

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 683 OF 2012

1. Sayad Ismile Sayad Miya,  
Age : 66 years, Occu. Nil,  
R/o. Sabangalli,  
Ambajogai, Tq. Ambajogai,  
Dist. Beed.
  
2. Rajiyabegum Aslamkhan Pathan,  
Age : 26 years, Occu. Household,  
R/o. Moin Nisar Chal, House No. 5,  
Kasaiwada, Kurla, Mumbai,  
Now at Ambajogai, Tq. Ambajogai,  
Dist. Beed.

.. Appellants  
(Orig. Accused)

Versus

The State of Maharashtra

.. Respondent

.....  
Mr V. D. Gunale, Advocate for the appellants  
Mr P. N. Kutti, APP for respondent/State  
.....

**CORAM : A.V.NIRGUDE &  
V.L. ACHLIYA, JJ.**

**DATE OF RESERVING THE JUDGMENT : 08.06.2016.**

**DATE OF PRONOUNCING THE JUDGMENT : 11.08.2016.**

**JUDGMENT (PER V. L. ACHLIYA, J.) :-**

1. This appeal is directed against the Judgment and Order dt.23.11.2012 passed in Sessions Case No. 25/2011 by Additional Sessions Judge, Ambajogai, Dist. Beed thereby convicting the appellants No. 1 and 2 under Sections 302 read with 34 and 109 of the Indian Penal Code and sentenced them to suffer imprisonment for life and to pay fine of Rs. 500/- each. In default of payment of fine, to undergo rigorous imprisonment for one month. The appellant No. 2 is also held guilty of offence punishable under Section 324 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 200/-. In default of payment of fine, to suffer rigorous imprisonment for 15 days.

2. In brief, the facts leading to filing of the present appeal are summarized as under: -

The appellants were charge-sheeted and prosecuted to face charge u/s 302 r/w 34 of the Indian Penal Code (in short “IPC”) and appellant No. 2 was also prosecuted for committing offence punishable u/s 324 of IPC. In nutshell, the prosecution has approached with a case that, on 15.4.2010 at about 9:00 p.m., Sk. Mustaq (hereinafter referred to as “deceased”) was standing in open courtyard outside the house of Sk. Raisoddin, uncle of the deceased. He was chit-chatting with his paternal uncle Nafisoddin. At that time, the appellants No. 1 and 2 came there. They had dispute with the family of the deceased on account of premises in their possession. The appellant No. 1 assaulted deceased with knife over his abdomen. Since the deceased sustained first blow on abdomen, he raised the shouts as “Mara Re Bap Muze Mar Dala”. Hearing the scream of Sk. Mustaq, the father of deceased namely; Sk. Hafijoddin (PW1) and Sk. Irfan (PW4) who were taking dinner in the adjoining house of Sk. Alim came out of the house. They saw accused No. 1 assaulting Sk. Mustaq by means of knife. The second blow of knife was dealt in their presence. After receiving the second blow over the abdomen, Sk. Mustaq fell down on the ground. When Sk.

Irfan (PW4) was trying to lift Sk. Mustaq, appellant No. 2 took the knife from appellant No. 1 and assaulted Sk. Irfan (PW4) who too sustained injury over his left hand. Sk. Mustaq was initially taken to Police Station Ambajogai. Station House Officer asked the relatives of the deceased to take him to S.R.T.R.M.C. Hospital. He also gave requisition in the name of Medical Officer of S.R.T.R.M.C. Hospital to treat Sk. Mustaq. Thereafter Sk. Mustaq was admitted in S.R.T.R.M.C. Hospital, Ambajogai, where he was operated. He succumbed to the injuries on 19.4.2010. After his death, the father of the deceased i.e. Sk. Hafijoddin (PW1) lodged the complaint against the accused alleging therein that they had assaulted his son Sk. Mustaq. On the basis of the complaint lodged by Sk. Hafijoddin (PW1) and A.S.I.-Mahadeo Bajirao Terkar (PW-6) recorded the complaint and registered the offence against the accused. The dead body of the deceased was referred for post-mortem. Dr. Sunil Dasre (PW-8) conducted the post-mortem and opined that the deceased died on account of Hemorrhagic shock. The appellant No. 1 was arrested on 21.10.2010. Appellant No. 2 appeared before the Police Officer on 26.04.2010 and she was arrested in the crime registered against her. At her instance, one knife alleged to be used in commission of offence was seized. One shirt of appellant No. 1 was also seized

