

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

CRIMINAL APPEAL NO.339 OF 2006

The State of Maharashtra,
Through, Sangamner Taluka
Police Station,
Dist. Ahmednagar.

...Appellant.
(Ori. Complainant)

VERSUS

- 1) Ramnath Sukhdeo Nehe,
Age : 65 years,
- 2) Narayan Ramnath Nehe,
Age : 21 years,
- 3) Kashinath Sakharam Nehe,
Age : 70 years,
- 4) Balu Kashinath Nehe,
Age : 45 years,
- 5) Kailas Kashinath Nehe,
Age : 32 years,
- 6) Macchindra Kashinath Nehe,
Age : 35 years,
- 7) Deoram Kashinath Nehe,
Age : 30 years,
- 8) Punjabai Ramnath Nehe,
Age : 43 years,
- 9) Sumanbai Ramnath Nehe,
Age : 50 years,
- 10) Lilabai Balu Nehe,
Age : 42 years,
- 11) Shilabai Kailas Nehe,
Age : 28 years,
- 12) Hirabai Macchindra Nehe,
Age : 30 years,

13) Latabai Deoram Nehe,
Age : 26 years,
All R/o. Savargaon,
Tq.Sangamner Dist.Ahmednagar.

...Respondents.
(Ori. Accused)

Mr. S.P. Deshmukh, A.P.P. for the appellant.

Mr. R.K. Temkar, Advocate for respondent Nos.1 to 13.

WITH

CRIMINAL REVISION NO.80 OF 2006

Babasaheb s/o Govind Nehe,
Age: 37 years, Occ.: Agriculturist,
R/o.: Sawargaon, Tal. Sangamner,
Dist. Ahmednagar.

...Petitioner.
(Ori. Complainant)

Versus

- 1) Ramnath s/o Sukhdeo Nehe,
Age : 65 years,
- 2) Narayan s/o Ramnath Nehe,
Age : 23 years,
- 3) Kashinath s/o Sakharam Nehe,
Age : 72 years,
- 4) Balu s/o Kashinath Nehe,
Age : 47 years,
- 5) Kailas s/o Kashinath Nehe,
Age : 34 years,
- 6) Machindra s/o Kashinath Nehe,
Age : 37 years,
- 7) Deoram s/o Kashinath Nehe,
Age : 32 years,

- 8) Punjabai w/o Ramnath Nehe,
Age : 45 years,
- 9) Sumanbai w/o Ramnath Nehe,
Age : 52 years,
- 10) Lilabai w/o Balu Nehe,
Age : 44 years,
- 11) Shilabai w/o Kailas Nehe,
Age : 30 years,
- 12) Hirabai w/o Maccindra Nehe,
Age : 32 years,
- 13) Latabai w/o Deoram Nehe,
Age : 28 years,
All by Occ.: Agriculturist,
R/o.: Sangamner,
Dist.Ahmednagara. **...Respondents.**
(Original accused)
- 14) The State of Maharashtra. **...Respondent.**

Mr. R.D. Bhalerao, Advocate for the petitioner.

Mr. R.K. Temkar, Advocate for respondent Nos.1 to 13.

Mr. S.P. Deshmukh, A.P.P. for respondent No.14.

**CORAM : SUNIL P.DESHMUKH AND
SANGITRAO S.PATIL, JJ.**

**RESERVED ON : 28TH SEPTEMBER, 2017
DELIVERED ON : 12TH OCTOBER, 2017**

JUDGMENT (PER : SANGITRAO S.PATIL, J):

Being dissatisfied with the judgment and order
dated 25/01/2006, passed in Sessions Case No.17/2004 by

the learned Ad-hoc Additional Sessions Judge, Sangamner, Dist. Ahmednagar, whereby, the respondent No.1 to 13 had been acquitted of the offences punishable under Section 143, 147, 148, 302, 323, 324 and 506 read with Section 149 of the Indian Penal Code("IPC", for short), the State/prosecution has preferred the above numbered appeal, while the informant namely, Babasaheb Nehe has filed the above numbered Criminal Revision Application.

02. For the sake of convenience, respondent Nos.1 to 13 are hereinafter, referred to as "accused Nos.1 to 13".

03. Accused No.1 Ramdas is the uncle of accused No.3 Kashinath. Accused Nos.4, 5, 6 and 7 are the sons of accused No.3, while accused Nos.10, 11, 12 and 13 are the wives of accused Nos.4, 5, 6 and 7 respectively. Accused No.2 and one Shivaji (juvenile) are the sons, while accused Nos.8 and 9 are the wives of accused No.1. The deceased Govind was the brother of accused No.3 Kashinath. The informant - Babasaheb and Pralhad are the sons, Sangeeta is the daughter and Indubai is the widow of the deceased Govind.

