

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 252 OF 1995

- | | | |
|----|-----------------------------------|---|
| 1 | Amar Chandrakant Nalavade. |) |
| | Age 34 years, Resident of |) |
| | 118, 'E' Ward, Kolhapur. |) |
| | |) |
| 2 | Suresh Gopal Gaikwad |) |
| | Age 41 years, resident of |) |
| | Asangaon, Taluka: Koregaon, |) |
| | District : Satara.(since deceased |) |
| | through his legal heirs) |) |
| 2A | Smt. Maya Suresh Gaikwad |) |
| | Motichandnagar, B-18, 197, |) |
| | Satara Road, Taluka Koregaon |) |
| | District Satara. |) |
| 2B | Mr. Nilesh Suresh Gaikwad |) |
| | Motichandnagar, B-18, 197, |) |
| | Satara Road, Taluka Koregaon |) |
| | District Satara. |) |
| 2C | Mrs. Sheetal Yogesh Gangawane |) |
| | Dighi, Pune. |) |
| 2D | Mrs. Shubangi Amol Bansode |) |
| | Katraj, Pune. |) |
| 2E | Mrs. Sarika Amit Waghmare |) |
| | Satara. |) |
| | Applicant No. (2C) to 2(E) |) |
| | also residing at |) |
| | Motichandnagar, B-18, 197, |) |
| | Satara Road, Taluka Koregaon |) |
| | District Satara. |) |
| | |) |

- 3 Shrirang Jaising Bhojane)
 Age : 35 years, resident of)
 Gulumb, Taluka : Wai,)
 District: Satara.)
)
- 4 Arun Tulshiram Ingale since)
 deceased through his legal heirs)
- 4a Bharati Arun Ingale, Age 46 yrs.)
- 4b Shrikant Arnun Ingale, Age 26 yrs.)
- 4c Prashant Arun Ingale, Age 23 yrs.)
 All residing at Ajata Hotel,)
 Godoli, Rahimatpur Road,)
 Satara, Tal. Satara, Dist. Satara.)
- 4d Ashwini Arun Ingale)
 Age : 28 yrs.)
 residing at Degaon,)
 Tal. Satara, Dist. Satara.)
- 4e Smita Arun Ingale)
 Age : 27 yrs.)
 residing at Anapatwadi,)
 Tal. Koregaon, Dist. Satara.)
)
- 5 Pandurang Baburao Molawade.)
 Age : 34 years, Resident of)
 Kuthare, Taluka: Patan,)
 District: Satara.)
)
- 6 Vijay Balkrishna Gole)
 Age : 34 years, Resident of)
 Kondave, Taluka and District:)
 Satara.)... Appellants.

Versus

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Kolhapur.

... Respondent.

WITH

CRIMINAL APPEAL NO. 443 OF 1995

The State of Maharashtra.

)...Appellant.

Versus

- | | | |
|---|-------------------------------------|------------------|
| 1 | Amar Chandrakant Nalawade, |) |
| | age – 30 years, R/o 118, E ward, |) |
| | Kolhapur, Dist. Satara. |) |
| 2 | Suresh Gopal Gaikwad |) |
| | age – 37 years, R/o Asangaon, |) |
| | Tal- Koregaon, Dist.- Satara. |) |
| 3 | Shrirang Jaisingh Bhojane |) |
| | age – 31 yrs., R/o Gulumb, Tal-Wai, |) |
| 4 | Arun Tulshiram Ingale |) |
| | age – 31 yrs., R/o Ingalewadi, |) |
| | Mouje Tune, Dist.- Satara. |) |
| 5 | Pandurang Baburao Molawade, |) |
| | age-30, R/o. Kuthare, Tal. Patan, |) |
| | Dist. Satara. |) |
| 6 | Vijay Balkrishna Gole. |) |
| | age-30, R/o Kondave, Tal. & Dist. |) |
| | Satara. |) |
| 7 | Tukaram Annaji Pawar |) |
| | age- 60, R/o Kshetra Mahuli, |) |
| | Tal & Dist. Satara, now at 190, |) |
| | A/5 Godoli, Satara. |)...Respondents. |

Mr. S.A. Ingawale i/b. Mr. R.R. Bhonsale, advocate for appellant in Cr. Appeal No. 252/95 and 270/95.

Mr. L.S. Gaikwad, advocate for respondent Nos. 3 and 6 in Cri. Appeal No. 443/95.

Mrs. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 15, 2016

JUDGMENT :

1 The appellants herein are convicted for the offence punishable under Section 143, 147, 304 part (ii) read with 149, 330 read with 149, 348 read with 149 of the Indian Penal Code and u/section 66(b) read with Section 145(2) of Bombay Police Act. They are sentenced to suffer R.I. for 5 years each and to pay fine of Rs. 1,000/- each I.d. to suffer further R.I. for 3 months u/sec. 304(ii) of the Indian Penal Code. The appellants to are also sentenced to suffer R.I. for 2 years and to pay fine of Rs. 500/- each I.d. to suffer further R.I. for 2 months under Section 330 of the Indian Penal Code. The appellants

are also sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/- each I.d. to suffer further R.I. for 2 months u/section 348 of the Indian Penal Code. The appellants are also sentenced to suffer R.I. for 3 months under section 143 of the Indian Penal Code. The appellants are also sentenced to R.I. for 6 months u/section 147 of the Indian Penal Code. The appellants are also sentenced to suffer R.I. of 1 month u/section 66(b) r/w. 145(2) of Bombay Police Act. The appellants are acquitted of the offence punishable under Section u/section 302 read with Section 149 of the Indian Penal Code. The appellant/Accused No. 1 is acquitted of the offence u/section 218 of the Indian Penal Code. The appellant in Cr. Appeal No. 270/95/accused No. 7 is convicted of the offence punishable under Section 217 and 218 of the Indian Penal Code and is sentenced to suffer R.I. of 1 year and to pay a fine of Rs. 500/- I.d. to suffer further R.I. for 2 months under section 217 of the Indian Penal Code. He is further sentenced to suffer R.I. for 3 years and to pay a fine of Rs. 500

I.d. to suffer further R.I. for 2 months under section 218 of the Indian Penal Code. Hence, this appeal.

