

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.869 OF 2007

1. Shivaji Ramchandra Pawar	]
Age : 61 Years, Occ.: Agriculture	]
	]
2. Vitthal Shivaji Pawar	]
Age : 27 Years, Occ.: Agriculture	]
	]
3. Santosh Shivaji Pawar	]
Age : 31 Years, Occ.: Agriculture	]
	]
4. Navnath Shivaji Pawar	]
Age : 24 Years, Occ.: Agriculture	]
	]
	] Appellants /
All residents of Ramnagar, Tal. & Dist. Satara	] (Org. Accused)
<i>Versus</i>	
The State of Maharashtra	] Respondent

Dr. Yug Mohit Chaudhary for Appellant Nos.1, 2 & 3.

Mr. H.J. Dedhia, A.P.P. for the Respondent-State.

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

DATE : 6TH MAY, 2015.

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

1. This Appeal takes an exception to the Judgment of the Additional Sessions Judge, Satara in Sessions Case No.7 of 2001, dated 31st

August, 2007. By the impugned Judgment, the Appellants are convicted for the offences punishable under Sections 302 and 307 r/w. 34 of the IPC and sentenced to suffer R.I. for life and to pay fine of Rs.3,000/- each, in default to suffer S.I. for six months on the first count, and R.I. for ten years and to pay fine of Rs.1,000/- each, in default to suffer S.I. for one month on the second count, with a further direction that both the substantive sentences of imprisonment are to run concurrently.

2. Factual matrix of the case, as is necessary, for deciding this Appeal may be depicted as follows :-

The Appellants, the First Informant PW-1 Sahebrao Gogavale, the injured PW-5 Laxman Gogavale, deceased Dilip and Prosecution Witnesses to the incident are of the same village, belonging to two rival factions, having the history of strained relations between the two families. The incident giving rise to this case had taken place on 28th August, 2000 at about 7:00 am to 7:15 am, when, as per Prosecution case, on account of some minor altercations, the Appellants assaulted deceased Dilip and PW-5 Laxman with axe and sticks in their hands. As a result, Dilip sustained grievous injuries and became unconscious, whereas, PW-5 Laxman sustained bleeding injury to his head. PW-1 Sahebrao, who was

an eye witness to the incident, has sent both the injured Dilip and Laxman in the rickshaw tempo of PW-3 Balasaheb Beble to the Civil Hospital and he himself went to Satara Taluka Police Station, where he lodged the First Information Report about the incident vide Exhibit-29. On his complaint (Exhibit-29), C.R. No.107 of 2000 came to be registered against the Appellants for the offence punishable under Section 307 r/w. 34 of the IPC. In respect of the same incident, the Appellant No.1 had also lodged cross complaint and on his complaint, C.R. No.106 of 2000 was registered against the Prosecution Witnesses. Appellant Nos.1 to 3, who had sustained injuries in the said incident, were also referred, accordingly, for their medical examination to Civil Hospital, Satara.

3. PW-13 API Anil Deshmukh, who was in-charge of the said Police Station, took over the investigation of C.R. No.107 of 2000 registered on the complaint of PW-1 Sahebrao. He visited the spot of incident and prepared Spot Panchanama (Exhibit-46) in the presence of the Panch PW-6 Janardan More. From the spot, he collected simple mud and blood stained mud under the said Panchanama. On the same day, he arrested Appellant No.1-Shivaji under Panchanama (Exhibit-50) and also recorded the statements of eye witnesses to the incident.