04. As per the case of the prosecution, the

deceased Govind was residing jointly with his sons and daughter in his agricultural land, situate within the local limits of village Savargaon, Tq. Sangamner Dist. Ahmednagar. Accused No.1 also is residing jointly with his family near the farm house of the deceased Govind. The water channel of the well of the deceased Govind was running through the land of accused No.1. Accused No.1 was obstructing the deceased Govind while taking water of the well through his land. On that count, there was dispute between the family of accused No.1 on one hand and that of the deceased Govind on the other.

05. On 18/03/2004 at about 08.00 a.m., the informant Babasaheb was washing mouth in front of his house. The deceased Govind and his another son namely Pralhad were inside the house. At that time, all the accused persons and Shivaji came to the house of the deceased Govind. They were armed with sticks. Accused No.1 threatened the informant of death in case, he did not get the dispute settled. The informant did not utter anything. At that time, accused Nos.2, 3, 4, 5, 6, 7 and Shivaji rushed on the person of the informant and gave stick blows on both of his legs and left hand, causing injuries to him. After hearing shouts of the informant,

Pralhad came out of the house. He also was beaten on both of his legs by means of sticks by the accused persons. The deceased Govind came to rescue Pralhad, he was beaten with sticks by the lady accused persons. The informant, his brother Pralhad and deceased Govind sustained injuries and fell down on the ground. Indubai, the mother of the informant, came to intervene and at that time, accused Nos.9, 10, 11, 12 and 13 beat her. Thereafter, the accused persons left the spot of the incident.

06. Sangeeta went to Chandanpuri and informed Sakharam Deoram Rahane, the maternal uncle of the deceased Govind, about the incident, Sakharam Rahane and his wife Vithabai came to the spot of the incident. After seeing the condition of the informant, Pralhad, Indubai and that of the deceased Govind, Sakharam Rahane went back to Chandanpuri and got called an ambulance through a telephonic message. All the four injured persons were then taken to the Cottage Hospital at Sangamner in the ambulance. They were examined and admitted in the hospital for treatment.

07. Police visited the Cottage Hospital and

recorded the statement of the informant in respect of the incident, which came to be treated as the First Information Report ("FIR", for short). On the basis of that F.I.R., Crime No.40/2004 came to be registered in Police Station, Sangamner at about 08.20 p.m. on 18/03/2004 for the offences punishable under Sections 143, 147, 148, 324, 323 and 506 read with Section 149 of the IPC and also under Section 37(1) punishable under Section 135 of the Bombay Police Act.

08. The investigation followed. Spot panchanama was prepared. Statements of witnesses were recorded. The deceased Govind was shifted to private hospital of Dr.Tambe for further treatment. He died in the hospital of Dr.Tambe on the next day of the incident i.e. on 19/03/2004. After his demise, the offence punishable under Section 302 of the IPC came to be added in the above numbered crime. Inquest of the body of the deceased Govind came to be prepared at about 02.30 p.m. on 19/03/2004. Post mortem on the body of the deceased was conducted by Dr.Laxman Sampat Gadekar in Cottage Hospital at Sangamner on 19/03/2004 between 4.15 p.m. and 06.00 p.m. Dr.Gadekar opined that the injured Govind died due to cardiac arrest, with aspiration pneumonia,

with internal organ damage, with anaemia, with old age.

09. The sticks allegedly used at the time of the incident, came to be seized. The accused persons came to be arrested. After completion of the investigation, they came to be charge-sheeted for the above mentioned offences in the Court of the learned Judicial Magistrate First Class (Court No.1) at Sangamner, Dist. Ahmednagar. The offence punishable under Section 302 of the IPC being exclusively triable by the Court of Session, the learned Magistrate committed the case to the Court of Session for trial.

10. The learned Ad-hoc Additional Sessions Judge, to whom the case was assigned, framed charges against the accused persons for the above mentioned offences vide Exh.29 and explained the contents thereof to them in vernacular. The accused persons pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication. According to accused No.1, a false case came to be filed with a view to avoid giving of share in the ancestral well to the accused persons.

11. The prosecution examined 13 witnesses to

establish the guilt of the accused for the above mentioned offences. The learned trial Judge evaluated the evidence and came to hold that the prosecution failed to establish the guilt of the accused for the offences with which they were charged. Resultantly, the learned trial Judge acquitted all the accused of the above mentioned offences as per the impugned judgment and order.

