

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.674 OF 1994

1. Ashok Ambo Sangade	]	
2. Dharma Pandurang Pavashe	]	 Appellants/
3. Balkrishna Pandurang Pavashe	]	(Original
4. Janardan Kacharu Pavashe	]	Accused
5. Narayan Namdeo Kathe	]	Nos.16,3,6,
All residents of Nitlas, Tal. Panvel, Dist. Thane.	]	14 & 9)

Versus

The State of Maharashtra,	]	 Respondent/
Through Taloja Police Station,	]	(Original
Tal. Panvel, Dist. Raigad.	]	Complainant)

WITH
CRIMINAL APPEAL NO.10 OF 1995

1. Shivram Laxman Sangade	]	
2. Rohidas Mangal Mhatre	]	
3. Ram Madhukar Choudhari	]	 Appellants/
4. Vasant Ambo Sangade (<i>stands abated</i>)	]	(Original
5. Gurunath Shantaram Pavashe	]	Accused
6. Vasudeo Kathor Kathe	]	Nos.4,11,12
All resident of Nitlas, Tal. Panvel, Dist. Thane.	]	15, 17 & 18)

Versus

The State of Maharashtra,	]	 Respondent/
Through Taloja Police Station,	]	(Original
Tal. Panvel, Dist. Raigad.	]	Complainant)

Mr. A.P. Mundargi, Sr. Counsel, a/w. Mr. Shreekant V. Gavand, for the Appellants.

Mrs. U.V. Kejriwal, A.P.P., for the Respondent-State.

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

JUDGMENT RESERVED ON : 29TH JANUARY, 2015.

JUDGMENT PRONOUNCED ON : 3RD FEBRUARY, 2015.

JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. These Appeals unfold the case of rivalry in the two factions of the village, which ultimately resulted into the death of one person, prosecution and arrest of 18 persons of the rival group and conviction and sentence to life imprisonment of 11 persons out of them, by the Judgment dated 17th November, 1994, passed in Sessions Case No.59 of 1992, by the Additional Sessions Judge, Raigad-Alibag. By preferring these two Appeals, the Original Accused have challenged their conviction and sentence.

2. As both these Appeals are arising out of one and the same Judgment, they are being decided by this common Judgment.

3. Facts, as are necessary, for the decision of these Appeals may briefly be stated thus :

PW-3 Bhau Tukaram Bhopi was Sarpanch of Gram Panchayat Nitlas, Tal. Panvel. Dist. Thane since 1986 till 1991. There were nine members of Gram Panchayat. Four members were of his party and five members were of the party of Accused No.4 Shivram. The village was also equally divided between these two parties; 15 to 20 houses in the village were of the party of PW-3 Bhau, whereas remaining houses were of the party of Accused No.4 Shivram.

4. On 19th October, 1991, Accused No.4 Shivram and 2 to 4 persons of his party had abused PW-3 Bhau demanding his resignation from the post of "Sarpanch". A complaint of the said incident was filed by PW-3 Bhau at Taloja Police Station, which was registered as non-cognizable offence. Again, on 20th October, 1991, the Accused persons pelted stones on the houses of the party of PW-3 Bhau. The complaint thereof was also registered and Accused were arrested and released on bail. On 25th October, 1991, some quarrel again took place between Laxman Choudhari belonging to PW-3 Bhau's party and Accused. The complaint thereof was also filed.

5. As per Prosecution case, due to these incidents, the relations between these two factions had become quite strained to the extent that some apprehension was also entertained about the danger to the life of PW-3 Bhau's nephew Madan. Hence, on the request of Madan's elder brother, Kacharu, PW-1 Namdeo, PW-4 Eknath and his companion Prakash went to escort Madan from Apte Amalgamation Company. After his second shift was over at 11 p.m., all the four of them were proceeding to their house on bicycles.

6. On the way, Accused No.2 Arun, who was also working in the same Company, overtook them on his motorcycle. By the time PW-4 Eknath, Madan and Prakash came upto Water Tank S.T. Stop after Indial Company, they heard the shouts of Accused No.4 Shivram "*aale saliya dhara*" and then about 15 to 20 persons, who are later indentified as Accused, rusehd to attack them from both sides of the road. Hence they left their bicycles and started running. Other three succeeded in running away. However, the Accused caught hold of Madan while he was climbing on the rear gate of Nitco Pain Company. They pulled him down and assaulted him with the weapons in their hands like the swords, guptis and sticks. Madan was shouting that he was dying (*melo..melo..*). PW-4 Eknath became frightened and to save himself, he started running from the field behind the Santoshi Mata Canteen and came to MIDC main road.

There, he met Kacharu and informed him that Madan was assaulted by the persons from the rival parties in front of the rear gate of Nitco Paint Company. Kacharu told him to go to the village and inform people there, whereas Kacharu went to see where Madan was lying.

7. PW-1 Namdeo and Prakash, who had concealed themselves near Rukma Company, then started proceeding to the Police Station by a different way, under the fear of the Accused. They met the Patrolling Police Vehicle near Dena Bank. PW-14 Police Constable Baban Kambale was in the said vehicle, along with Police Constable Palkar. They took PW-1 Namdeo and Prakash in their Police Jeep and proceeded towards the spot. There, they saw the dead body of Madan lying in injured condition by the side of gate of Nitco Company. PW-14 Police Constable Kambale requested Police Constable Palkar to remain near the dead body and then in his Police Jeep, along with PW-1 Namdeo, he went to Taloja Police Station.

