IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 932 OF 2005

1) Sahebgonda Laxman Birajdar
Age 45 yrs, occ-Agriculturist
R/o. Jalgiri, Taluka Bijapur,
Dist. Bijapur.

2) Rudrappa Gurunath Birajdar
Age 40 yrs, occ-Agriculturist

3) Irrappa Gurunath Birajdar
Age 40 yrs, occ-Agriculturist

4) Laxmibai Rudrappa Birajdar
Age 23 yrs, occ-Household

5) Gurawwa Gurunath Birajdar
Age 50 yrs, occ-Household
Nos. 2 to 5 are residing at
Asangi Turk, Taluka Jath,
District-Sangli.

...Appellants

6) Raju Sahebgonda Birajdar
Age Major years, Occ-Agriculturist.

(Orig. accused Nos.7, 9, 10, 11, 12 and 20)

Versus

The State of Maharashtra ...Respondent

WITH
Cr. Appeal NO. 613 OF 2005

Basappa Jaygonda Basargi ...Appellant
(Org. accused no.6)

Versus

The State Of Maharashtra ...Respondent

WITH

Cr. Appeal NO. 675 OF 2005

1) Sou Kashibai Ashok Basargi,
Age-32, Occ.: Household,

2) Sou. Mahananda Shrikant Basargi,
Occ.: Household

3) Bhourawwa Rudrappa Basargi
age-50, Occ.: Household.

4) Bhimu Rudrappa Basargi,
age-34, occ-Tailor
r/o. Aasangi Turk, Taluka-Jath,
District-Sangli.

5) Tejappa Shivappa Basargi ...Appellants (Org.
Age-48, Occ.: Agriculture, accused nos.28, 13,
r/o. Sankh, Taluka-Jath, 34, 37, 36)
District-Sangli.

Versus

The State Of Maharashtra ...Respondent

WITH

Cr. Appeal NO. 677 OF 2005

Shrikant Paragonda Basargi
Age-28 yrs. Occ.: Agriculture
R/o. Asangi Turk, ...Appellant
Taluka -Jath, District-Sangli. (Org. accused
no.41)

Versus

The State of Maharashtra ...Respondent

WITH

Cr. Appeal NO. 678 OF 2005

1. Chidanand Shivappa Basargi
Age 30 yrs, Occ: Agriculture

2. Shrishailya Basappa Basargi
Age 39 yrs. Occ. Service

3. Laxman Rudrappa Basargi
Age 28 yrs Occ: Service

4. Irappa Pargonda Basargi ...Appellant
Age: 38 years, Occ: Agriculture (Org. accused Nos.1
Accused Nos. 1 to 4 r/o. Asangi Turk, to 4)
Taluka Jath, District -Sangli.

Versus

The State of Maharashtra ...Respondent

WITH

Cr. Appeal NO. 701 OF 2005

1) Vitthal Mallappa Birajdar,
(the appeal abates against this
appellant vide order dt.28/4/2016)

2) Gurappa Mallappa Birajdar
age 31 yrs, Occ.: Agriculture

3) Tukaram Mallappa Birajdar,
age 36 yrs, Occ.: Agriculture

4) Sou. Bhourawwa Gurappa Birajdar
age 26 yrs, Occ.: Household

5) Annusaya Vithal Birajdar
Age 36 years, Occ.: Household

6) Smt. Gangawwa Shivappa Basargi,
Age: 65 yrs, Occ.: Household

7) Sou. Shantawwa Irappa Basargi
Age: 28 yrs, Occ.: Household
Nos.2 to 5 r/o. Sankh, Tal.Jath,
District-Sangli.
Nos.6 & 7 R/o. Asangi-Turk,
Tal.Jath, District-Sangli
(all a/p District Prison, Sangli.) ...Appellants (Orig. accused No.16, 17, 18, 24, 25, 29 and 14)

Versus

The State of Maharashtra ...Respondent

WITH
Cr. Appeal NO. 906 OF 2005

Siddha Dharma Patil
Age 30 yrs, Occ.: Agriculture,
R/o. Jalgiri, Tal: Bijapur,
(at present lodged in Kolhapur Central Prison, Kolhapur) ...Appellant (orig. Accused No.23)

Versus

The State of Maharashtra ...Respondent

WITH
Cr. Appeal NO. 945 OF 2005

The State of Maharashtra ...Appellant

versus

1) Chidanand Shivappa Basargi

Age 30, Occ Agriculture

2) Shrishelya Basappa Basari
Age-39, Occ.: Service

3) Laxman Rudrappa Basargi
Age-28, Occ-Service

4) Irappa Pargounda Basargi
Age-Major, Occ:- Agriculture

5) Basappa Jagonda Basargi
Age-27, Occ:- Agriculture

R Nos.1 to 5 r/a village Asangi Turk,
Taluka-Jath, District-Sangli.

6) Sahebgonda Laxman Birajdar
Age-45, Occ:-Agriculture
R/a Jalgiri, Taluka Bijapur.

7) Rudrappa Gurunath Birajdar
Age-40, Occ:- Agriculture

8) Irappa Gurunath Birajdar
Age-40, Occ.: Agriculture

9) Laxmibai Rudrappa Birajdar,
Age-40, Occ.: Household

10) Sou. Gurawwa Gurunath Birajdar
Age-50, Occ.: Household,

11) Sou. Shantawwa Irappa Basargi,
Age-27, Occ: Household,

Respondent Nos.6 to 11

R/a. Village Asangi Turk,
Tal.: Jath, Dist. Sangli.

12) Vitthal Mallappa Birajdar,
Age-40, Occ: Agriculture

13) Gurappa Mallappa Birajdar,
Age-30, Occ.: Agriculture

14) Tukaram Mallappa Birajdar
Resp.Nos.12 to 14 r/a. Sankh,
Taluka Jath, District-Sangli.

15) Raju Sahebgonda Birajdar
Age- 21, Occ.: Agriculture
R/a village Asangi Turk,
Tal-Jath, Dist. Sangli

16) Siddhu Dharma Patil,
Age-30, Occ.: Agriculture
R/a. Jalgiri, Tal-Bijapur.

17) Bhourawwa Gurappa Birajdar
Age 25, Occ: Household.

18) Anusaya Vitthal Birajdar
Age-35, Occ: Household

19) Gangawwa Shivappa Basargi
Age-50, Occ.: Agriculture,

Resp. Nos.17 to 19 R/a. Sankh,
Taluka-Jath, District-Sangli.

20. Shantawwa Basgonda Birajdar
Age-50, Occ.: Household

21. Bhourawwa Rudrappa Basargi,
Age-50, Occ.: Household,

Respondent Nos.20 and 21
Both R/a. Village Asangi Turk
Tal.: Jath, Dist.: Sangli.

22. Tejappa Shivappa Basargi,
Age-48, Occ.: Agriculture,
R/a. Sankh, Taluka-Jath,
Dist. Sangli

23. Bhimu Rudrappa Basargi,
Age- 34, Occ.: Tailor,

...Respondents

24. Shrikant Paragonda Basargi,
Age-28 years, Occ.: Agriculture,

Respondent Nos.23 and 24
Both R/a. Village Asangi Turk,
Tal.: Jath, District-Sangli.

(Orig. Accused Nos.1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 20, 23, 24, 25, 29, 31, 34, 36, 37 and 41)

Dr. Yug Mohit Chaudhry with Ms Parijat Bhardwaj for accused Nos.3, 9 , 11, 12, 34 and 37
Mr. Amit Sale for orig. accused No.1, 4, 14, 16, 17, 18, 24, 25, 29 and 36
Mr. Shekhar Ingawale for orig. accused Nos.7 and 20, 23.
Mr. Niteen Pradhan i/b. Ms S.D. Khot and Ms Ameeta Kuttikrishnan for orig. accused Nos.2, 6,13, 28, and 41.
Mr. S.K. Shinde PP with Mr. H.J. Dedia, A.P.P. for State.

CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.

JUDGMENT RESERVED ON: 5th May, 2016
JUDGMENT PRONOUNCED ON: 7th October, 2016

JUDGMENT [PER SMT. ANUJA PRABHUDESSAI, J.]:

1. All the aforesaid appeals, except criminal appeal No.945 of 2005, are filed by the accused challenging judgment dated 9th May, 2005 in Criminal Case Nos.107 of 2004 and 176 of 2004 whereby the learned 4th Additional Sessions Judge, Sangli, convicted for offences under Section 302, 536, 436, 342, 143, 147, 148, 149 and 120 B of the IPC and sentenced the abovementioned accused as under:-

2. The accused Nos.1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 23, 24, 25, 28, 29, 34, 36, 37 and 41 are convicted for the offences punishable under sections 143, 147, 506 r/w. 149, 342 r/w. 149, 436 r/w. 149, 302 r/w. 149 and 427 r/w. 149 of the IPC and sentenced as under :-

(i) Rigorous imprisonment for a term of three months for the offence punishable under section 143 of the IPC.

(ii) rigorous imprisonment for a term of six months for the offence punishable under section 147 of the IPC.

(iii) rigorous imprisonment for a term of six months for the offence punishable under section 506 r/w. 149 of the IPC.

(iv) rigorous imprisonment for three months for the offence punishable under section 342 r/w. 149 of the IPC.

(v) rigorous imprisonment for a term of five years and to pay fine of Rs.500/- i/d. to suffer RI for one month for the offence punishable under section 436/149 of the IPC.

(vi) rigorous imprisonment for life, and to pay fine of Rs.1000 i/d. to suffer rigorous imprisonment for two months for the offence punishable under section 302 /149 of the IPC.

(vii) rigorous imprisonment for a term of six months for the offence punishable under section 427/149 of the IPC.

3. Aggrieved by the conviction and sentence accused Nos.7, 9, 10, 11, 12 and 20 filed appeal No.932 of 2005. Accused No.6 filed appeal No.613 of 2005. Accused Nos.28, 13, 34, 37 and 36 filed appeal No.675 of 2005. Accused No.41 filed appeal No.677 of

2005. Accused Nos.1, 2, 3 and 4 field appeal No.678 of 2005. Accused Nos. 16, 17, 18, 24, 25, 29 and 14 filed appeal No.701 of 2005. Accused No.23 filed appeal No.906 of 2005 before this Court.

4. The State has filed criminal appeal no.945 of 2005 seeking enhancement of sentence imposed against the accused.

5. The brief facts leading to these appeals are as under:

6. On the intervening night of 21st and 22nd March, 2004, Shri Shivpure, Station Officer of Umadi Police Station informed PW23 Dr. Digambar Pradhan, Deputy Supt. of Police Tasgaon Division, Sangli District that he had received a telephonic message that members of Basargi and Birajdar family had killed Mahadeo Chavan and his family members. PW23 conveyed the information to the other police officers. PW23 Dr.Pradhan proceeded to the spot of the incident along with the police staff. He engaged services of fire fighters to extinguish the fire. In the meantime the other police personnel arrived at the scene of offence. Some of the police personnel took PW3 Irappa to Umadi Police Station. PW19

Ramchandra Devane, PI of Umadi Police Station recorded the FIR (Exh.164) lodged by PW13 Irappa Kamble.

7. The complainant PW3-Irappa Krishna Kamble had alleged that on 21.3.2004 at about 4.00 p.m. while he was at his residence at Asangi Turk, he saw accused No.1-Chidanand Shivappa Basargi, accused No.2-Shrishailya Basappa Basargi, accused No.3-Laxman Rudrappa Basargi, accused No.4 Iranna / Irappa Paragonda Basargi, accused No.5-Appanna Shivappa Basargi, accused No.6-Basappa Jaygonda Basargi, accused No.7-Sahebgonda Laxman Birajdar, accused No.8-Gurunath Annappa Birajdar, accused No.9-Rudrappa Annappa Birajdar, accused No.10-Irappa Gurappa Birajdar, accused No.11-Laxmibai Rudrappa Birajdar, accused No.12-Gurawwa Gurunath Birajdar, accused No.13- Mahananda Shrikant Basargi, accused No.14- Shantawwa Irappa Basargi, accused No.15 Babasaheb Dhondiba Devkate, accused no.38-Suvarna Irappa Birajdar, accused no.41-Shrikant Paragonda Basargi and 20 to 25 other persons proceeding towards the house of Mahadev Chavan. He further stated that on reaching the house

of Mahadeo, the aforesaid accused assaulted Mahadev Chavan, his wife Fulabai, son-Appasaheb Chavan, daughter-Bharta Sawant and granddaughter Pranjali Sawant, who were outside the house. The accused thereafter dragged them inside the house, closed the door from outside and put bundles of hay around and above the house and set the house ablaze. As a result, Mahadev Chavan, his wife Fulabai, son-Appasaheb Chavan, married daughter-Bharta Sawant and granddaughter Pranjali Sawant were burnt alive.

8. Pursuant to the said FIR PW19- Popatrao Devane, Assistant Police Inspector, Umadi Police station registered crime No.15 of 2004 for offences punishable under sections 302, 536, 436, 342, 143, 147, 148 149 and 120 B of the IPC. He went to the place of the incident alongwith the police staff. The fire fighters present at the place of the incident extinguished the fire. He removed the bodies of Mahadev Chavan, Fulabai Chavan, Appasaheb Chavan, Bharta Sawant and Pranjali Sawant from the house. He conducted the inquest panchanama at Exhs.150 to 154 colly over the dead bodies of Mahadev Chavan and his family members. PW19

conducted the scene of offence panchanama at Exh.137 in presence of PW-2- Shrimant Waghe and Hajisaheb Valisaheb Patil. He seized all the articles found at the place of incident. He recorded the statement of PW17 Jagannath who was present at the spot of incident. He also recorded the supplementary statement of PW3 Irappa.

9. The dead bodies of Mahadeo and his family members were sent for post mortem. The post mortem was conducted by PW16-Dr. Sadashiv Vankhande. The testimony of PW16-Dr. Sadashiv Vankhande vis-à-vis the postmortem reports at Exh.242 to 246 colly. reveal that the death of Mahadev Chavan, Appasaheb Chavan, Fulabai Chavan, Bharta Sawant and Pranjali Sawant was due to shock as a result of 100% deep burn injuries.

10. PW19 recorded the statement of another eye witnesses viz. PW-4 Manohar Hake. In the course of the investigation motorcycle, axe, etc. were recovered pursuant to the disclosure statement made by the accused. Upon completion of the investigation, he submitted the charge sheet before the J.M.F.C.,

Sangli. The case being sessions triable was committed to the Court of Sessions at Sangli.

11. The accused pleaded not guilty and claimed to be tried. Accused No.8 Gurunath, died during the pendency of trial. The prosecution in support of its case examined 23 witnesses. The statements of the accused were recorded under section 313 of the Cr.P.C. The accused denied their involvement in the crime. The defence of the accused, as can be discerned from the cross-examination, is that Mahadeo and his family members had committed suicide due to financial crisis.

12. Accused Nos.1, 2, 3, 5, 15, 26, 35 and 36 had raised the plea of alibi. Accused No.1 filed a statement (Ex.337) wherein he had stated that on the relevant day he had gone for a yatra (fair) and returned at night. Accused Nos.2 and 26 filed statement (Exhs.299 and 300) wherein they alleged that on the relevant day they were at village Ghonasgi, Karnataka. Accused No.3 filed his statement at Exh.293 stating that he and his mother (Accused No.34) were at

village Konyal, Bijapur. Accused No.5 stated that on the relevant day he was at CPED college at Sindagi, Bijapur, District-Karnataka. Accused No.15 filed his statement (Exh.296) that pursuant to his transfer from Umadi Police station, he reported to police Head Quarter at Sangli. He claimed that on the date of the incident he was at Sangli. Accused No.35 filed a statement (Exh.303) and claimed that on the date of the incident he was at Masteck Computer Center and was working at Sidheshwar Medical Agencies at Jat. Accused No.36 claimed that he was working as a driver on a water tanker and that he was on duty on 21.3.2004 at village Sankh. In support of his defence Accused No.5 examined R.B. Buddhilal, the Principal of CPED College, whereas Accused No.36 examine Mr. N.T. Amratti, Village Development Officer at village-Sankh.

