

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4 OF 2008

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| 1. Dipak Maruti Shelar, |] | |
| Indian Inhabitant, Age : About 39 Yrs., |] | |
| R/of Achloli, Tal. Mahad, Dist. Raigad. |] | |
| |] | |
| 2. Sandesh Arjun Palande, |] | |
| Indian Inhabitant, Age : About 38 Yrs., |] | |
| R/of Achloli, Tal. Mahad, Dist. Raigad. |] | |
| |] | |
| 3. Rajkumar Haibat Jadhav, |] | |
| Indian Inhabitant, Age : About 38 Yrs., |] | |
| R/of Achloli, Tal. Mahad, Dist. Raigad. |] | |
| |] | |
| 4. Umesh Anna Jadhav, |] | Appellants/ |
| Indian Inhabitant, Age : About 36 Yrs., |] | (Org. Accused |
| R/of Achloli, Tal. Mahad, Dist. Raigad. |] | Nos.1 to 4) |

Versus

The State of Maharashtra	]	 Respondent
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Mr. Murtaza M. Najmi for Appellant No.1.

Mr. A.P. Mundargi, Sr. Counsel, a/w. Mr. Niranjan Mundargi and Mr. Omkar Mulekar, i/by M/s. Hareesh Mehta & Co., for Appellant Nos.2 to 4.

Mr. A.S. Shitole, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 9TH JULY, 2015.

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

1. The Appellants, who are Original Accused Nos.1 to 4, have preferred this Appeal against the Judgment dated 25th October, 2007 of Additional Sessions Judge, Raigad-Alibag in Sessions Case No.74 of 2006, challenging their conviction and sentence for the offence punishable under Section 302 r/w. 34 of the IPC for which they are sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default to suffer R.I. for 2 years; Section 341 r/w. 34 of the IPC for which they are sentenced to suffer R.I. for 3 months and to pay fine of Rs.500/- each, in default to suffer R.I. for 1 month; Section 201 r/w. 34 of the IPC for which they are sentenced to suffer R.I. for 3 years and to pay fine of Rs.2,000/- each, in default to suffer R.I. for 1 year. By the said Judgment, they are also convicted for the offence punishable under Section 120-B of the IPC though no separate punishment is imposed for the same.

2. Facts, as are necessary, for deciding this Appeal may be stated as follows :-

Vijay Palande, since deceased, was Secretary of Mahad Taluka National Congress Party and was Sarpanch of Village

Achloli for some years. He had also taken the lead in establishing Raigad Military School and was instrumental in collecting donations and securing land for the said school. He has given employment to PW-2 Shashikant More as Driver in the said school, being the Member of Managing Committee and Secretary of that school.

3. At the time of incident, Accused No.1 Dipak was Sarpanch of the Village Panchayat. Both Accused No.1 Dipak and Accused No.2 Sandesh were elected as Members of Village Panchayat on the panel of Nationalist Congress Party. However, later on, Accused No.1 Dipak and acquitted Accused No.5 Santosh Ramu Jadhav entered into Shiv Sena Party. Hence, deceased and PW-2 Shashikant, along with other members of Nationalist Congress Party, had moved a No Confidence Motion against Accused No.1 Dipak. When resolution of No Confidence Motion was kept for voting, accused persons had kidnapped one of the member of Nationalist Congress Party. Thus, there was a strong political rivalry between deceased Vijay and PW-2 Shashikant on one hand and accused persons on the another hand.

4. In this back-drop, the incident giving rise to this case took

place. On the night of 1st March, 2006, PW-2 Shashikant and the deceased went for the village fair at Vireshvar Maharaj Temple in Mahad town on their motor-cycle at about 10 pm. They left the fair at about 5:30 am on the next day and were returning on their motor-cycle from Raigad-Mahad Road. When they took turn and were proceeding on Tetghar – Achloli Road, Accused Nos.1 to 4 came there and obstructed their motor-cycle. Accused No.1 Dipak threatened to kill the deceased. Saying so, Accused No.1 Dipak inflicted blow of chopper on the right wrist and another blow of the chopper on the left wrist of the deceased. Accused No.2 Sandesh with a big weapon, like, chopper rushed towards PW-2 Shashikant. At that time, Accused No.3 Rajkumar was armed with iron bar, whereas, Accused No.4 Umesh was armed with stick. Hence, PW-2 Shashikant got frightened and started running towards the house of deceased Vijay through paddy field.