8. At Taloja Police Station, PW-5 Head Constable Gavand was on duty as in-charge of Police Station. He recorded the complaint (Exhibit-32) of PW-1 Namdeo containing the names of all the Accused persons and the sequence of events, as unfolded.

9. On the basis of this complaint, PW-5 Head Constable Gavand registered C.R. No.107 of 1991 at 11:50 p.m. against the Accused persons for the offences punishable under Sections 147, 148 and 302 r/w. Section 149 of the IPC. He informed his superior immediately and thereafter investigation was taken over by PW-15 PI Vinayak Joshi. He went to the spot of incident, drew the Inquest Panchanama (Exhibit-29) and sent the dead body for post mortem. On the next day, in the evening, he made the Spot Panchanama (Exhibit-41) in the presence of Panch PW-7 Balaram Kathe; arrested Accused No.1 Hari Pavashe and Accused No.2 Arun Hilal and continued to take the search of remaining Accused, who were arrested subsequently on 31st October, 1991 and 1st November, 1991, respectively. Their clothes, which were having blood stains, came to be seized under Panchanama. On 29th October, 1991 itself, he conducted another Panchanama of the scene of offence, (Exhibit 41-A), in the night time to ascertain the availability of light at the spot.

10. During the course of further investigation, the statements of witnesses were recorded and various weapons of assault, like sword, gupti and knives, came to be seized under Memorandum and Recovery Panchanamas, (Exhibits 10, 11, 14, 15, 16, 17 and 18), at the instance of some of the Accused. The blood stained clothes of the Accused along with the blood smeared weapons of assault were sent to the Chemical

Analyzer. The C.A. Reports revealed presence of human blood on these clothes and the weapons of assault. Meanwhile, the Post Mortem Report (Exhibit-68) was received, evidencing the cause of death as “*as a result of injuries*”, thus homicidal one. Hence, after completion of due investigation, PW-15 PI Joshi filed Charge-Sheet in the Court against in all 18 Accused.

11. On the case being committed to the Sessions Court, the Trial Court framed charge against the Accused. The Accused abjured the guilt and claimed trial, raising the defence of false implication on account of the previous rivalry and strained relations.

12. To bring home the guilt of Accused, though Prosecution examined in all 16 witnesses, out of them, PW-8 Parshuram Patil, PW-9 Sukir Madhavi, PW-10 Gona Gondhali, PW-11 Govind Mali and PW-12 Rajaram Patil, who were the Panch Witnesses to the various Memorandum and Seizure Panchanamas of the weapons of assault, had not supported the Prosecution case and hence declared hostile. PW-13 Namdeo Sukrya Patil, owner of Santoshi Mata Canteen, was also declared hostile. The main reliance of the Prosecution case was, therefore, on the evidence of two eye witnesses, namely, PW-1 Namdeo Chandar Patil, who has lodged the F.I.R. (Exhibit-32) and PW-4 Eknath. Prosecution also placed reliance

on the evidence of PW-2 Narayan and PW-3 Bhau, in addition to the evidence of PW-5 Police Head Constable Gavand and PW-13 Patil, PW-15 PI Joshi, Investigating Officer, and PW-16 Dr. Kendre, who has conducted the post mortem.

13. The Trial Court accepted the evidence led by the Prosecution on all the counts including the evidence relating to recovery of the weapons of assault and C.A. Reports and placing implicit reliance on the testimony of the eye witnesses, held the present Appellants guilty and convicted and sentenced them as stated above; while acquitting the remaining Accused, namely, Accused No.1 Hari, Accused No.2 Arun, Accused No.7 Padu, Accused No.8 Laxman and Accused No.13 Kacharu, holding that there was no sufficient evidence on record against them and hence benefit of doubt can be extended to them.

14. This Judgment and Order of the Trial Court is being assailed in the present Appeals by the learned Counsel for the Appellants Shri. A.P. Mundargi. The main ground on attack is naturally on the evidence of the eye witnesses, challenging that their presence at the time of incident as not natural one and they are the set up witnesses. According to him, as they are from the rival party of PW-3 Bhau and the deceased, their evidence cannot be relied upon implicitly. It is urged that despite there

being several other independent eye witnesses available, Prosecution has not examined any of them, which creates doubt about veracity of Prosecution case. As regards recovery evidence, it is submitted that all the Panchas were declared hostile. There is no evidence of the sealing of the seized articles. Muddemal Clerk is also not examined. Hence, evidence relating to recovery of the weapons cannot be admitted or relied upon. Lastly, it is submitted that there was rivalry of two Trade Unions in the Company of deceased Madan and there is every probability that Madan might have been attacked and injured by the members of the rival Union. There was no sufficient light for the eye witnesses to identify the assailants. Hence, out of the enmity, they have implicated the Accused falsely in this incident.

15. Per contra, Mrs. U.V. Kejriwal, the learned A.P.P. for the Respondent-State, has supported the Judgment of the Trial Court, by pointing out to the evidence of the eye witnesses, which is, according to her, consistent and reliable and also to the other incriminating material brought on record by the Prosecution.