13. Upon analysing the evidence on record and considering the submissions of the learned PP for the Respondent -State and the learned counsels appearing for the Appellants-accused, the learned Sessions Judge acquitted the accused Nos. 5, 15, 19, 21, 22, 26,

27, 30, 31, 32, 33, 35, 38, 39, 40 and 42 of offences under sections 143, 147, 148, 120 B, 504, 506, 342, 436, 302, 427 r/w. 149 of the IPC. The accused No.38 is acquitted of offence punishable under section 109 r/w. 436 of the IPC, the accused Nos.39 and 40 are acquitted of the offence punishable under section 212 of the IPC. The other accused are convicted and sentenced as stated above. Being aggrieved by the said conviction and sentence, the accused have preferred the aforesaid appeals, whereas the State has filed Appeal No.945 of 2005 for enhancement of the sentence. The accused nos. 10 and 16 died during the pendency of these appeals.

14. The learned counsel Mr. Pradhan has argued on behalf of the accused No.6 (appeal No.613 of 2005) accused Nos.13 and 28(appeal No.670 of 2005), 41 (appeal No.677 of 2005), 2 (appeal No.678 of 2005). The learned counsel Mr. Yug Mohit Choudhary argued on behalf of accused No.3 (appeal No.678 of 2005), accused Nos. 9, 11 and 12 (appeal No.932 of 2005) and accused Nos. 34 and 37 (appeal No.675 of 2005). The learned

counsel Mr. Sale argued on behalf of accused Nos.1, 4 (appeal No.678 of 2005), accused Nos.14, 16, 17, 18, 24, 25, 29 and 36 (appeal No.675 of 2005). The learned counsel Mr. Ingawale argued on behalf of accused Nos.7 and 20 (appeal No.932 of 2005) and accused No.23 (appeal No.906 of 2005).

15. The submissions of the learned Counsels can be summarized as under:

a) Delay in lodging the FIR.

b) Delay in forwarding the FIR to the Magistrate.

c) Non-examination of material witnesses viz. Shivaji Kare and the other police personnel who were first informed about the incident.

d) Contradictions and ommissions in the testimony of PW3 and PW17 vis-à-vis the FIR at Exh.164 and the statement under Section 161 of Cr.P.C.

e) Variation in the testimony of PW3, PW4 and PW17.

f) Unnatural conduct of PW3, PW4 and PW17.

g) PW4 is chance witness and his testimony is unworthy of credence.

h) Non disclosure of the names of the accused Nos.16 to 18, 20, 23, 24, 25, 28, 29, 34, 36 and 37 in FIR.

i) False implication of all the family members of the accused.

j) Failure to establish that the accused were the members of unlawful assembly.

16. The prosecution in support of its case examined three eye witnesses viz. PW3 Irappa Kamble, PW4-Manohar Hake and PW17 Jagannath Chavan. PW3 Irappa, is the neighbor of deceased Mahadeo. He resides at a distance of one furlong away from the place of the incident, i.e. the house of Mahadeo. PW3 had set the law in motion by lodging the FIR at Exh.164, pursuant to which crime No.15 of 2004 was registered against the aforestated accused for offences under sections 302, 436, 342, 427, 143, 147, 148, 149 and 504 of the IPC.

17. The testimony of PW3-Irappa Kamble reveals that he and Ramchandra had purchased 30 acres land, which was originally

owned by Shivappa Basargi. Out of the said 30 acres, Pw3 had purchased 11 acres of land whereas Ramchandra Chavan, brother of deceased Mahadeo had purchased 19 acres. He has deposed that the land purchased by Ramchandra Chavan is recorded in the name of the deceased Fulabai, Machindranath Mahadeo Chavan and Ramchandra Chavan. He has further deposed that there was a dispute in respect of the said land between the family of the deceased Mahadeo Chavan, Iranna Birajdar and Rudrappa Birajdar, the sons of Gurunath Birajdar. PW3-Irappa Kamble has stated in his cross-examination that the dispute between Mahadev Chavan and Gurunath Birajdar was in respect of the strip of land between the property purchased by him and Ramchandra.

18. PW3-Irappa Kamble has deposed that on the relevant date at about 3 p.m. while he was in his courtyard, he saw Chidanand Basargi (A1), Shrishailya Basargi (A2), Laxman Basargi (A3), Iranna/Irappa Basargi (A4), Apanna Shivappa Basargi (A5), Basappa Basargi (A6), Sahebgonda Jalgiri (A7), Gurunath Annappa (A8), Rudrappa Birajdar (A9), Iranna Birajdar (A10),

Laxmibai Birajdar (A11), Guravva Birajdar (A12), Mahananda Shrikant (A13), Shantavva Iranna (A14), accused no Kashibai Basargi A28), Babasaheb Devkate (A15), Danavva Madamai (A27), Gangavva Basargi (A29), Shantavva Basargi (A31), Bhouravva Basargi (A34), Bhimanna Basargi (A37), Shrikant Basargi (A41), Prabhavati Basargi (A42), passing through his courtyard towards the house of deceased Mahadeo Chavan. The aforesaid accused were talking to each other. He became suspicious and followed them. He has deposed that all the accused went towards the house of Mahadeo and assaulted Mahadeo, his wife Fulabai, son Appasaheb, daughter Bharata and her child Pranjali, who were in the courtyard. The accused thereafter pushed the deceased Mahadeo, his wife Fulabai, son Appasaheb, daughter Bharata and her child Pranjali in the house, closed the door from outside and thereafter accused Iranna Birajdar (A10) set the house ablaze. Accused no.2 Shreeshail Basargi, Accused No.3 Laxman Basargi, accused no.1 Chidanand Basargi, Accused no.4 Iranna Basargi and accused No. 41 Shrikant Basargi brought bales of hay and threw on the roof of the house.

19. PW3 has stated that he had witnessed the incident from a distance of about 50 ft from the scene of offence. He has stated that he heard the hue and cry. He has also stated that Rudrappa, Iranna and Chidanand threatened him and therefore he ran towards the house of one Shivaji Kare. PW3 has further deposed that he went to the house of Shivaji Kare and told him that Birajdar and Basargi people had confined Mahadeo and his family members in his house and set the house ablaze and killed Mahadeo and his family members. He and Shivaji Kare thereafter went to Mali Vasti. Shivaji Kale gave telephonic information to Umadi Police Station. He has stated that the police came to the scene of offence i.e. Hake Vasti at about 10.00 p.m and took him to Umadi Police Station. He lodged the report at Exhibit 164. Thereafter he returned to the place of incident along with police and showed the scene of offence to the police. His supplementary statement was recorded on the same day.

20. In his cross examination PW3 has stated that the courtyard of his house is facing towards the northern side and the door of his

house is also facing towards the northern side. He has further stated in his cross examination that the house of Gurunath Birajdar is between his house and the house of Mahadeo Chavan. He has further stated that the police personnel by name Subhash Kamble attached to Umadi Police Station had enquired with him about the incident and had reduced the same into writing. He has further stated that Devane (Pw20) was the police inspector of Umadi Police Station. He has further stated that Police Inspector Devane also enquired with him about the incident and the personnel assistance of the police inspector reduced the same into writing and thereafter Inspector Devane accompanied him to the place of incident. He has further stated that Police Inspector Devane read over to him the contents of the statement recorded by Mr. Kamble. He has denied that he had no witnessed the incident and that he had falsely implicated the accused.