5. There, PW-22 Vivek Palande, deceased's son, was present in the house. PW-2 Shashikant informed him about the incident and both of them then left the house in search of the deceased. They came to the spot and found there the pool of blood. However, neither the deceased nor his motor-cycle was found

there. They, however, noticed the trail of blood stains by the side of the road. They followed that trail, which led them to Mahad-Raigad Road; from there to one kachcha road on left side and ultimately to the field known as Isadacha Mala. In the Isadacha Mala, they saw the signs of someone being dragged from there upto river bed. When they went there, they saw the dead body of deceased lying in the water spot known as Patola Doha. The motor-cycle of the deceased was found kept on the dead body.

6. PW-2 Shashikant then went in six seater rickshaw to the Police Station and lodged complaint (Exhibit-59) against the Accused at Mahad City Police Station at about 9:30 am.

7. At the relevant time, PW-25 PI Madhukar Chowdhary was on duty at Mahad City Police Station and on the complaint (Exhibit-59) of PW-2 Shashikant, he registered C.R. No.21 of 2006 for the offences punishable under Sections 302 and 201 r/w. 34 of the IPC against Accused Nos.1 to 4. Immediately thereafter, along with PW-2 Shashikant and the staff, he went to the spot, removed the dead body and motor-cycle of the deceased bearing No.MH-06-P-6247 from the water, prepared the Inquest Panchanama (Exhibit-84). At that time, he found around 25

injuries on the dead body. He then sent the dead body to Rural Hospital, Mahad for postmortem. The Seizure Panchanama of the clothes of the deceased was accordingly made vide Exhibit-85.

8. Thereafter he has drawn the Scene of Offence Panchanama of the spot, as shown by PW-2 Shashikant, vide Exhibit-113. Under the said Spot Panchanama, he seized broken pieces of glass of indicator of the motor-cycle, clip of head light of motor-cycle, the wooden handle of the weapon and sample of simple and blood stained earth. While drawing the said Panchanama, he has also noted the signs of dragging dead body from road to Isadacha Mala and then to river.

9. After the Spot Panchanama, he had recorded the statements of some of the witnesses and arrested Accused Nos.1 to 4 on the same day at about 11 pm under Panchanamas (Exhibits "88" to "91"). Thereafter all the four Accused were referred for their medical examination to Rural Hospital, Mahad and it was found that there were no injuries on the person of Accused No.1 and Accused No.4. However, Accused No.2 Sandesh and Accused No.3 Rajkumar were having injuries on the fingers of their hands. The Injury Certificates of Accused Nos.1 to

4 are accordingly obtained and produced on record at Exhibits "150" to "153".

10. During Police custody, Accused No.1 Dipak expressed his willingness to show the spot where he has hidden the weapon of assault, the chopper, used in the commission of the offence. His statement was reduced to Memorandum Panchanama (Exhibit-117). Thereafter, Accused No.1 Dipak guided the Police and Panchas to the spot near his Poultry Farm by the side of Mango tree. He took out the chopper (Article No.14), which was concealed in the grass. The blade of the chopper was having blood stains and hair. It was seized under Panchanama (Exhibit-118).

11. On the same day, Accused No.2 Sandesh also expressed his willingness to produce the sword used in the commission of the offence. His statement was accordingly reduced to Memorandum Panchanama (Exhibit-120). Thereafter, Accused No.2 Sandesh guided Police and Panchas to the back side of the house of one Chandrakant Shinde and took out the sword (Article 15), which was hidden beneath the grass bundle. The blade of the sword was also having blood stains and hair. Handle of the sword was

found broken. It was seized under Panchanama (Exhibit-121).

12. On the same day, PW-25 PI Chowdhary again visited the Patola Doha, from where the dead body was recovered, with a view to see minutely whether any article of the deceased was lying there. He found a mobile handset of Nokia company in the water in the river. The screen of the mobile was found in broken condition. It was not in working condition. He seized the said mobile handset (Article No.16) under Panchanama (Exhibit-141).