16. In our considered opinion, before adverting to the rival submissions made by them, it would be useful to refer to the evidence on record and first of all to the evidence of PW-16 Dr. Kendre, who has conducted the

post mortem on the dead body of Madan. He has found as many as 13 incised wounds on the vital parts of the body of Madan, like head, neck, chest, back, hands, caused by sharp edged weapons. He has described in detail those injuries in Column No.17 of the Post Mortem Report (Exhibit-68) by drawing the diagram of the injuries. He has noticed corresponding internal injuries, which he has described in Column No.19 of the Post Mortem Report. According to him, all these injuries were ante-mortem in nature and sufficient in ordinary course of nature to cause death. He has opined that the cause of the death was "*shock secondary to rupture of brain due to sharp edged weapon*". There is no cross-examination of this witness either about the cause of death, the time of death or on any other aspect. Neither in the Trial Court nor in Appeal, the factum of the death of Madan having succumbed to homicidal injuries found on his person, caused by sharp edged weapon, is not disputed.

17. As the edifice of Prosecution case is *inter se* rivalry and strained relations between the two groups of the deceased and Prosecution Witnesses on one side and the Accused persons on the other side, coupled with the eye witness account, we consider it appropriate to discuss first the evidence relating to this *inter se* rivalry.

18. The testimony of PW-3 Bhau is material on this aspect. PW-3 Bhau Bhopi was the Sarpanch of the Village, at the relevant time, and the uncle of deceased Madan. He has categorically stated that there were two factions in the Village; one belonging to his party and the other belonging to the party of Accused No.4 Shivram, of which other Accused were the members. Like Gram Panchayat Office, the village was equally divided between these two parties, as a result of the election to the post of "Sarpanch" of Gram Panchayat. PW-3 Bhau, as deposed by him, was the Sarpanch since 1986 till the incident in the year 1991. It is brought out in his cross-examination that Accused persons did not want him to continue as Sarpanch and were demanding his resignation, as Accused No.4 Shivram wanted to become the Sarpanch. As per the evidence of this witness, Madan being the Judo Karate player and clever amongst other members and was actively supporting his uncle PW-3 Bhau, it was apprehended that after PW-3 Bhau, Madan would be the strong contender for the post of Sarpanch. Naturally, Accused persons, as per the evidence of this witness, were having a cause to eliminate Madan.

19. The genesis of the incident giving rise to the present Prosecution case was some prior skirmishes and quarrels between these two parties. Just before the date of incident on 28th October, 1991, there were series of small incidents, which led to adding strain in the relations.

20. As deposed by PW-3 Bhau, on 19th October, 1991, Accused No.4 Shivram and 2 to 4 other persons had abused him and demanded his resignation from the post of Sarpanch. Therefore, he has filed complaint in Talaja Police Station, which was registered as a non-cognizable offence. Again, on 20th October, 1991, the Accused persons pelted stones on the houses of PW-3 Bhau and the persons from his party. In respect of this incident also, the complaint was filed; the Accused persons were arrested and released on bail. Just three days before the incident, on 25th October, 1991, the quarrel took place between Laxman Choudhari belonging to the party of PW-3 Bhau and the Accused No.4 Shivram and Laxman had filed complaint in respect thereof. The evidence of PW-3 Bhau is to the effect that, as a result of all these incidents resulting into the complaints with Police and the arrest of Accused, the Accused were very annoyed with him and his party. Accused were also threatening them and hence, the atmosphere in the village was tense, raising apprehension in the mind of the party members of PW-3 Bhau that some untoward incident may happen. This apprehension was the reason that on 28th October, 1991, Kacharu, the elder brother of deceased Madan told PW-4 Eknath and Prakash to escort Madan from the Company after his shift was to be over at 11 p.m.

21. This evidence relating to the enmity or rivalry between the two factions of the deceased and the Accused and the filing of complaints *inter se* is not at all disputed by the Accused also. Conversely, the very defence taken by the Accused is that, on account of these very strained relations and enmity between the parties, they have been falsely implicated in the offence, though, according to them, Madan might have been assaulted by the members of rival Trade Union. We will discuss this aspect of the defence of the Accused subsequently in detail, but for the present, it is suffice to state that, admittedly, the relations between these two parties were enimical and strained on the issue of election to the post of Sarpanch and just few days before the incident, on account of some complaints being filed by the party of the deceased against the Accused, those relations were further strained and tense, giving cause for Kacharu to request PW-4 Eknath and Prakash to escort Madan from the Company at about 11 p.m. Thus, the presence of PW-4 Eknath and PW-1 Namdeo Chandar Patil with Madan at the time of incident, cannot be called unnatural in any way, if it is looked into this back-drop.

22. Now, coming to the evidence of the two eye witnesses, namely, PW-1 Namdeo and PW-4 Eknath. PW-1 Namdeo is also the Informant. He has lodged complaint immediately within few minutes after the incident. He is resident of the same area and serving in Bharat Electric Company situate

in MIDC area, where Apte Amalgamation Company, in which Madan was serving, is also situate. According to him, on the date of incident, he was on work in first shift from 7 a.m. to 3 p.m., whereas Madan was in the second shift duty from 3 p.m. to 11 p.m. There was tension in the village on account of the earlier incidents as the Accused were insisting that PW-3 Bhau should resign from the post of Sarpanch. He has also deposed about the earlier incidents of abusing and stone throwing etc., in respect of which the complaints were lodged and Accused were arrested.

23. It is deposed by PW-4 Eknath that on 28th October, 1991, at about 7 p.m., he went to the house of his maternal uncle along with Prakash and there Madan's elder brother Kacharu requested him to escort Madan from the factory after second shift was over. Hence, he and Prakash went to the house of PW-1 Namdeo.