during the course of investigation. The statement of witnesses were recorded. On completion of investigation, the charge-sheet was filed against both the appellants by Investigating Officer Shri. U. S. Pawar (PW9). The charge as stated above was framed against the appellants. They pleaded not guilty and claimed to be tried. Hence, the trial proceeded against the accused. They have taken defence of total denial and false implication at the instance of family members of the deceased. On conclusion of trial, appellant Nos. 1 and 2 held guilty u/s 302 r/w 34 of IPC and sentenced to undergo imprisonment for life. Appellant No. 2 also held guilty of offence u/s 324 of the IPC and sentenced as stated above. Being aggrieved by the judgment and order passed by the Id. Addl. Sessions Judge, the appellants have preferred this appeal on the various grounds as set out in the appeal.

3. In order to prove its case, the prosecution has examined in all 10 witnesses. Prosecution has examined Sk. Hafijoddin Sk. Papamiya (PW-1) and Sk. Irfan Sayad Nafijoddin (PW-4) as eye-witnesses to the incident. Shaikh Ahmed Shaikh Mohmad (PW-3) was examined as a witness to the spot panchanama (Exh. 48/C). (PW-5) Shaikh Shafi Shaikh Chand though examined as witness to recovery of knife/Sura at

the instance of the accused No. 2, he has not supported the prosecution. A.S.I.-Mahadeo Bajirao Terkar (PW-6) was examined to prove the complaint filed by PW-1 and Inquest Panchanama (Exh. 46). The prosecution has examined Nilesh Diwani as PW-7 to prove the seizure of white colour shirt at the police station. Prosecution has examined Dr. Sunil Dasre as PW-8, the Autopsy Surgeon who conducted the post-mortem and issued post-mortem report (Exh. 69). Prosecution has further examined Uttam Shankarrao Pawar (PW-9) Retired Dy.S.P., the Investigating Officer, who conducted the investigation and filed the charge-sheet against the accused. Lastly, the prosecution has examined Dr. Shaikh Ashma Tanvir PW-10, the Medical Officer attached to S.R.T.R.M.C. Hospital, Ambajogai, Dist. Beed, who examined Sk. Irfan i.e. PW-4 and issued injury certificate (Exh. 81). The accused have taken defence of total denial and false implication at the instance of the close relatives of the deceased.

4. On conclusion of the trial, the learned Additional Sessions Judge has reached to the conclusion that the prosecution has proved that the deceased died on account of homicidal death. Relying upon the testimony of PW1 & PW4, and other evidence such as recovery of knife

and seizure of clothes of accused, the learned Additional Sessions Judge has reached to the conclusion that the prosecution has proved its case beyond reasonable doubt and held accused Nos. 1 and 2 guilty of offence punishable u/s 302 r/w 34 of the IPC. Besides, holding the accused Nos. 1 and 2 guilty of the offence punishable u/s 302 of the IPC, the learned Additional Sessions Judge has convicted accused No. 2 for the offence under Section 324 of the Indian Penal Code and sentenced her to suffer rigorous imprisonment for one year and pay fine of Rs. 200/-. Being aggrieved by the said Judgment and Order dt. 23.11.2012, the appellants have preferred this appeal.

5. We have heard Mr Gunale, learned counsel appearing on behalf of the appellants and learned APP for respondent and carefully perused the evidence.

6. Mr. Gunale, the learned counsel for appellants/accused has strenuously contented that, there was inordinate delay of more than four days in registering the offence. It is pointed out that, the offence was committed on 15.04.2010 at about 9.00 p.m. However the offence was registered on 19.04.2010. As per the case of the prosecution, the