21. PW4 Manohar Hake is a resident of Hake Vasti at Village Asangi Turk. He has deposed that on 21.3.2004 at about 12.00 p.m. he and his family members had gone for the village fair at

Matewadi. While they were returning home, at about 3.45 to 4.00p.m. they saw that the house of Mahadeo Chavan was ablaze. He has deposed that the accused Chidanand Basargi (A1), Laxman Basargi (A3), Irappa Basargi (A4), Shrikant Paramgonda Basargi(A41). Rudrappa Birajdar (A9), Irappa Birajdar (A10), Sahebgauda Birajdar (A7), Tukaram Birajdar (A18), Vitthal Birajdar (A16), Mahananda Basargi (A13), Laxmibai Birajdar (A11), Guravva Birajdar (A12), Kashibai Badargi (A28), Bhauravva Basargi (A34), Gangavva Basargi (A29) were present near the house of Mahadeo Chavan. Some of these accused persons had sticks and axes in their hands. The accused persons were throwing bundles of hay on the house to ignite the flames. He has stated that accused Mrs. Mahananda Badargi (A13), Laxmibai Birajdar (A11), Gangavva Basargi (A19) were bringing bundles of hay and handing over the same to the male accused who in turn were throwing the same on the house. He had requested the accused to refrain from doing so, but they threatened to kill him in the same manner as they had killed Mahadeo Chavan and his family members. He has stated that he

was scared and hence he left the place of the incident. The next morning he went to the spot of the incident and saw that the fire was extinguished. He saw that the house had collapsed and the police had removed five totally burnt dead bodies from the house. He has stated that he was called to the police station on 31.3.2004. The accused Sanappa Khot (A32), Sidhu Dharma Patil (A23) were at the police station and that he had identified these accused.

22. PW17 Jagannath, is the son of deceased Mahadeo and Fulabai. He has deposed that there was a dispute between his family and the accused no.8 and his two sons in respect of a strip of land which is in between the property of the accused and the property purchased by his uncle Ramchandra and PW3. PW17 has deposed that about a year and half prior to the incident his father had tried to get the land measured through the Inspector of Land Records. He has deposed that accused no.8 and his family members had prevented the Inspector from surveying the land. His father, deceased Mahadeo, had lodged a FIR against accused

no.8 and his two sons Iranna and Rudrappa, because of which the accused no.8 and his sons were annoyed with him. He has stated that the relations between his family and the family of accused no.8 were further strained since about six months prior to the incident and that the members of Basargi and Birajdar family had threatened to set them ablaze. He has deposed that his mother and his paternal aunt Balabai had reported to the police that they apprehended danger to their life at the hands of Basargi and Birajdar family. He has deposed that the police did not take any action stating that it was a civil dispute. He has stated that even thereafter the members of Basargi and Birajdar family continued threatening to set them ablaze.

23. The evidence of PW17 also reveals that on 21.3.2004 his married sister Bharata had visited them with her minor daughter Pranjali to celebrate Gudi Padwa. He has deposed that at about 12 p.m. Suvarna Irappa Birajdar (A-38) brought her cattle in the disputed land. In a quarrel that ensued, deceased Mahadeo assaulted Suvarna (A38). He has further stated that Irappa

Birajdar (A10) and his family members went to the basti and returned with the members of Basargi Family. On seeing them he went to Village Kaganari to make a telephone call to his paternal aunt Balabai, who was residing in village Jath and to inform her about the incident. When he returned, he saw Chidanand Basargi (A1), Tejappa Basargi (A36), Shrikant Paramgonda Basargi(A41). Irappa Basargi (A4), Rudrappa Birajdar (A9), Irappa Birajdar (A10), Shreeshail Basargi (A2), Laxman Basargi (A3), Bhimu Basargi (A37), Laxmibai Birajdar (A11), Guravva Birajdar (A12) Gangavva Basargi (A29), Sahebgauda Birajdar (A7), Raju Birajdar (A20), Shiddu Patil (A23), Vitthal Birajdar (A16), Anusaya Birajdar (A25), Tukaram Birajdar (A18) Gurappa Birajdar (A17), Smt. Bhairavva Birajdar (A24), Bhauravva Basargi (A34) and other people gathered near his house. They had weapons like sticks and axes in their hands. He saw them assaulting his parents, brother, and sister. He has stated that the said persons pushed his parents, brother and sister in the house and set the house ablaze. He has stated that the women gathered at the place of the incident were handing over bales of hay to the male

members were throwing the same in the fire.

24. PW17 has stated that he was frightened and rushed to the basti of Shivaji Kare. Since he did not find anyone in his house, he proceeded towards village Kagnari. He went to the house of Sidraya Ramgonda Manidar and told him that Birajdar and Basargi people had assaulted his family members, pushed them into the house, and set the house on fire. He requested Sidrayya to take him to the house of his paternal aunt. Said Sidrayya took a motorcycle from his relative and took him to his paternal aunt at Jath. He stated that some women who were present in the house told him that his paternal aunt had already gone to village Asangi Turk. He stated that he was afraid and as such he halted at Jath on the said night. The following morning he went to Asangi Turk. Many people had gathered at the spot of the incident. The fire fighters were at the place and five bodies were removed from his house. He has stated that he had identified the dead bodies of his father, mother, brother, sister and her minor child. He has stated that the police recorded his statement on the same day at about

4.00 to 5.00 p.m.

25. In his cross examination PW17 has denied that his father had taken a loan of Rs.1,00,000/- to Rs.1,50,000/- with interest @ 16 -17% per annum by mortgaging the property. He has denied that his father was unable to repay the said loan amount and therefore the bank officers were visiting their house to recover the dues. He has also denied that his sister was ill-treated by her husband and his family members. He has denied that his parents were frustrated and since they were unable to cope up with the difficulties, they decided to commit suicide by consuming pesticide. He has further denied the suggestion that he has not witnessed the incident and that he had falsely implicated the accused persons.

26. The evidence of PW3 and PW17 vis-à-vis the records (exh.282 and 283) produced by PW-23 Deputy S.P. Dr. Digambar Pradhan reveals that there was a property dispute between the family of deceased Mahadeo and the family of accused no.8

Gurunath. The evidence of PW17 also reveals that criminal case was registered against deceased Mahadeo and 8 others for committing murder of Shivappa Basargi, father of accused no.1 Chidanand and that they had been acquitted in respect of the said offence. The relations between the two groups were not only strained, but there was total animosity between these two groups. The evidence on record further indicates that the incident in question was preceded by a quarrel followed by an incident of assault on A38 Suvarna by the deceased.

27. The evidence of PW3 vis-a-vis the FIR at Exh164 reveals that on 21.3.2004 he had seen accused Nos.1 to 15, 38, 41 and 20 to 25 others proceeding towards the house of Mahadeo. He suspected their conduct and hence followed them. He saw the said mob assaulting Mahadeo, his wife Fulabai, son Appasaheb, daughter Bharata and her child Pranjali and thereafter pushing them inside the house and setting the house ablaze. This witness informed one Shivaji Kare that the members from Basargi and Birajdar family had assaulted Mahadeo and his family mambers.

Shivaji Kare gave the telephonic information to the Umadi police station and therafter he returned to the vasti.

28. It is to be noted that Shivaji Kare had not witnessed the incident. He was informed about the incident by PW3 and he had merely phoned Umadi Police Station and conveyed the information given to him by PW3-Irappa Kamble. Furthermore, the information given by Shivaji Kare was cryptic and was rightly not treated as FIR. Under these circumstances, neither Shivaji Kare nor the police personnel, who had made the entry in the station diary, are material witnesses and non-examination of theses witnesses is of no consequence.