13. On 4th March, 2006, PW-25 PI Chowdhary arrested Accused No.5 Santosh Ramu Jadhav and one Sudhir Jadhav under Panchanama (Exhibit-156).

14. On the same day, in pursuance of interrogation of Accused No.4 Umesh, the rickshaw bearing No.MH-06-445 came to be seized under Panchanama (Exhibit-111). The blood stains were found in the said rickshaw.

15. On 5th March, 2006, PW-25 PI Chowdhary sent these two weapons of assault, namely, the chopper (Article No.14) and the sword (Article No.15), to Rural Hospital, Mahad for obtaining opinion as to whether injuries found on the fingers of Accused

No.2 Sandesh and Accused No.3 Rajkumar can be possible in assault by those weapons. Similarly, to know whether the injuries found on the dead body could be caused by those weapons. Doctor examined those weapons and issued letter (Exhibit-74) giving the opinion that injuries on the person of the deceased and Accused No.2 Sandesh and Accused No.3 Rajkumar are possible by these two weapons.

16. On 5th March, 2006, at the instance of Accused No.3 Rajkumar, in pursuance of the Memorandum Panchanama of his statement made vide Exhibit-138, the iron bar (Article No.18), with blood stains thereon, hidden in the grass at some distance from Isadacha Mala came to be seized under Panchanama (Exhibit-139).

17. On 6th March, 2006, at the instance of Accused No.2 Sandesh, his blood stained shirt and full pant came to be seized from his house under Panchanama (Exhibit-132). On the same day, shirt and full pant of Accused No.1 Dipak also came to be seized from his house under Panchanama (Exhibit-99). Whereas, clothes of Accused No.4 Umesh came to be seized under Panchanama (Exhibit-102) and clothes of Accused No.3 Rajkumar

were seized under Panchanama (Exhibit-107) on the same day. All the seized muddemal property was sent to Chemical Analyzer and the relevant C.A. Reports are produced on record at Exhibits "158" to "161". As a part of further investigation, PW-1 Mahipat Undre, Circle Inspector, was requested to draw the map of the scene of offence, which is produced on record at Exhibit-57.

18. Further to completion of investigation of the case, Charge-Sheet came to be filed in the Court. In due course, case was committed to the Sessions Court. On committal of the case to the Sessions Court, Trial Court framed charge against the Accused vide Exhibit-36. Accused pleaded not guilty and claimed trial, raising the defence of false implication out of political rivalry.

19. In support of its case, Prosecution examined in all 25 witnesses and on appreciation of their evidence, the Trial Court was pleased to acquit Accused No.5 Santosh Ramu Jadhav. Trial Court held the guilt of Accused Nos.1 to 4 alone to be proved for the offences punishable under Sections 302, 341, 201 and 120-B r/w. 34 of the IPC.

20. This Judgment of the Trial Court is challenged in this Appeal

by learned Counsel for Appellant No.1 Mr. Murtaza Najmi and learned Counsel for Appellant Nos.2 to 4 Mr. A.P. Mundargi, whereas supported by learned A.P.P. Mr. A.S. Shitole. In our considered opinion, in order to effectively deal with their rival submissions, it would be useful to refer to the evidence on record.

21. To prove the homicidal death of deceased Vijay, Prosecution has led the evidence of PW-3 Dr. Bhaskar Jagtap, who has conducted postmortem on his dead body. On external examination, he found following injuries, which are described in Column No.17 of the Postmortem Notes :-

- 1) *Linear incised wound with regular margin, margins are odematous over right temporal parietal region, 4 in number from above below, (1) 5 x 1 cm by bone deep (2) 3 x 1 cm by bone deep (3) 3 x 1 cm by bone deep (4) 3 x 1 cm by bone deep respectively.*
- 2) *Linear incised wound with regular edematous margin over frontal region in mid line extending to front parietal region, 11 x 2 cm*

by bone deep with fracture frontal bone.