4. Further investigation of the case was taken over by PW-12 PI Anil Sandbhor. He arrested Appellant No.4-Navnath on the next day. During police custody, at the instance of Appellant No.4-Navnath, he seized the stick (Article No.6) under Panchanama (Exhibit-80) from the house of Appellant No.4-Navnath. On 31st August, 2000, he has arrested Appellant No.2-Vitthal and Appellant No.3-Santosh and seized the clothes on their person under Panchanama (Exhibit-103). During interrogation, on 1st September, 2000, Appellant No.1-Shivaji expressed his willingness to produce the weapon of assault, an axe, which he has concealed behind the door of his house. His statement was reduced to Memorandum Panchanama (Exhibit-81) in the presence of PW-10 Panch Jitendra Deshmukh. Thereafter, Appellant No.1 guided the Police and Panchas to his house and produced the axe with blood stains thereon, which came to be seized under Panchanama (Exhibit-82). On the same day, during interrogation, Appellant No.3-Santosh expressed his willingness to produce the axe concealed in his house. His statement was also reduced to Memorandum Panchanama (Exhibit-83) in the presence of PW-10 Panch Jitendra Deshmukh. Then he guided the Police and Panchas to his house and produced the axe with blood stains thereon. It also came to be seized under Panchanama (Exhibit-84).

5. Meanwhile, on 30th August, 2000, injured PW-5 Laxman produced his blood stained clothes, which were seized under Panchanama (Exhibit-41). On 4th September, 2000, injured Dilip, who was referred for further treatment to Ruby Hospital, Pune, succumbed to the injuries there. Hence, his Inquest Panchanama (Exhibit-85) was made and his dead body was sent for postmortem examination. Accordingly, a charge under Section 302 of the IPC was added and supplementary statements of the witnesses were recorded. On 8th September, 2000, PW-12 PI Anil Sandbhor sent the seized muddemal articles to Chemical Analyzer at the hands of Constable Patil vide requisition (Exhibit-104). The C.A. Reports are produced in the case at Exhibits "106" to "108", whereas, the Postmortem Report is at Exhibit-60 with advance cause of Death Certificate (Exhibit-61). Further to completion of investigation, PW-12 PI Anil Sandbhor has filed Charge-Sheet in the Court against the Appellants.

6. On the case being committed to the Sessions Court, the Trial Court framed charge against the Appellants vide Exhibit-12. The Appellants pleaded not guilty and claimed trial.

7. In support of its case, Prosecution has examined in all 13 witnesses, whereas, Defence has also examined Medical Officer Dr.

Varsha Kulkarni to prove Injury Certificates of Appellant Nos.1 and 2. On appreciation of this evidence on record, the Trial Court was pleased to hold the guilt of the Appellants to be proved beyond reasonable doubt and has convicted and sentenced them, as aforesaid.

8. At this stage, it may be stated that during the pendency of the Appeal, Appellant No.4-Navnath raised the plea of being juvenile-in-conflict with law at the time of incident. His plea was accepted by this Court and by order dated 16th March, 2011, his sentence was set aside and he was directed to be released forthwith from the Jail. This Appeal is, thus, proceeded against Appellant Nos.1 to 3 only.

9. In this Appeal, we have heard learned Counsel for the Appellants Dr. Yug Mohit Chaudhary and learned A.P.P. for the Respondent-State Mr. H.J. Dedhia. In our considered opinion, in order to effectively deal with the submissions advanced by them, it would be useful to refer to the evidence on record.

10. This case rests on the eye witness account of injured and three eye witnesses to the incident. PW-5 Laxman is the injured witness in the case. According to him, just a day before the incident, on 27th August, 2000, at

about 6 pm, while he was proceeding towards Village Variye on his scooter, Appellant No.3-Santosh accosted him and hence some hot exchange of words took place between him and Appellant No.3-Santosh. One Babasaheb Pawar separated them. This incident had taken place in the back-drop of the admitted strained relationship between the two families.