2 Such of the facts necessary for the decision of these appeals are as follows :

(i) The appellants herein are police personnels, who at the time of incident were assigned duties at the outpost. The incident is dated 3/11/1988. At about 10.30 a.m. the appellants herein had been to the field namely, Nhavacha Mala, which was owned by Ramu Aba Bandirge, as according to them, they had reliable information that the deceased was cultivating Ganja, which happens to be a contraband under the NDPS Act.

(ii) When the appellants entered the field, deceased Ramu, his son Haridas and his wife Parubai were present in the field. That the appellants had hustled and tussled the deceased Ramu for seeking admission to discover ganja plants.

(iii) It is the case of the prosecution that Ramu was physically and mentally harassed by the appellants. They had taken survey of the field, but had found no incriminating material or incriminating cultivation of the contraband.

(iv) That Ramu was taken away by the appellants in a tempo. His son Haridas had accompanied Ramu. They were taken towards Aund Police Station. Ramu felt drained out by physical assault and wanted to rest in the tempo. However, he was restrained from doing so by the appellants.

(v) They assaulted him with stick on his chest and stomach. He was not allowed to answer nature's call. When the tempo was passing through village Palsi, Ramu had vomited blood. The appellants had allegedly made him to alight from the tempo and allowed him to rest under a tree. Haridas was helplessly watching the incident.

(vi) The appellants had then informed Ramu that he cannot be treated as an accused and that they had withdrawn the case and therefore, he would be free to return to his village.

(vii) According to the prosecution, Ramu and Haridas then went to village Pusesavali, as advised by Waman Kukale, from whom they had borrowed money. They reached village Pusesavali. One Vishnu Master, who was acquainted with them, sent them to the clinic of Dr. Ayachit. Ramu had taken treatment in the hospital. He felt relaxed and therefore, he left the clinic.

(viii) Ramu then went to the house of his sister Chandrabhaga at village Vadagaon on the bicycle of Bhau Gurav and Haridas went to village Shenavadi on the bicycle of Raghunath Salunkhe.

(ix) It is the case of the prosecution that in the intervening night of the incident 3/11/1988 and 4/11/1988 Ramu expired at Vadgaon in the house of his sister. The message was sent to his house. His wife Parubai took dead body to the village Shenavadi in bullock-cart.

(x) The villagers had learnt that Ramu was assaulted by the police personnels and had succumbed to the said injuries. Hence, the villagers claimed coercive action against the police. The villagers had

carried the dead body of Ramu to the office of the Gram Panchayat. Ramchandran and Dinkar Ghodke informed about the matter to the PA of the local MLA.

(xi) The message was then remitted to the S.P. Office, Satara. The Superintendent of Police Mr. Subramanian personally went to Karad. Vijay Wadke who happened to be the PA of the local MLA then communicated the said information to the Home Department.

(xii) The Superintendent of Police had then deputed Mr. Pawar (Accused No. 7) to go to the spot and take necessary steps. The Deputy Superintendent of Police deputed PSI Mohite also to go on the spot for taking further action.

(xiii) It is the case of the prosecution that accused No. 7 Mr. Pawar prepared inquest panchanama and had indulged into causing of disappearance of evidence, which was in the form of injuries on the dead body.

(xiv) The dead body was then sent for autopsy to Cottage Hospital, Karad. On 5/11/1988 the post mortem report was received and Dr.

Kulkarni and Dr. Shaikh, who had performed autopsy had not given a precise opinion about cause of death and had only informed that visera report is awaited. Upon receipt of the viscera report, Dr. Kulkarni opined that the cause of death was “shock due to myocardial (infraction)”.

(xv) The accused No. 7, in the meanwhile, had obtained report from the Police Patil and on the basis of the said police report, had registered Accidental Death No. 20 of 1988 under section 124 of the Code of Criminal Procedure, 1973. He had prepared panchanama of spot at Nhavacha Mala and had seized a piece of stick. The accused No. 7 had recorded the statements of Haridas and Parubai.

(xvi) The allegation against the accused No. 7 is that on 4/11/1988 itself Parubai and Haridas had levelled allegations against the police personnels and that he had not accepted the said report.

(xvii) It was revealed that there are deliberate latches on the part of the accused No. 7 Pawar, while conducting investigation and therefore, the investigation was transferred to DYSP Mr. Pardhe.

Once again the statements of witnesses were recorded. Mr. Pardhe then submitted final report and reported that the accused Nos. 1 to 6 have not caused death of Ramu.

(xviii) Upon perusal of the said final report the son of deceased Ramu, Haridas filed Criminal Writ Petition No. 940 of 1989 in the High Court at Bombay. Upon hearing the petitioner and the prosecution this Hon'ble Court was pleased to set aside the final report submitted by the then investigating officer and had directed that there shall be fresh investigation to be conducted by independent CID police officer.

(xix) Pursuant to the directions PSI Sangle of Aundh Police Station who happened to be successor of the original accused No. 1, lodged a report at the police station, on the basis of which C.R. No. 44 of 1990 was registered against all the accused for the offence punishable under section 302, 143, 147, 149, 323 of the Indian Penal Code.

(xx) The investigation was handed over to DYSP Tagtode of C.I.D. Once again statements of the witnesses were recorded. S.P. C.I.D., Pune had sought expert opinion from Dr. Phatanani, to be given on

the basis of the post mortem report, opinion of the medical officer Dr. Kulkarni and the treatment given by Dr. Ayachit.

