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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.482 OF 2007**

1. Ravi Bhauraya Kolule,	]	
age 26 years,	]	
occupation: Agriculturist	]	
	]	.. <u>Applicants</u>
2. Siddhappa Bhima Lade	]	Original
age: 48 years, Occn. Agriculturist	]	Accused
	]	Nos 1 & 7
Both residing at Nimbargi	]	
Taluka: South Solapur	]	
District: Solapur	]	

V/s.

The State of Maharashtra	]	
at the instance of Mandrup Police Station	]	
District: Solapur	]	 Respondent

**WITH
CRIMINAL APPEAL NO.292 OF 2008**

The State of Maharashtra	]	Appellant
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V/s

1. Ravi Bhauraya Kolule	]	
age: 26 years.	]	
	]	
2. Narayan Bhauraya Kolule	]	
age: 45 years,	]	
	]	
3. Tatya Bhauraya Kolule	]	
age: 56 years	]	

4. Shrimant Ranbha Lade
age: 54 years,
5. Shiv Shrimant Lade
age: 22 years
6. Bharat Shrimant Lade
age: 20 years
7. Siddhappa Bhima Lade
age: 46 years
8. Balu Pandurang Lade
age: 40 years
9. Prabhakar Balu Lade
age: 19 years
10. Shankar Ganappa Lade
age : 45 years,
11. Mhalappa Kashiram Lade
age: 32 years
12. Vitthal Genappa Lade
age: 60 years **(abated)**
13. Sanjay Mahadev Lade
age: 31 years
14. Gajanan Mahadeo Lade
age: 21 years
15. Mahadev Ganappa Lade
age: 55 years

accused Nos 1 to 12 are agriculturists
and r/o Nimbargi, Tal. South Solapur

.. Respondents
Ori.accused
Nos 1 to 15

accused Nos 13 to 15 are]
r/o Vinchur, Tal. South Solapur]
District: Solapur]

Mr. Girish R. Agarwal, for the appellants in Appeal No.482 of 2007 and for respondent Nos 1 to 11 and 13 to 15 in Criminal Appeal No.292 of 2008.

Mr. A.S. Shitole, APP for the Respondent-State in Criminal Appeal No.482 of 2007 and for appellant State in Criminal Appeal No.292 of 2008.

**CORAM : SMT. V.K. THILRAMANI ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.**

CLOSED FOR ORDER : 20th NOVEMBER, 2015.

PRONOUNCED ON: 30th NOVEMBER, 2015

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

1. Both these appeals are arising out of one and the same judgment and order dated 20th April, 2007, in Sessions Case No.233 of 2005, by the learned Additional Sessions Judge, Solapur. Hence they are being decided by this common judgment. By the impugned judgment, the original accused No.1 Ravi and accused No.7 Siddhappa were convicted for the offence punishable under Section 302 read with 34 of the Indian Penal

Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- each in default to suffer simple imprisonment for three months. They were also convicted alongwith original accused No.13 Sanjay and accused No.14 Gajanan, for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.200/- each in default to suffer simple imprisonment for two weeks. Being aggrieved by the said judgment, original accused No.1 Ravi and accused No.7 Siddhappa have preferred Criminal Appeal No.482 of 2007 challenging their conviction and sentence whereas the State has preferred Criminal Appeal No.292 of 2008, challenging the acquittal of original accused Nos 1 to 15 for the offences punishable under Sections 147, 148, 325, 302 read with section 149 of the Indian Penal Code.

2. Brief facts of both these appeals can be stated as follows :-

P.W.2 Laxman and Shankar were the real brothers

interse. Prabhavati was the daughter of Shankar and was given in marriage with one Siddharam Shegaonkar. He had expired about 10 years prior to the incident leaving behind his widow Prabhavati and son Mahesh as his only legal heirs. Sundarabai the sister of deceased Siddharam, was given in marriage to accused No.4 Shrimant Lade. After the death of Siddharam, partition was effected in the landed property left behind by him at village Kalagi. In the said partition 74 acres of agricultural land was given to Mahesh and Prabhavati; whereas 21 acres of agricultural land was given to Sundarabai the wife of accused No.4 Shrimant Lade. Accused No.4 was not happy with the said partition and demanded more share to Sundarabai. Therefore, there was quarrel and disputes between prosecution witnesses and the accused persons.

3. On 10.5.2005, at about noon time P.W.2 Laxman and his brother Shankar asked, Ramrao the son of accused No.4 Shrimant Lade, as to why they were opposing the mutation of name of Mahesh and Prabhavati to revenue record of the agricultural land even after partition. At that time altercation

took place between P.W.2 Laxman and Ramrao the son of accused No.4 Shrimant Lade. Both of them filed cross complaints against each other at Mandrup Police Station in connection therewith. Police called both the parties to come again to police station on the next day in the morning at 11.00 a.m.