12. Heard the learned Additional Public Prosecutor for the State/prosecution and the learned counsel for the respondents. None appeared for the revision applicant.

13. According to the learned A.P.P., there is cogent and consistent evidence on record to establish beyond reasonable doubt that the accused formed an unlawful assembly with a common object to assault the informant, his parents and brother; and in prosecution of that common object, the accused assaulted them with sticks, *Gupti*, spear and caused serious injuries. The informant sustained grievous hurt since his right tibia was fractured. The deceased Govind succumbed to the injuries, which were caused to him by the accused at the

time of the incident. The informant, Indubai (PW 5) and Pralhad (PW 10) are the injured witnesses. Their presence at the time of the actual incident cannot be doubted. Their evidence is consistent in respect of the roles played by the accused at the time of the incident. Sangeeta (PW 8) also corroborates the evidence of these witnesses. The medical evidence supports the case of the prosecution. There are some omissions and inconsistencies in the evidence of these witnesses, which are minor in nature and insignificant. The learned trial Judge wrongly attached importance to those discrepancies and acquitted the accused persons. The learned A.P.P., therefore, submits that the impugned judgment of acquittal being not legal, proper and correct, may be set aside and the accused may be convicted for the offences, for which they have been charged.

14. On the other hand, the learned counsel for the accused submits that the evidence of the informant and other injured witnesses is full of material omissions and improvements. There is no consistency in the evidence of the ocular witnesses. They are interested witnesses. Though independent witnesses were available,

none of them has been examined by the prosecution. There is delay of about 12 hours in lodging the F.I.R. The delay has not at all been explained by the prosecution. The incident is stated to have taken place between 07.30 a.m. and 08.00 a.m. However, Dr.Kacheriya (PW 11), who examined the deceased Govind, the informant, Pralhad (PW 10) and Indubai (PW-5) in Cottage Hospital at Sangamner on 18/03/2004 at about 04.45 p.m., categorically states that the injuries were sustained by the said persons between 09.00 a.m. and 01.00 p.m. and not prior to that. He further submits that, Dr.Gadekar (PW 13), who conducted post mortem on the body of the deceased Govind, states that the death of Govind was natural and was not attributable to the injuries found on his person. According to the learned counsel for the accused, the medical evidence does not at all support the case of the prosecution. He further submits that there were many persons, who had inimical terms with deceased Govind and his family members. He submits that there was dispute between the deceased Govind on one hand and accused no.1 on the other in respect of an ancestral well. The informant falsely implicated accused no.1 and accused no.3 with all of their family members

in this case with a view to deny the share of accused no.1 in the ancestral well. He submits that the learned trial Judge rightly appreciated the facts of the case and the evidence on record and rightly acquitted the accused. The view taken by the learned trial Judge is quite plausible and cannot be interfered with in appeal.

15. The informant deposes at Exh.48, that on 18/03/2004 at about 7.00 a.m. to 7.30 a.m., when he was cleaning his mouth in front of his house, all the accused persons came there. Accused No.2 caught hold of him from backside. Accused no.7 was having a *Gupti*. All other accused persons were having sticks. They were having a spear also. They assaulted by means of sticks on both of his legs. Accused no.7 inflicted a blow of *Gupti* on his legs. Both of his legs were fractured. Accused no.2 took a bite on the left side of his chest. He fell down on the ground and raised shouts. After hearing his shouts, his parents i.e. the deceased Govind, Indubai (PW 5), Pralhad (PW 10), Sangeeta (PW 8) came to rescue him. All the accused persons and Shivaji pulled the deceased Govind and carried him nearby a *Babhul* tree. Accused no.1 had caught hold of legs of the deceased Govind, while accused no.2, accused no.8 and

Shivaji assaulted on his legs by means of sticks. Sangeeta (PW 8) also was assaulted by sticks. Pralhad (PW 10) was caught hold of by accused no.5. Other accused persons assaulted him with sticks. Accused Nos.8, 9 and 10 assaulted Indubai (PW 5) on her head by sticks. A stab injury was caused by spear on the private part of the deceased Govind. Accused No.8 gave a blow of stone on the head of the deceased Govind. This is what is the account of the incident given by the informant.

