the scene of offence, the prosecution has relied upon the sketch at Exh. 97 to depict the topography of the scene of offence. PW14 Ashok who was working as a maintenance Surveyor had visited the site on 3/5/2007 and drawn the sketch at Exh. 97 based on the spot panchanama at Exh.67. A perusal of the sketch at Exh.97 vis-à-vis the spot panchanama at Exh.67 reveals that Sangram Chowk is a junction where the road leading from Kesari chowk to Gosavi Galli intercepts Veer Shaiv Bank road leading to Shatkon Chowk. Zanvar building is in the north-west corner of the four road junction i.e. Sangram Chowk. The mercury vapour street light is at the corner where Shatkon chowk road meets Gosavi Galli road.

45. It is to be noted that the sketch reveals that the house of Rajaram Dhawale is abutting Gosavi Galli road and that Om Shree Electricals shop which is adjoining the house of Dhawle is on the north-east corner of the chowk, abutting Gosavi galli road as well as Veer Shaiv Bank road. It is to be noted that though the house of Dhavle and the electrical shop are shown as two distinct structures, the evidence of PW7 reveals that the house of Dhawle has entrance from Gosavi Galli

road as well as from Veer Shaiv Bank road. The evidence of PW8 also reveals that Electrical store is in the premises of Dhawle. It is therefore evident that the house of Dhawle and Electrical shop is one structure, which abuts Veer Shaiv Bank road as well as Gosavi Galli road. The location of the house gains importance as the witnesses have claimed that the incident had occurred on the road in front of the house of Dhawle and learned Senior Counsel Shri Gupte has contended that no blood stains are seen at Sangram Chowk or to the road in front of house of Dhawale.

46. The testimony of PW6 and PW8 reveals that prior to the incident they were standing near Zanvar building. Gajanan had stepped back on seeing the accused rushing towards him. These witnesses have further stated that after the assault, Gajanan had fallen below the almond tree near Prateek general store, which is adjoining Veer Shiv Bank road. The evidence of these witnesses therefore reveals that though they were initially standing at Sangrm Chowk, the deceased Gajanan , as a natural and normal conduct, had moved away on seeing the accused rushing towards him. However, the accused had followed

and attacked Gajanan and he had finally fallen below the almond tree, near Prateek Generl Store.

47. It is pertinent to note that though the witnesses have stated that the incident had occurred at Sangram Chowk, no much significance can be attached to such a description of place as the term “Sangram Chowk” could have been used loosely. More so, the evidence of PW8 shows that the entire area is referred to as Sangram Chowk.

48. The evidence of PW4 and PW19 vis-à-vis the spot panchanama at Exh. 63 and the sketch at Exh.97 also reveals that one sword without grip was lying Veer Shaiv Bank road at a distance of 8 ft from the house of Dhawale. The blade of the said sword was stained with blood. The evidence further reveals that a pool of blood, chunk of hair, grip of the sword and one Shahabad tile with dried blood stains were seen on the Veer Shaiv Bank road, near the almond tree. PW16 and PW19 had attached all these incriminating articles and had also taken control sample of soil as well as the sample of blood stained soil. These articles were subsequently forwarded to CFSL for examination.

The report at Exh.88 reveals that the sword, shahabadi tile, chunk of hair, and the grip of the sword were stained with human blood. The report further reveals that the sample of mud seized from the spot of the incident was also mixed with human blood and this clinches the situs of the crime. We are therefore unable to concur with the contention of Learned Senior Counsel Shri Shirish Gupte that the prosecution has failed to establish the place of the incident.

49. PW6, PW7, PW8 and PW9 have emerged as truthful witnesses. Contradictions and omissions in their testimony and other discrepancies highlighted by the Learned Counsel for the accused, are not of such magnitude to discard the prosecution case in its entirety. These witnesses had deposed more than three years after the incident and in such circumstances, it is natural for the witnesses not to recollect and reproduce the past events. Such minor discrepancies do not materially affect the credibility of the witnesses and does not create any infirmity in the prosecution case.

50. We are therefore of the view that the prosecution has succeeded in proving the place of occurrence, the time of occurrence as well as

the manner of assault made on Gajanan as well as the injured witness PW6 Rakesh. The evidence adduced by the prosecution further proves that the incident was a sequel of the previous incident at the cricket ground where the altercation between the accused and the deceased over kicking of a boy had led to a riotous situation warranting calling off the match. Be that as it may, whether the previous incident served as a strong motive or not is not material as the case of the prosecution is otherwise based on ocular evidence.

51. The evidence of PW19 further reveals that the accused were arrested on 11.03.2007 under arrest panchanama at Exh.78, drawn in presence of PW11 Arun Jadhav. It is the case of the prosecution that in the course of the interrogation, the accused no.4 Chandrakant had volunteered to show the clothes worn by him and other accused on the date of the incident. The disclosure statement at Exh.99 was recorded in presence PW15 Iqbal Pathan. The testimony of PW15 reveals that pursuant to the said disclosure statement the accused Chandrakant had taken them near Ganesh temple on the banks of Panchganga river. The accused went behind the temple and removed four trousers from the

bushes and handed over the same to the police. The said trousers were stained with blood. They were separately wrapped and were seized under panchanama at Exh.100. The evidence of PW19 reveals that these trousers were sent for CFSL examination and as per the report at Exh.88, the trousers at Exh. 24 and 25 were stained with blood.

52. It is also the case of prosecution that while the accused were in custody they were interrogated and pursuant of the disclosure statement at Exh.75 made by the accused no.1 Nagesh, two swords, a baton and a stone were recovered under recovery panchanama at Exh.76, drawn in presence of PW10 Jafar Jidage. The testimony of PW10 Jafar vis-a-vis the recovery panchanama at Exh.75/76 reveals that on 16.3.2007, the accused Nagesh, while in custody, had volunteered to show the place where he had kept the swords, baton and the stone. The said disclosure statement was recorded and the signature of the accused was obtained on the same. The accused Nagesh thereafter took them to Panchganga river and removed two swords, a baton and a stone from the bushes near the bank of the river. The said swords, baton and the stone were seized and were subsequently

forwarded to CFSL for examination. The CFSL report at Exh.88 reveals that the swords were stained with human blood.

53. The evidence reveals that the clothes as well as weapons were not sealed. There is no evidence to prove that the accused had carried away the stone while leaving the place. Under the circumstances, we are not inclined to rely upon the said recovery panchanama. This however will not dent the prosecution case as the ocular evidence adduced by the prosecution proves the guilt of the accused beyond reasonable doubt.

54. We are of the considered view that the learned trial judge has assessed and analysed the evidence meticulously and has rightly held the accused guilty of the offence with which they were convicted and sentenced. We therefore do not find any reason to disturb the findings.

55. Under the circumstances and in view of the discussion supra, the appeal has no merits and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)

(P.V.HARDAS, J.)