

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

CRIMINAL APPEAL NO. 22 OF 2000

The State of Maharashtra
Through – Killari Police Station,
Dist. Latur.

.. Appellant
[original
complainant]

Versus

1. Govind Shankarrao Kohale
Age. 39 years
[Appeal abated against respondent
No.1 as per order dated 02.12.1999]
2. Babruwahan Shankarrao Kohale
Age. 55 years
3. Arvind Keshavrao Mathe
Age. 35 years
4. Arvind Shankarrao Kohale
Age. 35 years
5. Shankar Narsing Kohale
Age. 51 years
6. Pratap Babruwahan Kohale
Age. 25 years
7. Karan Shankarrao Kohale
Age. 23 years
8. Vikram Shankarrao Kohale
Age. 27 years

.. Respondents
[original
accused]

All R/o. Haregaon,
Tq. Ausa, Dist. Latur.

Mr.R.V. Dasalkar, A.P.P. for the appellant/State.
Appeal abated against respondent No.1.
Mr.V.R. Dhorde, Advocate [appointed] for respondent Nos.
2 to 8.

**CORAM : S.S.SHINDE &
S.M.GAVHANE,JJ.**
RESERVED ON : 04.07.2017
PRONOUNCED ON : 14.12.2017

JUDGMENT [PER : S.M. GAVHANE,J.] :-

. This appeal is filed by the appellant-State against acquittal of the respondents/original accused of the offences punishable under sections 143, 147, 148, 452, 302 read with section 149 of the Indian Penal Code [for short "the IPC"] vide judgment and order dated 16.01.1998 in Sessions Case No.47 of 1997 passed by the Additional Sessions Judge, Latur.

2. During pendency of the appeal, respondent No.1/original accused No.1-Govind died. Hence, the appeal is abated against him vide order dated 02.12.1999 in

Criminal Application No. 1570 of 1998.

3. Case of the prosecution, in brief, is as under :-

a] Complainant Pandit (PW-1) is resident of village Haregaon, Tal. Ausa, Dist. Latur. The deceased Vinayak, Angad and Sugriv are uncles of the complainant. His Uncle Angad and accused No.1 Govind were leaders of the rival political groups of village Haregaon. The groups of Angad and Govind were on inimical terms from 1989 Grampanchayat elections. There were cases and counter-cases against each other and most of them have been compromised. At the relevant time of incident dated 21.08.1996, election of a co-operative society was declared and it was scheduled to be held on 18.09.1996. The prosecution case is that the rival groups were contesting the election of society.

b] A meeting for making arrangements of election campaign was called in the office of the society by Angad on 21st of August, 1996. The meeting was attended by deceased Vinayak, Angad, complainant Pandit and some other persons. Vinayak was present in the meeting till 10=30 at night. He, thereafter, proceeded towards his house, since he was feeling asleep. Some time thereafter some other persons left the office of society leaving behind them Pandit, Angad, Vaijinath and Laxman. These four persons were chatting in the office of the society till 11.45 p.m. At about 11.45 p.m., Pandit left the office of society for returning to bed towards his house. After leaving the office of society, he eased his bladder and proceeded towards his house. While he was at a distance of about 20 paces from the house of uncle Vinayak, he heard noise of foot steps behind him. He, thereafter, turned around and noticed that his uncle had slept in the veranda in front of his house and at that place electronic bulb was burning. He had noticed that the legs of his uncle Vinayak were held by accused No.8-

Vikram Shankar Kohale and accused No.7-Karan Shankar Kohale, accused No.5-Shankar Kohale and accused No.2-Babruwahan Kohale had held his hands, accused No.4-Arvind Shankar Kohale and accused No.6-Pratap Shankar Kohale had latched the door of his house from outside and they were standing in the veranda just in front of the door. Accused No.3-Arvind Keshav Mathe was holding a big stone in his hand and he was standing near the head of deceased Vinayak. The complainant-Pandit noticed that stone was handed over to accused Govind by accused Arvind Mathe and then accused Govind inflicted blow of that stone on the head of Vinayak. After noticing this incident, Pandit raised hue and cry. After hearing his clamor, prosecution witnesses Ganesh Mudbe and Angad Kohale hurriedly arrived at that spot from the office of the society. Pandit then enquired with Vinayak as to what had happened. He was told by Vinayak that he has been betrayed by Govind and others. Accused Govind and his associates had already started fleeing from the spot of incident. They were chased by Pandit. Accused Govind

was accosted by him, however, he gave a jolt to Pandit, rescued himself from his clutches and then fled from the spot. By then Ganesh and Angad had also arrived at the spot of the incident. All of them rendered first aid to Vinayak. Pandit procured a jeep and reached Vinayak in the Vivekanand Hospital at Latur, at about 2=00 a.m. Vinayak was given treatment in the hospital. While he was under treatment of the doctor, he succumbed to the injuries at about 4=00 a.m. After Vinayak was declared dead by the doctors, Pandit immediately returned to Killari in a jeep and lodged a complaint about the incident with the police. PSI Ingewad, who was then holding the charge, registered Crime No.85 of 1996 under sections 143, 147, 148, 149, 452, 302 of the IPC, took further investigation in his charge and immediately proceeded to Latur, since the dead body was lying in the Vivekanand Hospital.

c] The inquest panchanama was drawn, dead body was sent to Civil Hospital for performing autopsy. A police

constable was retained along with dead body. PSI Ingewad then returned to Haregaon for further investigation into the crime. It is stated that scene of offence Panchanama was drawn by him. At the time of drawing scene of offence Panchanama, a quilt, a carpet, a pillow with pillow cover, a stone, all stained with blood have been seized by him along with a pair of chappal, from the spot of incident.

d] When the investigation was in progress, the dead body was brought to Haregaon. Clothes on the person of the deceased were produced by a police constable, who was retained along with dead body. The clothes produced by him were seized by drawing a panchanama of seizure. Statements of material witnesses have been reduced into writing. The accused were arrested.

e] After completion of investigation, charge-sheet was filed by the Investigating Officer in the Court of Judicial Magistrate, FC, Ausa., who then committed the

case to the Sessions Court, Latur as the offence under section 302 of the IPC was exclusively triable by the Court of Sessions, which was allotted to the Additional Sessions Judge, Latur.