29. The testimony of PW19 reveals that upon receipt of the said information, some police personnel from Umadi Police Station proceeded to the place of occurrence and engaged services of fire fighters to extinguish the flames. They brought PW3 Irappa to the police station and thereafter PW19 recorded the FIR lodged by PW3 Irappa. The learned Counsels for the accused have

questioned the credibility of the FIR on the ground of delay in lodging as well as dispatching the FIR to the Magistrate. They have submitted that the delay in lodging the FIR and dispatching the FIR to the Magistrate indicates that the FIR has been doctored after deliberations and consultations, which renders the prosecution case doubtful. In support this contention they have relied upon the decisions in

(I) Bijoy Singh v. State of Bihar 2002 Cri.L.J. 2623
(II) Meharaj Singh v. State of U.P. (1994) 5 SCC 188
(III) Ishwar Singh v. State of U.P. AIR 1976 SC 2423
(IV) Marudanal Augusti v. State of Kerala (1980) SCC 985
(V) Kunju Muhammed and Khumani v. State of Kerala 2003 All MR Cri 263
(VI) Mahadeo Kundalik Vaidya v. State of Maharashtra 2001 Cri L.J. 4306
(VII) Buta Singh v. State of Punjab 1991 Cri.L.J. 1464
(VIII) Shivlal & Anr. Vs. State of Chattisgarh 2011 All MR (Cri.) 3922 (SC)
(IX) Devinder v. State of Haryana 1997 SCC (Cri) 570
(X) Bir Singh v. State of UP 1979 Cri LJ 177.

30. It is no doubt true that prompt lodging of FIR generally rules out the possibility of false implication and concoction of false implication. Nonetheless it is well settled that the delay per se is not fatal to the case of the prosecution. In the case of **Ravinder Ku-**

mar and another Vs. State of Punjab AIR 2001 SC 3576 the Apex Court has observed as under:-

> *"The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein."*
>
> *"When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the*

> *police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident."*
>
> *"We are not providing an exhausting catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [**Vide Zahoor vs. State of UP (1991 Suppl.(1) SCC 372; Tara Singh v. State of Punjab (1991 Suppl.(1) SCC 536); Jamna vs. State of U.P. (1994 (1) SCC 185)**."*

31. In ***Tara Singh*** (Supra) the Apex Court made the following observations:

> *"It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush*

> *to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report*."

32. In the instant case, the incident had occurred on 21.3.2004 between 4.00 to 5.00 p.m. whereas the FIR was lodged by PW3 Irappa on 22.3.2004 at about 1.15 a.m. It is pertinent to note that PW3 Irappa is an illiterate agriculturist from a rural area, who might not have known the importance of prompt lodging of the report. He did not possess adequate transport facility to go to the police station, which was at a distance of 50 kilometers from the place of the incident. He has stated that he was aware that Shivaji Kare, the Ex-Sarpanch had phone facility. On witnessing the ghastly incident, he rushed to the house of Shivaji Kare, which was at about 1 hours walking distance from the place of the incident and narrated the incident to Shivaji Kare. He returned to the place of the incident after Shivaji Kare relayed the information to

the police. On receiving the telephonic information from Shivaji Kare, the police came to the spot of the incident and took PW3 Irappa to the Police Station on the same night and it was only thereafter that he lodged the FIR. In view of the above facts and circumstances, the delay if any in lodging the FIR is satisfactorily explained. Consequently, the delay of couple of hours does not amount to serious infirmity in prosecution case.

33. As regards the delay in sending the FIR to the Magistrate, there can be no controversy that Section 157 of Cr.P.C. requires that the FIR be sent forthwith to the Magistrate empowered to take cognizance of the offence. As held by the Apex Court, in ***Shivlal***, supra the object of this provision is to keep the Magistrate informed of the investigation of such cognizable offence so as to enable him to control the investigation, and if necessary to give appropriate direction under Section 159 Cr.P.C.

34. In ***Bijoy Singh v. State of Bihar*** (Supra) the Apex Court has held that *:*

> *"Sending a copy of the special report to the Magistrate as required under Section 157 of the Cr.P.C. is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of the deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 Cr.P.C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."*

35. In ***Mehraj Singh v. State of U.P***. (supra) the Apex Court has held that:

> *"With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a*

> *murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate."*

36. In ***Ishwar Singh*** (supra) the Apex Court has held that :

> *"The extra ordinary delay in despatching the FIR is the circumstance which provides a legitimate basis for suspecting that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embelishments and set up a distorted version of the occurrence."*

37. In ***Marudanal Augusti v. State of Kerala*** (supra) the Apex Court has observed that once the FIR was found to be fabricated or brought into existence long after the occurrence, the entire fabric of the prosecution case would collapse. In ***Manga @ Mansingh*** (supra) the Apex Court has held that :

> *"19. Per Contra, it will be appropriate to refer to a reasoneddecision of this Court reported in Sandeep v. State of Uttar Pradesh - 2012 (6) SCC 107, wherein this very Bench dealt with the implication of Section 157 Cr.P.C. and held as under in paragraphs 62 and 63:*

"62. It was also feebly contended on behalf of the appellants that the express report was not forwarded the Magistrate as stipulated under Section 157 Cr.P.C. instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No.116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

Applying the above ratio in Pala Singh to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Ishwar Singh v. State of U.P. and Subash Chander v. Krishan Lal."

38. We can also refer to the decision of this Court in ***Bhajan Singh @ Harbhajansingh and Ors. v. State of Haryana – (2011) 7 SCC 421***. Relevant paras 29 and 31 are as under:

> *"29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.*
>
> *31. In view of the above, we are in agreement with the High Court that there was no delay either in lodging the FIR or in sending the copy of the FIR to the Magistrate. It may be pertinent to point out that the defence did not put any question on these issues while cross-examining the investigating officer, providing him an opportunity to explain the delay, if any. Thus, we do not find any force in the submissions made by the learned counsel for the appellants in this regard."*

39. Again in ***Shivlal & Another v. State of Chhattisgarh- AIR***

2012 SC 280, the significance and relevance relating to sending a copy of FIR to the Illaqa Magistrate has been explained as under in paragraph 9:

> *"9.....the Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159, Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaka Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case."*

40. In the present case, PW20 has deposed that the FIR was registered on 22.3.2004 at about 1.15 am. He has stated that he is aware that a copy of the FIR is required to be transmitted to the concerned Judicial Magistrate forthwith. He has stated that considering the seriousness of the crime, he had proceeded to the place of the incident at about 1.45 to 2.00 a.m. He has stated that

he had given instructions to the Station Officer of the Umadi Police Station to transmit the FIR to the concerned Judicial Magistrate immediately. He has further stated that he had returned to the police station on 22.3.2004 at 7.30 to 7.45 p.m. and that he was told that the copy of the FIR was already dispatched to the Court. He has stated that though the FIR at Exh.164 indicates that the copy was received in the court of the magistrate on 29.3.2004 at 5.00 p.m., there in fact appears to be an over writing over the number "29". He has denied the suggestion that the FIR was not recorded and registered on 22.3.2004 but it was recorded only on 29.3.2004 after deliberation and collection of evidence.

41. The evidence of PW20 indicates that the FIR was registered on 22.3.2004 and that a copy of the FIR was dispatched to the Magistrate on the same day. A perusal of the FIR substantiates the contention of PW20 that there is indeed an over writing over the date "29". We are therefore unable to accept the contention of the learned Counsels for the appellants that the copy of the FIR was

received in the court only on 29th March 2004. Be that as it may, the records reveal that PW20 had also recorded the supplementary statement of PW3 on 22.3.2004. There would be no need to record the statement under Section 161 of Cr.P.C. if at all the investigating officer had an intention of doctoring the FIR. It is also pertinent to note that the FIR does not disclose the names of all the accused, who have been prosecuted but merely states that the accused Nos.1 to 15, 38 and 41 and 20 to 25 others were involved in the incident. Had it been prepared subsequently, the FIR would have disclosed names of all the accused and would have further contained minute details of the incident. The fact that the FIR does not name all the accused and does not contain all the details of the incident clearly indicates that it was not fabricated. We are therefore not inclined to accept the contention of the learned Counsels for the appellant that there was any delay in forwarding the FIR to the Magistrate or that the FIR was doctored. Furthermore, the accused have not been able to demonstrate any prejudice that has been caused to them on account of the alleged delay in forwarding the FIR. Under the

circumstances, we do not find any infirmity in the case of the prosecution on that score.

