

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.758 OF 2007**

Rajesh Balkrishna Pille
Aged : 40 years, Residing at
Shantinagar Jhopadpatti,
Survey No.110/111,
Yerwada, Pune
Presently in custody in the
Yerwada Central Prison,
Yerwada, Pune 411 006.

...Appellant.

versus

State of Maharashtra

..Respondent.

.....
Ms. Rebecca Gonsalves for the Appellant.
Mrs. A.S. Pai, Addl.P.P. for the State.

.....
**CORAM : SMT V.K. TAHILRAMANI, Acting C.J.&
A.S. GADKARI, J.**

Judgment reserved on : 3rd September, 2015.

Judgment pronounced on : 28th September, 2015.

JUDGMENT (PER A.S. GADKARI, J.) :

The Appellant - original accused No.1 has impugned the judgment and order dated 21st May, 2002 passed by the learned Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.158 of 2001. By the impugned judgment and order dated 21st May, 2002 the learned Ad-hoc Additional Sessions Judge has convicted the Appellant under Section 302 read with Section 34 of the

Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and a fine of Rs.500/-, in default of fine to further undergo rigorous imprisonment for three months. The Appellant has also been convicted for the offence punishable under Sections 324 read with Section 34 of the Indian Penal Code, and has been sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs.300/-, in default of payment of fine to further suffer rigorous imprisonment for one month. For the offence punishable under Sections 506(ii) read with Section 34 of the Indian Penal Code, the Appellant has been convicted and sentenced to suffer rigorous imprisonment for one month and fine of Rs.100/-, in default of payment of fine to further suffer rigorous imprisonment for one week. The learned Ad-hoc Additional Sessions Judge has directed that the substantive sentences of imprisonment shall run concurrently.

The record discloses that the Appellant who is the original accused No.1 was tried along with Pappu Anant Ghayalkar in the same Sessions Case No.158 of 2001. That the Appellant and the said original accused No.2 – Pappu Ghayalkar were convicted by the impugned judgment and order dated 21st May, 2002. That the said co-accused Pappu Ghayalkar preferred

Criminal Appeal No.369 of 2007 in this Court. The same was admitted on 16th July, 2007. During the pendency of the said Criminal Appeal No.369 of 2007 the said Pappu Ghayalkar preferred an application dated 11th April, 2009 through jail thereby contending that he was juvenile in conflict with law on the date of commission of the offence and therefore, he was entitled to be released forthwith as he was in custody for more than three years, by claiming the benefit of Section 15(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000. In an enquiry under Section 7 of the said Act it was revealed that the said co-accused was juvenile on the date of commission of the offence and therefore, the Division Bench of this Court by its judgment and order dated 31st March, 2010 was pleased to grant benefit under Section 15(g) of the said Act to the said co-accused he was directed to be released forthwith unless required in any other case as he had undergone more than three years of imprisonment on the day of the passing of the said judgment.

2. The facts which are necessary to decide the present Appeal can briefly be stated as under :

(i) The date of incident in the present case is 9th January,

2001. Mr.Sharad Deshmukh (P.W.2) has purchased a house at Shantinagar which was under construction. Some plumbing work was to be carried out in the said premises and therefore, he consulted a contractor viz. Mr.Kamble who recommended the name of Mr.Mohammed Shaikh who was a professional plumber. That on 9th January, 2001 Mr.Sharad Deshmukh along with his colleague Mr.Namdev Gaikwad (P.W.3) and Mr.Mohammed Shaikh had been to the house of Mr.Sharad Deshmukh at about 1 to 1.30 p.m. Mr.Mohammed Shaikh and Mr.Namdev Gaikwad started doing the plumbing work and at that time Mr.Sharad Deshmukh was on the platform of the house of one Mr.Waghmare which was in front of his house. Mr.Sharad Deshmukh was knowing both the accused persons i.e the Appellant and Pappu Ghayalkar since he was working in that area previously. Both the accused persons were disturbing the work of plumbing by coming and going from the said place/lane which was outside the house of said Mr.Sharad Deshmukh. The work of plumbing was disturbed on account of the acts of both the accused persons. Mr.Sharad Deshmukh therefore asked Pappu Ghayalkar either to go at one side of the house or to go at other side of the house so that the plumbing work will not be disturbed. At that time Pappu Ghayalkar abused Mr.Sharad Deshmukh in filthy language.