(xxi) Mr. Tagtode had taken steps towards fresh investigation. The accused were arrested after receipt of sanction to prosecute. The case was committed to the Court of Sessions and registered as Sessions Case No. 69 of 1991. The charge was framed against the accused, for which they were charge-sheeted.

3 The prosecution examined as many as 21 witnesses to bring home the guilt of the accused. The learned Sessions Judge had considered the substantive evidence of the material witnesses i.e. P.W. 3 Kisan Anna Sarnobat, Police Patil of Bhushangad, P.W.5 Subhadra Rasal, P.W. 7 Haridas Bhandirge and P.W. 8 Parubai Bhandirge. According to the prosecution, P.W. 7 and P.W. 8 are star witnesses. They have specifically deposed before the court that on the day of incident i.e. 3/11/1988 all the accused had been to the agricultural land of Ramu.

4 The relevant witnesses examined by the prosecution are P.W. 3 Kisan Sarnobat, who happens to be the police patil of Bhushangad. He has deposed before the court that he resides in his agricultural land which is known as Sarbatacha Mala, which is 3 km. Away from village Shenavadi. He was acquainted with deceased Ramu Bhandirge who owned 50 to 60 acres of land known as Nhavyacha Mala. He has deposed before the Court that a tempo had come to his house at about 10 to 11 a.m. on 3/11/1988. There were 5 police men and one PSI who alighted from the tempo. 5 police persons were in civil dress and one police was in uniform. They had sought directions from him to reach village Shenavadi. P.W. 3 accompanied them in the said tempo and was seated in the front portion between the PSI and the tempo driver. He has identified the accused No. 1 as the PSI of Aundh Police Station. He has identified all the accused before the Court. P.W. 3 had shown them Nhavyacha Mala. They all alighted from the tempo. P.W. 3 returned to his house whereas the police

halted there. P.W. 3 has further deposed that the deceased Ramu was a healthy man. He was a wrestler.

5 In the cross-examination, the defence has questioned P.W. 3 about topography of the scene of offence, which does not deserve any discussion. It is elicited in the cross-examination that land of one Rasalbai is adjacent to the land of P.W. 3 and that he had not seen Rasalbai present in her land. The defence has also tried to elicit that P.W. 3 remained in his agricultural land throughout the day till evening.

6 P.W. 4 Dr. Sanjivan Ayachit has deposed before the Court that he is running hospital in the name and style as "Sanjivan Clinic" at Pusesavali. That on 3/11/1995 he was present in his clinic upto 1 p.m.. Thereafter, he had gone home. The distance between his house and clinic is hardly 1 km. At that time, one Jaysingh Dalvi went to his house and informed him that his relative from Shenewadi was

brought to the clinic and that he was in frightened condition. P.W. 4 went to the clinic at about 2.30 p.m. He saw one person sleeping on the floor and some other persons were sitting besides him. The compounder informed P.W.4 that person lying on the floor is the patient. Upon enquiry, the patient informed that he was suffering from pain all over his body as well as his chest. That he was restless and uneasy. Upon examination, P.W. 4 diagnosed that his pulse was feeble and his heart beat was slow. His hands and legs were cold due to fear. The patient did not disclose anything else. P.W. 4 diagnosed that he was in shock.

7 P.W.4 administered injection namely Dexona to release him from shock and injection analgin for relieving him from pains. He had also administered aspirin tablets. He had also prescribed tablets Proxyvon. The patient has disclosed his name as Rama Aba Bhandirge. P.W. 4 had advised him to get admitted in the hospital, but the patient disclosed that he was feeling better and therefore, he

would not get admitted in any hospital. His relative paid charges. He was advised to return on the next date.

8 On 5th November, 1988, the accused No. 7 had visited P.W. 4 and informed P.W. 4 that Rama Bhandirge has expired and that his dead body was taken to Shenewadi after post mortem. He also informed P.W. 4 that the cause of death was shown as heart attack and therefore, accused No. 7 had been to the clinic of P.W. 4 requesting him to produce the case papers. P.W. 4 had informed him that he does not maintain case papers. The accused No. 7 insisted upon P.W. 4 to prepare the case papers, and therefore, at his instance, the case papers were prepared. Accused No. 7 had insisted upon P.W. 4 to state that the deceased had sustained heart attack. However, P.W. 4 was not convinced. Since P.W. 4 was not convinced, he had stated heart attack and put a question mark before it. The case papers obtained by Pawar is at Exh. 47. The statement of P.W. 4 was not read over to him.

9 On 19/12/1988 Dy. S.P. Pardhe had once again recorded the statement of P.W.4 and that the statement was also not read over to him. On 23/8/1990 CID Officer Tagtode had recorded his statement. He had read out two earlier statements recorded by Pardhe and Pawar. P.W. 4 had realised that they were not in accordance with his narration. The statement of P.W. 4 was recorded on 9/11/1990 before JMFC, Vaduj and P.W. 4 claims to have narrated the facts to the learned Magistrate. He had also informed that he had not given any treatment of heart attack. According to P.W. 4, a patient suffering from heart attack cannot have the sensation of pains all over his body. P.W. 4 had diagnosed that it is not a case of heart attack. However, he had mentioned the same in the case papers only due to coercion of accused-Pawar.

10 P.W. 4 has further admitted in the cross-examination that on 3/11/1988 he had not maintained any sort of record in respect of the

said patient. He has further admitted that he did not find any marks of violence on the body. That he did not talk to anybody about the force and threat given by Pawar to him. It is further admitted that the effect of mild heart attack remains for 48 hours. That he learnt about the death of patient when Mr. Pawar had been to his clinic and had recorded his statement. It is categorically admitted that he could not recollect as to whether Mr. Pawar was accompanied by any other police persons. The narration was recorded by the writer constable. Accused No.7 Pawar was dictating his assistant and P.W. 4 was hearing the said discussion. **It is admitted that he did not find any incorrect narration in his statement.**

11 As far as the examination of the patient is concerned, P.W. 4 has further admitted that he did not check the blood pressure of the patient, because it was not necessary. He had consulted Dr. Katkar about the patient, who had also opined that it was a case of shock and not heart attack.