42 The learned counsels for accused have submitted that the testimony of PW3 suffers from material omissions creating a serious doubt about the credibility of this witness. The learned counsels have pointed out the following omissions :

i) PW3 had not stated in the FIR that on the relevant date at about 3 p.m. he was standing in his courtyard.

ii) PW3 had not stated that he was suspicious on seeing the accused persons passing towards the house of deceased Mahadeo, and that he had followed them.

iii) PW3 had also not stated that he had witnessed the incident from a distance of about 50 feet away from the spot of the incident.

iv) PW3 had not specified that the accused no.1 had set fire to the house of Mahadeo and that the

accused nos.2, 3 , 4 and 41 had thrown bundles of hay on the roof of the house of deceased Mahadeo.

v) PW3 had not stated that Rudrappa, Chidanand and Iranna had threatened him.

43. We have given our anxious consideration to the submissions made at the Bar. Before assessing the evidence particularly in the context of the omissions and improvements which have been brought to our notice, it would be relevant to refer to the decision in ***State of Rajasthan V/s. Kalki 1981 SCC 2 752 and State of UP Vs. Naresh and Ors. (2011) 4 SCC 324***. In this case, while drawing the distinction between material discrepancies and minor discrepancies, the Apex Court has held that material discrepancies are those, which are not normal, and not expected of a normal person. Whereas normal discrepancies are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. It has been held that whether omissions amount to contradictions, creating a serious doubt about the

truthfulness of the witness, such witness cannot be safe to rely upon. However, minor contradictions, inconsistency, embellishments, or omissions of trivial matters, which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The Court has to form its opinion about the credibility of the witness and record finding as to whether his deposition inspires confidence.

44. In **State of MP Vs. Dal Singh (2013) 14 SCC 159** the Apex Court has reiterated as under:

> *"So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence. The court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. "Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution's story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of*

credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e. which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited. Where such omission(s) amount to contradiction(s), raising serious doubts about the truthfulness of a witness, and other witnesses also make material improvements before the court in order to make their evidence acceptable, it cannot be said that it is safe to rely upon such evidence. (Vide: A. Shankar v. State of Karnataka*, AIR 2011 SC 2302)*.

45. **In Shivaji Sahabrao Bobade vs. State of Maharashtra the Apex Court has held as under:**

"*8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioral pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the*

> *veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered."*

46. The above principles are reiterated in ***State Of Karnataka vs Suvarnama & Anr*** on 14 October, 2014.

47. In the instant case PW3-Irappa has deposed that on 21.3.2004 at about 4.00 p.m. while he was in his courtyard, he had seen accused nos. 1 to 15, 37 and 41 proceeding towards the house of deceased Mahadev. The fact that this witness had not stated in the FIR that at the relevant time he was standing in his courtyard or that the accused passed through his courtyard can hardly be considered as a material omission. It is also pertinent to note that though this witness had not stated that he had followed the accused, his evidence clearly indicates that the house of the deceased Mahadev Chavan is not visible from his house. The fact that this witness has given material particulars of the incident in the FIR clearly indicates that he had followed the accused, which is otherwise a normal conduct and course of action considering

the previous relationship between the parties inter se. Hence, the fact that the witness has not specifically stated that he had followed the accused does not lead to an inference that he had not witnessed the incident or that he is an unreliable witness. As stated earlier, the FIR is not an encyclopedia. The FIR need not contain minute details of the incident but it requires to disclose the substance of allegations and can be used either to corroborate or to contradict the version of its maker. In the instant case the omissions brought on record do not amount to serious contradictions but are minor/normal discrepancies. These omissions do not affect the core of the prosecution case and do not create doubt about the credibility of the witness to render the evidence unacceptable.

48. As regards the omission in disclosing the names of accused, it is true that PW3 had not named accused Nos. 27, 28, 29, 31, 34, 37 and 42 in the FIR at Ex 164. Similarly, there is an omission in the FIR as regards the specific role of accused Nos. 1, 2, 3, 4 and 15 in committing the crime. At this stage, it would be relevant to

refer to the decision of the Apex Court in ***Gangabhavani Vs. Rai patti & Ors. 2013 (15) SCC 298*** wherein the Apex Court has held that non mentioning the names of all the accused or their overt acts elaborately would not render the FIR vague or unreliable. The Apex Court held that it is natural that all the names and details would not be given in the FIR where the large number of accused are involved. Similarly, in ***Tika Ram Vs. State of M.P. (2010) 4 SCC (Cri) 667*** the Apex Court has held that the fact that the name of the accused is not mentioned in the FIR would not by itself be sufficient to reject the prosecution case.

49. Reverting to the facts of the case, it is to be noted that the FIR at Exh.164 not only makes specific reference to accused Nos.1 to 15, 38 and 41, but further states that these accused were also accompanied by 20 to 25 other persons. The FIR therefore, indicates that apart from the above 17 accused who were named and identified by PW3 in the FIR, about 20 to 25 other persons were also involved in the crime. As such the mere fact that PW3 has subsequently in his evidence before the Court named some

more accused other than those named in the FIR is not a ground either to dub him as an unreliable witness or to discard his evidence in toto. In such circumstances it is the duty of the Court to scrutinise the evidence with care and caution and ascertain whether these accused who have been named subsequently had in fact accompanied the accused named in the FIR or whether they have been implicated by way of an afterthought.

50. Similarly, keeping in mind the general human tendency of the victims and the witnesses to rope in the innocent family members of the accused, false or /wrong implication of Suvarna (A-38) and her consequent acquittal would not per se justify acquittal of the other accused. Particularly when the maxim falsus in uno, falsus in omnibus does not apply in criminal cases in India. This well settled principle has been reiterated by the Apex Court in ***Prem Singh and Ors. Vs. State of Haryana (2009) 14 SCC 494 and Balige @ Trimbak Vs. State of Maharashtra (2010) 6 SCC 673. In Ranjitsingh Vs. State of M.P. (27/10/2010)*** the Apex Court has summarized the law to the effect that "the aforesaid

legal maxim is not applicable in India and the Court to assess to what extent the deposition of a witness can be relied upon. The Court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such witness can be discarded.

51. In ***Amrita Vs. State of M.P. (2004) 12 SCC 224*** the Apex Court has reiterated that it is the duty of the Courts to separate the grain from the chaff where it is so possible and to convict the accused if called for on the basis of evidence despite the fact that the same witness also falsely implicated others. Mere acquittal of some of the accused on the same evidence by itself does not lead to a conclusion that all deserves to be acquitted in case appropriate reasons have been given on appreciation of evidence both in regard to the acquittal and conviction of the accused.

52. In the instant case, having analysed and scrutinized the evidence of PW3 in proper perspective and upon discarding the part of the evidence, which is not credible, we have no manner of

doubt in our mind that PW3 is a truthful witness. It is relevant to note that this witness resides in the close vicinity of place of the incident and is therefore a natural witness. More than 40 persons were involved in committing the crime of gruesome nature, resulting in death of five persons. He had immediately narrated the incident to Shivaji Kare, the ex-Sarpanch of the village and subsequently lodged the FIR on the same night wherein he had named 17 persons. Considering the number of people involved in committing the crime vis-à-vis the nature of the crime, it would not be possible for the witness to mention name of each of the accused or to specify the role played by each of the accused or to recall the detail sequence of the events connected with the crime. Considering the above circumstances, we are not inclined to give much importance to the marginal variations in his statement. The omissions and discrepancies, which are brought to our notice, in our considered view, do not go to the root of the case and do not materially affect the trial or core of the prosecution case. Having analysed the evidence of this witness in its entirety and having regard to the entire fact scenario, in our considered view, PW3 has

emerged as a truthful and reliable witness.