11. As deposed by him, on 28th August, 2000, at about 7:00 am to 7:15 am, he was proceeding towards the hotel of PW-2 Tanaji Gogavale for the purpose of reading newspaper. On the path-way, which was leading in front of the house of the Appellants, Appellant No.3-Santosh, who was standing in the court-yard of his house, picked-up the quarrel by spitting and giving abuses to him in filthy language. Appellant No.3-Santosh also caught hold of his hand and dragged him in the court-yard. Appellant No.1-Shivaji and Appellant No.2-Vitthal also came there and they rushed to assault him with axe and sticks in their hands. By that time, his elder brother Dilip arrived there, but Appellants started giving him blows of axe on his person, because of which Dilip sustained injury to his nose, forehead, head and other parts of the body. He fell down on the ground in the pool of blood and became unconscious. Even though wife of Appellant No.1 Yamuna shouted not to beat PW-5 Laxman, the Appellants started

assaulting him also. Appellant No.2-Vitthal gave him axe blow near his right wrist, whereas, Appellant No.3-Santosh gave him fist blows and kicks. Even Appellant No.1-Shivaji also gave him two blows of axe; one on his neck and second on the back, which he succeeded in avoiding. By that time, PW-1 Sahebrao, PW-2 Tanaji and PW-3 Babasaheb Beble rushed there and separated the quarrel. Then they secured the rickshaw tempo and injured Laxman and Dilip were taken to the Civil Hospital, Satara. PW-5 Laxman was admitted there for one month, whereas, his brother Dilip was shifted to Ruby Hospital on the very day itself, where he succumbed to the injuries on 4th September, 2000. In evidence before the Court, PW-5 Laxman has identified the weapons of assault, the stick (Article No.6), and two axes (Article Nos.12 and 13).

12. This evidence of PW-5 injured Laxman gets complete support and corroboration from the evidence of PW-1 Sahebrao, who has intervened in the scuffle and has lodged the report of the incident to the Police. As per his evidence also, on that day, at about 7:00 am to 7:15 am, when he was sitting in his grocery shop, he heard the shouts of quarrel from the side of the house of Appellants. Therefore, he rushed there and saw that the Appellants were beating deceased Dilip and PW-5 Laxman with axes in their hands. Dilip has sustained two axe blows on his head, one on his

nose and another on his right palm. He was lying in the pool of blood. PW-5 Laxman has also sustained the injury due to the axe blow on his head. While Appellant No.1-Shivaji was giving second blow to PW-5 Laxman, PW-1 Sahebrao caught the axe from the hands of Appellant No.1-Shivaji. Therefore, PW-5 Laxman could escape from the said blow. According to his evidence, he shouted loudly. Therefore, all the four Appellants left the spot. By that time, brother, PW-2 Tanaji and PW-3 Balasaheb had arrived there. They also intervened and then PW-3 Balasaheb and PW-2 Tanaji took the injured Dilip and PW-5 Laxman to the Hospital, whereas, PW-1 Sahebrao went to the Police Station and lodged the complaint (Exhibit-29).

13. PW-2 Tanaji has given complete support and corroboration to the evidence of these two witnesses. He is having hotel near the spot of incident. He opens the same from 6 am onwards till 7 am. He also used to keep newspapers in his hotel as some persons used to come to his hotel for reading the newspaper. On the day of incident also, as usual, he has opened the hotel at 6:15 am and had already served tea to two customers. By that time, he heard shouting from the side of the house of the Appellants. Hence, he rushed there and saw that Dilip was lying in the pool of blood, having sustained bleeding injuries. The Appellants were

present there being armed with axes and they were assaulting PW-5 Laxman with the axe. PW-5 Laxman has also sustained injury on his head and right forearm. PW-2 Tanaji tried to intervene in the quarrel. However, Appellants were not ready to listen to him. Appellant No.1-Shivaji was about to give third axe blow on the head of PW-5 Laxman, but PW-2 Tanaji intervened and saved Laxman from that third blow. However, as Appellant No.2-Vitthal rushed on him with the axe to assault him, he left the place and waited at the distance of 10 ft. to 15 ft. Thereafter, he has taken the injured to the Hospital.