4. Charge was framed against the accused for the offences punishable under sections 143, 147, 148, and under sections 452 and 302 read with section 149 of the IPC, to which they pleaded not guilty and claimed to be tried. Their defence is denial. So also, their defence as it appears from the trend of cross-examination of the material prosecution witnesses and written say of accused No.1 is that there used to be elections of Grampanchayat and society in their village and there used to be one panel of accused No.1. In September, 1996, there was election of society and there was one panel of accused No.1 and another panel was of Angad Kohale. In 1996 he (accused No.1) was Deputy Sarpanch of Grampanchayat and panel of Angad was defeated. On account of election, his relation with Angad and his associates were not good. In

the mid-night between 21.08.1996 and 22.08.1996 he (accused No.1) – Govind (now deceased) had slept in the office of Grampanchayat along with Namdeo Kohale, Vishnu Kohale and Harishchandra Kohale, because Shalubai – sister of accused No.1 had expired prior to 3-4 days and cremation was made in the village and there were guests in his house. All of them heard clamor from the house of Angad Kolahe. In order to ascertain as to what had happened, all of them had been to the house of Angad. Somebody had assaulted deceased Vinayak. When accused No.1-Govind and other had reached at the spot and asked people in crowd what had happened, at that time complainant Pandit (PW-1), Sugriv Kohale, Angad and Vasant came to accused No.1-Govind and assaulted him saying that they are responsible to assault Vinayak. In the said incident accused No.1-Govind sustained injuries. He was treated by Doctor. Accused No.1 had been to Killari Police Station at about 4^o clock in the morning of 22.08.1996 to report the said incident. His complaint was registered by police, however, cognizance of the same

was not taken. Behaviour of deceased was not good and therefore some people in village were suspecting his character. Deceased had no concern or enmity with accused No.1. Accused No.8 Vikram has taken defence of alibi as appears from cross-examination that he had been to village Borgaon (Nakuleshwar) for attending a meeting on 21.08.1996, called by Tahsildar, Ausa for taking review of progress of work of rehabilitation of earthquake affected persons. On that day, there was heavy rain. Therefore, he could not return to Haregaon in the night and he halted at Borgaon (Nakuleshwar) and returned to Haregaon only on next day morning i.e. on 22.08.1996. The accused have further contended that complainant – Pandit (PW-1), who is advocate has concocted this prosecution only with a view to give counter to the complaint of accused No.1 – Govind.

5. The accused have examined two witnesses Harishchandra Kohale (DW-1) and Vijay Aounde (DW-2) in defence.

6. The prosecution has examined in all seven witnesses and relied upon the panchanamas and post mortem report referred to above. Considering the evidence adduced by the prosecution, the Trial Court has held that death of the deceased is homicidal and that the prosecution has failed to prove the offences against the accused with which they were charged and accordingly acquitted all the accused by the impugned judgment and order dated 16.01.1998. Therefore, this appeal by the appellant/ State against the accused on several grounds mentioned in the memorandum of appeal, which has been abated against accused No.1-Govind as said earlier.

7. We have heard learned APP for the appellant-State and learned advocate appointed to represent the accused. Learned APP submits that, there is direct evidence of eye witnesses PWs1,3 and 4. Said evidence is corroborated by medical evidence of Dr.Raibhoge (PW-2), and post mortem report Exh.28 issued by the said doctor.

Therefore, the Trial Court ought to have held that the prosecution has proved the offences punishable under sections 452 and 302 read with section 149 and under sections 143, 147 and 148 of the IPC against the accused. It is further submitted that the impugned judgment and order be quashed and set aside, and the accused be convicted for the aforesaid offences by allowing the appeal.

8. On the other hand, learned Advocate for the respondents/accused Nos.2 to 8 submits that there is no consistency in the evidence of alleged eye witnesses PWs 1,3 and 4. Said eye witnesses are related witnesses. Therefore, the Trial Court has rightly disbelieved the evidence of said witnesses and held that, the prosecution has failed to prove offences against the accused with which they were charged and acquitted them of the said offences by the impugned judgment and order. Learned Advocate further submits that the view taken by the Trial Court is reasonable and possible view, and it is not the

case that there is error in appreciation of evidence by the Trial Court, and therefore, there is no ground to interfere with the impugned judgment and order, and as such he claimed to dismiss the appeal.

9. In support of his aforesaid submissions, learned Counsel for the respondents/accused has relied upon the ratio laid down in the case of **Golbar Hussain & Ors. Vs. State of Assam & Anr., (2015) 11 SCC 242** and invites our specific attention to para 9 to 12 of the said judgment.

. The Apex Court in para 9 to 12 has held as under:-

"9. In our view, the above mentioned are certain cardinal rules to be kept in mind in appeals against acquittal. In our view the Trial Court has given a reasoned decision after careful and thorough analysis of the evidence produced by the parties. The Trial Court also had the advantage of looking at the demeanor of the witnesses, and was correct in granting the benefit of doubt to the accused and acquitting them. The High Court erred in presuming a version against the accused as the view which is favourable to the accused should be taken in cases where two views are probable.