53. As regards the evidence of PW4, we are not inclined to rely upon the said evidence as PW4 appears to be a chance witness. His evidence also reveals that though he was present at the place of the incident for about 4 to 5 hours, he did not disclose the incident to the police or to any other person. He claims that the accused had threatened to kill him in the same manner that they had killed Mahadev. He therefore left the place and returned to his house. Even after seeing five persons being burnt alive, he went home and slept through the night peacefully, without disclosing the incident to the police or any other person either telephonically or otherwise. He returned to the place of the incident on the next morning. Even then he did not inform the police personnel who were present at the place of the incident that he had witnessed the incident. The conduct of this witness is totally unnatural.

54. It is also to be noted that his statement was not recorded

immediately but was recorded on 31st March, 2004. The delay in recording the statement is not satisfactorily explained. Furthermore, the evidence of this witness reveals that he was called to the police station on 31.3.2004 and that the police had told him the names of the accused, who were at the police station. He has stated that he did not know the names of these accused and that he had not identified them in Test Identification parade. In the light of above, the testimony of this witness does not inspire confidence and hence, cannot be relied upon.

55. Coming to the evidence of PW17, he is the son of the deceased Mahadeo and Fulabai, his testimony clearly indicates that on the date of the incident during morning hours his father had assaulted accused No.38- Suvarna. The said incident of assault had led to the incident in question. PW17 had seen the accused gathered at the place of the incident. His testimony indicates that the accused had assaulted his parents, brother, and sister and thereafter pushed them inside the house and set the house ablaze. The learned counsels for the accused have PW17

had not stated that the persons who had gathered near his house had pushed his family members in his house and that he had heard hue and cry inside the house. PW17 had also not stated that he had informed PW18-Sidraya Medidar that the persons, who had gathered near his house had assaulted his family members, pushed them inside the house and set the house ablaze. It is further contended that the conduct of this witness is unnatural. They have further stated that the witness could not witness the incident and the place of the incident is not visible from the pomegrante garden wherein he was allegedly standing.

56. It is true that PW17-Jagannath Chavan has admitted that after having witnessed the said incident he did not call the people from the nearby locality. Even when he went to the house of Shivaji Kare, he did not narrate the incident to the other people who were present in the house. PW17- Jagannath Chavan did not tell PW-18 Sidraya Ramgonda Medidar to inform the police about the incident. He did not tell PW-18 Sidraya Medidar to take him to Jat Police station. Despite such gruesome incident, he claims to

have slept in the house of Balabai without narrating the incident to the persons present in the house of Balabai. He did not to the Sank Police out post to lodge the report.

57. While appreciating the evidence of PW17 Jagannath Chavan, it has to be borne in mind that at the time of the incident he was barely 18 years of age. He had witnessed his entire family i.e. his father, mother, elder brother, sister and sister's daughter being set ablaze. His testimony indicates that he was scared that he too would be killed by a large number of accused gathered at the place of the incident. He has stated that it did not occur to him that he should go to the police station or that he should ask for help from the people from the nearby locality. The mental condition/ disposition of this witness, horror, shock, agony and trauma suffered by him coupled with his age and rural naivety cannot be lost sight of while appreciating his evidence or commenting upon his conduct. In such fact scenario, the witness could not be expected to narrate the chain of events or state with precision the distance or the place from which he had witnessed

the incident. Nevertheless, this witness had named the accused no.1 to 4, 7, 9 to 12, 16 to 18, 20, 23 to 25, 29, 34, 36, 37 and 41 immediately after the incident and he had given graphic details of the incident. He did not vacillate in identifying the accused. Evidence of PW17 read in its entirety amply proves that he had witnessed the incident. Consequently, his testimony cannot be doubted based on general probabilities.

58. The evidence of this witness clearly indicates that he had informed PW18- Sidraya Medidar about the incident. Though PW17-Jagannath Chavan had not said the said fact in his statement recorded under section 161 of the Cr.P.C. and this omission has been brought on record, the testimony of PW18-Sidraya Medidar amply proves that the PW17-Jagannath Chavan at the relevant date had come to his house and told him that Basargi and Birajdar people had killed his parents, brother, sister and sister's daughter by confining them in the house and setting the house on fire. PW18- Sidraya Medidar has further deposed that PW17-Jagannath Chavan had told him that he apprehended

that he too would be killed and had requested him to save him and drop at the house of his paternal aunt Balabai at Jat. The testimony of PW18-Sidraya Medidar reveals that he had dropped PW17- Jagannath Chavan to the house of wife of his paternal uncle at Jat. PW18-Sidraya Medidar has further deposed that while passing by the road he had seen thick smoke at the place of the incident. The testimony of PW18 therefore corroborates the testimony of PW17 and proves his presence at the place of the incident.

59. Having scrutinized the testimony of PW17 with care and caution we are of the view that the PW17 had indeed witnessed the incident. The testimony of this witness corroborates the testimony of PW3 and proves that the deceased Mahadev, Fulabai, Appaso, daughter Bharatha and her minor child Pranjali were in fact assaulted, confined in the house and set ablaze. The death of Mahadev and his family members was therefore, homicidal and not suicidal as claimed by the accused.

60. The aforestated accused are stated to be the members of an

unlawful assembly and they have been held guilty of the offences under sections 342, 436 and 302 with aid of section 149 of the IPC. Section 141 of the IPC defines Unlawful assembly as under:

> "**141**. Unlawful assembly- An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing the assembly is :
>
> (First) — To overawe by criminal force, or show of criminal force, 1[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or
> (Second) — To resist the execution of any law, or of any legal process; or
> (Third) — To commit any mischief or criminal trespass, or other offence; or
> (Fourth) — By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
> (Fifth) — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation.— An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 149 IPC, which creates specific and distinct offence, reads

as under:

> **149**. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

61. The core question which falls for our determination is whether the prosecution has established that the accused who were named in the FIR as well as the other accused, who have been named subsequently viz. accused Nos.16, 17, 18, 20 23, 24, 25, 28, 29, 34, 36, 37 and 41 had shared common object of committing the crime in question. Before adverting to the evidence on record, it would be advantageous to refer to the decision of constitution Bench in ***Masalti Vs. State of UP AIR 1965 Supreme Court Cases 1965*** wherein the Apex Court has laid down the following principles:

> *"What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the*

assembly, and he entertained along with the other members of the assembly the common object as defined by s.141, I.P.C. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of S. 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by s.141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin(1) assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence. is a member of the same assembly, is guilty of that offence; and

> *that emphatically brings out the principle that the punishment prescribed by s.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.*"

62. As regards the number of witnesses required to prove the offence by members of large unlawful assembly, the Apex Court has held that :-

> "*16. Mr. Sawhney also urged that the test applied by the High Cour tin convicting the appellants is mechanical. he argues that under the Evidence Act, 1872 trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. in a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. if at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well*

> *have been convicted. It is no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.*"

63. In ***Ranjit Singh & Ors. Vs. State of Madhya Pradesh*** (27.10.2010) after considering the decision in Masalti (supra) and the decisions of ***Muttu Naicker and Ors. Vs. State of Tamilnadu AIR 1978 SC 1647 , Vinaykumar singh Vs. STate of Bihar AIR 1997 SC 322, Kamaksha Rai & Ors. Vs. State of UP (1999) 8 SCC 701 and Chandrashekhar Bind and Ors. Vs. State of Bihar (2001) 8 SCC 690***, the Apex Court has held as under :

> *"22. Thus, from the above, the law on the issue remains that in a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the court is of the view that the testimony of such sole eye-witness is not reliable. Though, generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident in a fit case the court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one*

> *witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot."*

64. In the instant case, the testimony of PW3 and PW17 who in our view have emerged as truthful witnesses, demonstrates that the motive for the offence was the previous enmity between both the groups coupled with the incident of assault on accused No.38-Suvarna by the deceased Mahadev on the same day between 11.30 to 12.00 p.m. A conjoint reading of the testimony of PW3 and PW17 reveals that a mob of about 40-45 persons had gathered outside the house of the deceased Mahadev. They had assaulted Mahadev, his family members, confined them in house and set the house ablaze. In the FIR at Exh.164, PW3 had named and identified A1 to A15, A38 and A41, whereas in his evidence he had also named A27, A28, A29, A31, A34, A37 and A42. As far as PW17 is concerned, he has named and identified A1 to A4, A7, A8 to A11, A16, A17, A18, A20, A23 to A25, A29, A34, A36, A37 and A41.