- 3) Incised wound with irregular edematous margin over left temporo parietal region extending posteriorly to occipital region and inferiorly to post auricular cartilage admeasuring 10 x 5 x 1 by bone deep. Fracture of temporo parietal bone left side with brain matter exposed with blood clot under fracture of left temporo parietal bone.*
- 4) Four linear incised wound with regular margin edematous margin over right occipital region. Horizontal wound (1) 4 x 1 cm x bone deep, (2) 3 x 1 x bone deep, (3) 3 x 1 x bone deep (4) 4 x 1 x bone deep respectively from above down wards with fracture occipital bone.*
- 5) Right occipital linear incised wound with edematous margin, extending vertically till upper occipital horizontal wound admeasuring 4 x 1 x bone deep.*

- 6) *Mid occipital vertical linear incised wound 4 x 1 x bone deep.*
- 7) *Incised wound with irregular margin 3 x 3 x muscle deep over right axillary region, over right anterior axillary fold.*
- 8) *Amputation of right wrist joint with radius and ulna bone cut with muscle and radial and ulna vessel cut, imputed wrist joint right attached to forearm right with lateral skin fold.*
- 9) *Multiple abrasion over right forearm anteriorly (3 in number) averagely 5cm x 5 cm obliquely.*
- 10) *Incised wound with irregular odematous margin 2 x 2 x muscle deep over left posterior axillary fold.*
- 11) *Multiple abrasion over left forearm 3 in number 4 x 0.5 cm in length.*
- 12) *Linear incised wound with edematous margin with amputation of left proximal metacarpal*

phalangeal joint of left thumb base along with amputation of left proximal phalanger bone of left index finger, attached to left hand with pamar skin fold.

13) Amputation of distal phalangeal bone of left middle finger.

14) Multiple abrasion wound over left chest and upper abdomen 6 in number, approximately 4 x 0.5 cm in length vertical wound.

15) Multiple abrasion wound over right chest 4 in number approximately 3 x 0.5 cm in length vertical wound in right chest.

22. According to him, all these injuries were ante mortem in nature. There were corresponding internal injuries, which he has noted in Column No.19 of the Postmortem Notes (Exhibit-72). According to him, the cause of death was “*shock due to cranio cerebral injury with associated multiple poly trauma*”. In his opinion, all these injuries were sufficient in the ordinary course of nature to cause the death. His evidence, therefore, proves that

Vijay has succumbed to homicidal death. Learned Counsel for the Accused also fairly conceded that Accused are not disputing the fact that deceased has succumbed to homicidal death.

23. To prove involvement of Accused in the case, though the Prosecution has examined as many as 25 witnesses, the material witnesses as regards the incident are only three, namely, PW-2 Shashikant, who claims to be an eye witness to the incident and is also the First Informant to the Police, PW-22 Vivek, son of the deceased, and PW-23 Parag Helekar.

24. Out of them also, the star witness for Prosecution is PW-2 Shashikant, who, as a matter of fact, is the only eye witness to the incident, that too, only in respect of some part of the incident and not the entire incident as such. According to him, on 1st March, 2006, at about 10 pm, along with deceased Vijay, he went on motor-cycle to the village fair at Mahad town. They were in the fair till 5:30 am on the next day. While they were there, deceased had talk with one Prasanna Shelar, who is not examined by Prosecution, and PW-23 Parag Helekar. At about 5:30 am, they left the fair for returning to Village Achloli. They came via Raigad-Mahad Road and took turn to Tetghar-Achloli

Road. Deceased was driving the motor-cycle and he was sitting on the pillion seat. When their motor-cycle came at the distance of about 200 mtrs., from the Poultry Farm of Accused No.1 Dipak, Accused Nos.1 to 4 obstructed their motor-cycle. Accused No.1 Dipak gave threatening to kill the deceased and inflicted chopper blow on the right and left wrist of the deceased. At the same time, Accused No.2 Sandesh, who was armed with a weapon like chopper, rushed on PW-2 Shashikant. He also noticed that Accused No.3 Rajkumar was armed with iron bar and Accused No.4 Umesh was armed with stick.