10. The Second issue for consideration is the

testimonies of PW-4 and PW-5 in absence of any corroboration from any independent witness. PW-4 and PW-5 are related witnesses as they are the brothers of the deceased Hasen Ali. There is no bar on the admissibility of a statement by related witnesses supporting the prosecution case, but it should stand the test of being credible, reliable, trustworthy, admissible in accordance with law and corroborated by other witnesses or documentary evidence of the prosecution. This Court has held in *Manga alias Man Singh v. State of Uttarakhand*, (2013) 7 SCC 629, that it is the quality of the witness that matters and not the quantity, when the related witness was examined and found credible. In such a case non-examination of an independent witness would not be fatal to the prosecution case.

11. In the present case, however, the prosecution witnesses PW-4 and PW-5, contradict each other, and their statements are not corroborated by any independent witness in spite of the incident happening in the market place, with shops on both sides of the road. Therefore, in our view, as the testimonies of PW-4 and PW-5 are not completely reliable, this is a fit case where corroboration by an independent witness was required. The case of the prosecution also weakens on the ground that the only independent witness PW-8 turned hostile. A similar situation arose in *Shyamal Saha and Anr. v. State of West Bengal*, (2014) 12 SCC 321, where the only independent witness turned hostile. This Court decided to affirm the acquittal and granted benefit of doubt to the accused considering the factual background and circumstances involved in the case.

12. Therefore, in the light of the above conclusions on the issues for consideration, the view taken by the Trial Court was reasonable and probable on the facts of the present case. We are, therefore, of the opinion that the High Court should not have set aside the acquittal of the appellants."

10. We have carefully considered the submissions made by the learned APP and learned advocate appearing for the accused. With their assistance, we have perused the evidence adduced by the prosecution and the defence. So also, we have perused the impugned judgment and order.

11. Since this is an appeal against acquittal, it is necessary to refer the ratio laid down by the Apex Court in the case of Murlidhar alias Gidda and another Vs State of Karnataka (2014) 5 SCC 730, wherein in para No.12 the Apex Court has held thus:

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs

State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified.

Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

12. Case of the prosecution is that death of the deceased is homicidal. The accused have in-fact not disputed the same. The evidence of Dr.Raibhoge (PW-2) shows that on 22.08.1996 at about 1=00 p.m. he started post-mortem examination on the dead body of deceased Vinayak and he had noticed following injuries :-

1. Stitched wound over left side of forehead; transverse in direction about 7 cm in length.
2. A switched wound over left parietal region of scalp; transverse in direction; about 2 cm in length.

3. On palpation and internal examination, noticed fracture of left parietal region of skull; star shaped extending upto right parietal and occipital region of skull.

. According to Dr. Raibhoge, above all injuries were ante-mortem. He stated that he also noticed that brain was congested and was having multiple laceration of left parietal lobe. There was evidence of intra cervical hemorrhage. Accordingly, he prepared and issued post mortem notes (Exh.28). Further, he stated that the injuries noticed were grievous in nature and in his opinion the cause of death of the deceased was head injury due to fracture of left parietal bone of skull. His evidence about noticing injuries on the person of the deceased by him and the cause of death has gone unchallenged during his cross-examination. The post mortem notes Exh.28 also show the cause of death as deposed by Dr.Raibhoge. There was no suggestion to the said Doctor on behalf of accused that injury No.3- fracture of left parietal bone of skull which resulted into death of the deceased was accidental. Therefore, on

the basis of above medical evidence, we hold that the prosecution has proved that death of the deceased is homicidal. The Trial Court has also rightly held so by answering point No.1 in this respect in the affirmative.

13. Now, it is to be seen whether the accused are responsible for death of deceased. To attract offences under sections 143, 147 and 148 as well as offences under sections 452 and 302 read with section 149 of the IPC, the prosecution has to establish that there was unlawful assembly of five or more persons and the accused were members of said assembly. That common object of said assembly was to assault deceased Vinayak, accused members of said assembly were armed with deadly weapons and as such they committed house trespass by entering veranda of the house of the deceased and in prosecution of common object referred to above of said unlawful assembly, accused caused death of the deceased. To prove these facts, the prosecution has mainly relied upon evidence of eye witnesses PWs 1,3 and 4.

14. Now coming to the evidence of above eye witnesses, the evidence of PW-1 Pandit Kohale, who is admittedly nephew of the deceased and an advocate, has stated that he has three uncles, namely, Vinayak (deceased), Angad and Sugriv. They all are residing separately. There is a road which goes East-West side in direction in front of his house. The house of the deceased situates on the Southern side of the said road. On the Northern side of the said road, there is house of Angad. Width of the said road is 15 ft. The distance between his house and the house of the deceased is approx. 45 ft. and that there was construction between these two houses at the time of incident.

15. As regards relationship of the accused *interse*, PW-1 Pandit has stated that an accused Nos.1,4,7 and 8 are brothers and accused No.5 is their father. Accused No.2 is their uncle. Accused No.6 is their cousin. Accused No.3-Arvind is friend of accused No.1. Accused

No.5 is father of accused Nos.1. Except accused No.3, all the accused were residing in a joint family and at that time accused No.1-Govind was holding the office of Deputy Surpanch of village Haregaon, and accused No.2 was member of said Grampanchayat. PW-1 further stated that his uncle Angad was Chairman of the co-operative society. There were two political parties in their village; one led by accused No.1 Govind and another led by his uncle-Angad. Said parties were in existence since 1989 Grampanchayat election. Further, he stated that there were counter cases of each group and said cases were compromised. He stated that in the month of August, 1996, election of Co-operative Society was declared and nomination forms of said election were submitted on 09.08.1996. The date of said election was 18.09.1996.