16. The informant states that the deceased Govind, Pralhad (PW 10) and himself were lying in injured condition on the spot of the incident itself till 03.00 p.m. In spite of the calls to the Sarpanch and Police Patil of the village, they did not come to the spot of the incident. Sangeeta (PW8) went to village Chandanpuri to call the maternal uncle of the deceased Govind namely, Sakharam Deoram Rahane. Accordingly, said Sakharam Rahane came to the spot of the incident along with his wife. After seeing all the injured persons, Sakharam Rahane went back to Chandanpuri and gave a telephonic message to Taluka Police Station, Sangamner about the incident. However, the police did not take any

cognizance. Sakharam Rahane brought one ambulance from Chandanpuri and took all the injured persons to Cottage Hospital, Sangamner. All of them were admitted there. A police personnel inquired with the informant about the incident and reduced into writing the information given by him, which was treated as the F.I.R. (Exh.49).

17. The F.I.R. (Exh.49) seems to have been registered in Police Station, Sangamner taluka at about 08.20 p.m. on 18/03/2004.

18. From the cross-examination of the informant, it emerged that the following facts were not stated by him in the F.I.R. (Exh.49).

- (i) That accused no.2 had caught hold of the informant from backside at the time of the incident.
- (ii) That accused no.7 was armed with a *Gupti*.
- (iii) That the accused persons were having a spear.
- (iv) That accused no.2 took a bite on the left side of the chest of the informant.
- (v) That all the accused persons and Shivaji pulled the deceased Govind and carried him to

a *Babhul* tree.

- (vi) That accused no.1 caught hold of the legs of the deceased Govind and accused no.2, accused no.8 and Shivaji assaulted on his legs by sticks.
- (vii) That Sangeeta (PW 8) was assaulted on her shoulder by sticks.
- (viii) That while Pralhad (PW 10) was coming to rescue the informant, he was caught hold of by accused no.5.
- (ix) That accused nos.8, 9 and 10 assaulted on the head of Indubai (PW 5) by means of sticks.
- (x) That stab injury was caused by a spear on the private part of the deceased Govind.
- (xi) That accused no.8 gave a stone blow on the head of the deceased Govind.
- (xii) That the deceased Govind, Pralhad (PW 10) and the informant were lying in injured conditions on the spot of the incident itself till 03.00 p.m.

19. The above referred omissions are certainly material omissions and in the ordinary course, the

informant would not have forgotten to mention the above mentioned facts in the F.I.R. (Exh.49). The informant claims that the police had taken the bribe and therefore, they did not mention these facts in the F.I.R. (Exh.49). This reason does not appear to be natural and probable. The informant never complained against any police officer connected with the above mentioned crime for taking bribe in order to suppress the factual position. It is for the first time before the court that the informant made allegations against an anonymous police officer for taking bribe for not mentioning the above mentioned material facts in the F.I.R. (Exh.49). He never complained against any police personnel to any superior Police Authority on this count. The reason given by the informant is an outcome of afterthought and cannot at all be believed. It is, thus, clear that the informant tried to improve his version by adding a number of facts which, in fact, did not take exist.

20. Indubai (PW 5) at Exh.57 states that on the day of the incident at about 08.00 a.m., when the informant was washing his mouth out of the house, all the accused persons came there. Accused no.1 threatened the

informant of death, in order to compel him to enter into a compromise. This fact has not been stated by the informant himself in his evidence before the court. It is not even corroborated by Sangeeta (PW 8) (Exh.62) and Pralhad (PW 10) (Exh.65).

21. Indubai(PW 5) further deposes that the accused persons assaulted the informant by sticks. The deceased Govind rushed towards the informant on seeing that he was being assaulted. The accused persons stabbed on the left leg of the deceased Govind by means of a *Gupti*. The accused persons further assaulted on the head of the deceased Govind by means of iron fan of engine. Pralhad (PW10) also was assaulted by the accused persons. When she was trying to rescue the informant, she also was assaulted on her head, left shoulder, waist and knee by sticks, fists and kicks. She was assaulted by accused nos.4, 6 and 7. The lady accused pulled her hair. Then, she went to the house of *Sarpanch*. She herself talked with the police on telephone, whereon, she was told by the police that they would send a vehicle but no vehicle came there. She again contacted the police on telephone, whereon, they informed that their vehicle had gone to Ahmednagar and the office was closed. She went to the

house of the Police Patil, but he was not present there. The deceased Govind, Pralhad (PW 10) and informant were lying on the Otta of their house. Sangeeta (PW8) then went to Chandanpuri and brought Sakharam Rahane to the spot of the incident at about 02.00 p.m. Sakharam Rahane then went back to Chandanpuri and called the ambulance. All the injured persons were taken to Cottage Hospital, Sangamner and admitted there. On the same day, the deceased Govind was shifted to a private hospital of Dr. Tambe, where he died on the next day.