24. It is evidence of PW-1 Namdeo also that, on that day, at about 9:30 p.m., when he was in the house, PW-4 Eknath and Prakash Kathe came to him and told him that on the request of Kacharu, they would be going to escort Madan after second shift is over, in view of tension in the village. Accordingly, three of them started on their bicycles for going towards Apte Amalgamation Company. They reached there at about 10:30 p.m. and waited outside the Company. Madan came outside the Company on his

own bicycle at 11 p.m. They started together, came on MIDC Road and thereafter were proceeding to their village. At that time, Accused No.2 Arun, who was working in the Company of Madan, came from behind on his motorcycle, overtook them and went ahead.

25. As per their evidence, while they were proceeding further, near the tank of Indian Aluminum Company, they heard the shouts of Accused No.4 Shivram "*aale salyana dhara*" (*they have come, catch them*). They also noticed that 15 to 20 persons, identified by them as Accused persons, sitting on both sides of the MIDC road, rushed to attack them. Those persons were armed with the weapons. Hence, all the four of them left their bicycles at the spot and started running towards right side of the road. PW-4 Eknath was ahead, followed by PW-1 Namdeo, Madan and Prakash. PW-1 Namdeo and Prakash turned towards the road leading to Rukma Company. PW-4 Eknath started running through the field behind Santoshi Mata Canteen. Whereas, Madan went straight to the road leading to Nitco Paint Company. The Accused were chasing them. PW-4 Eknath received the slight blow of stick on his back and he started running fast. When PW-1 Namdeo and Prakash reached upto Santoshi Mata Canteen, they heard the shouts from behind and three of them saw that Madan was surrounded and assaulted by the Accused persons. Accused No.4 Shivram, Accused No.17 Gurunath and Accused No.12 Ram and

Accused No.15 Vasant were holding swords, whereas Accused No.18 Vasudeo and Accused No.11 Rohidas were having guptis and Accused No.8 Laxman and Accused No.1 Hari were holding sticks. Accused No.16 Ashok and Accused No.14 Janardan were having knives. All of them were assaulting Madan with swords, guptis, knives and sticks in their hands and Madan was shouting "*melo...melo...*". (He was dying).

26. PW-1 Namdeo has deposed that he himself and Prakash had concealed themselves near Rukma Company. After witnessing the assault on Madan, they started running to Police Station by odd way under the fear that Accused will beat them also. They saw the Patrolling Police Vehicle near Dena Bank and narrated the incident to the Police persons in the vehicle. Then, along with Police, PW-1 Namdeo and Prakash came to the spot, where they found Madan dead lying in injured condition and Accused had fled from the spot. Thereafter, PW-1 Namdeo and Prakash went in the Police vehicle itself to the Police Station and lodged complaint (Exhibit-32). As deposed by PW-4 Eknath, after witnessing the incident of assault of Madan, he started running on the road leading to BHEL Company. On the way, he met Kacharu and then went to inform in the village, whereas Kacharu went to the spot.

27. The evidence of these two eye witnesses is not at all shaken and has remained completely unshattered, even after their exhaustive and searching cross-examination. It also gets further support and corroboration from the evidence of PW-2 Narayan. He was also serving in the second shift itself on the date of incident, in Sanghavi Steel Company, which was just opposite to the Company of Madan. He and Madan had gone together on duty on their bicycles as usual and were supposed to be returning together. However, as deposed by him, after his duty was over at 11 p.m., his reliever had not come by that time. Hence, he waited at the gate for ten minutes. As the reliever did not come, he informed his supervisor and started proceeding to his house on bicycle. He came upto Apte Amalgamation Company. However, he did not find Madan there. Hence, he made enquiry with watchman and came to know that Madan has already left. Therefore, he alone started proceeding to his village. When he came upto United Vendure Company, he saw the assembly of ten to twelve persons from his village. He has identified them as Accused in the Court and stated that they were armed with weapons. He proceeded further. Near BHEL Company, he met Kacharu, who informed him that Madan was assaulted by the Accused persons. Then, along with Kacharu, he went to the spot, which was in front of Santoshi Mata Canteen, at rear side gate of Nitco Paint Company. There, he saw Madan

lying in injured condition. Then, Police Van came there along with PW-1 Namdeo and Prakash. PW-1 Namdeo went to the Police Station in the Police Van itself. After some time, Police again came there to make Panchanama of the dead body. In his cross-examination, it is brought on record that when he saw the villagers near United Vendure Company, he became suspicious.

28. There is further corroborating evidence of PW-14 Police Constable Kambale, who was at the relevant time on night round patrolling duty along with Police Constable Palkar. When they came near Dena Bank at about 11:30 p.m., they saw two persons coming running towards them and they informed them that near Santoshi Mata Canteen, some persons were assaulting Madan. Hence, they took those two persons, namely, PW-1 Namdeo and Prakash in their Jeep and went to the spot of incident at Santoshi Mata Canteen. There they saw the dead body of Madan. Then, PW-14 Police Constable Kambale took PW-1 Namdeo along with him to Taloja Police Station, whereas Police Constable Palkar remained near the dead body. At the Police Station, PW-5 Head Constable Gavand, who was the in-charge PSO, recorded the complaint of PW-1 Namdeo. Then, along with PW-1 Namdeo, PW-14 Police Constable Kambale again came to the spot.