Pappu Ghayalkar rushed to Mr.Sharad Deshmukh by brandishing a big sura in his hand. The persons who were around the place of incident intervened. Thereafter Pappu took away the knife in his hand and threw the same in his house which was near to the said place of incident. After some time both the accused persons came back to the house of Mr.Sharad Deshmukh and started giving abuses and threats to him. Mr.Sharad Deshmukh thereafter stopped the work and proceeded to Saipras Police Chowki to file a complaint against both the accused persons. He lodged a complaint against both the accused alleging therein that both of them were abusing and threatening him. Mr.Sharad Deshmukh thereafter came back to his house at Shantinagar along with two constables.

(ii) The house of the Appellant was on their way and therefore, they had been to his house first. However, the Appellant was not available there. Thereafter they went to the house of co-accused Pappu Ghayalkar. He was also not present in his house. Thereafter Mr.Sharad Deshmukh along with two constables came back to his house at Shantinagar and started searching both the accused persons. They waited there for about 15 minutes. However, the accused persons did not come. The constables

thereafter continued to search for the said accused persons. Mr.Sharad Deshmukh returned to his place at Shantinagar where he saw huge crowd collected in front of his house. Upon entering his house Mr.Sharad Deshmukh saw that plumber Mr.Mohammed Shaikh was lying in an injured condition in the new room. He saw injuries on the chest and left arm of Mr.Mohammed Shaikh and blood was oozing from those injuries. The persons who were gathered there informed him that the Appellant and Pappu Ghayalkar assaulted the plumber and Mr.Namdev Gaikwad (P.W.3) with knife. Mr.Mohammed Shaikh was lying in the house in an injured condition while Mr.Namdev Gaikwad had left to the police station to lodge a complaint. Mr.Sharad Deshmukh immediately went to Saipras Police Chowki.

(iii) Mr.Prakash Deshmukh (P.W.11) Police Inspector was then attached to Vishrant Wadi Police Station, Pune on 9th January, 2001. He was informed by the police station officer at about 2.45 p.m. on phone that a murder had been committed at Shantinagar area and he should proceed there immediately. The complaint was filed by Mr.Namdev Gaikwad (P.W.3). The said First Information Report was registered as C.R. No.1/2001 under Sections 302, 324 read with Section 34 of the Indian Penal Code

and the investigation of the same was entrusted to Mr.Prakash Deshmukh (P.W.11). The said First Information Report was reduced into writing by Police Havaladar Mr.Kanse. Police Inspector Mr.Prakash Deshmukh immediately contacted the control room and directed to send necessary help for further investigation. He also issued directions to his subordinate officer viz. P.S.I. Mr.Gaikwad to visit the place of offence and to draw the panchanama and the inquest panchanama. He also deputed some of the police officers to find out the accused persons whose names were reflected in the complaint. He visited the place of offence. P.S.I. Mr.Gaikwad had drawn the panchanama of the scene of offence, Exhibit 20. Inquest panchanama was also drawn by P.S.I. Mr.Gaikwad which is at Exhibit 40. The said two panchanamas were verified by Mr.Prakash Deshmukh. P.S.I. Mr.Prakash Deshmukh thereafter recorded the statement of four witnesses. He arrested both the accused persons on the same day. He attached the clothes of the accused persons by effecting panchanamas which are at Exhibits 41 and 42. Article Nos.10 and 11 are the clothes of the Appellant. The complainant Mr.Namdev Gaikwad also produced his clothes on the same day which was on his person at the time of incident and the same were seized under panchanama which is at Exhibit 32.