65. It is to be noted that A8 died during the pendency of the suit, whereas A10 and A16 died during the pendency of the appeals. Furthermore, A5, A15, A19, A21, A22, A26, A27, A30 to A33, A35, A38 to A40, and A42 have aready been acquitted. As regards the identity of the other accused, there is no consensus between PW3 and PW17 about involvement of A6, A13, A14, A17, A18, A20, A23, A24, A25, A28 and A36. These accused are therefore entitled for benefit of doubt.

66. As regards A1 to A4, A7, A9, A11, A12, A29, A34, A37 and A41 there is total unanimity between PW3 and PW17 regarding their presence at the scene of offence. This gives rise to the next question as to whether each of these accused entertained the common object as defined under Section 141 IPC. As stated earlier, the incident in question was preceded by an assault on A38- Suvarna by the deceased Mahadeo. The previous enemity coupled with the incident of assault on Suvarna was the motive behind the incident in question. The evidence of PW17 indicates that after the said incident of assault on accused No.38, the accused No.10-Irappa Birajdar and his family members contacted

and mobilized the members of Basargi family. The fact that PW17 had felt the need to rush to village Kagnari to make a telephone call to his aunt Balabai and inform her about the same reflects the retaliatory mood of the accused. It is also pertinent to note that PW3 had seen these accused proceeding towards the house of Mahadeo. The fact that he found their conduct suspicious is a clear indication that the accused had not gone to the house of the deceased Mahadeo to exchange pleasantries. The evidence on record reveals that the accused were armed with sticks and other weapons which fact fortifies that the accused were not idle or curious bystanders gathered at the place of incident, but were the members of the assembly which had gone to the house of Mahadeo to avenge assault on Suvarna. In pursuit of the common object they assaulted Mahadeo, his wife Fulabai, son Appasaheb, daughter Bharta and her minor child Pranjali and thereafter confined them in a house and set the house ablaze. The testimony of PW3 and PW17 therefore proves beyond reasonable doubt that these accused were the members of the unlawful assembly within the meaning of Section 141 IPC. This being the

case, the prosecution was not obliged to prove the specific overt act committed by each of these accused. This flows from the purport of section 149 of the IPC which fastens vacarious liability against each of the members of unlawful assembly for the unlawful acts committed pursuant to the common object by any of the members of that assembly.

67. In the light of the above discussion, in our considered view, there is clinching evidence to prove culpability of accused nos.1 to 4, 7, 9, 11, 12, 29, 34, 37 and 41. Consequently, the appeals filed by the accused lack merit and are liable to be dismissed.

68. Now coming to the appeal filed by the State, it is a well settled principle that the death sentence can be awarded in rarest of rare cases. Reliance is placed on ***State of UP Vs. Sanjay Kumar (2012) 8 SCC 537 and Mohinder Singh Vs. State of Punjab AIR 2013 SC 3 622 the apex Court has reiterated these principles, which are as under :-***

> "*16. The doctrine of "rarest of rare" confines two*

aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option is unquestionably foreclosed. Bachan Singh (AIR 1980 SC 898) (supra) suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose.

17.In life sentence, there is a possibility of achieving deterrence, rehabilitation and retribution in different degrees. But the same does not hold true for the death penalty. It is unique in its absolute rejection of the potential of convict to rehabilitate and reform. It extinguishes life and thereby terminates the being, therefore, puts an end anything to do with the life. This is the big difference between two punishments. Thus, before imposing death penalty, it is imperative to consider the same.

18."Rarest of rare" dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment would be pointless and completely devoid of any reason in the facts and circumstances of the case. As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second aspect to the "rarest of rare" doctrine, the court will have to provide clear evidence as to why the convict is not fit for any

kind of reformatory and rehabilitation scheme.

21. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependant upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent. While we are convinced that the case of the prosecution based on the evidence adduced confirms the commission of offence by the appellant, however, we are of the considered opinion that still the case does not fall within the four corners of the "rarest of rare" case".

68. In the instant case, no doubt the accused have committed murder of five persons. However, this act per se would not justify death sentence particularly when the evidence on record indicates the incident in question was in retaliation of the previous incident of assault on Suvarna. This is also not a case where sentencing aim of reformation can be said to be futile. Hence, this is not a fit case to enhance the sentence.

71. In the facts and circumstance of the case and in view of discussion supra, we pass the following order:

ORDER

(I) Appeal No.932 of 2005 is partly allowed. The accused no.20 is acquitted of the offences punishable under Sections 143, 147, 506 r/w 149, 342 r/w. 149, 436 r/w 149, 302 r/w. 149 and 427 r/w. 149 of the IPC. His bonds are discharged. The appeal is dismissed as against accused Nos.7, 9, 11 and 12. The conviction and sentence of these accused is maintained. Accused Nos.11 and 12 who are on bail are directed to surrender forthwith to serve the remainder sentence.

(II) Appeal No.613 of 2005 is allowed as against accused No.6. Accused no.6 is acquitted of the offences punishable under Sections 143, 147, 506 r/w 149, 342 r/w. 149, 436 r/w 149, 302 r/w. 149 and 427 r/w. 149 of the IPC. His bail bonds are discharged.

(III) Appeal No.675 of 2005 is allowed as against 13, 28, 36. The accused nos.13, 28 and 36 are acquitted of the offences punishable under Sections 143, 147, 506 r/w 149, 342 r/w. 149,

436 r/w 149, 302 r/w. 149 and 427 r/w. 149 of the IPC. Their bail bonds stand discharged. The appeal is dismissed as against accused Nos.34 and 37. Accused No.34 who is on bail is directed to surrender forthwith to serve the remainder sentence.

(IV) Appeal No.677 of 2005 is dismissed. The conviction and sentence imposed against accused no.41 is maintained.

(V) Appeal No.678 of 2005 is dismissed. The conviction and sentence imposed against these accused (A1 to A4) is maintained.

(VI) Appeal No.701 of 2005 is allowed as against 14, 17, 18, 24 and 25. They are acquitted of the offences punishable under sections 143, 147, 506 r/w 149,342 r/w. 149, 436, 302, 327 r/w. 149 and 427 r/w. 149 of the IPC. The appeal is dismissed as against accused No.29. The conviction and sentence impose against accused no.29 is maintained. Accused No.29 who is on bail is directed to surrender forthwith to serve the remainder sentence.

(VII) Appeal No.906 of 2015 is allowed. Accused No.23 is acquitted of offences punishable under sections 143, 147, 506 r/w 149, 342 r/w. 149, 436 r/w 149, 302 r/w. 149 and 427 r/w. 149 of

the IPC. His bail bonds stand discharged.

(VIII) Appeal No.945 of 2005 is dismissed.

(ANUJA PRABHUDESSAI, J.) **(SMT. V.K.TAHILRAMANI, J.)**