12 P.W. 5 Subhadra Rasal is declared hostile.

13 P.W. 6 Vishnu Jadhav was residing at Pusesavali. He was acquainted with the deceased Ramu Bhandirge. He has deposed before the Court that on 3/11/1988, he had been to Pusesavali at about 12 noon, as he had been to receive his daughter-in-law at the S.T. Stand. His daughter-in-law did not arrive by the scheduled bus. He saw Ramu Bhandirge and his younger son on the road. He also saw that Ramu Bhandirge was walking by leaning on the shoulder of his son. Upon enquiry Ramu Bhandirge had informed P.W. 6 that he was assaulted by the police of Aundh Police Station and therefore, he was unable to walk. P.W. 6 offered him tea. Thereafter, he had asked his son to take him to the hospital. He saw that two police persons had come on motor cycle, they were accused Nos. 4 and 5. They were from Pusesavali Police Outpost. They had enquired with P.W.6 who disclosed that Ramu had informed him that he was

assaulted by Aundh Police. He saw that Ramu was taken on bicycle by his son and one Dalvi and thereafter, he returned home. P.W. 6 has admitted in the cross-examination that he had not informed about the disclosure statement made by Ramu that he was assaulted by the police. It is pertinent to note that the said disclosure statement does not find place in his statement before the police and hence, the same amounts to a material omission. It can be inferred that there is a material omission as far as hearsay evidence is concerned.

14 P.W. 7 Haridas Bhandirge happens to be the son of the deceased and eye witness to the alleged incident. He has deposed before the Court that he was learning in 8th standard when the incident took place. On 3/11/1988 his school was having Diwali Holiday and therefore, he was at home. He has deposed before the Court that his father was wrestler and was coaching village boys in wrestling. He was also working as an assistant in a saloon. That he had a sound physical constitution.

15 As far as the incident is concerned, P.W. 7 has deposed before the Court that on 3/11/1988 he had gone to the agricultural land and after completing the assigned work, was sitting near the cattle shed. At about 10 a.m. he alongwith his father had taken the bullocks for drinking water and then took them to another land for teethering and his father was sitting under the pimparni tree. In the meanwhile, his mother also reached the land. She had brought mid-day meals for father and son, which she had kept in the shed. In the meanwhile, he saw green colour tempo approaching towards his land through Aund Road. The tempo stopped near the cattle shed. 5 persons in the civil dress alighted from the tempo out of which 3 persons went to the land, where there was standing chilly crop and two persons had been to the cattle shed. P.W. 7 Haridas was asked about the whereabouts of his father and he pointed out that he was taking rest under the pimparni tree. P.W. 7 called upon Ramu, as suggested by the said persons. One more person was seen seated in the tempo and he was

wearing khaki uniform. According to P.W. 7, the person sitting in the tempo was accused No. 1 Nalawade. He was identified on the basis of the name plate on his uniform. P.W. 7 and Ramu proceeded towards the cattle shed. All the persons assembled there.

16 He has deposed before the Court that two out of five persons had caught hold of Ramu by his arms and the three others had mounted assault upon him with fists blows and kicks. He was assaulted on ribs, back and abdomen. All the said persons were insisting upon Ramu to show Ganja concealed by him. Ramu insisted that he was not in possession of the contraband in any form and that they should not assault him unnecessarily. It is further deposed that the mother of P.W.7 also requested them not to assault Ramu. At that stage, accused No. 1 Nalawade had threatened the wife of Ramu that he would not leave Ramu unless the contraband is recovered. Accused Nos. 3, 5 and 6, after allegedly taking search of the cattle shed, had come out of the cattle shed with two paper packets, found

to be containing some dried leaves. The said persons wanted to recover rest of the contraband.

17 P.W.7 has further attributed overt act to each of the accused and has demonstrated that the deceased was given fists blows on chest, stomach and on private part. After assaulting, Ramu was forcibly made to sit in the tempo and when he was entering the tempo, he was pushed by accused No. 6. P.W. 7 has further alleged that he was also lifted and kept in the tempo alongwith his father.

18 When the tempo had reached Bhushandgad, it was noticed that Ramu was groaning due to unbearable pains. The accused No. 2 had pushed Ramu by means of stick and had asked him to seat properly and not pretend that he was suffering from pain. When the tempo reach near village Palashi, Ramu informed the said persons that he wanted to answer nature's call. After they had crossed village Palashi, Ramu had vomited blood twice or thrice. The tempo was stopped

near Palashi school. The accused had taken the deceased under a tree and he was made to lie. At that stage, accused No. 1 Nalawade had informed Ramu that he was withdrawing the case against him and that he was at liberty to go towards his village. Thereafter, original accused Nos. 2, 4 and 5 had walked towards village Palshi, whereas the accused Nos. 1 and 3 and others had proceeded towards Aundh.

19 That upon enquiry by Waman Ramoshi, Ramu had narrated entire episode to him. Waman paid Rs. 9 to Ramu and asked him to go to village Pusesavali. They had stopped a tempo to take them to village Pusesavali. Ramu and P.W. 7 entered into the tempo. On the way, Ramu had expressed that he was not in a position to walk and therefore, had insisted upon P.W. 7 to call for his relatives. A relative had come to the spot. Accused Nos. 4 and 5 had enquired about the disclosure made by Ramu to him. Thereafter, Ramu was taken to the hospital of P.W.4. After taking some preliminary treatment at the clinic of P.W. 4, Ramu expressed his desire to visit the house of his

sister. He had been to the house of his sister alongwith Bhau Gurav, whereas P.W. 7 alongwith Rahunath Salunkhe had proceeded to village Shenevadi. On the way, they were informed by Bhau Gurav that he had reached to the house of sister, as he could not sit properly on the bicycle.