injured was immediately removed from the spot on 15/4/2010 and initially taken to Police Station. Thereafter, police referred the injured to S.R.T.R.M.C. Hospital, Ambajogai, Dist. Beed, still no offence was registered on 15.04.2010. He was admitted in said hospital on 15.4.2010 & treated till 19.4.2010. The deceased succumbed to injuries and died on 19.04.2010. After his death, the FIR was lodged on 19.04.2010 at the instance of Sk. Hafijoddin PW-1, father of the deceased who claims to be eye-witness to the incident dt. 15.4.2010. He has first time disclosed in his complaint (Exh. 41) lodged on 19.4.2010 that the deceased was assaulted by accused No. 1 by knife. By referring the evidence on record, the learned counsel has submitted that there is no satisfactory explanation put forth by the prosecution to explain the delay of more than four days in registering the offence. By referring the Medico Legal Case Papers recording the admission & treatment given to deceased, the learned counsel has pointed out that while admitting the injured Sk. Mustaq, the history was disclosed as assault by unknown person. Similarly the eye-witness Sk. Ifan (PW4) who was also admitted and examined in hospital disclosed the assault by unknown persons. In the light of this evidence on record, the learned counsel has strenuously contended that, there is strong possibility of accused being framed in

the case at the instance of relatives of the deceased on account of old enmity cannot be ruled out. The possibility that the FIR was registered after due deliberation by father of deceased to falsely implicate the accused on account of dispute cannot be ruled out. He has therefore submitted that, in the facts and circumstances of the case the trial Court should not have placed reliance on the testimony of PW1 and PW4 who are closely related with the deceased, & highly interested to see the accused being convicted. It is further pointed out that, the prosecution has not examined any independent witness to prove its case. He has further submitted that, if testimony of PW-1 and PW-4 is discarded then there remains no evidence to sustain the conviction. He has urged that in absence of cogent, convincing evidence to establish the complicity of accused, the trial Court ought to have acquitted the accused.

7. On the other hand, the learned APP has supported the judgment and order passed by the trial Court. He has submitted that the prosecution has sufficiently explained the delay in registering the offence. He has further submitted that, the testimony of PW-1 and PW-4 inspires full confidence. Their testimony can not be rejected only for the reason that they are related with deceased. According to learned

APP, the prosecution has amply proved that, the deceased died a homicidal death due to assault by accused Nos. 1 and 2.

8. In order to appreciate the submissions advanced, we have carefully scrutinized the evidence on record in the light of reasons & findings recorded by the trial Court to hold the accused guilty of offences charged against them. If we consider the over all evidence on record then fact is not in dispute that the deceased has died a homicidal death. The prosecution has examined Dr. Sunil Dasre, the Autopsy Surgeon whose testimony is at Exh. 47. He has categorically deposed that, at the time of conducting post-mortem he found following injuries on the person of deceased.

- [i] One drainage belt over hypochondria region.
- [ii] stitch over surgical wounds 31 number from gepisterium.
- [iii] pelvic region 41 cm in length.
- [iv] Incised wound over right hypochondria region 15 cm. In length, 3 cm. Depth and 5 cm.
- [v] drainage over right stab wound hypochondria region.
- [vi] Stitches over right hypochondria region 7 in number 15 cm. Length.

9. PW-8 specifically deposed that, injury Nos. [iii] and [iv] as referred above, are stabbed wounds and possible by weapon like article

2 i.e. Knife/Sura. He has further deposed that, the deceased died due to “Hemorrhagic Shock” and the injuries were sufficient in ordinary course to cause the death of any person. Thus, there is clinching evidence on record to establish the fact that the deceased died on account of homicidal death.

10. Having reached to the conclusion that the deceased has died a homicidal death, the next question which falls for our consideration is whether the prosecution has proved its case beyond reasonable doubt to establish that the accused have caused the homicidal death of the deceased.

11. On perusing the reasons and findings recorded by the trial Court, it appears that the trial Court has held accused guilty of commission of offence on the basis of testimony of two eye-witnesses i.e. Shaikh Hafijoddin s/o. Sk. Papamiya (PW-1), the father of the deceased and Sk. Irfan (PW4), cousin of deceased. Besides the testimony of said two eye-witnesses, the learned Additional Sessions Judge has relied upon the testimony of Dr. Sunil Dasre (PW8), who conducted the post-mortem and seizure of Sura/Knife (Article No. 2)

alleged to be used in the commission of offence at the instance of accused No. 2 and seizure of one white shirt stained with blood.