29. Further corroboration is coming to this evidence from the testimony of PW-5 Head Constable Gavand, who was on the PSO duty, and, as deposed by him, at about 11:30 p.m., PW-1 Namdeo came to the Police Station in Police Jeep with PW-14 Police Constable Kambale. He recorded the complaint of PW-1 Namdeo Chandar Patil as per Exhibit-32 and registered C.R. No.107 of 1991 at about 11:50 p.m.

30. Thus, the evidence of two eye witnesses, which is throughout found to be consistent, convincing and reliable, is getting complete support and corroboration, though it is not necessary, from the evidence of these three witnesses i.e. PW-2 Narayan, PW-14 Police Constable Kambale and PW-5 Head Constable Gavand, leaving no spec of doubt about the manner in which the incident has taken place and the complicity of the Appellants therein. No major contradictions, omissions or inconsistencies are brought out in evidence of any of these witnesses, either individually or *inter se*. If at all there are some fringe variations, discrepancies in details, contradictions in narration and embellishments in non-essential parts, they are bound to be there in the evidence of any truthful witness. These discrepancies may be due to differences in individual power of observation, recollection, reproduction and recitation and cannot be considered as deliberate attempt to suppress or depart from the truth. Hence, they cannot militate against veracity of the core of their testimony.

31. Learned Counsel for the Appellants has challenged their evidence on the ground that though PW-1 Namdeo and PW-4 Eknath had purportedly gone to protect Madan from such attack, none of them have intervened to save Madan from the assault. This conduct on the part of these witnesses is unnatural and it is sufficient to disbelieve their presence at the time of incident. We are unable to accept this submission simply for the reason that there is no set rule of natural reaction. Everyone reacts in his own special way. Hence, to discard the evidence of an eye witness on the ground that he did not react in any particular manner, is to appreciate evidence in a wholly unrealistic and unimaginable way.

32. Secondly, in this case, witnesses were unarmed and far outnumbered by the Accused. They were only three, whereas, Accused were eighteen and armed with deadly weapons, making indiscriminate attack on Madan. Hence, in our considered opinion, non-intervention by these witnesses in the course of occurrence, particularly when there were about 18 Accused armed with deadly weapon, cannot be a circumstance against their credibility, self survival being the most predominant human tendency.

33. The most clinching corroboration is coming to the testimonies of two eye witnesses is coming from the F.I.R. (Exhibit-32), which is lodged and registered within just few minutes of the incident. The incident had taken place at 11:10 p.m., whereas complaint is recorded at 11:30 p.m. and the offence is registered, as can be seen from the F.I.R., at 11:50 p.m., leaving absolutely no time for any of the witnesses to concoct any false case against the Accused or to set up any got up witnesses.

34. Therefore, the only ground, on which the evidence of these two eye witnesses challenged, that they are the chance witnesses or set up witnesses, has to be rejected out rightly. F.I.R. lodged immediately after the incident speaks loudly and gives full proof guarantee of their presence at the time of incident. Therefore, the defence that Madan was attacked by the members of rival Trade Union and Accused are falsely implicated due to enmity, also cannot be sustained. There was absolutely no scope or time or occasion for any of these two eye witnesses or the independent Police persons to make up such false case of implicating the Accused. Moreover, if there was such rivalry of Madan with the members of Trade Union and they had assaulted Madan, then there was no reason for these witnesses to exculpate the real culprits and to implicate the Accused falsely.

35. The submission of the learned Counsel for the Appellants is that Prosecution has not brought on record any reason or motive on the part of the Accused to commit the assault on Madan. Admittedly, he was not the Sarpanch. He has also not stood for election of the Sarpanch. PW-3 Bhau, who was the Sarpanch, was not attacked. There was PW-1 Namdeo, then PW-2 Narayan and PW-4 Eknath also present at the scene of offence. None of them is assaulted or even slightly injured in the alleged incident. According to the learned Counsel for the Appellants, it is, therefore, impossible to believe that Accused will leave these witnesses alive, when they had opportunity to assault them, especially when, according to the Prosecution case itself, Accused were armed with deadly weapons and were larger in number than these three witnesses.

36. Further, it is submitted that the case put up by the Prosecution that Kachru asked PW-4 Eknath to escort Madan and PW-4 Eknath along with PW-1 Namdeo Chandar Patil and Prakash went to escort Madan, is also unbelievable. According to him, when, admittedly, PW-2 Narayan and Madan were going together and, as deposed by PW-2 Narayan, they were supposed to be returning also together after the shift, there was no reason to send any extra escort for Madan. Moreover, if there was need of escort or protection for Madan, then why the similar escort was not provided to PW-2 Narayan also? He was also equally belonging to the party of PW-3

Bhau and deceased. Hence, according to the learned Counsel for the Appellants, the entire story put up by the Prosecution is bereft of credence.