20 P.W. 7 had further disclosed that he had also been to the house of his paternal aunt to see his father. At that time, his father had told him that he would reach village Shenevadi after two days.

21 On the very next date, at 7 a.m. mother of P.W. 7 had been to village Vadgaon to see her husband. However, at about 9 or 9.30 a.m. the dead body of deceased Ramu was brought in a bullock-cart. Thereafter, the villagers had attempted to raise their voice before the Office of DSP as well as the local MLA. P.W. 7 had been to the police station to lodge a report. However, the said report was not accepted. The witness P.W. 7 had then left no stone unturned to prosecute the

persons who had assaulted his father. He had also filed Writ Petition in the High Court for proper investigation of the matter.

22 It is elicited in the cross-examination that P.W. 7 had narrated the incident for the first time to Waman Ramoshi of village Palashi. He had then informed Raghunath Salunkhe and then his mother. However, they had not informed about the incident to anybody in the village. He was not advised to go to the police patil.

23 It is categorically admitted by P.W.7 that Raghunath Salunkhe, Bhau and he himself had not informed the doctor that Ramu was assaulted by police and that he had vomited. That deceased Ramu had informed the doctor that he had pains all over the body due to assault by Aundh Police. He had also not told P.W. 4 that prior to visiting hospital Ramu had vomited blood. He has feigned ignorance about the kind of plants, which was uprooted from his land.

According him, he and his parents were doing the operations in the chilli crop.

24 It is also elicited in the cross-examination that on 3/11/1988 P.W. 7 was at home, when the tempo had come in the land and Ramu was under pimparni tree. Ramu had not introduced accused No. 1 Nalawade as PSI of Aundh Police Station. P.W. 7 was confronted with portion marked "A" in his statement dated 15/8/1990 and according to him, it is an incorrect statement. He has also admitted that he had not obstructed the accused persons, when they were assaulting Ramu. He has denied the contention in his previous statement that Nalawade had only enquired with Ramu and not assaulted him.

25 There are several inherent material omissions elicited in the cross-examination, which go to the root of the matter. The omission is in respect of the overt act attributed to each of the accused. It is

also specifically admitted that he was not lifted and kept in the tempo or was not pushed into tempo, but he had suo moto sat in the tempo. He has also denied to have disclosed anything to Vishnumaster. It is also denied that P.W. 7 and deceased had pointed out accused Nos. 4 and 5 to Vishnumaster.

26 According to P.W. 7, he had disclosed to the police that even before arrival of the dead body he had told the police patil that his father had been assaulted by police of Aundh. However, police patil had not reduced the information into writing. After arrival of the dead body, he had not disclosed anything to police patil or anybody else. It is also admitted that nobody had touched the dead body till arrival of the police. The marks of violence were not shown to the villagers nor the sarpanch or police patil had seen the marks of violence.

27 It is admitted in the cross-examination that accused No. 7 Pawar had prepared spot panchanama as per the spot shown by P.W.7. It is pertinent to note that it is admitted by P.W. 7 that Pralhad Suryavanshi and Mahadeo Suryavanshi, who are brothers inter se are the relatives of his father. Pralhad Suryavanshi is PSI, whereas Mahadev is working in Sales Tax office in Bombay. For one month P.W. 7 resided with Mahadev Suryavanshi at Bandra. After 15 days, he had learnt that no criminal case was filed against the accused and therefore, in 1989 he had filed Writ Petition against the accused No. 1 and Government of Maharashtra. His elder step-brother had helped him to prosecute the Writ Petition.

28 It is admitted that at the time of funeral, only accused No. 7 Pawar and the police patil were near the dead body. Accused No. 7 Pawar had prepared the spot panchanama himself. The villagers had not insisted that the dead body should be sent to Vaduj or Aundh. It is admitted that his statement was recorded in presence of villagers.

On 8/11/1988 he had narrated the incident to his relatives from Bombay. On 9/11/1988 he had been to Satara along with Pralhad and met Dy. S.P. Subramanyam. Another officer was deputed for recording his statement. When his statement was being recorded, there were instructions that the recording should be stopped and hence, the statement remained incomplete. This Court cannot be oblivious of the fact that P.W. 7 happens to be eye witness and material omissions and contradictions would go to the root of the matter.

29 P.W. 8 Parubai Bhandirge happens to be the wife of deceased Ramu. As far as the prelude to the incident is concerned, she has concurred with the allegations made by P.W.7. According to her, all the accused were in civil clothes. The person in the uniform was one officer and others were his subordinates and because they were searching for contraband, she realised that they were police. She also

identified them as police, since they demanded Rs. 2,000/- and one surety from her. The accused are identified in the court.

30 According to her, the father and son had not returned and therefore, she had asked Raghunath and Bhau Gurav to enquire about them. On the same day at about 6.30 p.m. Haridas had returned home and narrated the whole incident to her. On the next day in the morning, she had proceeded to village Vadgaon i.e. the house of sister of deceased Ramu, where he had stayed in the intervening night. According to her, she tried to wake him up and found that he was dead. The police had reached their village at about 5 p.m. and had asked the police patil to give a report. The police patil was of the opinion that a written report be taken from P.W. 7 and P.W.8, whereas the police were of the opinion that no such report from the relatives was necessary and therefore, asked the police patil to give report.

31 Her statement was recorded on 7th day of the incident by accused No. 7 Pawar. The said statement was not read over to her. Her second statement was recorded after 15 days and her third statement was recorded after two years. She has alleged that accused No. 7 or Pardhe did not file any case against the accused and therefore, Haridas had filed Writ Petition in the High Court.