14. If at all any further corroboration is required to the evidence of these three eye witnesses, whose presence at the spot is natural and one of them being himself, an injured, then there is also the evidence of fourth eye witness PW-3 Balasaheb Beble, whose house is in front of the house of the Appellants. On that day, he was standing in front of his house brushing his teeth. He saw PW-5 Laxman proceeding towards the hotel of PW-2 Tanaji from the road in front of the house of the Appellants. He also saw the Appellants raising quarrel with PW-5 Laxman and then Dilip arriving there, after hearing the shouts. He also rushed there and saw that Appellants were giving axe blows to Dilip, as a result of which Dilip has sustained bleeding injuries. The Appellants were also assaulting PW-5

Laxman. He snatched the axe from the hands of Appellant No.2-Vitthal, when he was making further assault. Then he and the above referred witnesses intervened and separated the Appellants and the injured. Thereafter he and PW-2 Tanaji took the injured to the Hospital.

15. All these four eye witnesses have been cross-examined at length by the Defence, but except for succeeding in eliciting some minor contradictions or inter-se inconsistencies, which are bound to occur in the evidence of any truthful witnesses and which gives inbuilt guarantee of their being the witnesses of truth, Defence has not succeeded in making any dent in their testimonies. Their presence at the time of incident is also natural one, being residents of the same area and just adjoining to the house of the Appellants. As stated above, one of them, PW-5 Laxman is injured in the incident.

16. This ocular account is also getting further support and corroboration from the F.I.R. (Exhibit-29), which is lodged immediately after the incident and contains all the details of the incident. As stated above, it is lodged by PW-1 Sahebrao, an eye witness to the incident. The incident had taken place in between 7:00 am to 7:15 am and the crime was registered on his F.I.R. at 8:35 am.

17. The medical evidence in the instant case also goes hand in hand with the ocular account. PW-11 Dr. Anil Shinde, who was attached to Civil Hospital, Satara and was on duty on the day of incident, has examined injured Dilip and Laxman there at about 7:50 am. He found that Dilip was unconscious. His condition was critical. He noticed following injuries on his person :-

- (i) *Incised wound on right palm at base of right thumb measuring 3 cm x 8 mm x 1 cm oblong fresh, reddish bleeding, both ends tapered, oblique in direction.*
- (ii) *Incised wound over middle of nose, of size 6 cm x 1 cm transversely curved, downwards, bone cut, transversally fresh bleeding.*
- (iii) *Incised multiple incised wounds on right temporo parietal region measuring 10 cm x 4 cm wounds in various directions, skin edges clean cut, bone pieces coming out through wound. Brain matter expelled out through wound. Fresh bleeding.*
- (iv) *Incised wound over occipital region, measuring 8 cm x 1 cm x 1 cm with palpable fracture. X-ray skull plate No.1629/30 showed fracture of multiple pieces right fronto parietal and occipital region right side.*

18. According to him, Injury Nos.(ii) to (iv) were grievous in nature and the cause of injuries was assault by sharp edged heavy weapon. The age of the injuries was within six hours. He has issued the Injury Certificate

accordingly (Exhibit-93). On the same day, he has referred Dilip to Ruby Hall Clinic, Pune for further treatment. He has produced the case-papers of Dilip at Exhibit-96.

19. On the same day and at the same time, he has also examined PW-5 Laxman, who has given the history of assault with axe, sattur and wooden stick. On examination of PW-5 Laxman, he found following injuries :-

- (i) *Incised wound over occipital region at right side oblique measuring 2 cm x 1 cm x 1 cm with palpable suspected fracture of occipital region, oblique fresh bleeding. X-ray plate No.1635/36 dated 28.8.2000 showed fracture of parieto occipital bone, right side.*
- (ii) *Incised wound right forearm middle 3rd, outer aspect, measuring 6 cm x 1 cm x 1 cm, oblong tapering at both ends, suspected fracture of radius. X-ray plate No.1637/38, dated 28.8.2000 showed fracture radius straight oblique with fracture 4th metacarpal right side.*
- (iii) *Swelling right palm with fracture metacarpal 4th.*

20. The cause of his injuries was also assault by sharp edged and heavy object. Injury Certificate of PW-5 Laxman is at Exhibit-94 and case-papers at Exhibit-97. In evidence before the Court, PW-11 Dr. Anil Shinde has deposed that the injuries sustained by deceased Dilip and injured

PW-5 Laxman are possible with the assault by the axes (Article Nos.12 and 13).