25. According to his evidence, he became frightened and started running towards the house of deceased through paddy field. Then along with PW-22 Vivek, son of the deceased, he returned to the spot. There they found the pool of blood, but neither the deceased nor his motor-cycle were present. They further found the trail of blood stains by the side of the road. Hence they followed that trail, which led them to Mahad-Raigad Road; from there to kachcha road leading to Isadacha Mala. There they found some signs of dragging. They followed those signs, which took them to the river bed. In the river bed, in the spot known as Patola Doha, they found the dead body of the

deceased with his motor-cycle kept thereon. Immediately PW-2 Shashikant went to the Police Station in six seater rickshaw and lodged the complaint (Exhibit-59).

26. Prosecution has relied upon the evidence of PW-22 Vivek to support the evidence of PW-2 Shashikant. According to him, at about 6:30 am, PW-2 Shashikant came to his house and informed him about the incident. Then both of them took the search and found the dead body and motor-cycle of his father in the river.

27. Prosecution has further led the evidence of PW-23 Parag, who has deposed that on the night of 1st March, 2006, he had been to village fair and, there he saw the deceased and PW-2 Shashikant at about 4 am. They had some formal talk and then he went away.

28. In cross-examination of PW-2 Shashikant, an omission is elicited to the effect that he had not stated before the Police that in the fair they met Prasanna Shelar and PW-23 Parag and had formal talk with them. It is further brought out in his cross-examination that he and deceased decided to go to fair after they had finished their dinner. As per his evidence, they had left for fair at about 10 pm. Therefore, it follows that prior to 10 pm,

they had their dinner. He has also admitted that in the fair, they had not eaten anything. Even they did not take any kind of drink.

29. It is further brought out from his cross-examination that this incident of assault took place at about 6 am. Immediately he went to the house of the deceased. As per evidence of PW-22 Vivek, son of the deceased, PW-2 Shashikant came to his house at about 6:30 am. Further evidence of PW-2 Shashikant is to the effect that after the dead body was found in the water, he went in six seater rickshaw to the Police Station and lodged the report at 9:30 am. Then they returned to the spot within 10 to 15 minutes and the dead body was removed from the water. The Inquest Panchanama (Exhibit-84), proved through the evidence of PW-4 Mahadev Shinde, shows that the dead body was removed at about 10 am.

30. The evidence of PW-3 Dr. Bhaskar Jagtap, who has conducted the postmortem, shows that he started postmortem at 12:30 pm and finished it at 13:30 hours. According to him, the death took place 4 to 6 hours after the last meal and within 12 hours from the time when he has done the postmortem. He has arrived at this finding on the basis of the fact that no food grains

were found in the stomach and it was completely empty. He has also found rigor mortis was present on the entire body at the time of postmortem.

31. In his cross-examination, he has admitted that the presence or absence of rigor mortis is one of the aspect for determining the time of death. He has further admitted that one of the object of conducting the postmortem is to ascertain the time of death before performing postmortem. He has opined that if dead body remains in water, rigor mortis develops slowly. In India, rigor mortis develops completely 3 to 4 hours after the death. He has further agreed that PM lividity develops completely after 6 to 8 hours. Further it is brought out in his cross-examination that 4 to 6 hours are required for complete digestion of food. When he was confronted with the photographs showing the white patches on the finger tips of the dead body, he has admitted that there is a phenomena called as '*washer women skin*', which develops after the dead body remains in the water. He has further admitted that for complete development of washer women skin on the finger tips, 8 to 12 hours are required.

32. Thus, even a cursory glance to the admissions given by PW-

3 Dr. Bhaskar Jagtap in the cross-examination and the approximate time of death, which he has arrived at on the basis of the presence of rigor mortis and the empty stomach, coupled with the factor of washer women skin, is sufficient to show that the death must have taken place much prior to 5:30 to 6:00 am on that day. If dead body was in the water till 10 am, i.e. only for four hours, as per the Prosecution case, then, the sign of washer women skin could not have been there. Even the presence of complete rigor mortis, as noticed by the Doctor, is not consistent with the timing of the death, as given by PW-2 Shashikant. Moreover, as per the evidence of PW-3 Dr. Bhaskar Jagtap, if the death had taken place 4 to 6 hours after the meal and within 12 hours from the time when postmortem was done and if the deceased had taken the last meal before 10 pm, then it follows that the death of the deceased must have occurred much prior to 6 am, which timing is given by PW-2 Shashikant about the incident.