37. As regards the contention that why PW-1 Namdeo, PW-4 Eknath and Prakash were not assaulted by the Accused when they were with Madan, as already discussed, the evidence of PW-1 Namdeo and PW-4 Eknath goes to prove that when they saw the Accused, all the four of them started running. These witnesses managed to run ahead, whereas Madan somehow was left behind. As deposed by PW-4 Eknath, when he saw the Accused chasing him, he started running fast, even then he sustained slight blow of stick on his back and, therefore, he increased his speed. Similarly, PW-1 Namdeo also ran towards another side of the road and he and Prakash concealed themselves behind Santoshi Mata Canteen. As against it, the evidence on record shows that Madan could not be so fortunate to escape from the clutches of the Accused. As deposed by PW-1 Namdeo and PW-4 Eknath, while Madan was climbing on the rear gate of Nitco Paint Company so as to escape from that place, Accused caught hold of him, pulled him down and then assaulted him. By that time, the other three witnesses had succeeded in running away or at-least concealing themselves. That appears to be the reason why these three witnesses could escape unscathed, whereas Madan alone became the

victim of assault. It is not that Accused, though caught hold of other witnesses, allowed them to escape. It was merely in the circumstances in which these four persons found themselves that other three could prove themselves lucky in running away, whereas Madan could not.

38. Moreover, the evidence of these witnesses also goes to prove that Madan was having better chances of becoming the Sarpanch after his father, as he was clever and having some other qualities. As entire cause of enmity was the election to the post of Sarpanch, it was but natural that Accused wanted to eliminate Madan and hence focused on assaulting him. As a matter of fact, that was the reason for apprehension in the mind of Madan's elder brother Kacharu also that Madan may be attacked by the Accused and, hence, he told PW-4 Eknath to escort him. As regards PW-2 Narayan, PW-4 Eknath or Prakash, there is no material as such brought out to show that Accused had any special ground to assault them.

39. Moreover, when the relations between the two sides were undoubtedly strained, it is difficult to fathom the undercurrents. As to why Accused chose Madan and not PW-1 Namdeo, PW-2 Narayan or PW-4 Eknath, is difficult to say.

40 About submission that why the PW-1 Namdeo, Prakash and PW-4 Eknath did not wait for PW-2 Narayan to come there, the evidence of PW-2 Narayan itself shows that he could not leave his Company as his reliever had not come. Hence, he waited for ten minutes and then left. By that time, these witnesses had taken Madan along with them. As the apprehension of danger was to the life of Madan, according to the understanding given to these witnesses by Kacharu, they took care to see that Madan was escorted and hence they give precedence and priority to that fact instead of waiting for PW-2 Narayan. Hence, there is nothing unnatural in it to disbelieve their evidence on this aspect.

41. Coming to the submission that PW-1 Namdeo and PW-4 Eknath are set up witnesses as they were not supposed to be there at that particular point of time, it is true that, in the normal circumstances, both, Madan and PW-2 Narayan were coming and returning together after second shift duty, but, considering the previous three incidents of skirmishes between these two rival parties, the protection to Madan was felt necessary. Therefore, the presence of these two witnesses at the time of incident or their going to escort Madan cannot be called as unnatural, to discard their evidence. They also cannot be called as got up or set up witnesses, much less the chance witnesses. If it was so, in the FIR lodged immediately within few minutes of the incident, their presence would not have been mentioned.

This prompt lodging of FIR, containing all the details, thus, proves their presence, put a seal of truthfulness to the case of the Prosecution and negatives all the defences raised by the Accused.

42. One of such defences raised is that these two eye witnesses are interested ones, being of the party of the deceased. The learned Counsel for the Appellants fairly concedes that the evidence of interested witnesses or the witnesses belonging to one faction need not be discarded altogether, but, according to him, their evidence needs to be scrutinized carefully. In our considered opinion, even after the careful scrutiny and re-appreciation of their evidence, we do not find any reason to disbelieve them. Their entire conduct is quite natural. Their evidence is having a ring of truthfulness, their presence is mentioned in the FIR itself and they have withstood successfully the test of cross-examination. Hence, their evidence needs to be accepted and relied upon, as is rightly done by the Trial Court, which has the advantage of watching their conduct and demeanor while recording their evidence.

43. Once the evidence of these two eye witnesses is found to be reliable, the next submission of the learned Counsel for the Appellants that Prosecution has not examined any other independent witnesses though they were available, has to be rejected. It may be true that as

there are several factories in the said MIDC area and the timing of the second shift of all the factories is same, there may be several other persons also, who could have or might have witnessed the incident. But, it need not be stated that, when the incident of such attack by 15 to 20 persons armed with weapons takes place, the eye-witnesses will be from the one faction only. The Court will rarely come across the evidence of independent eye witnesses as such in such incidents of disputes between rival parties.

44. Moreover, the Prosecution is not expected to examine multiple witnesses just for duplication or repetition. If the evidence of the witnesses examined by the Prosecution is found to be reliable, then the Prosecution case cannot be disbelieved merely because some more witnesses on the same points are not examined. As per the time-honoured principle, evidence has to be weighed and not counted. It is the quality of the evidence and not the quantity of the witnesses, which is the deciding factor. Hence, at times, even the testimony of solitary witness is held to be sufficient to base conviction.

45. As regards the contention that the case is lodged after consultation to implicate the Accused falsely, in the given facts of the case, when the Police came to the spot within few minutes and the complaint is registered

within 10 to 20 minutes thereafter, there remains no scope to entertain such contention. The evidence of PW-2 Narayan and PW-4 Eknath proves that the villagers and other relatives like Kacharu came there after PW-1 Namdeo left in the Police Van for lodging the complaint,. Therefore, there was no opportunity or time at all for deliberation and consultation for concocting such case. PW-4 Eknath has flatly denied the suggestion put to him in cross-examination that there was discussion between him, PW-1 Namdeo and PW-3 Bhau to take the names of the Accused persons and hence PW-1 Namdeo has lodged the complaint against the Accused. This argument would have been attractive or persuasive if the complaint was not lodged and offence was not registered immediately after the incident, within minutes.