(iv) Dr. Sudhendra Belsare (P.W.8) conducted postmortem on the dead body of Mohammed Shaikh. He also issued advance medical certificates of deceased Mohammed Shaikh. Police Inspector Mr.Prakash Deshmukh thereafter referred the complainant Mr.Namdev Gaikwad to Sassoon Hospital for medical examination. During the course of investigation, a knife was recovered at the instance of the Appellant by effecting a panchanama which is at Exhibit 35. Police Inspector Mr.Prakash Deshmukh sent the necessary and relevant articles to the Chemical Analyser for its opinion in the matter. Mr.Prakash Deshmukh was subsequently transferred and therefore, he handed over the charge to his successor Police Inspector Mr.Dhavale on 22nd February, 2001. Mr. Dhavale thereafter received the reports from the Chemical Analyser which are at Exhibits 56, 57 and 58. Police Inspector Mr.Dhavale thereafter submitted charge-sheet on 4th April, 2001 in the Court of Judicial Magistrate First Class, Pune.

(v) The Judicial Magistrate First Class, Pune committed the said case to the Court of Sessions. The Trial Court framed charge against both the accused persons under Sections 302, 324 and

506(ii) read with Section 34 of the Indian Penal Code and also under Section 37(1) read with Section 135 of the Bombay Police Act and under Section 4 read with Section 25 of the Indian Arms Act.

(vi) The said charge was read over and explained to the Appellant to which he pleaded not guilty. He denied the alleged incident. The defence of the Appellant was that, on the day of incident he had gone to the place of co-accused Pappu Ghayalkar and thereafter they left for liquor den to consume liquor. After consumption of liquor the Appellant left for his house. At his residential place his wife reminded him of the repairs of his house and therefore he started proceeding towards the house and on his way, he met co-accused Pappu Ghayalkar. At that time Pappu Ghayalkar informed him that he was assaulted by Mr.Sharad Deshmukh (P.W.2). Thereafter he returned to his house and slept. Some time thereafter police officers came to his house and took him to the police station. He was assaulted in the police station by police. Police enquired with him about Pappu Ghayalkar, but the Appellant refused to tell the police about Pappu Ghayalkar. Thereafter the Appellant was arrested and detained in police lock up. He also contended that on

account of his criminal background, he has been falsely implicated in the present case by the police on suspicion only. He lastly contended that the witnesses are telling lie at the instance of P.W.2 – Mr.Sharad Deshmukh.

(vii) The learned Trial Court after recording the evidence of the prosecution witnesses and after hearing the parties to the said case was pleased to convict the Appellant by its order dated 21st May, 2002 as stated above. The said judgment and order dated 21st May, 2002 passed by the learned Trial Court is impugned herein.

3. Heard Ms. Rebecca Gonsalvez, learned counsel for the Appellant and Mrs. A.S. Pai, learned APP for the State and perused the entire record.

4. The learned counsel for the Appellant submitted that P.W.2 and P.W.3 who are the witnesses to the incident have not stated about the presence of P.W.6 at the spot of incident or either prior to it and therefore, the presence of P.W.6 at the spot or near the spot is doubtful. She further submitted that P.W.5 who is the panch witness to the discovery of knife at the instance of the

Appellant, in his testimony has not stated about the sealing of the said article on the spot and therefore, it creates doubt about it being tampered at the instance of the investigating agency. She further contended that the learned Trial Court in the impugned judgment has recorded a finding that the fatal blow which caused the death of Mr.Mohammed Shaikh was given by original accused No.2 Pappu Ghayalkar and it means that the Appellant did not give the fatal blow. The Appellant only caused injury to the deceased and the injured witnesses only with a view to beat them and therefore, it cannot be inferred that the Appellant shared common intention along with co-accused Pappu Ghayalkar. She contended that the Appellant only caused hurt by blunt side of the knife to the deceased and the injured witness Mr.Namdev Gaikwad (P.W.3). She further submitted that her said contention is supported by the medical evidence. She lastly submitted that as the Appellant did not share common intention with the co-accused Pappu Ghayalkar, the conviction under Section 302 of the Indian Penal Code may be altered to one under Section 325 of the Indian Penal Code and the Appellant may be acquitted from the charge under Section 302. The learned counsel for the Appellant in support of her contention relied on the judgment of the Supreme Court in the case of Shri

Kishan and others v. State of Uttar Pradesh reported in AIR 1972 SC 2056.