21. The Prosecution has also placed reliance on the evidence of PW-8 Dr. Shrikant Chandekar, who has conducted postmortem examination on the dead body of Dilip on 4th September, 2000 at Sasoon Hospital, Pune. On his examination, he found not only the injuries noticed by PW-11 Dr. Anil Shinde, but also the corresponding internal injuries, which he has noted in the Postmortem Report (Exhibit-60). According to him, these injuries were antemortem and sufficient in the ordinary course of nature to cause the death. The cause of the death in his opinion was the head injury sustained by the deceased.

22. Thus, medical evidence produced in the case leaves no manner of doubt about occurrence of the incident, as deposed by the eye witnesses. It proves the indiscriminate assault made by more than one assailant with the sharp edged weapons like axe, both, on deceased Dilip and also on PW-5 Laxman.

23. Prosecution has also relied upon the evidence relating to recovery of the blood stained axe at the instance of Appellant No.1-Shivaji and

Appellant No.3-Santosh. There is evidence of PW-10 Panch Jitendra Deshmukh and PW-12 PI Anil Sandbhor, which reveal that in pursuance of the disclosure statement given by Appellant No.1-Shivaji, on 1st September, 2000, the blood stained axe was recovered from his house under Panchanama (Exhibit-82) and on the same day, another blood stained axe was recovered at the instance of Appellant No.3-Santosh from his house under Panchanama (Exhibit-84). Both the Panchanamas under Section 27 of the Evidence Act are properly proved by the Prosecution.

24. These weapons of assault and the blood stained clothes of the Appellants, seized at the time of their arrest, were sent to the Chemical Analyzer, as deposed by PW-12 PI Anil Sandbhor and the C.A. Report (Exhibit-106) proves that these weapons of assault and the clothes of the Appellants were found with the human blood stains.

25. In the face of this overwhelming and clinching evidence brought on record by the Prosecution, it has to be held that the Prosecution has succeeded in proving, beyond reasonable doubt, the entire incident and the complicity of the Appellants in the same. As a matter of fact, learned Counsel for the Appellants Dr. Yug Mohit Chaudhary has also fairly conceded that as in respect of the same incident, the Appellants had also

lodged complaint on which C.R. No.106 of 2000 was registered against the Prosecution Witnesses, Defence cannot dispute occurrence of the incident, as has happened. His only submission is that as the incident had taken place in front of the house of the Appellants and as in the same incident, Appellants had also sustained injuries, which Prosecution Witnesses have failed to explain, in the light of the landmark decision of ***Laxmi Singh & Ors. Vs. State of Bihar, 1976 Cr.L.J. 1736***, it has to be held that the Prosecution has suppressed the genesis and truth of the occurrence. Prosecution has also not presented the true version and the defence version, which explains the injuries, being a competing version is required to be accepted, thereby throwing doubt on the truth of the Prosecution case.

26. In this respect, learned Counsel for the Appellants has drawn our attention to the admission given by PW-1 Sahebrao that incident of assault took place in front of the house of the Appellants. Though he has stated that at the place of incident, he did not notice any injuries on the person of the Appellants, in his further cross-examination, he has admitted that before he reached to the Police Station for lodging the report, Appellant No.1-Shivaji and Appellant No.3-Santosh were already present there and both of them were injured. Their clothes were stained with

blood. Even the complaint of Appellant No.1-Shivaji was registered prior to his complaint and it was bearing C.R. No.106 of 2000. He has further admitted that Sessions Case No.123 of 2001 was filed in the Court on the basis of C.R. No.106 of 2000 in respect of the same incident. It is a matter of record that the said cross case ended into acquittal.