32 P.W.8 was acquainted with her previous statement and she has denied to have stated portion marked "A". She has also admitted that she had not shown the clothes of the deceased either to the police patil or the villagers. There are several inherent omissions and contradictions in the substantive evidence of P.W.8.

33 P.W.9 Chandrabhaga Waske happens to be the maternal cousin of deceased Ramu. She was staying at village Vadgaon. According to her, on 3/11/1988 at about 4.30 p.m. Ramu was brought to her house by Gurav. When he reached her house, he was suffering from

pains all over the body and asked her to allow him to lie on the ground. That his son Haridas had given him four tablets and then left her house. According to her, she had asked doctor about the illness of her brother and that it was disclosed to her that he had been assaulted by the police. She had realised in the intervening night that Ramu was suffering from pains and had disturbed sleep. At about 6 a.m. she did not hear anything from Ramu. However, his wife had come home at about 7 a.m. or 7.30 a.m. The wife of Ramu had been to the house of P.W.9 and they found that he was dead. On the next day, the police had recorded her statement, but the said statement was not read over to her. It is categorically admitted in the cross-examination that on the next day, in the morning when Parubai had come to her house, she had not disclosed to her about the incident which had taken place in her agricultural land. It is also admitted that while in her house, Ramu had not taken any food.

34 P.W. 10 Raghunath Salunkhe is the resident of Shenevadi. According to him, on 3/11/1988 at about 11 to 11.30 a.m. when he was proceeding towards the agricultural land, Parubai had approached him and had informed him that police had assaulted Ramu and her son Haridas and that they were taken away in tempo. It is further deposed that the witness had been to Sanjivani clinic to see Ramu. He had seen that Ramu was lying on the floor and Haridas was sitting on the bench. That two policemen had come when he was in the clinic and had forcibly obtained thumb mark of Ramu and signatures the witnesses and the said two police persons have been identified as the original accused no. 4 and 5. The portion marked "A", "B" and "C" are shown as material contradictions. He has also admitted that in the intervening night, he had not apprised the police of the incident as narrated to him by Ramu.

35 P.W. 11 Waman Kukale has been declared as hostile by the prosecution.

36 P.W.12 Vijaya Vadake was working as stenographer in the office of D.S.P. Satara. According to her, on 4/11/1988 the police officer had come to the office of D.S.P. She had received the message that on that day, PSI and police of Aundh Police Station had been to conduct a raid of ganja from the field of Ramu. That at about 11.30 to 12 p.m. one Kashinath Mali from Mayan had been to the office. She had received the telephonic message that PSI and police of Aundh Police Station had been for conducting search. That they had been to the field of Ramu. Instead they had taken Ramu and had forced him to accompany them.

37 P.W. 13 Prabhakar Tayade is D.S.P. at Satara. According to P.W.13, Ramu was left on the way for taking treatment from Dr. Ayachit. Accordingly, message was received by him. He had not communicated the message to anybody, much less to his superiors.

38 P.W. 14 Karl D'Souza was Superintendent, C.I.D. Crime, Pune. According to P.W.14, he had studied the case papers. However, he could not recollect when he had received investigation in the present case. The panchanamas and statements recorded by original accused No. 7 were verified and included in the paper of investigation.

39 P.W. 15 Kashinath Mali was PA to MLA Shri Gudage. According to him, he was informed that the dead body of Ramu was being brought in front of grampanchayat. He was also informed that the police had left Ramu at Palshi as he had vomited blood and then he went to hospital and subsequently, died. He was requested to make a phone to the Superintendent of Police that Aundh Police shall not register offence. The police was deputed to the spot. He has admitted that he had not produced diary before the police and there was no mention in Exh. 72 about the raid of ganja effected by the police in the land of deceased Ramu.

40 P.W. 16 Ramchandra Dhondiram Ghodke was also acquainted with Ramu. He had learnt from Bhimrao Ghodke that Ramu was taken by police in connection with the raid of contraband Ganja. According to him, when he saw the dead body, there were marks of violence all over his body. There was swelling to the testicles. There were marks of violence on the dead body. It is admitted that the marks of violence as well as swelling of testicles do not find place in the inquest panchanama. He has further deposed that the panchanama at Exh. 75 i.e. inquest panchanama was prepared by accused No. 7 Pawar. It was only when Mr. Pardhe had been to record his statement, he had realised that marks of violence and swelling on testicles is not mentioned on the panchanama. He also happens to be wrestler and chairman of Society. His attention has been drawn to the several omissions and contradictions in his first and second statements. He has feigned ignorance about the said portion not being reduced in writing.

41 P.W. 17 Ramchandra Kokate is police patil. He was informed by the wife of the deceased. The villagers had attempted to restrain him from informing about the incident to the police. The police vehicle had arrived in the village at about 4 to 5 p.m.. It is admitted that he had not prepared the occurrence report. There are material omissions and contradictions in his evidence. Exh. 78 is the report given by P.W. 17 to PSI informing him about the death of Ramu. He had admitted tht he had prepared the said report at the instance of accused no. 7 Pawar.

42 P.W. 18 Chandrakant Sangale was attached to Aundh Police Station as PSI at the relevant time. He had registered A.D. No. 20/1988 in respect of accidental death of Ramu. Pursuant to the directions given by the Hon'ble High Court in Writ Petition No. 940 of 1989, he had registered Crime No. 44 of 1990 on the basis of phone message against the accused for the offence punishable under Section 302, 143, 147, 149 and 323 of the India Penal Code. He had

registered an offence against original accused Nos. 1 to 6. On 8/8/1989 he had produced station diary of Aundh Police Station from 21/10/1988 to 17/12/1988. The said station diary is at Article No. 301. In the telephonic message, there is mention of PSI and the staff of Aundh Police Station, but there is no name of persons in the telephonic message. He had mentioned the names of the accused Nos. 1 to 6 in Exh. 81 because they were the PSI and staff at Aundh Police Station at the relevant date and time and on the basis of the application of relative on the same day. He could not state the strength of the Aundh Police Station. Exh. 81 is the report by the PSI about the orders passed in the Writ Petition.