16. As regards the incident, PW-1 has stated that deceased Vinayak was murdered on 21.08.1996 at about 11.45 night. On 21.08.1996 he (witness) was proceeding towards his home after easing to return to bed. While he

was proceeding towards his house, he heard noise of foot steps behind him. Immediately, he turned back and saw that his uncle Vinayak was present in his house. In the light of electric bulb he noticed that there were eight persons present around him and Vikram (accused No.8) and Karan (accused No.7) had held legs of his uncle-Vinayak. Shankar (accused No.5) and Babruwahan (accused No.2) had held his hands. He stated that he had noticed that Arvind (accused No.3) and Pratap (accused No.6) were present in front of door of his house. Latch of the door was closed. He stated that accused Arvind Mathe (accused No.3) was standing near hands of Vinayak with a stone in his hand. Arvind then handed over the stone to Govind (accused No.1). Govind then inflicted blow of stone on the head of Vinayak. He deposed that he started raising hue and cry and then started running towards them. All of them fled away from that spot. He asked Vinayak, what had happened? He told him that Govind has betrayed him [गोविंदने माझा घात केला]. While he was raising hue and cry, two persons, namely, Ganesh (PW-2) and Angad had arrived at

the spot. Vinayak became unconscious. He stated that he started chasing accused. He held accused Govind. He gave a jolt to him and rescued himself and then fled away. Then he returned to Vinayak and noticed that Vinayak had sustained injuries to his head. He managed to procure a jeep for reaching Vinayak in the hospital. They left Haregaon at about 12=00 mid night and reached Vivekanand Hospital at Latur at 02=00 a.m. Vinayak was admitted in the hospital, thereafter he died at about 4=00 a.m. Then he returned to Killari by a jeep at about 05=00 a.m. and lodged complaint Exh.24. He identified the accused present before the Court, and stated that they are from his village, and also from his brotherhood.

17. In the cross-examination PW-1 admitted that, houses in the village are situated on both sides of the road and are facing towards road. His house is constructed in two parts. One is old and another is newly constructed portion. His house situate in the North-West corner at the square of East-West and South-North roads.

He admitted that there is veranda in front of house of Vinayak. The height of said veranda is approximately 1 ft. from the ground level. He denied the suggestion that, walls approximately 4-5 feet in height, and are constructed on the Eastern and Western side of the said veranda. He stated that width of the veranda is 38 inch and its length is approximately 8-10 ft. He stated that the deceased has been murdered in the said Veranda, while he was asleep. He denied the suggestion that, veranda of the house of the deceased is not visible from the East-West road, and that East-West road is 30 ft in width. He stated that approximately 10-12 persons including himself were present in the tin shed of the society, and were discussing about the election campaign. He admitted that Vinayak was also present in the tin shed. He left the tin shed at about 10=00 p.m. to 10=30 p.m. for going to sleep. He stated that at about mid night he left the tin shed and proceeded towards his house. When he was at a distance of 20 paces he heard noise of foot steps. He noticed 8 persons immediately after turning towards the

house of Vinayak. All of them were present in the veranda. Nobody was facing towards him. The spot of incident is visible from East-West road; and a man in a sleeping position, was visible from the road. He further deposed that, Vinayak made attempt to set himself free. He was standing at a distance of about 20 ft. away from the spot of an incident. He reached at the spot of incident within two minutes. The moment he reached the spot, all the 8 persons had fled from the spot of incident.

. He admitted that the width of the East West road and South North road is equal. The house of accused situate at a distance of about 1000 ft. on the Northern side of the road and on the same side of the road his house is situated. The accused fled towards the Eastern side. He started chasing the accused when they were at a distance of about 30 ft. from the spot of incident. He caught hold accused Govind at about 45 feet away from the spot of incident. He kicked him at two places. However,

he stated that it is not mentioned in the complaint, that Govind was caught hold by him. There is a door towards Southern side of house of Vinayak. The son of Vinayak, namely, Prabhakar had arrived at the spot of incident after hearing hue and cry. Wife of Vinayak had also arrived at the spot. He stated that it did not happen that approximately 100 persons had gathered at the spot of incident immediately after the incident. The distance between the spot of incident and office of society is approximately 30 ft. Ganesh and Angad reached at the spot of incident simultaneously with him. Neither Angad nor Ganesh attempted to catch hold any one of the culprits. He stated that all of them attempted to provide first aid to Vinayak. Both of them were present when he asked Vinayak as to what had happened. He stated that he owns a Jeep. It was stationed in front of his house. His brother drives it.

18. Further in the cross-examination PW-1 has admitted that they spent approximately 2 hours in

Vivekanand Hospital. They were asked history of the case by the Doctor. Accordingly, it was noted down by the Doctor. He had stated to the Doctor that injury has been sustained by Vinayak because of blow of a big stone on his head. He did not feel it necessary to mention it to the Doctor that the injury has been caused to Vinayak by accused No.1-Govind. He did not lodge complaint to any police station at Latur. He admitted that Doctor from Vivekanand Hospital informed the police that they were in receipt of MLC and the patient was under treatment in the hospital. He denied that police had arrived at hospital at night. He admitted that he did not disclose to any police authority that Vinayak has been murdered by the accused till he was declared dead by the Doctor from Vivekanand Hospital. He, Angad and driver of his jeep – Pawar had been to Killari immediately after the declaration of death of Vinayak by the Doctor from Vivekanand Hospital. He admitted that he was told by police that one hour before his arrival in the police station, a complaint has been lodged by one Govind

against him and other persons. He admitted that he was told by the Police that the complaint has been registered in the station diary of the police station. He did not try to obtain information about the nature and particulars of the allegations made against him in the complaint by Govind since it was a practice of the accused. He stated that he was not aware as to whether the allegation was that he, Sugriv, Angad and Vasant Kohale had assaulted Govind. He denied that a complaint has been lodged by him with premeditation with a view to raise a counter to the allegations made by the accused Govind. He admitted that he was charge-sheeted in connection with similar offences. He has not gone through any charge-sheet except above referred charge-sheet. He admitted that he had not stated before police in his complaint as well as in his supplementary statement that Vinayak was leader in the group of Angad. He has denied that deceased Vinayak was characterless man and some villagers were not happy with him. He denied that Ganesh (PW-3) is the son of cousin sister of Vinayak. He denied