5. The learned APP on the other hand submitted that P.W.6 though is not a witness to the entire incident, is a witness to the part of the incident as he was accompanying P.W.2 just prior to the incident when the Appellant extended threats prior to and after the incident to P.W.2. She further submitted that the knife which was used by the Appellant was discovered at the instance of the Appellant in the presence of P.W.5, which was stained with human blood. That the Chemical Analyser's report discloses that the said bloodstains were of deceased Mohammed Shaikh. She further submitted that P.W.6 in his evidence has stated that the Appellant was a local goon and a habitual offender. She lastly contended that there is sufficient evidence on record to establish the fact that the Appellant shared common intention with original accused No.2 Pappu Ghayalkar in commission of the present crime. She urged before us that the conviction and sentence awarded by the learned Trial Court needs no interference at the hands of this Court and prayed that the present Appeal may be dismissed.

6. The prosecution in support of its case examined in all 11 witnesses. Out of the said 11 witnesses, P.W.4 and P.W.9 are the panch witnesses to the seizure of clothes and recovery of knife from original accused Nos.2 Pappu Ghayalkar and their testimony is not relevant for the purpose of deciding the present Appeal.

7. P.W.8 Dr. Sudhendra Umakant Belsare was working as a Medical Officer at Sassoon General Hospital at Pune in January 2001 and conducted the postmortem examination on the body of Mr.Mohammed Hajrat Sab Shaikh on 9th January, 2001. During the course of postmortem examination, he noticed the following external injuries :-

- “1) 3 abrasions on mid forehead 1 x 1 cm, 3 x 3 cm and 1 x 1 cm.
- 2) Contused laceration on occiput 1 x 1 x 1 cm
- 3) Abrasion on right side of neck 4 cm below right angle of mandible 1 x 1 cm
- 4) Abrasion on nose 1 x 1 cm
- 5) Contused laceration on left eye brow, 2 x 1 x 1 cm
- 6) Abrasion on right elbow 2 x 1 cm
- 7) Contused of laceration on mid left forearm 2 x 1 x 1 cm

- 8) Stab injury in left fifth inter costal space/ directed lateral to medial pointed ends, sharp margins 4 cm lateral to mid line 4 x 2 cm extending deep into the thoracic cavity.
- 9) Grazed abrasion on both sides of lower chest on an area of 20 x 20 cm."

He opined that all the aforesaid external injuries were antemortem.

8. He also noticed the following internal injuries during the postmortem examination :-

- "1) Blood in thoracic cavity.
- 2) Blood in pericardial cavity clotted.
- 3) Anterior surface of left vertical cut through and through near the apex.
- 4) Stomach contained yellow fluid 40cc no order mucosa normal. Small and large intestines were partly loaded."

9. He further opined that the stab injury which has been described at Sr. No.8 of external injury column corresponding to internal injury No.2 mentioned above was, in the ordinary course

of nature, sufficient to cause death. He further deposed that external injury No.8 corresponding to internal injury No.2 was possible by knife (Article 26 before the Court).

10. It is to be noted here that the said Article 26 was recovered at the instance original accused No.2 Pappu Ghayalkar and therefore the Trial Court in his judgment has observed that the fatal blow was given by original accused No.2 Pappu Ghayalkar.

11. P.W.10 Dr. Arjun Mukutrao was then attached to Sassoon General Hospital as Casualty Medical Officer and on 9th January, 2001 he examined one Mr.Namdev Gaikwad (P.W.3) who had come with a police yadi for medical examination. He examined the said patient and noticed the following injuries :

- "1) CLW on left temporal region 1" x 1/4th
- 2) CLW on posteriaspect of left ear lobule
1/2" x 1/4" x 1/4th C"

12. He mentioned that the injuries were simple in nature and age of the same was during last six hours. He further deposed that the injuries would have been caused by hard and blunt object. He has further stated that aforesaid injury No.1 could

have been caused by the knife (Article 25), but from its blunt side and not from sharp side. It is to be noted here that the said Article 25 has been recovered from the Appellant in presence of panch witness Mr.Alim Saiyed (P.W.5).

13. P.W.6 – Mr.Surendra Gajanan Rajput is a witness to the part of the incident though not witness to the entire incident. P.W.6 in his testimony has stated that the incident took place on 8th January, 2001. That he along with Satbhaiya had been to Shantinagar to see the room of Mr.Sharad Deshmukh. He wanted to take that room on rental basis. It was 7.00 p.m. at that time. They came at a distance of about 100 ft. from the room of Mr.Deshmukh. Two boys came there from front side and one of them gave a push and crossed them. P.W.6 Mr.Surendra Rajput saw those two boys, the boy who was tall threatened them by saying that why they are looking at and they shall see them. When they were observing the room of Mr. Deshmukh, those two boys came there and again threatened them by saying that if they want to live quietly then only they can live, otherwise they would kill P.W.6. Thus P.W.6 made enquiry with the neighbour Smt.Latabai about the said boys, on which she informed that those boys are habitual offenders and committing theft. On the

next date i.e. 9th January, 2001 he again visited the room of Mr. Deshmukh at 1.00 p.m. to clean it. In the bye-lane in front of the said room he found two persons doing work of plumbing. The said two persons were doing the work of plumbing outside the house. He saw the same two boys coming in that bye-lane. At that time Mr. Deshmukh (P.W.2) was also standing near the place where the plumbing work was going on. Mr. Deshmukh asked the said boys not to disturb the work of plumbing. The boy who was tall started quarrelling with Mr. Deshmukh (P.W.2). During that quarrel, the tall boy threatened Mr. Deshmukh by saying that he would kill those two persons who were doing plumbing work and Mr. Deshmukh. Mr. Deshmukh thereafter left that place and came back along with two policemen. P.W.6 took the bucket and came back to the room. At that time those two boys again started giving abuses to the two persons who were doing plumbing work. The Appellant was holding a knife in his hand. The boy who was having less height was also holding a knife in his hand. During the quarrel the tall boy assaulted one of those persons by giving blow with knife on his head. Those two persons ran towards the room of Smt.Lata Lokhande. The said incident of assault took place after the police left the spot in search of those two boys. Both the boys chased those two

persons who were doing plumbing work. P.W.6 got frightened and therefore, he came back to the room and closed the door from inside. He heard the noise of falling utensils from the house of Smt.Lata. He also heard the noise of saying 'save, save'. He saw through the crack of the door that those two boys were coming outside the house of Smt. Latabai. At that time the tall boy had given a general threat that if anybody gives evidence against them, he would kill them. Both the boys thereafter left the place. P.W.6 has seen these things from the crack of the door of the said house. That after arrival of the police, he came out of the house. P.W.6 has identified those two boys in the Court i.e. the tall boy as the Appellant and short boy as original accused No.2 Pappu Ghayalkar. In the detail cross-examination of this witness, no material has been elicited at the instance of the Appellant to discredit his testimony.

14. P.W.2 is Mr.Sharad Deshmukh. P.W.2 in his testimony has deposed that he had purchased a house at Shantinagar which was under construction and he completed the construction work. Some plumbing work was remained to be carried out in the said premises and therefore, in consultation with contractor Mr.Kamble who recommended the name of Mr.Mohammed

Shaikh, a plumber, he entrusted the work to Mr. Shaikh. On 9th January, 2001 he himself along with his colleague Mr.Namdev Gaikwad (P.W.3) and Mr.Mohammed Shaikh had been to his house at Shantinagar at about 1 to 1.30 p.m. That Mr.Mohammed Shaikh and Mr.Namdev Gaikwad started doing the plumbing work and at that time he was standing on the platform of the house of one Mr.Waghmare which was in front of his house. He was knowing both the accused persons i.e the Appellant and Pappu Ghayalkar since he was working at Shantinagar previously. Both the accused persons were oftenly crossing the said bye-lane and were disturbing the plumbing work of Mr. Shaikh. After some time the Appellant left the place and original accused No.2 Pappu continued to disturb the plumbing work by crossing the said bye-lane oftenly. P.W.2 - Mr. Sharad Deshmukh therefore asked original accused No.2 Pappu Ghayalkar to remain at one side of the house so that the plumbing work would not be disturbed. At that time original accused No.2 Pappu Ghayalkar abused P.W.2 - Mr.Sharad Deshmukh in filthy language and rushed towards him with a big sura in his hand. The house of Pappu was near to that place. The persons in the vicinity pacified Pappu. Thereafter Pappu took away the knife in his hand and threw the same in his house. P.W.2 thereafter returned to his house at Shantinagar.