33. Thus, the medical evidence and the oral account of PW-2 Shashikant, who is the only eye witness to the incident, is not consistent with each other. We are aware that the evidence of an eye witness can prevail over the medical evidence, provided it is

found to be completely trustworthy and reliable. However, in the present case, it becomes difficult to place implicit reliance on the evidence of the only eye witness PW-2 Shashikant. There are three-four reasons for the same. The first reason is, admittedly, there was not only political rivalry between this witness and the deceased on the one part and the Accused on another part, but that rivalry had become so intense to the extent of kidnapping the members of one party and filing of the criminal cases against one another. The evidence of PW-2 Shashikant also goes to reveal that he is a highly interested witness. As admitted by him, he has made every attempt to ensure that Accused should not be released on bail. Accused had moved the applications for bail on three occasions and on all these three occasions, he had filed affidavit resisting the said applications. Thirdly, PW-2 Shashikant was having close affinity to the deceased. As a matter of fact, deceased had given him job in the Raigad Military School and, therefore, he was under the obligation of deceased. He is also co-accused in the F.I.R. filed by Accused No.1 Dipak in respect of the incident of kidnapping. His evidence is, therefore, can be accepted only after it withstands careful scrutiny.

34. As held in ***Raju alias Balachandran & Ors. Vs. State of***

Tamil Nadu, (2012) 12 SCC 701, relied upon by learned Counsels for the Accused,

“A Court should examine the evidence of a related and interested witness having an interest in seeing the Accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third-party disinterested and unrelated witness. Therefore, the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny.”

35. If the evidence of PW-2 Shashikant, who is proved to be a highly interested witness in prosecution of the Accused for political and his own personal reasons, is subjected to such meticulous and careful scrutiny, then it is found to be not only inconsistent with the medical evidence but also with the other

evidence on record. He has condemned himself by giving certain admissions in his cross-examination, like, he has stated that he has not carried his mobile phone with him when he had gone to the village fair along with deceased. According to him, he has kept his mobile in his house. When he was confronted with the various outgoing and incoming calls on the said mobile, he has stated that those calls might have been made by his wife or family members. However, the Call Details Record of his mobile and the mobiles of the other witnesses produced on record revealed that on that night from 1:21 am to 9:14 am on the next day, seven calls were outgoing to the mobile number of Nana Jagtap. This Nana Jagtap is the President of Mahad Taluka Nationalist Congress Party. If PW-2 Shashikant has not carried the mobile with him, there is absolutely no explanation as to how from his mobile about four calls were made in between 1:21 am to 5:02 am i.e. much before the incident. The Call Detailss Record further reveal that he has also received one call from Nana Jagtap on that night at about 2:36 am and 3 calls from 8:40 am to 10 am. As admitted by him, his wife was not having any relations with Nana Jagtap or other witnesses to whom the calls are seen to have been made. Then the only inference that can

be drawn is that he has made those calls, but has not explained why those calls were made at such odd hours in night.

36. Similarly, the Call Details Record also reflect that PW-2 Shashikant has made five calls to PW-22 Vivek, son of the deceased, from 2:22 am on that night till 6:32 am. What was the reason to make these calls to the son of the deceased on that night, especially, at 2:22 am and 4:02 am is again not explained. At the same time, PW-2 Shashikant's mobile's Call Details Record reveals that there was incoming call from the deceased's son PW-22 Vivek at 00:19 am and again at 5:59 am.

37. It is pertinent to note that, even from the mobile phone of PW-15 Panch Umesh Sawant also, PW-2 Shashikant has received three calls; one at 03:03 am, second at 03:12 am and third at 04:43 am. Even to PW-25 PI Chowdhary, PW-2 Shashikant has made a call at 9:21 am i.e. before lodging of the complaint.

38. Thus, the various phone calls made during the night time, at odd hours, to the persons connected and the various phone calls received during the said period, clearly falsifies the claim of PW-2 Shashikant that he was not carrying his mobile phone with him. The timings of these incoming and outgoing calls on his

mobile hence makes it necessary to infer that some incident resulting into the death of the deceased must have occurred much prior to 6 am, otherwise there was no reason for him to contact various persons and those persons to contact him, especially, son of the deceased, then this Nana Jagtap, Umesh Sawant and others.