that he engineered this false case with the help of his knowledge of law, with a view to falsely implicate the accused persons who were belonging to rival group. He admitted that Vinayak was never Chairman of society nor he was member of Grampanchayat. He admitted that accused Arvind is a teacher and he was posted at Matola. He admitted that one Shalubai who was sister of accused Vikram had died in the village on 16.08.1996. Accused Vikram had secured degree as Bachelor of Engineering in 1996 and he was working on the Earthquake Rehabilitation Project for the earthquake affected persons of village Shivaji-Birvli, Chincholi (Kajale). He denied that accused Vikram had attended a meeting at Borgaon (Nakuleshwar) called by the Tahsildar, Ausa for taking review of progress of construction work and he did not return to village Haregaon since the meeting lasted for late hours and it was raining on that day. He denied that the accused are not in any way concerned with the incident and that they are falsely implicated in this case by taking undue advantage of death of Vinayak. He

stated that Article No.17—stone showed to him is the same stone inflicted by accused Govind on the head of Vinayak.

19. From the evidence of PW-1 it appears that according to him, he saw the incident from a distance of 20 ft. and thereafter he reached to the spot of incident within two minutes and the moment he reached to the spot, all 8 persons have fled away from the spot of incident and that when he had seen said persons they were not facing towards him. Considering the said evidence and the time of incident i.e. at about 11=45 p.m. in the night, his evidence is not sufficient to infer that it was possible for him to identify all accused from a distance of 20 ft. in the night from their backside. Another aspect to be noted is that this witness, Angad and Prabhakar and others had brought deceased Vinayak to Latur in the Vivekanand Hospital in the jeep at about 02=00 a.m. and then Vinayak died at 4° clock in the hospital. Admittedly, this witness neither disclosed to Doctors in the said hospital nor to the police in the

hospital or police of Latur Police Station that the deceased sustained head injury because of blow of a big stone on his head by accused No.1. In-fact, he should have disclosed the same both to the Doctor in the hospital and police. He admits that the Doctor from Vivekanand Hospital informed police that they were in receipt of medico legal case and patient was under treatment in the hospital. But no document in this respect is produced on record by the Investigating Officer to show that really such information was given to the police by Doctors of Vivekanand Hospital and in the said information it was disclosed that the deceased was assaulted by accused No.1-Govind by stone. Moreover, as referred earlier, PW-1 admits that he did not disclose to any police authority till the deceased was declared dead by the Doctors from Vivekanand Hospital that deceased Vinayak has been murdered by the accused. This silence on the part of PW-1 creates doubt whether really he has seen the incident. Another aspect to be noted is that PW-1 admits that they had spent approximately 2 hours in

Vivekanand Hospital. They were asked about history of the case by the Doctor and it was noted down by the Doctor. According to him, he had stated to the Doctor that Vinayak sustained injury due to blow of a big stone on his head. But it appears that he did not state to the Doctors that all accused or accused No.1-Govind are/is responsible to the said injury. The evidence that he asked Vinayak as to what had happened, he told him that Govind has betrayed him [गोविंदने माझा घात केला] shows that he had not seen the incident of actual assaulting the deceased. Therefore, when as admitted by PW-1 that before he lodged complaint in Killari Police Station against the accused, complaint was lodged against him and others by accused No.1-Govind of assaulting the said accused and as it appears that he is accused in one charge-sheet filed by police on 29.11.1996 alleging that Govind was assaulted by him, Angad, Sugriv and Vasant and that Govind was contesting co-operative society election from rival panel, which was scheduled on 18.09.1996, possibility of his implicating accused No.1-Govind and others to save

himself from the aforesaid case against him and others cannot be ruled out. Another reason to arrive at said conclusion is that admittedly, there was quarrel between PW-1 and accused on account of right of way from the land of the accused, due to which there is possibility of PW-1 deposing against the accused and filing false case against the accused cannot be ruled out.

20. When PW-1 as observed above stated that out of accused, nobody was facing towards him and he saw them from a distance of about 20 ft. and it was night time, his evidence giving minute details regarding act done by individual accused at the time of assaulting deceased Vinayak is not believable.

21. The second eye witness Ganesh Shankar Mudabe (PW-3) has stated that he was working as Supervisor in Stup Construction Co. Ltd. He knows Vinayak. The construction work of the house of Vinayak was started one month after his death. He further stated that Vinayak is

not alive and he has been murdered. He had been to the office of society on 21.08.1996 at about 08.00 p.m. Election of society was to be held and therefore a meeting was arranged in the office of the society. Vinayak was present in the office of society till 10.30 p.m. He left the office of the society at that time. Approximately 10 to 12 persons were present in the office of the society. They were Vinayak, Pandit, Angad, Satish, Vaijinath, Nandkumar and himself. 15 minutes after the departure of Vinayak some other persons had left and they proceeded towards their houses. He himself and four others namely, Angad, Pandit, Vaijinath and Laxman were present in the office of society after the departure of remaining persons. They were in the office of society till 11.30 p.m. At about 11.45 p.m. Pandit left the office of the society and proceeded towards his house. He stood in front of the door of the society for few minutes and thereafter he went to bed. Some time thereafter he heard noise from outside that "Appa has been betrayed" [आप्पाचा घात झाला]. He recognized the noise. It

was noise of Pandit. 'Appa' was the nickname of deceased Vinayak. After hearing the noise he himself and Angad came out of the office of the society and proceeded towards the house of Vinayak. He had noticed at that time that Pandit too was running towards the house of Vinayak. He had noticed eight persons in the light of electric bulb. Vikram and Karan had held the legs of Vinayak. Shankar and Babruwan had held the hands of Vinayak. Arvind Mate was holding big stone in his hand. He was standing near the head of Vinayak. Govind took that stone from the hand of Arvind and then inflicted a blow of that stone on the head of Vinayak. After inflicting the blow, all of them fled away from the spot of incident. Pandit started chasing them. He held Govind at a distance of about 20-25 feet from the spot of incident. He compelled Govind to fall down on the ground and then inflicted kicks on his person. Govind thereafter fled away from the spot of incident. Since blood was oozing from the injuries of Vinayak, he attempted to provide him first-aid. They wrapped a bandage around his

injuries. Pandit, thereafter, brought a jeep. Vinayak was thereafter reached in the hospital at AUSA. The hospital was closed. Vinayak was thereafter shifted to Latur in Vivekanand Hospital. They reached Latur at about 2.00 a.m. Vinayak was admitted in the hospital and he was given treatment. At about 4^o clock in the morning Vinayak had died in the hospital, while he was under treatment of the Doctors. Pandit, thereafter, went to Killari Police Station. Vinayak had sustained injuries on left side of his hand.

22. In the cross-examination, PW-3 denied that the police had arrived on the next day of the incident in the village and he had shown them the spot of incident. He further denied that after noticing them the assailants had started fleeing from the spot of incident. PW-3 denied that he himself and Angad went to Vinayak and noticed his physical condition. He denied that he noticed complainant Pandit bringing accused Govind towards the jeep, when Vinayak was already kept in the

jeep for reaching him in the hospital. He denied that he, Pandit, Angad and Vasant reached Vinayak to Vivekanand Hospital at Latur. He denied portion marked "B" in this respect in his statement before police. He stated that he cannot assign any reason as to why portion marked "B" is so recorded by police in his statement. PW-3 denied that he stated before police that accused Govind was caught by the complainant Pandit at a distance of about 20-25 feet from the spot of incident and he was made to fall down on the ground and was kicked by Pandit. He denied that he stated before the police that jeep was brought by complainant Pandit for reaching Vinayak in the hospital. He denied that he had stated before police that Vinayak was initially taken to the hospital at AUSA. PW-3 denied that neither himself nor other prosecution witness were aware as to how the incident had occurred. He denied that because of political rivalry the accused have been implicated in this false case after premeditation, due deliberation and consultation by taking undue advantage of the occurrence of the incident.

He denied that Vikram was not present in the village on the day of incident. He also denied that he was an accused in a counter case filed by the accused after the Grampanchayat elections of 1989.

23. Thus it is clear from the above evidence of PW-3 that he denied portion that he, PW-1 Pandit and people gathered at the spot of incident, reached Vinayak in the jeep, which has been proved by the Investigating Office as Exh.38, is omission while deposing before the Court. Had it been the case that he along with three others referred to above would have reached deceased Vinayak in injured condition in the jeep, there would have been bloodstains on his clothes and said stains would have supported his evidence to prove his presence. Moreover, his evidence that he has not stated before the police that, accused No.1-Govind was caught by the complainant Pandit (PW-1) at a distance of 20 ft. from the spot of incident, and he was made to fall down on the ground and was kicked by PW-1, and further that the jeep was brought

by PW-1 for reaching Vinayak in the hospital and that Vinayak was initially taken to hospital at AUSA, is also an improvement while deposing before the Court and material omission in his statement before police. So also as admitted by him, he was accused in counter case filed by the accused after Grampanchayat elections of 1989. It can be said that, he was not in good terms with accused. Therefore, he has reason to implicate them and as suggested to him on behalf of accused that, because of political rivalry the accused have been falsely implicated in alleged crime after due deliberations and consultation by taking undue advantage of the occurrence of the incident. Another aspect to be noted is that, as noted above, PW-3 stated that while he was standing in front of door of society after 11.45 p.m; for few minutes and thereafter went to bed, he heard noise from outside that "Appacha Ghat Zala". According to PW-3 it was noise of PW-1 Pandit, and on hearing the said noise he and Angad came out of the office of the society and went towards Vinayak. While PW-1 Pandit has not stated that

after seeing the incident he uttered "Appacha Ghat Zala". PW-3 claims that he himself and Angad had heard noise from 30 feet distance between office of society and house of deceased Vinayak. Considering said distance also evidence of this witness of hearing said noise is also not probable. As per the prosecution case Ganesh (PW-3) had shown the spot of incident on the next day, and accordingly PSI Ingewad (PW-7) had prepared panchanama of spot of incident Exh.25. PW-6 Panch Shripati Kohale has also deposed in tune with PW-7. However, PW-3 Ganesh has stated that, it did not happen that, on the next day of incident police had come in the village and he had shown them the spot of incident. The said conduct of PW-3 clearly demonstrates that he was not telling full truth about the real incident. In that view of the matter, his evidence is not trustworthy.

24. Prosecution examined Satish Pralhad Bajulge (PW-4) as third eye witness. He stated that he knows Vinayak and his house situates on the Eastern side of house of

Vinayak. East-West road situates in front of his house. He stated that on the day of incident after having meals he went to bed at about 9=30 p.m. At about 11=45 p.m. at night, he heard hue and cry of Pandit. Therefore, he went out of his house. He noticed that all the accused, present before the Court, were running from the house of Vinayak towards Eastern side on East-West road on the date of incident. He heard noise of crowd from the side of house of Vinayak. He, therefore, went there to see as to what had happened. He noticed that blood was oozing from the mouth and nostrils of Vinayak and a stone was lying near his head. He enquired with Pandit, as to what has happened. Pandit told him that all the accused had inflicted a blow of stone on the head of Vinayak and they fled away from the spot immediately after the incident. The relatives of Vinayak then reached him in a jeep in the hospital. Another jeep was hired, and in said jeep he came to Latur.

25. In the cross-examination PW-4 admitted that

Vinayak was his maternal uncle. He admitted that there are residential houses in his locality on all sides of the road. Approximately 25 persons had gathered at the spot of incident till the Vinayak was reached in the hospital in a jeep. He could not tell their names. He denied that he opened the door and noticed the assailants fleeing away from the road. PW-4 admitted that he was called by police. The police officials were present in the office of society when he was called. Angad, Pandit, Ganesh and Prabhakar were present along with police officials. He had no talk with police officials. He was present with the police officers approximately for about 2 hours. He denied that he had not witnessed the incident.

26. From the evidence of PW-4 it is clear that he has not seen the actual incident of assaulting the deceased by the accused and as per his evidence he has just seen the accused running from the house of Vinayak towards the eastern side East-West road. He has not

stated about the act attributed to the accused individually either as deposed by PW-1 or as deposed by PW-3. So also his evidence is of hearsay in nature as he deposed that on his asking, complainant Pandit told him that all the accused inflicted blow of a stone on the head of Vinayak, and they fled away from the spot of incident immediately. Admittedly, the deceased was maternal uncle of PW-4. He admitted that he was co-accused in case, in which his mother was arrested. For the above reasons, when he is closely related to the deceased, his evidence is not believable.

27. On careful consideration of oral evidence of eye witnesses PWs 1,3 & 4, it is clear that there is no consistency in the evidence of these witnesses as regards individual role of the accused and needless to state that PW-4 has not at all named any accused. As referred earlier the evidence of PW 1 & 3 only shows that accused No.1 Govind, who is no more and died, against whom appeal is abated had hit the stone on the head of the deceased.

None of these eye witnesses have stated that the accused were armed with deadly weapons. So also, these witnesses have not claimed that they had seen all the accused, proceeding towards the house of the deceased where the deceased was sleeping, holding weapons in their hands, so as to hold that they were members of unlawful assembly, and in prosecution of common object i.e. to kill the deceased, of said assembly, they had gone to his house. All these eye witnesses PWs 1,3 & 4 have claimed that one Angad, who is brother of deceased had also come to the spot of incident. Admittedly, he has not been examined by the prosecution. It has come in the evidence of PW-3 that, he himself and four other persons, namely, Angad, Pandit, Vaijinath and Laxman were present in the office of society in the night after departure of remaining persons till 11.30 p.m., and at about 11.45 p.m. PW-1 Pandit left the office and proceeded towards his house. PW1's evidence shows that thereafter PW-3, Angad, Vaijinath & Laxman were in the office of the society. Therefore, said Angad, Vaijinath & Laxman in natural course would

have definitely heard noise of PW-1 after assaulting the deceased, and would have also gone to the spot of incident with PW-3 and could have also seen the incident. Admittedly, said Vaijinath and Laxman have also not been examined by the prosecution. In-fact, they being independent and not related witnesses to the deceased, were required to be examined by the prosecution. In the light of discussion in foregoing paragraphs, the evidence of PWs 1,3 and 4, who are related to the deceased and interested witnesses, is not consistent and ultimately not believable so as to infer that all the accused armed with deadly weapons, formed unlawful assembly in the night on the date of incident and in furtherance of common object of said assembly, they assaulted and Killed Vinayak (deceased). In such circumstances, the evidence referred to above is not even sufficient to infer that the accused Nos.2 to 8 were members of unlawful assembly and were armed with deadly weapons.

28. The next piece of evidence relied upon by the

prosecution is the panchanama of spot of incident Exh.37. Said panchanama shows that, one stone along with other articles having bloodstains were seized from the spot of incident. The Investigating Office – PSI Ingewad (PW-7) has deposed that the articles including stone, were seized from the spot of the incident. Thereafter, the investigation was handed over to CPI Kanthekar as per the instructions of the Superintendent of Police, Latur. It is the case of the prosecution that the seized stone and other articles were sent to the Chemical Analyser for analysis. However, CA report was not produced on record. In-fact, it was necessary on the part of the prosecution to find out that the said bloodstains found on stone, were of the deceased, so as to say that said stone was used in assaulting the deceased. Therefore, mere seizure of stone and other articles as per spot panchanam Exh.37 is of no help to the prosecution to connect either the accused No.1 – Govind or accused Nos.2 to 8 with the offences alleged against them.

29. Now coming to the defence of the accused, their defence is simple denial. As appears from the trend of cross-examination of the eye witnesses there were two political groups in the village. One was headed by Angad – brother of the deceased and one was headed by accused No.1-Govind (since deceased). It was alleged that the character of the deceased was not good and therefore he was assaulted by unknown persons, however, PW-1—an informant, who is an advocate by profession, has falsely implicated the accused. It is also the defence of the accused, that there was election of society on 18.09.1996, accused No.1-Govind was contesting the election of the Co-operative Society from rival panel and therefore out of political rivalry, they are falsely implicated in the alleged offences. Accused No.1 – Govind was assaulted by Angad, Sugriv and Vasant alleging that he was responsible for the incident, and accused no.1 Govind sustained injury. Accused No.1-Govind filed complaint application Exh.40 prior to the FIR in this case with Killari Police Station alleging that in the

night of 22.08.1996 at about 01=00 a.m. to 01-30 a.m., while he was sleeping in the shed, he heard noise. Therefore, he, Namdeo Kohale, Vishnu Kohale and Harishchandra Kohale went towards house of Angad Kohale. There somebody had quarreled with Angad Kohale. No sooner accused No.1 and other went there, presuming that accused No.1 assaulted, Angad, Sugriv, Pandit and Vasant beat him and caused him injuries. Said complaint application is proved by the Investigating Officer – PSI Ingewad.

30. Now coming to the defence witness - Harishchandra Limbaji Kohale (DW-1) at Exh.61, whose name is in the complaint application of accused No.1 – Govind, has deposed that deceased Vinayak was his cousin brother. He was present in the office of the Grampanchayat, when the incident occurred in the evening. At that time when he himself and others had slept in the office of Grampanchayat, at about mid night, they heard hue and cry. He along with other persons came out of office of

the Grampanchayat and went towards the road. All of them thereafter ran towards the place from which noise was audible. They went to the house of Vinayak. They saw Crowd gathered in front of house of Vinayak. It was dark, since there were no street lights. He enquired with the crowd as to what had happened at that spot. However, nobody replied to his query. Therefore, accused Govind enquired in loud voice as to what had happened? After hearing voice of accused no.1-Govind, PW-1 arrived at that spot, and caught hold the neck of said Govind and stated that all of them have committed offence of assaulting his uncle. Angad, Sugriv, Vishnu and others also came at that place, and accused No.1-Govind was assaulted by PW-1. Afore-stated evidence of DW-1 is not shattered in the cross-examination on behalf of the prosecution. His evidence shows that PW-1 and accused came to the spot of incident after people had gathered at house of Vinayak. It further shows that accused No.1 - Govind was assaulted by PW-1 Pandit. Admittedly, DW-1 is cousin of the deceased. Therefore, he has no reason to

depose against the prosecution. Hence, there is no reason to disbelieve his evidence.

31. Evidence of Vijay Aounde [DW-2], who is Junior Engineer shows that, accused No.8-Vikram Kohale was serving as Junior Engineer in the Project of Rehabilitation of Earthquake Affected Persons, at the relevant time of the incident. His evidence further shows that, on 21.08.1996, he had been to Nakuleshwar – Borgaon, as meeting was called by the Collector, Latur, for taking account of progress of rehabilitation work and accused No.8 Vikram had also come to attend said meeting. He stated that said meeting started at about 5.30 p.m. and it was in progress till 09.00 p.m. Since it was raining in the said night, they had taken decision to take halt at Nakuleshwar – Borgaon itself. He stated that some persons including accused No. 8 Vikram, Sarpanch and some Junior Engineers halted with him, and Sarpanch of village Nakuleshwar – Borgaon had made arrangement of their meal. They had dinner at 10.30 p.m.

and were chit-chatting till 11.30 p.m. He further stated that they halted at same place where the meeting was arranged. Accused No.8 – Vikram was with them till next day in the morning. They came to AUSA together and thereafter went to their respective villages. Though he has been cross-examined at length, however, nothing was elicited from his cross, which can lend support to the prosecution case. The relevant portion of the register of said meeting is also produced at Exh.63. Considering the above discussed evidence, there is substance in the defence of accused No.8 Vikram that, at the time of incident on 21.08.1996 in the night at 11.30 p.m., he was not present in his village – Haregaon.

32. As observed earlier, since 1989 there were two political groups in Haregaon, one headed by Angad-uncle of PW-1 and another headed by accused No.1-Govind (since deceased). There were cross cases filed by the groups against each other. So also as noted earlier accused No.1-Govind had filed complaint application in the police

station alleging that on 22.08.1996 at 01=00 to 01=30 a.m. he was assaulted by PW-1 and others, and said complaint application was filed prior to the FIR in this case lodged by PW-1 Pandit on 22.08.1996 at 05.30 p.m. In the above circumstances, the possibility of falsely implicating the accused in the alleged incident, due to political rivalry by PW-1, cannot be ruled out.

33. As regards motive of accused to commit murder of deceased Vinayak, it appears that as per prosecution case, there were two political groups in the village, one headed by Angad – brother of the deceased and another headed by accused No.1 – Govind (since deceased), and out of said political rivalry Vinayak was murdered. It has come on record that, the deceased never held any post in the Grampanchayat or in the Seva Sahakari society, in the village. So also, he did not contest election of the society which was scheduled to be held in September, 1996. Considering these aspects and the defence of the accused as discussed here-in-above, the prosecution has

failed to prove that the accused had motive to commit murder of the deceased.

34. For the reasons discussed above, the evidence adduced by the prosecution is not sufficient to hold that the accused formed unlawful assembly as alleged and being members of unlawful assembly were armed with deadly weapons, they committed house trespass and killed Vinayak and are responsible for the death. Merely because the death of the deceased was homicidal, is no ground to connect the accused with commission of alleged offences. We, therefore, hold that the prosecution has failed to prove alleged offences under sections 452 and 302 read with section 149 and under sections 143, 147 and 148 of the Indian Penal Code against the accused, beyond reasonable doubt. The Trial Court has rightly held that the prosecution has failed to prove alleged offences against the accused with which they were charged. The Trial Court rightly acquitted accused by giving benefit of doubt. The view taken by the Trial Court is a

reasonable and possible view, and it is not the case that there is error in appreciating evidence by the Trial Court. Thus, there is no justifiable ground to interfere with the impugned judgment and order of acquittal of the accused. Therefore, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly, we dismiss the same. Bail bonds of accused Nos.2 to 8 shall stand cancelled.

35. Mr.V.R. Dhorde, advocate was appointed to represent the accused/respondent Nos. 2 to 8. We appreciate his sincere efforts in rendering able assistance during the course of hearing the appeal, so as to arrive at proper conclusion. We quantify his fees at Rs.7500/- (Rupees Seven Thousand Five Hundred Only).

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]