43 P.W.19 is Dr. Suresh Kulkarni, who had performed autopsy on the dead body of Ramu. He has deposed before the Court that there were no external injuries on the dead body. Upon internal examination, it was revealed that right and left lungs were congested and there was a huge thrombus in the strium, infarction of the left

ventricle present. The stomach contained brownish undigested material. Early sign of gangrene of intestine present. Early sign of decomposition present. There were greenish patches of discolouration over chest, neck and abdomen. Abdomen was distended. Penis scrotum was swollen.

44 According to the P.W. 19, probable cause of death was myocardial infarction. P.M. notes are at Exh. 88. Before issuing the post mortem report, he has issued the death certificate indicating that opinion in regard of cause of death was reserved. Visera was sent for analysis on 6/11/1988. No histopathological test was conducted.

45 It is admitted that the location and size of infarction was not mentioned in the post mortem nor the colour changes of heart muscles were noted in the post mortem notes. He has also agreed to the suggestion that person may die due to fright without there being any external injuries. It is agreed that if a heart patient is assaulted

by 5 to 6 persons by means of fists and kick blows, it may result into instantaneous death. It is clarified that infarction means insufficient supply of blood to heart and would also mean death of cardiac muscle and obstructions of arteries would lead to infarction. He has further stated that the clot, which he found in column 20 of post mortem report was in the upper right side chamber in heart and the infarction was in the lower left chamber. He has expressed his inability to arrive at a conclusion as to whether the infarction was old or recent.

46 According to P.W. 19, gangrene must have been developed more than 4 to 5 hours after stoppage of blood. That the gangrene must have been received by the deceased when he was alive. It is also admitted that in case of death due to heart attack, there cannot be symptoms like gangrene. According to this witness, swelling of the penis and scrotum was not mentioned in the inquest panchanama although they are visible by naked eye. It is further admitted that

since it was a suspected case of cardiac attack, he had not carried out microscopic examination of heart or the artery etc. It is pertinent to note that the witness has specifically stated that while conducting the post mortem, he did not find any internal damages due to external assault and hence, did not mention the same in the post mortem report. During the post mortem, it was revealed that **the deceased was a chronic heart patient and that he died of heart attack.** It is also admitted that -

“The gangrene to the intestine of the deceased was not due to external blow. The said gangrene was not the cause of death. The gangrene is possible if there is embolic in the blood vessel. Blood embolic is the sign of heart attack.”

It is also admitted as follows :

“The patches mentioned in Col. No. 12 in P.M. report can occur if the patient was heated by means of brick. Such patches are possible even by means of self massage or if massage is given by the doctor. The patches mentioned in col. 12 of the report were not the cause of death.... The heart of the deceased was

enlarged. Enlarged size of heart is sign of heart disease. ...The death of the deceased was natural due to heart attack.

47 The last relevant witness would be the Investigating Officer P.W. 21 Shivdas Bajarang Tagtode. On 4/8/1990 he was entrusted with the investigation of Crime No. 44 of 1990 registered at Aundh Police Station. He had taken stock of the documents, panchanamas, which were prepared at the initial stage of investigation. He had received the statement recorded by accused No. 7 and the Dy. S.P. Pardhe on 8/8/1990. He had actually not visited the scene of offence as the scene of offence panchanama was prepared by accused No. 7. It is admitted that he had not personally read the Judgment of the High Court but it was explained to him by somebody. He had recorded the statement of Mahadeo Suryvanshi on the first day of commencement of investigation. He had received instructions from the senior officers that the charge-sheet should be submitted under Section 304 of the Indian Penal Code and therefore, he had sought permission to charge-sheet the accused under Section 304 of the

Indian Penal Code. He has proved the omissions and contradictions in the evidence of the prosecution witnesses.

48 Perused the evidence on record. Upon appreciating evidence adduced by the prosecution, prima facie, the prosecution had attempted to make out a case of direct evidence. As far as the direct evidence is concerned, P.W. 7 Haridas happens to be the son of the deceased who had noticed the accused persons assaulting his father. He had accompanied his father. He has deposed before the Court that on the way also his father was assaulted in the tempo and that he had vomited blood. That he and his father were made to alight from the tempo on the midway. He with the help of son of Jyoti had taken his father to the clinic of Dr. Ayachit. He had not disclosed to the doctor that his father had been assaulted by the police. There is no cogent and convincing evidence, even to remotely indicate that the deceased had disclosed to P.W. 4 Dr. Ayachit that he was suffering from bodily pain due to the brutal assault by the police of Aundh Police Station.

All that was informed to Dr. Ayachit was that the patient was suffering from bodily pains. Dr. Ayachit had not noticed any mark of violence on the body of Ramu. There were no blunt traumatic injuries sustained by him. It is pertinent to note that Dr. Ayachit was not even informed that Ramu had vomited blood. The doctor had given him preliminary treatment. Thereafter, Ramu had walked quite distance with the help of his son. He had then proceeded on cycle to the house of his sister Chandrabhaga at village Vadgaon. There is no disclosure to Chandrabhaga that he was assaulted by the police. He survived throughout the night and died at about 6.30 a.m.

49 P.W. 7 Haridas has categorically admitted that he had disclosed to the police patil about the assault by the police prior to arrival of the dead body in the village. But thereafter, mother and son i.e. P.W. 8 and P.W. 7 had maintained silence for quite some time. In the mean while, A.D. No. 20/1988 was registered. The investigation was set in motion.