22. The evidence of Indubai (PW 9) is rather vague and general. She does not name any particular accused and attribute any particular role to him/her. She does not even state as to which particular accused assaulted her, at the time of the incident. She does not state that any of the accused persons inflicted a blow of *Gupti* on the left leg of the informant. The fact that the accused persons stabbed on the leg of the deceased Govind has not been stated even by the informant. She does not corroborate the version of the informant that a stab injury was caused by a spear on the private part of the deceased Govind. Thus, the evidence of Indubai (PW 5) is not only vague and general, but also is not

consistent with the evidence of the informant on material particulars.

23. The following are the omissions brought in the cross-examination of Indubai (PW 5):

- (i) That the deceased Govind was assaulted by Gupti on the left leg by the accuse persons.
- (ii) That the deceased Govind was assaulted on his head by the accused persons by mean of an engine fan.
- (iii) That when she tried to rescue th informant, the accused persons assaulted on her left shoulder and knee.
- (iv) That accused nos. 4 and 7 assaulted her.
- (v) That the lady accused pulled her hair.
- (vi) That she went to the sarpanch and telephoned to the police and that th police told her that they would send a vehicle bud did not send the same.
- (vii) That she again went to the house of th sarpanch and phoned the police, whereon the police stated her that their vehicle had been to Ahmednagar and the office was closed.

(viii) That the sarpanch refused to come to the spot of the incident.

(ix) That the informant, the deceased Govind and Pralhad (PW 10) were lying on the Otta of the house.

24. The above referred omissions clearly indicate that Indubai (PW 5) tried to add many things in her evidence before the court, which were not disclosed by her when her statement was recorded by the police. She did not assign any reason for these omissions in her statement before the police.

25. Pralhad (PW 10) (Exh.65) testifies that on 18/03/2004 at about 07.40 a.m. to 08.00 a.m., all the accused persons came in front of his house. The informant was outside the house. Accused No.2 caught hold the informant from backside, while accused Nos.3, 4, 5, 6 and 7 assaulted the informant by means of sticks. Due to that the legs of the informant got fractured. The deceased Govind, Indubai (PW 5) and himself went out of the house to rescue the informant. When they were trying to rescue the informant, accused

Nos.1, 2, 4, 5, 6, 7 and Shivaji took the deceased Govind aside and assaulted him by sticks and *Gupti*. Accused No.8 assaulted on the head of the deceased Govind by means of an iron fan. Accused Nos.5 and 6 gave stick blows on his left arm, while accused Nos.2, 4, 5, 6, 7 and Shivaji assaulted on his legs and knee by sticks and *Gupti*. Indubai (PW 5) also was assaulted by accused Nos.5 and 6 by sticks on her head and waist. Sangeeta (PW 8) also was beaten, however, she ran away from the spot of the incident. Due to the said assault, all of them fell down on the ground and then the assailants went away by throwing the weapons on the spot itself. Indubai (PW 5) sent Sangeeta (PW 8) to Sakharam Rahane at Chandanpuri. Accordingly, Sakharam Rahane came to see them along with his wife. He got called an ambulance on telephone, in which they were taken to the Cottage Hospital at Sangamner and admitted there for treatment.

26. Pralhad (PW 10) states that, he has got the degree of bachelor of Arts. His statement was recorded by the police on 18/03/2004 itself. The following omissions have been elicited in the cross-examination of this witness.

- (i) That accused No.2 Narayan caught hold of the informant from backside.
- (ii) Accused Nos.3, 4, 5, and 6 assaulted on the legs of the informant and caused fractures.
- (iii) That Shivaji also assaulted the informant by sticks and *Gupti*.
- (iv) That when the deceased Govind, Indubai and himself tried to rescue the informant, accused Nos.1, 2, 4, 6, 7 and Shivaji took the deceased Govind aside and assaulted him by sticks and *Gupti*.
- (v) That accused No.8 assaulted on the head of the deceased Govind by means of iron fan.
- (vi) That accused Nos.2, 4, 5, 6, 7 and Shivaji assaulted on his legs and knee by sticks and *Gupti*.

27. The above mentioned are the material omissions, which Pralhad (PW 10) would not have forgotten to state before the police at the time of recording of his statement on the day of the incident itself.

28. Sangeeta (PW 8) (Exh.62) states that on the day

of the incident at about 06.00 a.m., all the accused came to the house of her father Govind. They assaulted the deceased Govind, the informant, Pralhad (PW 10) and Indubai (PW 5) by sticks. She further states that the lady accused assaulted on her face by *Chappals* and sticks. Then, she went to Chandanpuri to call Sakharam Rahane (PW 6).