39. These Call Details Records are important from another angle also. They not only falsify the claim of PW-2 Shashikant of not carrying mobile phone with him and thereby depriving him of the credibility which the Court seeks in his evidence being a solitary witness, but they are also in a way proving consistent with the medical evidence, which shows that the death must have occurred much before 6 am. The very admissions given by PW-3 Dr. Bhaskar Jagtap, who has conducted the postmortem, reveal that if dead body remains in water for 3 to 4 hours and then taken out, rigor mortis starts developing (not completely) within two hours. He has admitted that stay of rigor mortis and its completion are two separate things. His evidence and the Postmortem Report (Exhibit-72) reveals that, in this case, the rigor mortis was already present on the entire body at the time of the postmortem. It necessarily, therefore, follows that the

death must have taken place much before 6 am and indirectly it further goes to prove that PW-2 Shashikant is not giving true version of the incident.

40. Evidence of PW-2 Shashikant is falsified from another angle also. According to PW-2 Shashikant, he and deceased were on the motor-cycle when Accused No.1 Dipak assaulted on both wrists of the deceased with the chopper (Article No.14). He has, however, stated that even after the assault, neither he nor the deceased fell down from the motor-cycle, but after the assault, he got down from the motor-cycle. Evidence of PW-3 Dr. Bhaskar Jagtap, however, goes to show that after amputation of two wrists in attack, victim, who was driving a motor-cycle, will lose his balance. Therefore, the evidence of PW-2 Shashikant that both of them were sitting on the motor-cycle and after the assault, they got down from the motor-cycle, does not appear to be truthful. Further, as per evidence of PW-3 Dr. Bhaskar Jagtap, at the time of amputating of wrist, there has to be spray of blood. However, as per evidence of PW-2 Shashikant, who was sitting on the pillion seat, there was not a single stain of blood on his clothes.

41. Further, as per his evidence, Accused No.3 Rajkumar was armed with iron bar and Accused No.4 Umesh was holding stick. However, the injuries found on the dead body of the deceased reveal that there was not a single wheal mark or any contusion lacerated wound on the dead body. All the injuries sustained were incised wounds and abrasions. Hence, the assault by these two weapons, which are hard and blunt objects, is also ruled out.

42. Most important aspect is that PW-2 Shashikant is not an eye witness to the entire incident as such. He has only seen the assault on the wrists of the deceased and then he ran away from the spot to the house of the deceased to inform his son PW-22 Vivek. As per his own admission, he does not know what happened thereafter. As per his further evidence, as they found the trail of blood stains by the side of the road, he and PW-22 Vivek followed the said blood trail, which led them to Raigad-Mahad Road, thereafter to kachcha road, then to Isadacha Mala and lastly to Patola Doha. He has admitted that this distance is of about $\frac{1}{2}$ km to 1 km, whereas, according to PW-1 Mahipat Undre, this distance is about 3 kms. PW-2 Shashikant has further admitted that this road is a busy road even at the odd hours. In the early morning, the milk men and the school going children

proceed on this road. Therefore, it does not appear probable that deceased, if alive or his dead body, if dead, could be dragged with his motor-cycle, for such a long distance, without anyone else, i.e. the passers-by, on the road noticing it. Hence, the tracing of the dead body on the basis of the blood trail is on the face of it appearing improbable.

43. Another theory put up by Prosecution is that the dead body was carried in the rickshaw to the river bed. If it was so, the evidence relating to some blood stains being found in the rickshaw and those blood stains being sent to Chemical Analyzer to connect the use of the rickshaw in the said incident was utmost necessary. However, no such connecting evidence is produced on record. Though the rickshaw is seized in investigation, as per the evidence of PW-25 PI Chowdhary, in the absence of evidence establishing the link of the use of rickshaw for the purpose of dragging the dead body, mere seizure of rickshaw is not sufficient. Moreover, even if it is accepted that the dead body was carried in the rickshaw, what about the motor-cycle; why and how it was also carried or dragged upto the river bed. Hence, this entire case put up by this witness and the Prosecution appears to be shrouded in the mystery. The

burden was obviously on the Prosecution to clear this suspicion and doubt, which Prosecution has not been able to do from the evidence on record.

44. As regards the seizure of the blood stained clothes of the Accused and the weapons of assault at the instance of the Accused also, the relevant connecting link is not established by the Prosecution. As per evidence of PW-3 Dr. Bhaskar Jagtap, he has not collected the blood sample of the deceased. Hence, the blood group of the deceased as "O" is not conclusively established. Moreover, Accused No.4 Umesh is also having the blood group "O". Therefore, in this respect also, the necessary conclusive link is not established to lead to a hypothesis that none other and Accused alone are responsible for the death of the deceased.

45. On the aspect of conspiracy, the Prosecution has relied on the evidence of PW-21 Gangadhar Chalke, who has stated that on 20th February, 2006, he heard Accused No.2 Sandesh saying to other persons that they want to finish deceased within 2 to 3 days. If it was so, the question is '*why he did not inform about the said conversation to the Police immediately or at-least after*

the death of the deceased?'. As admitted by him, he has not done so.

46. Prosecution has also led the evidence of PW-19 Vikas Pawar to show that on 16th February, 2006, Accused No.1 Dipak told him that he was going to kill the deceased before Holi festival and he was informing the said fact to him and he has no objection if PW-19 Vikas disclose the said fact to the deceased. He has further deposed that he has disclosed the said fact to the deceased after 4 to 5 days. However, in his cross-examination, he has admitted that in his statement recorded by the Police, he has not stated that he has disclosed the said fact to the deceased. Therefore, it is an omission. He has also not informed the Police about it immediately on the day when he came to know about the murder of the deceased.

47. Further, as admitted by PW-21 Gangadhar Chalke, there are two roads available for going to Achloli from Mahad. There is no evidence to show that either the deceased or PW-2 Shashikant had disclosed to anyone that they will be going to fair and returning from the fair at that particular time and from that particular road. In absence thereof, the evidence of alleged

conspiracy, which is normally hatched in secrecy, in the instant case becomes artificial and unbelievable.

48. To sum up, therefore, when the entire case of prosecution rests on the highly interested version of a solitary witness, who is having not only enmity but hatred, as admitted by him, against the Accused, then it becomes hazardous and unsafe to rely on the testimony of such witness, especially, when several loop-holes are found in his evidence. His evidence is also not in tune with the medical evidence. Conversely, medical evidence in the case belies his testimony. Learned Counsel for the Accused has, therefore, relied on ***Mani Ram and Ors. Vs. State of U.P., 1994 Supp (2) SCC 289***, wherein it was held that,

“Where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence, especially, when he is the solitary eye witness to the incident. Unless the inconsistency in the oral and medical evidence is reasonably explained, it is sufficient

not only to discredit the evidence but the entire case.”

49. In the instant case, PW-2 Shashikant, who has escaped unhurt from the attack and who has every reason to implicate the Accused falsely, considering the intense political rivalry, the charged atmosphere in the village and the various infirmities and lacunae brought out from the evidence of the prosecution witnesses themselves, the all important probability factor also does not echo in favour of the Prosecution case. Once the eye witness is disbelieved, the recovery evidence of the clothes or weapons, which is merely of a corroborating nature, loses its relevance and significance. The Prosecution case, therefore, as a whole, against the Accused cannot be said to be proved beyond reasonable doubt. Several loose ends kept by the Prosecution in its own case do not lead to the only inference that none else than the Accused have committed the assault on the deceased. Though the needle of suspicion may point to the guilt of the Accused, mere suspicion, howsoever strong, cannot take the place of the proof.

50. Consequently, the conviction and sentence of the

Appellants, which stands on a shaky and meager evidence, is required to be quashed and set aside. Hence, the Appeal is allowed. Conviction and sentence of the Appellants for the offences punishable under Sections 302, 341, 201 and 120-B r/w. 34 of the IPC is quashed and set aside. Appellant Nos.1 to 4 are acquitted for the offences with which they were charged. Appellants are directed to be released forthwith, if not required in any other case. Fine amount, if deposited by the Appellants, be refunded to them.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]