50 Taking the case of the prosecution till this stage, it may appear that this was a rare case of direct evidence. A.D. enquiry was conducted by accused No. 7 Pawar(since deceased). Much damage was done to the case at the hands of PSI Pawar. Dr. Ayachit specifically stated that Mr. Pawar had coerced him to prepare the medical record of Ramu. It was only after the directions were given by the Hon'ble High Court in Writ Petition No. 940 of 1989 that the offence was registered against the accused. It appears that in the course of investigation, since post mortem notes did not reveal any external injuries, charge-sheet was filed under Section 304 of the Indian Penal Code. The charges were framed under Section 302 of the Indian Penal Code.

51 It is the case of P.W. 7 and P.W. 8 that all the persons had come to their agricultural land in civil dress. None of them had disclosed their names. There were no name plates on their clothes

and therefore, there was no occasion for 12 years old boy to know the names of the accused persons, who were police persons. It is neither the case of the prosecution that the accused had come to the agricultural land in police jeep but had been in green colour tempo. That P.W.7 and P.W.8 had not even disclosed to the police patil or to anybody else that the father and son had been taken by the police. P.W. 7 Haridas has categorically stated that he had voluntarily accompanied his father. In the eventuality that the police were taking coercive action against Ramu, they would not have been careless to keep eye-witness ready and that too, the son of the deceased Ramu.

52 That Section 304 II of the Indian Penal Code has to be an inference which is to be drawn by the Court after recording of evidence. In the present case, the charge was framed against the accused under Section 304II read with Section 149 of the Indian Penal Code on 21/4/1992 and on 10/2/1995 the charge was framed

against the accused under Section 302 read with Section 149 of the Indian Penal Code.

53 Section 304 II of the Indian Penal Code read as under :

304. Punishment for culpable homicide not amounting to murder-Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

54 At the stage of framing of charge, there was no cogent and convincing material to hold that the deceased was assaulted by the accused with the knowledge that the assault would result into death.

The post-mortem notes did not indicate the cause of death. The dead body was received for the purpose of performing autopsy on 4/11/1988 at 11 p.m. and post mortem was conducted on 5/11/1988 and therefore, post mortem lividity as well as rigor mortis was well marked. Column No. 20 had shown infarction of ventricular. Column No. 21 had shown earlier signs of gangrene in the intestine. Dr. S.V. Kulkarni has opined that development of gangrene had commenced in the life time of the deceased and it cannot be caused due to external assault. There is positive opinion that the cause of death is **cardiac assault**. In these circumstances, there was no occasion to frame charge under Section 304 II of the Indian Penal Code.

55 It is true that in case of direct evidence, the evidential value of an ocular evidence would prevail over medical evidence. In the present case, in the absence of any remote evidence that the cause of death could be attributed to the present appellants, direct evidence/

ocular evidence cannot be relied upon, more particularly, since there are inherent omissions and contradictions. An offence was registered practically after two years of the alleged incident i.e. in 1990. The presence of gangrene would make the prosecution case doubtful that the deceased Ramu died due to the assault by the appellant. It is in these circumstances, that the accused deserve to be acquitted of the charge levelled against them.

56 As far as Criminal Appeal No. 252 of 1995 is concerned, the accused has expired and the appeal would stand abated. As far as accused No. 7 is concerned, there is ample evidence to indicate that he had caused disappearance of evidence or had attempted to tamper with the facts of the case and therefore, even on merits the appellant had no case. In any case, since the appeal stands abated and the legal heirs have not filed any application to prosecute the appeal, the appeal would stand disposed of as abated.

57 In view of the observations made hereinabove, since this Court is of the opinion that the accused deserves to be acquitted, the appeals filed by the prosecution are disposed of. Since the evidence of P.W. 7 and P.W.8 did not inspire the confidence of the Court, it cannot be said that this is a case of direct evidence. There is no evidence on record to even indicate that P.W. 7, whose uncle was PSI had made any efforts to disclose that Ramu was assaulted at the hands of the police. Initiation of prosecution would be a different aspect all together. The conduct of the witnesses would also assume importance. The concession could be given to P.W. 7, who was minor of just 13 years, but no efforts were made by P.W. 8 also to disclose it to the relatives that the police had coerced Ramu to accompany them. It is further pertinent to note that it is not the case of the prosecution that deceased Ramu had disclosed to his sister that he was suffering from pains due to assault by the police. The witnesses who had met the father and son on the way and who had in all probabilities been informed about the incident had also not taken any

steps. Their statements were recorded after two years. The delay in recording of statement of the witnesses which can throw light upon the prosecution case, would be fatal to the prosecution case. Hence, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

58 Hence, following order is passed :

ORDER

(1) Criminal Appeal No. 252 of 1995 is allowed. The judgment and order dated 12th June, 1995 recorded by III Addl. Sessions Judge, Satara, in Sessions Case No.69 of 1991 convicting the appellants for the offences punishable under Sections 304 Part II read with Sections 143,147 read with Section 149, 330 read with Sections 149, 348 read with Section 149 of Indian Penal Code and under Section 66(b) read with Section 145(2) of the Bombay Police Act, under Section 235 of Cr.P.C. is hereby quashed and set aside.

(2) The appellants are acquitted of all the charges levelled against them.

(3) Their bail bonds stand cancelled.

(4) Fine, if paid, be refunded to the appellants.

(5) Criminal Appeal No. 270 of 1995 filed by original accused No. 7 – Tukaram Annaji Pawar stands abated.

(6) In view of the fact that Criminal Appeal No.252 of 1995 is allowed, Criminal Appeal Nos. 442 of 1995 and 443 of 1995 filed by the State against acquittal and for enhancement of sentence respectively are hereby dismissed.

59 All the Appeals stand disposed of.

(SMT. SADHANA S. JADHAV,J)