27. Learned Counsel for the Appellants has also pointed to the evidence of PW-3 Balasaheb, who has admitted in his examination-in-chief itself, that in the same incident, Appellant No.1-Shivaji and Appellant No.3-Santosh had also sustained injuries to their head. Though he has further stated that these injuries were sustained by the Appellants in the process of assault on their own doing, this evidence, according to learned Defence Counsel, is in the nature of improvement, as it was not stated in the statement recorded by the Police.

28. On this aspect, in our considered opinion, evidence of PW-11 Dr. Anil Shinde is also relevant, as he has examined Appellant No.3-Santosh on the date of incident itself, when he was referred by the Police with Yadi. He has also given the history of assault by axe. On examination of Appellant No.3-Santosh, PW-11 Dr. Anil Shinde found following injury on his person :-

Incised wound on parieto occipital region of right side measuring 3.5 cm x 8 mm x 5 mm oblique fresh bleeding. The X-Ray of skull plate No.1627/28 dated 28.8.2000 did not show any fracture.

29. He has issued his Medical Certificate (Exhibit-98) and the case-papers (Exhibit-99) accordingly. In his opinion, this injury was also caused by the sharp edged weapon like axe.

30. Further, the Appellants have also examined the Defence Witness Dr. Varsha Kulkarni, who has examined Appellant No.1-Shivaji on the date of the incident, at about 10:30 am, and found following three injuries on his person :-

- (i) *C.L.W. at right wrist inferiorly over frontal aspect 2.5 cm x 0.5 cm.*
- (ii) *C.L.W. over right eye brow on lateral aspect about 2 cm x 0.5 cm.*
- (iii) *C.L.W. over left thumb at the base on dorsal aspect about 1 cm x 0.5 cm.*

31. Appellant No.1-Shivaji has also given the history of assault by sharp edged weapon. However, in her opinion, the injuries were possible by

hard and blunt object. Appellant No.1-Shivaji was admitted in the Hospital till 31st August, 2000, as per the said case-papers.

32. Dr. Varsha Kulkarni has also examined on the same day Appellant No.2-Vitthal, who was having complaint of tenderness in left auxiliary region over 4th, 5th, 6th and 7th rib and congestion in the chest. Therefore, she has referred him for x-ray of chest in order to ascertain whether there was any fracture. However, no evidence of any fracture was noticed. He was treated as O.P.D. patient. His case-papers are at Exhibit-119.

33. Thus, according to the learned Counsel for the Appellants, the fact that the Appellants had sustained injuries in the same incident, which were treated by the very Doctors, who had examined and treated the Prosecution Witnesses, makes it necessary that the Prosecution should have offered probable and proper explanation for the same. However, according to him, none of the Prosecution Witnesses have offered such explanation. Though PW-3 Balasaheb has stated that these injuries might have been sustained by the Appellants in the course of assault by themselves, according to him, the said explanation does not appear probable. Hence, learned Counsel for Defence has made ferrent plea that as the injuries on the person of the Accused are not being explained by

the Prosecution and the incident had taken place in front of the house of the Appellants, thereby indicating that the Prosecution Witnesses were the aggressors, the benefit of reasonable doubt will have to be extended to the Appellants.

34. We find it difficult to accede to this submission, because even a cursory glance to the nature of injuries, which are suffered by the deceased and PW-5 injured Laxman, on one hand, and suffered by Appellant Nos.1 to 3, on another hand, make it clear that the injuries sustained by the deceased and PW-5 injured Laxman are far more grievous, serious and life threatening, than the injuries found on the person of the Appellants. PW-11 Dr. Anil Shinde has stated in his evidence itself that, deceased Dilip had sustained multiple incised wounds, which he was even unable to count and those incised wounds were on the vital part of the body like head and definitely caused by the sharp edged weapon like axe. As against it, the injury which he found on Appellant No.3-Santosh, was only one incised wound, that too admeasuring 3.5 cm x 8 mm x 5 mm. X-ray of the same skull revealing no damage or no fracture. Similarly, the injuries which Appellant No.1-Shivaji has sustained were only CLWs, that too on non-vital parts of the body, like, wrist and hand. As admitted by the Defence Witness Dr. Varsha Kulkarni, those

injuries were of simple nature and not at all dangerous to the life. As regards Appellant No.2-Vitthal, he has only complaint of tenderness and congestion in the chest. However, the x-ray revealed no fracture or no damage. Thus, the injuries sustained by all the three Appellants were of too minor and trivial nature and except for the incised wound sustained by Appellant No.3-Santosh, none of the injuries sustained by the Appellants were caused by any sharp edged weapon. The nature of the injuries sustained by the Appellants is such that they are likely to be caused in the course of the assault made by them with axe in their hands.

35. As per the law elaborated by the Apex Court in the case of ***Gade Lakshmi Mangraju Vs. State of Andhra Pradesh, AIR 2001 SC 2677***, the omission on the part of the Prosecution to explain the injury sustained by the Accused in the same incident may not lead to necessary inferences that Prosecution has suppressed the genesis and truth of the occurrence, if the injuries are not serious and if the evidence as a whole led by the Prosecution is so cogent, clear, consistent and credit-worthy, that it outweighs the effect of omission on the part of the Prosecution to explain the injuries. In the instant case, the Prosecution Witnesses have not suppressed the injuries sustained by the Accused. They have given the explanation that whatever injuries found on the person of the Accused,

were having been sustained in the course of assault by them with weapons to the Prosecution Witnesses. Moreover, the medical evidence shows that the injuries were not of a serious nature at all. Moreover, as held above, the evidence on record is solid, like a rock, thoroughly consistent and credit-worthy so as to place implicit reliance thereon.

36. In view of these facts, the further submission that the Prosecution Witnesses were aggressors as the incident had taken place in front of the house of the Appellants, also cannot be accepted. The weapons like axes were found in the hands of the Appellants and not the Prosecution Witnesses. The evidence proves the use of the weapons like axes and sticks was made by the Appellants. The serious injuries were caused to the Prosecution Witnesses and not to the Appellants. Therefore, it can hardly be accepted that the Prosecution Witnesses were aggressors.

37. Moreover, PW-5 Laxman and other eye witnesses have explained the circumstances in which the incident had taken place in front of the house of the Appellants. Incident has occurred while PW-5 Laxman was proceeding to the hotel of PW-2 Tanaji and the way to that hotel was leading in front of the house of the Appellants. The other Prosecution Witnesses have arrived there only on hearing the shouts and they were

not accompanying PW-5 Laxman. Therefore, there is hardly any material or evidence to even infer that the Prosecution Witnesses were the aggressors. In such situation, no plea of even the right of private defence is also available to the Appellants.

38. To sum up, therefore, it has to be held that from the proved facts on record, no other inference but that of the guilt of the Appellants for both the offences punishable under Sections 302 and 307 r/w. 34 of the IPC can be drawn. Hence, the Trial Court has rightly convicted them. No interference, therefore, is warranted in the impugned Judgment of the Trial Court. Consequently, this Criminal Appeal stands dismissed, confirming the conviction and sentence of the Appellants for the offences charged and proved against them, with a further direction that the Appellants are entitled to set off for the period already undergone in Jail since the date of their arrest i.e. 28th August, 2000 in respect of Appellant No.1-Shivaji and 29th August, 2000 in respect of Appellant No.2-Vitthal and Appellant No.3-Santosh.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]