29. It has come in her cross-examination that she had stated before the police that at about 06.00 a.m., all the accused had come to the house of her father Govind. She further states that, she had stated before the police that the lady accused assaulted on her face by means of *Chappals* and sticks. However, the said facts did not find place in her statement before police. She did not assign any reason as to why the said facts are not mentioned in her statement before police. These are material omissions in the statement of Sangeeta (PW 8). She certainly would not have forgotten to state before the police at the time of recording her statement on the day of the incident itself.

30. The above mentioned omissions in the statements of the informant, Indubai (PW 5), Pralhad (PW 10) and

Sangeeta (PW 8) have been duly proved through the evidence of P.S.I., Bhachhav (PW12), I.O., who recorded the F.I.R. (Exh.49) and the statements of these witnesses.

31. The ocular evidence coming before the Court through the informant and the above referred three ocular witnesses also is not consistent *inter se* on material particulars. Their evidence is not consistent in respect of roles attributed against the accused persons. These witnesses have tried to improve their versions to a great extent. Though, the informant, Induabai (PW 5) and Pralhad (PW 10) are injured persons, they are interested witnesses. It would be risky and hazardous to rely on their evidence without any independent corroboration, more particularly, when their evidence is full of material omissions, improvements and inconsistencies.

32. Tanaji (PW 2) (Exh.50) happened to be a panch to spot panchanama (Exh.51). He is resident of village Savargaon Tal itself. It has come in his cross-examination that the house of one Tukaram Mhatarba Walhekar is at the distance of about 300 ft., the house

of Anna Baban Nehe is at the distance of about 600 ft., the house of Vitthal Gangaram Nehe is at the distance of about 100 to 200 ft. from the house of the informant (i.e. spot of the incident). He further states that the house of Vitthal Gangaram Nehe is visible from the house of the informant.

33. As seen from para 7 of the cross-examination of the informant, the learned counsel for the accused had specifically asked the informant about location of the houses of various persons referred to above, nearby his house. However, he flatly denied that the houses of the said persons are situated nearby his house. The evidence of Tanaji (PW 2), referred to above, makes it clear that the informant deliberately avoided to admit existence of the houses of the above mentioned persons nearby his house. If the evidence of Tanaji (PW 2) is considered, it will be clear that there were a number of persons residing near or at a short distance from the house of the informant, who in the ordinary course, would have witnessed the incident, however, none of them has been examined by the prosecution without assigning any reason. Thus, the independent evidence though available, has been withheld by the prosecution.

34. Dr.Kacheriya (PW 11) (Exh.66) examined the deceased Govind, the informant, Pralhad (PW 10) and Indubai (PW 5) in the Cottage Hospital at Sangamner on 18/03/2004 between 04.45 p.m. and 5.30 p.m. He noticed the following injuries on their persons:

(A) Injuries of the deceased Govind as mentioned in O.P.D. papers (Exh.71):

- (i) CLW left ear pina with cartilage splitted.
- (ii) CLW over right leg anteriorly upper 3rd region.
- (iii) Contusion over right knee joint, swelling and tenderness present.
- (iv) Contusion over left knee joint, swelling and tenderness present.

(B) The injuries of the informant Babasaheb (PW 1) as mentioned in certificate (Exh.68):

- (i) CLW over right leg anteriorly middle 3rd region bone deep, bleeding, 6x2x½ c.m. moderate swelling around injury around injury.
- (ii) Multiple CLW over left leg anteriorly, bleeding 6x2x1 c.m. moderate swelling over

left lower leg.

- (iii) Contusion over left knee joint with left thigh, lower region, with moderate swelling, tenderness present, 10x10 c.m.
- (iv) Contusion over right knee joint swelling and tenderness present, 6x6 c.m. with swelling over right lower leg.
- (v) Contusion over left upper arm anteriolaterally, middle 3rd region, swelling present, tenderness present, 8x4 c.m. red in colour.
- (vi) Contusion left shoulder anteriorly upper 3rd region, red in colour, 4x4 c.m.
- (vii) Contusion over lips, loosening of left upper medical insiser tooth with bleeding from cum socket.

(C) The injuries of Pralhad (PW 10), as mentioned in certificate (Exh.68):

- (i) Contused left elbow with left upper arm with left forearm, swelling was present, tenderness was present. There were restricted movements of left elbow.