4. However, on the same night at about 7.00 p.m. when P.W.2 Laxman, his brother Shankar and his nephew P.W.4 Shrikant were returning to village Nimbargi from the police station alongwith deceased Siddharam and P.W.5 Raosaheb on two motorcycles. When they reached at S. T. stand of Nimbargi, near panshop of one Babulal Inamdar, accused Nos 1 to 15 were present, armed with knife, sticks and stones. They pulled P.W.2 Laxman, his brother Shankar and deceased Siddharam from motorcycle and assaulted them by sticks and stones. P.W.3 Jagdeo and Sharanappa who were present there tried to intervene and rescue P.W.2 Laxman, Shankar and the deceased Siddharam from the assault. However, due to assault by the stick and stones on the head, chest, back and other vital parts of the body, deceased Siddharam, Shankar and P.W.2 Laxman

sustained serious injuries. After assault, accused persons left the spot whereas P.W.2 Laxman and other injured approached Mandrup police Station. Therefrom they were referred to Civil Hospital for medical treatment.

5. On 11.5.2005 P.W.11 ASI Bansode recorded the complaint of P.W.2 Laxman and on his complaint Exh.34 registered C.R.No.24 of 2005. On the same day, he visited the spot of incident and drew scene of offence panchanama Exh.27. Further he arrested in all 13 accused on that day and handed over further investigation of the case to P.W.13 API Kadam. He has recorded statement of witnesses and arrested the remaining accused. Meanwhile on 12.5.2005, injured Siddharam succumbed to injuries. Hence charge was altered to section 302 read with section 149 of the Indian Penal Code. As a part of further investigation, the clothes of the accused came to be seized under panchanama Exh.44 on 20.5.2005. During custodial interrogation of the accused No.7 Siddhappa, three sticks and one stone came to be seized at his instance, under panchanama Exh.47 under Section 27 of the Evidence Act. The seized

Muddemal articles including the clothes of accused were sent to Chemical Analyzer. Chemical Analyzer's reports are at Exh. 66 to 83. On completion of investigation P.W. 13 API Kadam filed chargesheet in the Court against in all 15 accused and a separate chargesheet against one juvenile in conflict with law.

6. On committal of the case to the Sessions Court, the trial Court framed charge against accused vide Exh.3. Accused pleaded not guilty and claimed trial, raising defence of false implication on account of strained relations. Specific plea is raised that while witnesses and deceased Siddharam were returning on motorcycle from Mandrup Police station, they met with an accident in which they had sustained injuries and only to harass the accused false case is filed against them.

7. In support of its case, prosecution examined in all 13 witnesses and relied mainly on the evidence of four eye witnesses viz P.W.2 Laxman, P.W.3 Jagdeo, P.W.4 Shrikant and P.W.5 Raosaheb. Out of them, P.W.2 Laxman and P.W.4 Shrikant were also injured in the said incident. On appreciation of their

evidence as aforesaid, the trial Court was pleased to convict accused Nos 1 and 7 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They were also convicted for the offence under Section 323 read with Section 34 of the Indian Penal Code, along with accused Nos 13 and 14. It appears that as accused Nos 13 and 14 were given set off for the period which they have already undergone in jail, they have not preferred any appeal challenging their conviction. Only accused Nos 1 and 7 have preferred appeal which is countered by the State with separate appeal challenging acquittal of these accused and remaining accused, for the offence punishable under Section 302 read with Section 149 of the IPC.

8. In this appeal, we have heard Mr. Girish R. Agarwal, learned counsel for the appellant accused and Mr. A. S. Shitole, learned APP for the State.

9. In our considered opinion, before adverting to the rival submissions advanced at bar by both, it would be useful to refer to the evidence on record.

10. To prove homicidal death of Siddharam, the prosecution has examined P.W.10 Dr. Keskar, who was attached to Government Hospital at Solapur and has conducted postmortem on the dead boy of Siddharam on 13.5.2005. On examination, he found following external injuries :-

1. Surgical drainage wound present on chest, left side on anterior axillary line 4 x 3 cm depth 2 cm.
2. Abrasion in front of right ear between right ear and right eye 2 x 1 cm.
3. Incised wound on left fore arm on lateral aspect 10 cm from elbow, 2 x 1 cm depth, 2 cm.
4. Abrasion on right fore arm 13 x 1 cm.
5. Abrasion on right arm just above elbow 4 x 3 cm.
6. Abrasion on right arm midshaft 1 x 1 cm.
7. Contused wound on right arm 25 x 13 cm.
8. Abrasion on left parietal region of head 3 x 2 cm.