The said house was near to the place of incident. After some time both the accused persons came back to his house and started giving abuses and threats to P.W.2-Sharad. P.W.2 - Mr.Sharad Deshmukh thereafter stopped the work and proceeded to Saipras Police Chowki to file a complaint against the accused persons. He lodged a complaint which is at Exhibit 22. He thereafter came back to his house at Shantinagar along with two constables. The house of the Appellant was on their way and therefore, they had been to his house first. However, the Appellant was not available in his house. Thereafter they went to the house of original accused Nos.2 Pappu Ghayalkar. He was also not found in his house. Thereafter he along with two constables came back to his house at Shantinagar. They started searching for both the accused persons. They waited there for about 15 minutes for the accused to come. However, the accused persons did not come. The constables thereafter continued to search for the said accused persons. However, P.W.2 - Mr.Sharad Deshmukh returned to his house at Shantinagar. He saw huge crowd gathered in front of his house. He entered in his house and saw blood lying on the floor in one of the rooms. He saw Mr.Mohammed Shaikh was lying in an injured condition in the new room. He saw injuries on the chest and left

arm of Mr.Mohammed Shaikh and blood was oozing from those injuries. Many persons had gathered at the place and some of them informed him that the Appellant and Pappu Ghayalkar assaulted the plumber and Mr.Namdev Gaikwad (P.W.3) with knife. Mr.Mohammed Shaikh was lying in the house in an injured condition while Mr.Namdev Gaikwad had left to the police station to lodge a complaint. P.W.2 – Mr.Sharad Deshmukh immediately rushed to the Police Chowki where he saw Mr.Namdev Gaikwad (P.W.3) with injuries on his head. He made enquiry with P.W.3- Mr.Namdev Gaikwad about the incident, who in turn intimated him about the entire incident. P.W.3 – Mr.Namdev Gaikwad lodged the complaint and thereafter police referred him to Sassoon Hospital for necessary treatment. In the lengthy cross-examination of this witness except an omission to the effect that, ‘since I was afraid of accused, I did not state before police that Pappu Ghayalkar was armed with long sura when I lodged complaint before Saipras Police Chowki’, no other material which is beneficial to the Appellant has been elicited from this witness.

15. P.W.3 – Mr. Namdev Gaikwad is an injured eye witness in the present case. P.W.3 - Mr.Namdev in his testimony has stated that he was working as a labourer in the Health Department of

Pune Corporation since 1973 and while Mr. Sharad Deshmukh (P.W.2) was also working with him. The incident took place on 9th January, 2001. That P.W.3 along with Mr. Sharad Deshmukh (P.W.2) and one mistry (i.e. deceased Mohammed Shaikh) had been to the house of Mr. Sharad Deshmukh for doing the plumbing work at about 1 to 1.15 p.m. The house of Mr. Sharad Deshmukh was situated at Shantinagar zopadpatti. The said mistry/ plumber was working with plumber Mr. Kamble. He had taken the said mistry for doing the plumbing work at the house of Mr. Sharad Deshmukh (P.W.2). He along with the said mistry i.e. Mr. Mohammed Shaikh were doing the plumbing work at the house of Mr. Sharad Deshmukh and were effecting a hole to the wall from outside of the house. The Appellant along with co-accused were crossing the said bye-lane on and often when the work was in progress. Mr. Sharad Deshmukh (P.W.2) asked them not to cross the bye-lane oftenly upon which original accused No.2 Pappu asked him whether the said road belongs to his father. Original accused No.2 Pappu also administered threat to Mr. Deshmukh by saying that all the three persons would be killed. Both the accused persons thereafter threatened Mr. Deshmukh (P.W.2) that they should stop the work otherwise they would murder them. Mr. Sharad Deshmukh (P.W.2) thereafter left