46. The next submission made by the learned Counsel for the Appellants pertains to the availability of sufficient light for identification of the assailants. Reliance is placed on the cross-examination of PW-4 Eknath, wherein he has stated that he has seen the incident in the tube light, which was burning at the door of the Santoshi Mata Canteen and if that tube light was not burning, he would not have been in a position to see the happening of the incident. The learned Counsel for the Appellants has, therefore, relied on the evidence of PW-13 Namdeo Sukrya Patil, the owner of Santoshi Mata Canteen, to show that this tube light was not

burning at the time of incident. This witness has deposed that on the day of incident, he closed his canteen at about 9 p.m. and he had put off the tube light attached to the sign board when he closed the canteen. However, it is pertinent to note that, this witness is declared hostile, as he has not supported the Prosecution case. In his cross-examination by the learned A.P.P., the incriminating portion in his statement marked as "A" was put up to him, in which he has categorically stated that the tube light of the sign board was on and burning throughout the night. Thus, he is sufficiently discredited in his cross-examination by the learned A.P.P. and it is apparent that he is won over by the Accused. Therefore, his evidence cannot be relied upon to hold that there was no light of the sign board of the canteen.

47. The topography of the scene of offence is sufficiently brought on record by examining the PW-6 Circle Inspector Hasan Khan, who has drawn the map (Exhibit-39) and which shows that the tube light on the sign board of Santoshi Mata Canteen was just near the spot where deceased Madan was assaulted. The map also shows the presence of one electric bulb hanging on Nilgiri tree to the west of Santoshi Mata Canteen. The presence of the bulb hanging on Nilgiri tree is spoken of by PW-7 Balaram, Panch Witness, to the Spot Panchanama (Exhibit 41-A). Two Panchanamas were drawn; one at Exhibit-41, immediately after the

incident and again another at Exhibit 41-A on the night of the next day. Both the Panchanamas are properly proved through the evidence of PW-7 Balaram Kathe, who has deposed about the tube light on the sign board of Santoshi Mata Canteen and light of the said tube reaching up to the place where deceased was found lying. He has also deposed that one bulb was found to be hanging on the Nilgiri tree. The Panchanama (Exhibit 41-A), thus, proves the presence of not only the light of tube of Canteen, but also of the bulb hanging on Nilgiri tree.

48. Moreover, this is not a case where the incident has taken place within a fraction of second or Accused were unknown to the witnesses or the deceased. They were residents of the same village, very much knowing one another for last several years, since the time of their childhood. Secondly, the Accused persons have chased the witnesses for sufficiently long distance. As can be seen from the map (Exhibit-39), the Accused were first seen by the eye-witnesses at MIDC main road, from there they chased the witnesses and the deceased upto the company area road, then road KV-2 i.e. for a distance of about 20 ft. to 30 ft. Naturally, there was no reason for any confusion on their part in identifying the Accused or in deposing about the overt acts played by the Accused.

49. The evidence of these witnesses as to the actual incident also gets support from the Spot Panchanama (Exhibit-41) proved through the evidence of PW-7 Balaram Kathe and PW-15 PI Joshi. It was drawn in between 10 a.m. to 11 a.m. From the spot, they collected the blood stained mud. They also found four bicycles lying in front of the Water Tank, where these witnesses had left them, while running from the spot.

50. Then Prosecution has placed reliance on the recovery evidence of the weapons of assault and the blood stained clothes of the Accused. After arrest of the Accused, their clothes were seized under the Panchanamas and on the clothes of Accused No.12 Ram, Accused No.14 Janardan, Accused No.15 Vasant, Accused No.16 Ashok and Accused No.17 Gurunath, the human blood stains were found, when those clothes were sent to Chemical Analyzer. As per the C.A. Report (Exhibit-43), on the clothes of Accused No.12 Ram and Accused No.15 Vasant, the blood found of group "O", which was the blood group of the deceased. As observed by the Trial Court, no explanation worth the name is offered for the presence of these human blood stains of the blood group of the deceased on the clothes of the Accused. It is also not the case of Accused that in the same incident they had also sustained the injuries.

51. There is also the evidence relating to recovery of the weapons of assault at the instance of some of these Accused like sword was seized at the behest of Accused No.17 Gurunath, gupti was seized at the behest of Accused No.11 Rohidas, whereas, knives were seized at the instance of Accused No.14 Janardan, Accused No.16 Ashok and Accused No.18 Vasudeo.

52. This recovery evidence is challenged by the learned Counsel for the Appellants on the ground that the Panchas to these Memorandum and Seizure Panchanamas of these various Accused have not supported the Prosecution case. They are declared hostile, cross-examined by the learned A.P.P., but nothing of substance is elicited to prove the Prosecution case. Secondly, it is submitted that none of these Seizure Panchanamas of the weapons of assault prove that the weapons were sealed with wax. Muddemal Clerk, in whose custody those weapons were kept after the seizure, is also not examined by the Prosecution. PW-4 Eknath has admitted in his evidence that these weapons were shown to him by the Police and hence, according to the learned Counsel for the Appellants, this recovery evidence cannot be relied upon.