On internal examination, he noted Corresponding internal injury like abrasion on right parietal region admeasuring 3cm x 2 cm with haematoma . Further he noticed fracture on 5th, 6th, 7th

ribs of right side and 10th, 11th, and 12th, ribs of left side.

11. According to him the cause of death was fracture of ribs with haematoma. He further opined that these injuries were antemortem in nature and sufficient in the ordinary course of nature to cause death. He has further stated that these injuries were on vital parts of the body and are possible due to forcible blow given by hard and blunt object or sharp edge weapon like sword or knife. The Muddemal article Nos 19 and 22 the sticks and stone, recovered in the course of investigation were shown to him. He has opined that the injuries sustained by the deceased are possible by these weapons also. Though this witness is cross-examined at length, nothing worthwhile is elicited in his cross examination to challenge his evidence or to discredit him. The fact that the deceased Siddharam has succumbed to the injuries sustained in the assault is thus proved on record. No suggestion is put up to Doctor that these injuries are possible in the accident of motorcycle, which is the defence taken up by the accused. No material to that effect is elicited from cross examination of this witness.

12. For proving involvement of accused in the incident of assault, the prosecution case relies on the evidence of four eye witnesses viz P.W.2 to 5. As noted above out of them two are injured in the assault. The evidence of P.W.2 Laxman, P.W.4 Shrikant and P.W. 5 Raosaheb is thoroughly consistent, uniform and certain to the effect that as a result of earlier incident which had taken place in the morning, they had gone to Mandrup Police Station to lodge complaint. While they were returning on their motorcycles, they reached near panshop of one Babu Inamdar. The accused persons were gathered there with weapons like sticks and stones in their hands and seeing these witnesses, they pulled P.W.2 Laxman, P.W.4 Shrikant and P.W.5 Raosaheb from their motorcycles, caused them to fall down and started assaulting them with sticks and stones in their hands. P.W. 2 Laxman has deposed that accused were beating him, his brother Shankar (not examined by the prosecution), deceased Siddharam and P.W.4 Shrikant. As both Shankar and Siddharam fell down on the ground, due to assault, the accused thought that they were dead. Therefore, accused ran away from the spot.

In the assault, he was also beaten by hand blows and stick blows due to which he sustained injuries on his back and waist. Deceased Siddaram sustained injuries on his head, chest and other parts of the body. Both Shankar and Siddaram were unconscious. They were subsequently shifted to the Hospital.

13. The evidence of P.W. 4 Shrikant goes to prove that while they were returning on motorcycle from police station, they reached at Panshop of one Babu Inamdar, accused obstructed them with weapons in their hands. Accused No.13 Sanjay pulled down the leg of deceased Siddharam. As a result Siddharam and P.W.5 Raosaheb fell down from the motorcycle. All the accused persons started beating them with sticks and stones. He himself and P.W.5 Raosaheb rescued themselves and went at some distance. He saw that his brother Shankar had also sustained injuries on his stomach, face and chest due to assault and had become unconscious. According to him, accused No.1 Ravi assaulted deceased Siddharam with knife. Accused No.1 Ravi had also lifted one stone to assault Siddharam. However, accused No.7 Siddhappa took the said stone from the hands of

accused No.1 Ravi and assaulted Siddharam with the said stone on his chest. As a result, Siddharam sustained injuries on his head, chest, face leg and became unconscious. As accused thought that P.W.2 Laxman and Siddharam were dead, they ran away from the spot. This witness has also spoken about the presence of P.W.3 Jagdeo at the spot of incident. It may be true that an omission is elicited in his cross examination that he has not stated before police, accused No.1 Ravi assaulted the deceased Siddharam with knife; omission being only in respect of knife. But then there is no improvement as to assault made by accused No.1 Ravi on deceased and evidence of P.W.10 Dr. Keskar and postmortem notes Exh.53 prove incised wound on left forearm of deceased.

14. P.W.5 Raosaheb was also in the same group which was returning from police station on motorcycle with injured and the deceased. He has deposed about accused persons obstructing him and others, pulling them from the motorcycle and beating Siddharam and other witnesses. According to him he tried to intervene, but it was of no use. Accused No.7 Siddhappa sat on

the body of deceased Siddharam and assaulted him with stone. The only ground on which his evidence is challenged is that his statement was recorded by police on 30.5.2007, about 20 days after the incident. In our considered opinion on the count of delay in recording his statement, even if his evidence is excluded from consideration, it will not make much difference to prosecution case as there is evidence of three other eye witnesses on record.