(ii) CLW over left leg anteriorly middle 3rd region, bleeding was present, 3x1x1 c.m.

(iii) Contusion over chin, swelling, 4x4 c.m. red colour.

(iv) Contusion behind right ear, swelling and tenderness was present.

(D) The injuries of Indubai (PW 5), as mentioned in certificate (Exh.69):

(i) Contused left elbow with left upper arm with left forearm, swelling was present, tenderness was present. There were restricted movements of left elbow.

(ii) CLW over left leg anteriorly middle 3rd region, bleeding was present, 3x1x1 c.m.

(iii) Contusion over chin, swelling, 4x4 c.m. red colour.

(iv) Contusion behind right ear, swelling and tenderness was present.

35. Dr.Kacheriya (PW 11) specifically states that the injuries found on the persons of the deceased Govind, the informant, Pralhad (PW 10) and Indubai

(PW 5) were probably caused by hard and blunt objects, like sticks. Indisputably, *Gupti* or spear are sharp edged weapons and not hard and blunt objects. *Gupti* and spear would cause incised or cut wounds. The above-mentioned injuries cannot be said to have been caused by any sharp edged weapons, like *Gupti* or spear. If, that be so, the evidence of the informant, Indubai (PW 5) and Pralhad (Exh.10) that *Gupti* and spear were used at the time of the incident for causing injuries cannot at all be believed. This fact clearly shows that these witnesses are having the tendency to depose before the court something far from the factual position. In the circumstances, the evidence of these interested witnesses in the absence of independent corroboration, would not be sufficient and dependable to hold the accused guilty.

36. As seen from the evidence of the informant, Indubai (PW 5), Sangeeta (PW 8) and Pralhad (PW 10), the incident took place between 07.000 am. and 08.00 a.m. Dr.Kacheriya (PW 11) specifically and emphatically states in his cross-examination that the injuries referred to above might have been caused between between 09.00 a.m. and 01.00 p.m. and not prior to that. Thus,

the medical evidence does not support the case of the prosecution that the above referred injuries were caused during the incident that took place prior to 08.00 a.m.

37. Dr.Laxman Gadekar (PW 13) (Exh.81) conducted post mortem of the body of the deceased Govind on 19/03/2004 between 04.15 p.m. and 06.00 p.m. in the Cottage Hospital at Sangamner. He externally examined the body of the deceased Govind and found the following injuries:

- (i) CLW over right lower leg anteriorly over sin of tibia, 3x1x1 c.m.
- (ii) CLW over right arm posteriorly 1x1 c.m.
- (iii) Abrasion over parasternal second space $\frac{1}{2} \times \frac{1}{2}$.
- (iv) Abrasion over left forearm, distally posteriorly, $\frac{1}{2} \times \frac{1}{2}$, to each (bilaterally).
- (v) CLW on left earpina with cartilage splitted.
- (vi) Abrasion on shoulder (left) 1x1 c.m. between two spine of scapula.

He further states that the said injuries were ante mortem. However, he does not state that the said

injuries resulted into the death of Govind. He opined that the probable cause of death of Govind was cardiac arrest with aspiration pneumonia, with damage of internal organs, with anaemia with old age. It is strange to note that Dr.Gadekar (PW 13) at his own states that the injuries found on the body the deceased Govind were not possible by means of assault by sticks which were shown to him before the Trial Court. He himself states in his examination-in-chief that such injuries are possible by fall. In his examination-in-chief itself, he further specifically states that the death of Govind was natural. It is not understandable as how this witness, at his own, stated all these facts in examination-in-chief. Dr.Kacheriya (PW 11) states that the injuries found on the body of of the deceased Govind were possible by stick blows. The learned APP, who was conducting the case, also did not ask anything to Dr.Gadekar (PW 13) as to on what basis, he could opine that the death of Govind was natural and the injuries found on his body were not possible by hard and blunt object, like stick. Albeit, the fact remains that the evidence of Dr. Gadekar (PW 13) does not support the case of the prosecution that the death of Govind was

homicidal.

38. As seen from the evidence of Indubai (PW5), the deceased Govind was shifted to a private hospital of Dr.Tambe on 18/03/2004 for treatment. He died on 19/03/2004. Dr.Tambe would have been the best witness to state before the Court about the cause of death of Govind. The case papers of the deceased Govind showing his condition after admission in the hospital of Dr.Tambe would have been of a great help to the prosecution to connect the death of Govind with the injuries sustained by him. However, the prosecution has not examined Dr.Tambe and has not produced the case papers of the deceased Govind. Thus, the best possible evidence has been withheld by the prosecution without assigning any reason.

39. As stated above, the evidence of informant, Indubai (PW 5), Sangeeta (PW 8) and Pralhad (PW 10) suffers from material omissions and improvements. There are vital consistencies in their evidence. It is clear that they tried to state many things before the court, which were far from the factual position. As per the case of the prosecution, there was dispute between the

deceased Govind on one hand and accused No.1 on the other on account of the water channel that was running through the land of accused No.1. Considering this previous rivalry, it was immensely necessary for the prosecution to produce independent evidence to corroborate the versions of the above mentioned four ocular witnesses, who certainly are interested in seeing the accused convicted. The medical evidence also does not support the case of the prosecution.

40. In the above background, the contention of the learned counsel for the accused that the unexplained delay of about 12 hours in lodging F.I.R. would be fatal to the prosecution, cannot be said to be without substance. The incident took place between 07.00 a.m. and 08.00 a.m. on 18/03/2004. The F.I.R. (Exh.49) has been lodged in the Police Station, Sangamner in the evening and on the basis of that F.I.R., Crime No.40/2004 came to be registered at 08.20 p.m. Even if it is assumed that the period of 1 hour was exhausted for recording the F.I.R. prior to registration of the crime, there is delay of about 11 hours in lodging the F.I.R., which has not at all been explained.

41. The informant states that Chandanpuri is at the distance of 5 k.m. from his village and Sangamner is at the distance of $7\frac{1}{2}$ k.m. from Chandanpuri. Chandanpuri is on Nasik to Pune State Highway. There is a tar road between his village and Chandanpuri. There is S.T. bus facility available at 7.00 a.m., 8.00 a.m., 9.00 a.m., 11.30 a.m., 1.00 p.m. and 4.30 p.m. for his village from Sangamner. He himself was having a Luna. His brother (i.e. Pralhad (PW 10)) can ride on Luna. He admits that vehicles are continuously available for going from Chandanpuri to Sangamner.

42. The deceased Govind was aged about 70 years at the time of the incident. Considering his age and the injuries sustained by him, and considering the fracture of right leg sustained by the informant a concession may be given to them for not taking steps immediately to lodge the F.I.R. However, there is nothing on record to show as to why Indubai (PW 5), Pralhad (PW 10) and Sangeeta (PW 8) did not inform the police about the incident until the informant Babasaheb narrated about the incident before the police on that day after he was admitted in the Cottage Hospital at Sangamner.

43. Indubai (PW 5) states that after the incident, she went to the house of *Sarpanch* and contacted the police on phone, however, there was no response. This fact has been denied by the P.S.I., Bachhav (PW 12). Any way, Indubai (PW 5) was in a position to walk.

44. Pralhad (PW 10) is an educated person. He was able to ride on Luna. He could have approached the Police Station by S.T.bus as well. He did not lodge the F.I.R. promptly without assigning any reason.

45. Sangeeta (PW 8) states that she had lodged F.I.R. against her husband and in-laws prior to the incident. She had filed maintenance application against her husband in the court at Sangamner. As such, she can be said to be conversant with the procedure of lodging report in the police station or filing complaint before the Magistrate. She went to Chandanpuri, informed about the incident to Sakharam (PW 6) and came back to the spot of the incident. However, she did not explain as to why she did not go to police station at Sangamner to lodge the report.

46. The informant involved all the members of the families of accused No.1 and 3 in the incident in

question. The evidence against the lady accused is totally vague and general. This fact itself indicates that they were deliberately involved in the alleged incident. The F.I.R., in the circumstances, cannot be said to have been lodged spontaneously and without deliberation and discussions. In the circumstances, the delay in lodging the F.I.R. would be fatal to the prosecution.

47. Considering the above mentioned facts and circumstances of the case, we hold that the learned trial Judge rightly appreciated the evidence on record and rightly held that the prosecution failed to establish guilt of the accused for the above mentioned offences. The view taken by the learned trial Judge is quite possible view. We subscribe to the view taken by the learned trial Judge. The accused have been rightly acquitted by the learned trial Judge. The appeal is devoid of any substance. It is liable to be dismissed. The revision application filed by the informant also is liable to be dismissed for the reasons mentioned above. Hence, the order.

O R D E R

- (i) Criminal Appeal No.239 of 2006 and Criminal Revision Application No.80 of 2006 are dismissed.
- (ii) The bail bonds of the accused/ respondents are cancelled. They are set at liberty.
- (iii) The Criminal Appeal and Criminal Revision Application are accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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