53. In our considered opinion, merely because the Panchas have not supported the Prosecution case, there is no reason to disbelieve the

evidence of Investigating Officer, on the aspect of recovery of weapons of assault at the instance of these Accused. But, for the sake of arguments, as there is no evidence to show that these weapons were sealed with wax and were in the same condition, when they were examined by the C.A., even if the evidence relating to recovery of weapons at the instance of the Accused, is kept aside or ignored, even then it does not make any difference to the Prosecution case. Once the evidence of the eye witnesses is believed upon, as in the present case, the evidence relating to recovery of weapons of assault being merely of a corroborating nature, even if it is excluded from consideration, it does not affect the Prosecution case.

54. The very edifice of Prosecution case is the testimony of eye witnesses, which is found in the present case to be full proof. Therefore, there is no need of any corroborating evidence. Even if it is required, it is coming from other sources like FIR, Spot Panchanama, the medical evidence proving the indiscriminate assault by sharp edged weapons made on the Madan, resulting into as many as 13 incised wounds on the vital parts of the body of Madan, with corresponding internal injuries, proving successfully the case, as laid by the Prosecution.

55. The last, but not the least, submission made by the learned Counsel for the Appellants is that no specific overt act is attributed to some of the Accused. Secondly, it is submitted that Accused No.7 Padu is acquitted, however, Accused No.9 Narayan, against whom the case stands on the same evidence, is held guilty and, therefore, he also deserves the same benefit of doubt.

56. As regards the first contention that specific overt act is not attributed to each of the Accused, it is not necessary also. The law is very well crystallized on this aspect in the case of **Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 262**, which has distinguished the observations made in **Baladin Vs. State of Uttar Pradesh, AIR 1956 SC 181**, and held that *“it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object and that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the relevant time of committing of that offence, is a member of the same assembly is guilty of that offence, and that emphatically brings out the*

principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.”

57. Hence, what is necessary to be proved for fastening vicarious liability on the member of the unlawful assembly is his presence at the time of incident and sharing of common object. The evidence relating to sharing of common object of an unlawful assembly can be gathered from the nature of the assembly, the weapons used by the members and the behaviour of the assembly at or before the scene of occurrence. It is an accepted principle that number and nature of injuries is a relevant fact to deduce that the common object developed at the time of incident.

58. In the instant case, the presence of the present Accused is sufficiently proved on record by evidence of two eye witnesses and the common object of the assembly can be easily made out from the conduct of the Accused before, after and at the time of incident. The evidence on record proves that all of them belong to one party, they had appeared together at the spot, armed with weapons, they together chased the witnesses and deceased and the moment they succeeded in catching hold of Madan, they had started assaulting him with weapons in their hands. The fact that they had come there armed with weapons is sufficient

to spell out the common object on their part. In such situation, it was not necessary for the Prosecution Witnesses to ascribe specific role to each of the Accused. The number and nature of injuries sustained by the deceased in the present case is also sufficient to deduce the common object with which the Accused had come there.

59. Moreover, when 15 to 18 persons are simultaneously assaulting one person while the eye witnesses were engaged in the attempt to conceal and save themselves, it may not be possible for the eye witnesses to ascribe specific role to each of the Accused. Even then, in the present case, we find convincing evidence on record on that score. There is consistent evidence of PW-1 Namdeo and PW-4 Eknath to the effect that Accused No.4 Shivram, Accused No.12 Ram and Accused No.17 Gurunath were assaulting Madan with swords in their hands; Accused No.11 Rohidas and Accused No.18 Vasudeo were assaulting him with guptis, whereas Accused No.16 Ashok and Accused No.14 Janardan were assaulting with knives. Therefore, it is not the case where general and specious allegations of assault are made against the Accused. Witnesses have remained truthful to whatever they have actually seen and accordingly deposed, without making any attempt of ascribing the overt act to each of the Accused. The Trial Court has, in detailed,

considered this evidence and after satisfying itself, held the guilt of those Accused only to be proved, whose presence and overt act is proved through the evidence of at-least two witnesses, whereas given benefit of doubt to the remaining Accused.

60. As regards submission that Accused No.7 Padu is acquitted, whereas, on the same evidence, Accused No.9 Narayan is convicted, though there was no recovery of weapon from any of these two Accused, needless to say, that recovery of weapons is not an essential criteria to prove the guilt, once the evidence of the eye witnesses is believed. The presence of PW-9 Narayan is spoken of not only by PW-1 Namdeo and PW-4 Eknath, like that of Accused No.7 Padu, but even by PW-3 Bhau, whose knowledge of the incident is derived from PW-4 Eknath. Secondly, once the presence of Accused No.9 Narayan is proved through the evidence of two eye witnesses, merely because on the same evidence, Accused No.7 Padu is acquitted, which acquittal may be unmerited also, the benefit of the same cannot be given to the Accused No.9 Narayan.

61. To sum up, therefore, the Prosecution case stands on a very solid and strong footing, leaving no manner of doubt either about the happening of the incident or about the complicity of Appellants therein. The Trial Court has, therefore, rightly held the guilt of the Appellants to be proved

beyond reasonable doubt for the offence punishable under Section 302 r/w. Sections 149 and 147 of the IPC.

62. Consequently, no interference is warranted in the Judgment of the Trial Court. Hence, both the Appeals deserve to be dismissed and stand dismissed accordingly confirming the conviction and sentence of the Appellants. As the Appellants are on bail, their Bail Bonds are cancelled and they are directed to surrender before the Trial Court within a period of twelve weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]