15. Lastly there is evidence of P.W.3 Jagdeo, who had also gone to Mandrup police station on that day with other witnesses. According to him, as only two motorcycles were available, he returned to village by bus alongwith Mahesh. He left Mahesh at his house and proceeded to Nimbargi bus stand. There Sharanappa told him that accused were beating Shankar and others. Hence he rushed to the spot which was near bus stand and saw that the accused were having sticks, stones and knives and were beating Shankar, deceased Siddharam, P.W.2 Laxman and P.W.4 Shrikant. According to him, accused No.7 Siddhappa bet Siddharam on his chest with stone by sitting on his body. Due

to the assault deceased Siddharam, P.W.2 Laxman and Shankar sustained injuries. Thereafter they were shifted to the hospital.

16. All these four witnesses are cross examined extensively, to point out some interse contradictions and omissions in their evidence. In our considered opinion, when 15 to 16 persons are assaulting to 5 to 6 persons simultaneously, then in such a melee, parrot like version of the witnesses cannot be accepted. There is bound to be some variance in their evidence especially when each witness is looking at the incident from different angles. Moreover, out of these four witnesses, P.W.2 Laxman was injured in the same incident; whereas P.W.4 Shrikant and P.W.5 Raosaheb were making attempt to rescue the injured and the deceased. Naturally their evidence cannot be ditto word to word, As to alleged omissions, they might not have been in a position to state before the police all the minor details of the incident immediately after the incident when their statements came to be recorded. Those details, if given in evidence before in such circumstances cannot be branded as omissions or improvements made by them. Their evidence is

consistent about assault made by the accused, specific role is attributed by P.W.4 Shrikant to accused No.1 Ravi of making assault by knife on deceased Siddharam and then lifting the stone and accused No.7 assaulting deceased with the said stone on his chest. P.W.3 Jagdeo and P.W. 5 Raosaheb have also attributed specific role to accused No.7 of beating Siddharam by stone sitting on his chest. Hence as regards accused Nos. 1 & 7, there is clinching evidence on record of actually committing murderous assault on the deceased. Their evidence is also supported with medical evidence. On the body of deceased one incised wound, caused by sharp edged weapon like knife and four to five abrasions were found, with fracture of about 6 ribs which ultimately has resulted into his death, coupled with haematoma on the head.

17. P.W.6 Dr. Madhusudan Gunhalkar, attached to Civil Hospital, Solapur who has rendered immediate medical treatment to P.W. 2 Laxman and P.W.4 Shrikant, has stated that on that night at about 11.25 p.m. these witnesses were referred by Medical Officer, Rural Hospital Mandrup. P.W.4 Shrikant was

having following injuries.

- 1) extensive bruises over back
- 2) tenderness over right angle of mandible
- 3) scalp haematoma, 3 x 2 cm in size over right occipital region of head.
- 4) bruise 3 x 2 cms, over posterior aspect of scalp.

According to him, those injuries were caused by light and blunt object . The injury certificate is produced at Exh.41.

He has also examined Shankar and found following injuries on his person. Shankar, however, is not examined by the prosecution.

- 1) altered blood clots over both nostrils
- 2) tenderness over left mamary region of chest
- 3) abrasion 2 x 2 ½ cm over right upper eyelid on lateral aspect.

18. Further there is also corroborating circumstantial evidence which is recovery of stone and sticks at the instance of accused No.7 Siddhappa. The memorandum Exh.47 is proved through the evidence of P.W.8 Gangadhar and Investigating Officer P.W.13 PI Kadam. Accused No.7 has then guided police and panchas to the place where he has hidden these articles and

produced them which came to be seized under panchanama Exh. 47A. The Chemical Analyzer's reports prove presence of human blood stains on the stone though the results of blood grouping are inconclusive which may be for several reasons. As to non recovery of knife, once the evidence of eye witnesses is believed upon, it does not affect prosecution case as such.

19. The submission of learned counsel for appellants is that all the witnesses in this case are closely related and interested one. Hence reliance cannot be placed on their evidence in the light of some improvements made by them. To substantiate his submissions, learned counsel has relied upon several authorities like :-

I) Gurdial Singh -vs- State of Punjab, AIR 1994 SUPREME COURT 1072.

II) B. BN. Singh -vs- State of Gujarat, AIR SUPREME COURT 1628.

III) Badruddin Rukonddim Karpude -vs- State of Maharashtra, AIR 1981 SUPREME COURT 1223.

IV) Pandit Ram Prakash Sharma -vs- Kharaiti Lal AIR 1998 SUPREME COURT 2820.