12. It is admitted fact that, the incident in question was occurred on 15.04.2010 at 09.00 p.m. in front of house of PW-1. The fact is also not in dispute that, on same day, the deceased was taken to S.R.T.R.M.C. Hospital at Ambajogai, in an injured condition, where he was operated and remained admitted till 19.04.2010. He died on 19.04.2010 at about 12:30 p.m. The fact is also not in dispute that, no complaint was lodged from 15.04.2010 onwards till the death of the deceased. Admittedly, the complaint/FIR Exh. 41 was lodged on 19.04.2010 i.e. after the death of deceased. There is ample evidence on record which shows that, immediately after the incident the deceased was taken to police station at Ambajogai. The Station House Officer referred the injured to S.R.T.R.M.C. Hospital, Ambajogai along with written Requisition i.e. Letter Exh. 83 dt. 15.04.2010 addressed to Medical Officer, S.R.T.R.M.C. Hospital, Ambajogai which is undisputedly signed and issued by Station House Officer on duty. The fact is also not in dispute that, till the death of the deceased, both the eye-witnesses

have not disclosed to police the names of accused as assailants. While admitting Sk. Mustaq (deceased) on 15.04.2010, the history was recorded as “assault by someone today at 9.00 p.m”. Similarly, Sk. Irfan (PW-4) when admitted in the Hospital as injured, he too disclosed the history as “assault by someone today at 9:00 p.m.” Disclosure of the incident in question and the names of the accused as assailants was first time made by PW1 & PW4 on 19.04.2010 that too after Sk. Mustaq (deceased) succumbed to the injuries. Therefore, the entire evidence needs to be scrutinized in the light of 'inordinate delay of about 4-5 days in lodging FIR and disclosing the names of accused as assailants'. Since it is case of prosecution that the incident was occurred due to dispute on account of house in possession of the accused, delay assumes great significance while appreciating the testimony of PW1 & PW4. Therefore, though the case is based upon the testimony of two eye-witnesses i.e. PW1 & PW4, in the facts & circumstances of the case their testimony needs to be scrutinized and needs to be accepted with due caution. They are the relatives of the deceased. They were on cross-terms with the accused, therefore the possibility of they being deposing falsely against accused to implicate the accused cannot be ruled out. In the facts of the case, the delay of more than 4 days in lodging the

complaint and disclosing the names of accused as assailants is of vital importance.

13. It appears that, the Id. Addl. Sessions Judge while appreciating the evidence has not seriously considered this vital aspect of the matter. It has been cursorily observed that, the delay in lodging the FIR was explained by Sk. Hafizoddin (PW-1) and treated as a mistake on the part of the Investigating Agency.

14. In our view, the delay in registering the offence and disclosure of the names of the accused after 4 days by PW1 & PW4 is a significant factor and same needs serious consideration. Sk. Hafizoddin (PW-1) has testified before the Court vide Exh. 40/C. He has deposed that, on 15.04.2010 he was invited by his nephew Alim for dinner (Kanduri). While he was proceeding towards the house of Alim, which is adjacent to the house of PW-1, he saw his son Sk. Mustaq, nephew Sk. Irfan and his brother Sk. Nafijoddin standing in front of his house and they were chit-chatting. He further deposed that, when he was taking dinner, he heard scream of his son Sk. Mustaq "Mara Re Bap Muze Mara". He therefore came out of the house. At that time, he witnessed

the accused Nos. 1 and 2 and heard accused No. 2 telling her father “Abba Jagahka Hisab Kardo”. He further deposed that, he saw Sk. Ismail i.e. accused No. 1 inflicting blows by means of knife over the abdomen of his son Sk. Mustaq and further saw his son Mustaq falling down on the ground and Sk. Irfan rushing to rescue him. He further deposed that, accused No. 2 inflicted a knife blow on left hand of Sk. Irfan. He deposed that, when his son Mustaq was taken in an Auto Rickshaw to police station, the police personnel asked them to take Sk. Mustaq to S.R.T.R.M.C. Hospital and also gave a cheat (letter) to get Sk. Mustaq admitted in Hospital, where he was admitted & operated. He died on 19.04.2010 at about 12:30 p.m. He further deposed that, throughout the period of hospitalization, Sk. Mustaq was unconscious. He has further deposed that, the incident took place due to dispute of land where the accused No. 1 was residing. He tried to offer an explanation as to delay in lodging the report. He has stated that, the police have told him that they have to record statement of his son after he regained consciousness therefore he has not lodged the complaint. He has further deposed that as his mental condition was not good, he could not lodge complaint immediately after the incident. PW-1 was cross-examined at length.

15. In the cross-examination, PW-1 has admitted that Mustaq was not his son but he had adopted him from his brother Raisoddin. He has admitted that, Sk. Ahmed Sk. Mohammed (PW-3) and Sk. Irfan Sayad Nafijoddin (PW-4) & other persons the witnesses cited & examined by the prosecution as witnesses are his relatives. He admitted that, there are about 50 houses in Sabungalli where the incident was occurred. He further admitted that there are no relatives of accused No. 1 in the Sabungalli locality. He further deposed that, when he came out of the house of Alim, already there was injury over the abdomen of his son (Sk. Mustaq) and accused No. 1 was standing with knife in his right hand. He further deposed that, his brother Nafijoddin & nephew Sk. Irfan were standing at a distance of 5 to 6 ft away from Sk. Mustaq. He further deposed that, the incident has taken place within a half to one minute. He further deposed that, he did not see as to what extent the accused No. 1 dealt the blow of knife over the abdomen of his son Sk. Mustaq. He further deposed that, he cannot tell as to which side of the abdomen the accused No. 1 dealt the blow of knife. He further deposed that, he witnessed accused No. 2 inflicting injury by means of knife on the left forearm of PW-4. Later on, he

changed his version and stated that, Sk. Ismail inflicted injury over the hand of Sk. Irfan. He admitted that after hearing the shouts, 7-8 persons from the lane reached on the spot. He further deposed that, due to stab injury blood was oozing, but clothes of accused No. 1 and 2 as well as Sk. Irfan were not stained with blood. He further deposed that, the blood stained clothes of Sk. Mustaq (deceased) collected but there was no blood on the floor where the incident was occurred. He expressed his inability to tell as to how many persons were present at the police station when Sk. Mustaq was taken to police station, Ambajogai. In further cross-examination, he has deposed that, two-three times they were told by the police that they would record the statement of Mustaq after he regains consciousness. He further deposed that, he has disclosed about the incident of assault by accused to number of persons residing in the locality and the news about the incident also published in the newspaper. He has further deposed that, in the Hospital he has disclosed the incident of assault by accused to persons who visited hospital to see his son Mustaq. He has disclosed to all of them that his son was stabbed with knife by Sk. Ismail (accused No. 1). However, he has not disclosed said fact to the police as he was not in proper mental condition. He further deposed that, he did not

disclose to Doctors treating his son that Sk. Ismail (accused No.1) stabbed his son with knife. He further admitted that, Sk. Irfan (PW4) also not lodged complaint about the incident as he too was not in good mental condition. He has also deposed that, Sk. Irfan and his other relatives were daily visiting him while deceased was lying admitted in hospital.

16. If we consider the over all evidence of PW-1, then it is highly unsafe to place reliance on testimony of such witness closely related to deceased. He cannot be treated as witness to fall in the category of wholly reliable witness. In the normal circumstances, the expected conduct of the person as that of PW-1, the father of deceased who claims to have witnessed the incident, knowing the names of assailants, ought to have reported the incident to police. It is difficult to believe that, he did not lodge the complaint for four days and disclose about the fact to the police as he was not in proper mental state of mind. He has admitted in his cross-examination that, he had not disclosed to police that his son was assaulted by accused though repeatedly met with police. The complaint disclosing the names of accused as assailants was lodged first time on 19.04.2010 i.e. after four days that too after the

deceased succumbed to the injuries. He has admitted that, in his presence the police have instructed to take Sk. Mustaq to Hospital. He has admitted in cross-examination that he met the police officials in the hospital 2-3 times. He has deposed that, he has disclosed the incident and names of accused as assailants to all the visitors who were visiting him in Hospital except the police personnel. This conduct of PW-1 raises a serious doubt as to over all credibility of this witness and facts deposed by him.

17. The explanation put forth that the complaint was lodged after the death of deceased as the police were telling him that they would record the statement of his son after he regain consciousness and he was not in proper state of mind appears to be by way of afterthought & unacceptable. He has deposed that he had disclosed the incident to all the visitors who visited him in the hospital during the period 15.4.2010 to 19.4.2010 except the police personnel, which itself makes his explanation as 'unacceptable'. When he had made such disclosure to so many persons, then he was not prevented to make such disclosure to the police. We are, therefore, not inclined to accept the explanation put forth by PW-1 that the delay in lodging the complaint

was due to the reason that he was not in proper state of mind and police have told them that he should wait till his son regains consciousness.

18. Inordinate delay of more than 4 days in lodging the complaint under the facts of the case raises a serious doubt as to over all credibility of PW1. There is no corroborative evidence of a nature to corroborate the testimony of PW-1. On the knife recovered, no human blood nor any stains of blood were found. The recovery of knife was made at the instance of accused No. 2 on 26.4.2010. No blood as that of the blood group of the deceased was found on the clothes of the accused. It has come on record that, the testimony of Uttam Pawar (PW-9) Investigating Officer that he had arrested accused Syed Ismail on 21.4.2010 and accused No. 2 on 26.4.2010. No blood was found on the spot of the incident as described by the eye-witnesses. The accused No. 1 was arrested from his house. Accused No. 2 was arrested on 26.4.2010 who herself visited the police station. This conduct of the accused shows that they were very much present in the city and ordinary place of residence from 15.4.2010 onwards till their arrest and not made any attempt to abscond. The arrest of accused No. 1 from his

house on 21.4.2010 and his conduct itself operates as a circumstance to establish his innocence. In light of the case of the prosecution that the accused were on cross-terms with the family of prosecution witness Nos. 1 and 4, it is highly unsafe to place reliance as the testimony of such closely related witnesses.

19. The prosecution has further relied upon the testimony of Sk. Irfan (PW-4) as another eye-witness to incident. He too closely related with the deceased as cousin. He too narrated the incident on same lines as deposed by PW1. He deposed that, on 15.4.2010 at 9:00 p.m., his father Sk. Nafijoddin and his cousin were chit-chatting in front of their house. At about 9:15 p.m., he heard screams of Sk. Mustaq and also heard screams of his father. He, therefore, left the dinner and came out of the house. When he came out of the house, he saw accused No. 1 stabbed by means of knife in the abdomen of Sk. Mustaq and further witnessed accused No. 2 telling her father “Abba Aaj Inko Jagahka Hisab Kar Dalo”. He has further deposed that, he has seen accused No. 1 - Sk. Ismail giving another blow of knife in the abdomen of Sk. Mustaq and saw blood oozing from his abdomen. He further deposed that, he too assaulted by accused No. 2 with knife & sustained injury in the

incident. He further deposed that, Sk. Mustaq was admitted in the hospital where he died on 19.4.2010. He further deposed that, accused caused murder of deceased on account of dispute over the land in possession of accused & which the family of deceased insisting to vacate. He further deposed that, though the accused were to vacate the land, they have not vacated the same and therefore there was dispute between them.

20. In cross-examination he deposed that besides him, PW-1 and Alim were present for the Kanduri (dinner) inside the house of Alim. He has further deposed that, while they were taking dinner they heard scream of Sk. Mustaq. He further deposed that, he was followed by his uncle Hafijoddin (PW-1) and Alim. He admitted in cross-examination that, he had not seen the first attack on Sk. Mustaq and he had seen only the second attack. He further deposed that, accused No. 1 dealt first blow on the middle of abdomen above the naval and the second blow was also given at same place. Clothes of Sk. Mustaq got stained with blood. He further deposed that, police have not seized his clothes though they were stained with blood.

21. If we consider the over all testimony of PW-1 & PW-4, then there are number of inconsistencies. According to PW-1, when he was going to house of Alim for dinner, PW-4 was standing outside the house and chitchatting with Mustaq and Sk. Nafijoddin. According to him, besides him, Alim was only present in the house for dinner. Whereas; PW-4 has deposed that he too present inside the house of Alim and taking dinner. He followed PW-1 after hearing the screams of Sk. Mustaq. PW-1 has deposed that, he has witnessed only one blow dealt by accused No. 1 over the abdomen of Sk. Mustaq. Whereas; PW-4 in his examination-in-chief has deposed that, he had seen the accused giving two knife blows over the abdomen of deceased that too at same place. However, in the cross-examination, PW-4 has admitted that he had not seen the accused giving first blow over abdomen of deceased. The conduct of PW1 & PW-4 not to disclose about the incident to the police as well as Doctor for a period of more than four days raises a serious doubt as to their testimony. Injury report at Exh. 83 depicts that the injury sustained by PW-4 was found to be simple in nature. As per testimony of Dr. Sk. Ashma Tanvir (PW10), on 15.04.2010 while she was posted in S.R.T.R.M.C. Hospital, Ambajogai as Medical Officer, at 10:30 p.m., injured Sk. Irfan was brought to her. He had incised wound on

left arm. She examined Sk. Irfan and found the injury was simple. She had issued the certificate at Exh. 80. In the cross-examination, PW10 has deposed that at the time of medical examination, Sk. Irfan (PW4) has narrated the history that injury was caused by some unknown person and she has noted the same in medical papers. The noting recorded in respect of Sk. Irfan in the MLC papers is at Exh. 81 which establishes the fact that, on 15.04.2010 at 10:30 p.m. when PW-4 was brought to Hospital, he has not disclosed that he was assaulted by known person and particularly accused persons that too when he was knowing the accused and they were residing in same locality. The fact regarding assault by accused was disclosed first time after the death of deceased Sk. Mustaq on 19.04.2010. No explanation has been put forth by him as to why he has not disclosed the fact regarding assault by accused Nos. 1 and 2 immediately after the incident dt. 15.04.2010. It has come on record, though the testimony of PW-1 that Sk. Irfan was regularly visiting the Hospital, this raises a serious doubt as to over all credence and reliability of PW-4's testimony. In view of the evidence on record that there was dispute between the accused with family of deceased, the possibility of they being roped in a false case cannot be ruled out, in the light of conduct of PW1 & PW4 and delay of four days

in lodging complaint and disclosing the names of accused as assailants. It is highly improbable that PW1 & PW4 though witnessed the incident and knowing the names of assailants, still takes four days to lodge complaint and disclose the names of assailants. Therefore, the possibility of complaint being lodged after due deliberation and consultation with the relatives of the deceased cannot be ruled out under the facts and circumstances and more particularly, the dispute with accused.

22. Although the evidence as regards recovery of knife has been relied as corroborative evidence to support testimony of PW-1 and PW-4, in our view, same is of no relevance. The recovery is shown to be made at the instance of accused No. 2 that too after 5-6 days after her arrest. As per C.A. Report, no blood was detected on the knife. The another circumstance relied against the accused that, a blood stain was detected on the shirt of accused No. 1 is also of no consequence. As per C.A. report at Exh. 72, shirt of the accused No. 1 was found with stains of human blood of group 'AB'. As per CA report at Exh. 72, blood group of accused No. 1 itself found to be of blood group 'AB'. No blood was

detected on the Sura. There is no report showing the blood group of deceased as of group 'AB' so as to connect the accused No. 1 in commission of offence.

23. In the light of the discussion made in the foregoing paras, we are of considered opinion that the reasons and findings recorded by the trial Court are not sustainable in law. Learned Addl. Sessions Judge has not properly appreciated the evidence adduced in the matter. The important aspect of the matter that there was a delay of more than four days in lodging the FIR was not seriously considered by the trial Court. So also the fact that PW-1 and PW-4 have not disclosed the incident to police till the death of deceased though they had an opportunity to make complaint to police also not taken into consideration by trial Court. The fact that PW-1 and PW-4 have not disclosed the incident to the police till the death of deceased and while admitting the injured Sk. Mustaq in the hospital the history which was disclosed as 'assault by unknown person' was also not considered by the trial Court. There is no cogent, convincing & reliable evidence on record to sustain the conviction of accused. The reasons and findings recorded by trial Court

are based upon improper appreciation of evidence on record. In our view, the reasons and findings recorded by trial Court are perverse and not sustainable in law.

24. In this view of the matter, the reasons and findings recorded by the trial Court are not sustainable in law. We are therefore of the view that, judgment and order dt. 23.11.2012 passed in Sessions Case No. 25/2011 by Additional Sessions Judge, Ambajogai, Dist. Beed deserves to be set aside. In the light of evidence on record the appellants are entitled to be given benefit of doubt. We, therefore, allow the appeal and pass the following order.

**ORDER**

- (I) Criminal Appeal No. 683 of 2012 is allowed.
- (II) The Judgment and Order dt.23.11.2012 passed in Sessions Case No. 25/2011 by Additional Sessions Judge, Ambajogai, Dist. Beed, is hereby set aside.
- (III) The appellants/accused Nos. 1 and 2 stand acquitted. They be released forthwith, if not required in any other proceeding.

(IV) Fine amount, if any paid, be refunded to the appellants/accused forthwith.

**[ V. L. ACHLIYA ]**  
**JUDGE**

**[ A. V. NIRGUDE ]**  
**JUDGE**