for police chowki to lodge a complaint. Mr. Sharad Deshmukh (P.W.2) returned with police constables after some time. The said policemen started searching for the accused persons. After some time both the accused persons came back to the spot. Original accused No.2 Pappu was armed with sword while the Appellant was armed with a sura. Both the accused thereafter assaulted him with those weapons on his head. The mistry (Mr.Mohammed Shaikh) concealed himself in the house of one Smt. Lokhande. As soon as P.W.3 - Mr.Namdev Gaikwad shouted for help the said mistry (Mr.Mohammed Shaikh) came out of the house. Both the accused persons i.e. the Appellant and original accused Nos.2 Pappu assaulted the mistry (Mr.Mohammed Shaikh) with that weapon on his chest. Due to fear P.W.3 - Mr. Namdev Gaikwad concealed himself near that house and as soon as the accused persons left, he came near the mistry and found that the said mistry (Mr.Mohammed Shaikh) was like a dead person. Thereafter he went to the police station and his complaint was recorded by the police. The said complaint is at Exhibit 26. In the cross-examination of this witness, no omission and/or admission has been elicited at the instance of this witness which would be helpful to the Appellant.

16. P.W.7- Mr.Shabbir Badshah Shaikh was the panch witness for the seizure of clothes of the Appellant. The said witness did not support the prosecution case and was declared as hostile.

17. P.W.5 Mr. Alim Saiyed was a panch witness to the recovery of knife (Article 25) from the Appellant. The said knife was recovered in the presence of P.W.5 after effecting recovery panchanama which is at Exhibit 35. It is to be noted here that though in the evidence of P.W.5, he has specifically not mentioned that the said knife was sealed in his presence by the police, the contemporaneous document i.e. Exhibit 35 which is the panchanama of recovery of the knife, specifically discloses that the knife was sealed on the spot. It is clearly stated therein that the knife was wrapped in paper and was sealed in the presence of panch witness at the spot. Exhibit 35 i.e. the panchanama of recovery of knife being a contemporaneous document, safe reliance can be placed on it and in our considered opinion, there is no substance in the submission of the learned counsel for the Appellant.

18. The prosecution has also relied on the Chemical Analyser's report which discloses that the blood group of deceased was 'AB'

and the blood which was found on the knife recovered at the instance of the Appellant (Article 25) was also having bloodstains of human origin with 'A' and 'B' antigens. As stated above the said knife was recovered at the instance of the Appellant.

19. Thus, after taking into consideration the entire evidence on record, we are of the considered opinion that the evidence of prosecution witnesses viz. Mr.Sharad Deshmukh (P.W.2), Mr. Namdev Gaikwad (P.W.3), the injured eye witness and Mr.Surendra Rajput (P.W.6) is trustworthy and reliable. P.W.2, 3 and 6 have categorically deposed about the entire incident including the role played by the Appellant in the crime. The Appellant has not only administered threat to the witnesses prior to the incident but even after the incident. The injuries suffered by deceased Mohammed Shaikh and P.W.3-Mr. Namdev Gaikwad at the instance of the Appellant have been corroborated by the medical evidence i.e. of Dr. Arjun Mukutrao (P.W.10) and Dr. Sudhendra Belsare (P.W.8). There is a recovery of the knife at the instance of the Appellant on which bloodstains of human origin were found. The said bloodstains were found to be of human origin with 'A' and 'B' antigens as stated above. The blood group of deceased was 'AB' and a safe inference can be drawn that the

bloodstains which were found on the knife recovered from the Appellant were of deceased Mohammed Shaikh. The Appellant has not given any explanation in his statement under Section 313 about the said circumstances against him. As stated above, we find that the evidence of P.W.2, 3 and 6 is trustworthy and reliable. It is to be noted here that the evidence on record discloses that the Appellant along with co-accused Pappu Ghayalkar simultaneously inflicted blows of knife on the injured witness and deceased, Mohammed Shaikh and therefore, we are of the considered opinion that the Appellant undoubtedly shared common intention with original accused No.2 Pappu Ghayalkar while committing the present offence. We therefore find that there are not merits in the Appeal and the Appeal is accordingly dismissed.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

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