V) Kalyan -vs- State of U.P. AIR 2001 SUPREME COURT 3976.

According to him reliance cannot be placed on the evidence of these witnesses considering family feud actuating interest in falsely implicating accused and subsequent improvements made by them. However, we are not inclined to accept the submission. The law is fairly well settled that merely because witnesses are relatives or family friends of the deceased and the injured, their evidence should be discarded altogether. The law only expects the Court to subject their evidence to careful scrutiny. As a matter of fact relatives are the last persons to allow an innocent person to be convicted and guilty persons to escape from clutches of law. Here in this case, the presence of these witnesses is natural and proved on record because as per admitted facts, all these witnesses were returning on their motorcycles from police station to their village. Some contradictions or improvements, as stated above, are bound to occur in the testimony of any truthful witness. Instead of creating suspicion about the credibility of such witnesses on that count,

they give inbuilt guarantee of their trustworthiness. In our considered opinion, therefore, as to the involvement and guilt of accused No.1 Ravi and accused No.7 Siddhappa, there is clinching evidence on record.

20. The next submission of learned counsel for accused is that the case of accused No. 1 Ravi and accused No.7 Siddhappa needs to be brought under Section 304 part II of IPC. However, in our considered opinion, in order to bring the case of accused Nos 1 & 7 under Section 304 part I or II of IPC, it must fall under any one of the Exceptions to section 300 of the IPC. Though learned counsel for accused has relied upon *Exception (iv) of section 300 IPC*, we are afraid that case of accused cannot fall under the said *Exception* also. For, in order to attract *Exception (iv) to section 300*, offence should have been committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in cruel or in an unusual manner.

The facts of the present case do not disclose that any of

these ingredients of *Exception (iv) to section 300 IPC* are satisfied. It was neither a sudden fight without premeditation nor assault is made in the heat of passion. The evidence on record proves that it was a pre-planned attack. The accused were waiting at the panshop for the deceased where the injured witnesses were to come there on their way from the police station to their village. Accused were also armed with the weapons like knives, sticks and stones. It was not a case of sudden quarrel or sudden fight. The injured and deceased witnesses were unarmed. There is no evidence of even quarrel much less sudden quarrel. The accused launched an assault on the injured and deceased with weapons in their hands, the moment they saw them on the motorcycle. The evidence on record proves that assault is committed by weapon like knife and stone that too on vital part of the body like chest and head. There are three, injuries on the chest, out of which one was incised wound and it has resulted in the fracture of six ribs. Hence one can gauge the gravity of the assault. There was abrasion on left and right parietal region which resulted into haematoma to the right parietal region. Therefore, it also cannot

be said that the offence was committed without the accused having taken advantage or acted in a cruel or unusual manner. In such situation, the benefit of *Exception (iv) to section 300 IPC* cannot be extended to accused Nos 1 & 7.

21. In ultimate analysis, we are of opinion that the prosecution has proved its case against accused Nos 1 & 7 beyond reasonable doubt for the offence punishable under Section 302 and 323 read with section 34 of the Indian Penal Code. Hence the appeal preferred by them needs to be dismissed.

22. As regards the appeal preferred by the State, challenging the acquittal of these accused and other accused for the offences punishable under Sections 302 read with section 149 of IPC, needless to say that the evidence on record does not attribute specific incriminating role to the acquitted accused. Therefore, their mere presence on the spot even if held to be proved, at times may not be sufficient to convict them with the aid of section 149 of the IPC. Hence the trial Court has extended

benefit of doubt to them.

23. While sitting in appeal against the acquittal, our scope of interference in the said finding of the trial Court is limited to the extent that we can set aside the said finding only if it is found to be perverse. Having regard to the totality of evidence on record, considering large number of accused involved in the case and the evidence against those accused being of a general and omnibus nature, we are of the opinion that the findings recorded by the trial Court on this aspect cannot be called as perverse so as to warrant interference therein. As a result, the appeal preferred by the State against acquitted accused also deserves to be dismissed.

24. In consequence Criminal Appeal No.482 of 2007 preferred by accused No.1 Ravi and accused No.7 Siddhappa stands dismissed, confirming their conviction and sentence. Criminal appeal No.292 of 2008 preferred by the State also stands dismissed.

25. Accused No.7 Siddhapa is in jail whereas accused No. 1 Ravi is on bail, hence the bail bonds of the accused No.1 Ravi Bhauraya Kolule stand cancelled. He shall surrender before the learned Sessions Judge within a period of 12 weeks from the date of this order, failing which the learned Sessions Judge shall take steps to arrest him to serve the remaining sentence.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment.