

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.104 OF 2000

The State of Maharashtra
(through Azadnagar Police
Station, Dhule)

...APPELLANT

VERSUS

- 1) Rajendra @ Raju Rambhau Yadav
Age-21 years,
- 2) Zumber Shiva Yadav
Age-40 years,
- 3) Ulhas Rambhau Yadav
Age-20 years,
- 4) Dinesh Pandurang Yadav
Age-25 years,
- 5) Gangaram Rambhau Yadav
Age-22 years,
- 6) Balu Zumber Yadav
Age-19 years

All R/o: Ambode,
Tq. & Dist. Dhule.

...RESPONDENTS

...
Mr.P.G. Borade, A.P.P. for Appellant-State.
Mr.R.M. Deshmukh, Advocate for Respondent
Nos.1 to 6.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 21ST JUNE,2017.

DATE OF PRONOUNCING JUDGMENT: 4TH JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is filed by the State challenging the Judgment and order dated 30th November, 1999 passed by the Additional Sessions Judge, Dhule in Sessions Case No. 53 of 1996, thereby acquitting the Respondents/original accused Nos. 1 to 6 for the offences punishable under Sections 147, 148, 302 read with 149, 341 read with 149 and section 120-B read with 149 of the Indian Penal Code (For short "I.P. Code") and for the offence under Section 37(1) (3) of the Bombay Police Act punishable under section 135(1)

of the Bombay Police Act.

2. The prosecution case, in nut-shell, is as under :-

(A) Accused No.1 - Rajendra @ Raju, aged about 23 years, is residing at Dhule. He is running a Pan Stall at Dhule. Accused No.3 Ulhas and Accused No.5 Gangaram are said to be brothers of Accused No.1 Rajendra. Accused No.2 Zumber is said to be paternal uncle of Accused No.1 Rajendra. There was a joint family consisting of Rambhau, Zumber and Pandurang. Their native place is village Ambode, which is hardly at a distance of about 18 to 20 Km.s away from Dhule. They were holding some agricultural land at Ambode, however, as it became very difficult for them to pull on the entire family on the agricultural income, they entered in other small trades. For instance, accused No.1 Raju purchased a tractor, and at the same time, as has been stated above, he was

running a Pan shop.

(B) Babaji Yadav, father of deceased Anant, is an agriculturist of village Ambode. The deceased Ananta studied up-to M.A., besides it, he was looking after the agricultural affairs. He also purchased a tractor for getting the regular income. The root cause of the rivalry which had arisen in between the family of the deceased and the family of the accused was that, it was the desire of each family that, the tractor belonging to other family should remain idle, and the tractor belonging to their family should be the source of income. At the relevant time, the work of the construction of road and the bridge at village Ajang and adjoining to that area was going on. For the collection of stones, metal and water, the tractor was required. The tractor belonging to the family of the accused was hired by the Contractor, who took contract to complete that bridge and road. At the same time, the contractor

had also hired the tractor belonging to the family of the deceased. There was a grudge in the mind of accused No.1 - Rajendra and his akin that, the tractor belonging to the family of the deceased should not be used by the contractor or by any person and that, the same should be remained idle, only with an oblique motive that the family of the accused should earn more and more, and that there should not be other sharers.

(C) The other cause of the feud was that, some of the persons from the family of the accused had contested a Gram Panchayat election of village Ambode. They were being opposed by some of the members of the family of the deceased. On some occasion there was a straight fight. Contemplating the contingency that, there were more members in the family of the accused, and they were at a upper stage on financial aspects, the members of the family of the deceased withdrew from the contest. That thing added fuel in the fire. It

appears that later on the members of the family of the accused, became more aggressive.

(D) On 2nd November, 1995 at about 10 a.m. deceased Anant Babaji Yadav left village Ambode for Dhule. The deceased was accompanied by Santosh Dada Pawar and 3-4 others. They reached Dhule in a tractor, to sell millet (Jawar). At about 11.30 a.m. they reached in the premises known as the Market Yard, Dhule. The gunny bags containing the Jawar were unloaded from the tractor, and the process of disposal of those gunny bags to the commission agent was going on. The deceased and Santosh Dada Pawar sat in the hotel known as Shiva Hotel, which is there in that premises. One Baliram Thorat is the owner of that hotel and he also hailing from the same place, which belongs to the family of the accused and the deceased. The deceased and Santosh had a tea and started chit-chatting. After some time, accused No.1 Raju started calling the deceased, to come outside the

hotel. Accordingly, the deceased went there. The place where accused No.1 and the deceased were standing, there is a Pan Shop. There was a talk between the deceased and accused No.1. It was a hot discussion. In a spur of moment accused No.1 removed the Gupti from the pocket of his pant, and thrust the same on the chest (right side chest where the portion of abdomen starts). The deceased fell on the ground and died instantaneously. At the time of incident some 5 to 6 persons, alleged to be accused Nos. 2 to 6, were present, so as to keep watch that the outsiders should not interfere. The moment deceased fell on the ground, accused No.1 and his colleagues, who are said to be accused Nos. 2 to 6 ran away from the place of incident. It is the case of the prosecution that, the moment the deceased went out of the hotel to confront accused No.1, he was followed by the informant Santosh Dada Pawar. However, the informant could not do anything.

(E) It is the further case of the prosecution that, at the time of incident one Uttam Kashinath from village Ambode was also present there along with one Bhilaji Hari Patil.

(F) informant Santosh Dada Pawar lifted deceased Anant with the help of police constable who, at the relevant time, was on the patrolling duty in that premises. On the way to Civil Hospital, Dhule, when the deceased was being brought in a auto rickshaw by the informant Santosh and by that constable, it had come to the notice of that police constable that, Inspector Shri Rathod, Incharge of Azadnagar Police Station was sitting in a jeep and was proceeding from the road. The constable stopped that Jeep and told the incident to P.S.I. In the Police Station, Azadnagar F.I.R. Exhibit-51 was registered as per the say of informant Santosh. In the beginning the offence was registered only under section 302 of I.P.C. vide C.R. No.339/1995 at about 13.05 p.m.

(G) The Police Inspector Shri Rathod started investigation of the said crime. Accused No.1 was apprehended immediately and he was brought in the Police Station. At about 4 to 4.30 p.m., the supplementary statement of Santosh Dada Pawar i.e. informant was recorded by the Police. In that supplementary statement, the informant made a reference of the material aspect that, at the time of incident some 5 to 6 persons were standing near accused No.1. At a very short distance an auto rickshaw was found parked. He made a reference that out of said 5 to 6 persons, who were present, 2 to 3 persons gave slaps to the deceased. He further made a reference that, he tried to intervene in the matter, but it was of no avail. It is to be noted that, even in his supplementary statement, which was recorded immediately after 3 to 4 hours after the incident was over, Santosh Dada did not tell the names of those 5 to 6 persons. He did not state about the

the presence of those so called eye witness Bhilaji Hari Patil.

(I) The supplementary statement of Santosh Dada i.e. the informant was again recorded by the Police on 3rd January, 1996 i.e. after 2 months after the incident. At that time, he told the incident in a different manner, than the manner which he had narrated in his F.I.R. at the beginning and which he had narrated in his first supplementary statement. On 3rd January, 1996 for the first time Accused Nos. 2 to 6 were being brought in the picture. It is pertinent to note that, at that time the presence of Bhila Hari Patil and Shantaram Dada was being exposed.

(J) During the course of investigation, the instrument i.e. Gupti which was used at the time of the commission of the offence was recovered from the possession of Accused No.1 - Rajendra. The Shirt containing the blood stains belonging to

accused No.1 and the shirt which the informant Santosh wore at the time of incident, on which there were blood stains was recovered. As per the routine procedure, the articles were sent to the Chemical Analyzer to elicit his opinion on the point of the detection of the blood group. The persons who had seen the incident and who were connected with the incident some way or the other, their statements were recorded and ultimately the charge sheet against the accused was placed before the Chief Judicial Magistrate, Dhule on 30th January, 1996.

(K) Thereafter the case was committed to the Court of Additional Sessions Judge, Dhule. Charge at Exhibit-33 was framed against all the accused persons and the same was explained to them. The accused persons pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and

conducting full fledged trial, the trial Court acquitted all the accused persons from the offences with which they were charged, as stated herein above in Para-1 of the Judgment. Hence this Appeal.

4. Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondents-accused, at length. Learned A.P.P. appearing for the State invites our attention to the evidence of three eye witnesses i.e. PW-1 Somnath, PW-2 Uttam and PW-5 Bhilajirao and submits that these witnesses have categorically stated that accused assaulted deceased Anant by Gupti, and they have witnessed the incident. He submits that overt act is attributed against all the accused persons. He further submits that the trial Court has not appreciated the evidence on record in its proper perspective, and the findings recorded by the trial Court are not in consonance with the evidence brought on record by the

prosecution. Therefore, he submits that the Appeal may be allowed.

5. Mr.R.M. Deshmukh, learned counsel appearing for the original accused/ Respondents invites our attention to the findings recorded by the trial Court and submits that on analysis of the evidence of all the prosecution witnesses and in particular evidence of alleged eye witnesses i.e. PW-1 Somnath, PW-2 Uttam and PW-5 Bhilajirao, the trial Court found that it suffers from serious contradictions, omissions, improvements and therefore benefit of doubt is given to the accused. It is submitted that PW-1 Santosh has stated different versions in his F.I.R., first supplementary statement and second supplementary statement recorded by the Investigating Officer. It is submitted that PW-1 Santosh stated in the F.I.R. that accused Raju took out knife from his pocket and stabbed Anant, however in supplementary statement he stated that accused No.2 Zumber gave

Gupti to accused Raju, and then Raju gave blow by said Gupti on the chest of deceased Anant. He invites our attention to the findings recorded by the trial Court and in particular Para 30 onwards and submits that interference in the order of acquittal is unwarranted. He submits that the trial Court has taken a plausible view and though another view may be possible, the same is no ground to interfere in the order of acquittal. He submits that alleged recovery of weapon is not proved. There was delay in recording statements of the eye witnesses by the police and therefore entire prosecution case appeared doubtful to the trial Court and therefore the Respondents are acquitted. It is submitted that no any overt act qua Respondent Nos. 2 to 6 has been attributed. Their names have been included after thought, in supplementary statement by the informant. Therefore, he submits that the Appeal deserves to be dismissed.

. By way of alternative submissions, the learned counsel appearing for the Respondents submits that without prejudice to the contentions already raised by him, if this Court is of the opinion to convict the accused, in that case, even as per the prosecution case Raju gave one blow of Gupti on right side of stomach of deceased Anant and therefore benefit of Exception-4 of Section 300 of the I.P. Code can be extended in favour of the accused. He further submits that it has also come on record that there was some altercation between Raju and deceased Anant and therefore Gupti was given by accused Zumber and then Raju assaulted Anant. Therefore, he submits that lenient view may be taken and case of the accused, may be considered for sentence under Section 304 Part-II of the I.P. Code.

6. The prosecution has examined medical officer, PW-3 Dr. Avinash Shamrao Ruikar. He deposed that on 2nd November, 1995 at 2.30 p.m.

dead body of Anant Babaji Yadav was sent to morgue for postmortem. He conducted postmortem on the dead body on the very day between 2.40 p.m. to 4.00 p.m. On external examination, he noticed following external injuries, described in Column No.17:-

1) Incised stab wound on right lower chest 1/2 cm., above right costal margin 1 cm. to right side of mid-line 2 cm. X 0.75 cm.

On dissection following internal injuries were noticed:

a) Right 11th space inter costal muscles cut 2 cm. X 1 cm., 1 cm. right side of mid-line,

b) Right dome of diaphragm cut through and through 2 cm. X 1 cm.

c) Right lobe of liver penetrated on its superior surface 1.5 X 0.5 X 4 cm.,

d) In peritoneum cavity about 1500 ml. blood/cloths, to depth 11.5 cm.

. PW-3 Dr. Avinash Ruikar further deposed that in his opinion the cause of death was hemorrhage and shock following stab wound of trunk involving liver. He deposed that the P.M. reports are in his handwriting and it bears his signature, contents are correct, it is at Exhibit 54. He deposed that the injuries mentioned in P.M. are ante-mortem. He has also mentioned in Col. No.8 condition of cloth-cut mark on shirt and banyan and both were blood stained. Liver was injured, so to cause bleeding and person should go into shock and it will take 1 to 1 and 1/2 hour after sustaining injury. He further deposed that on 6th November, 1995 P.S.I. Rathod made a query regarding type of weapon and whether by that weapon such injury can be possible. He deposed that the said Gupti was shown to him by police. Then he gave his opinion that such injury can be possible by said Gupti. He deposed that at the time of postmortem, he has also preserved blood sample for grouping purpose and also the nail

clippings, and the same blood phial was handed over to the concerned police station for sending it to C.A. on 3rd November, 1995. He deposed that the injury mentioned in Column No.17 and corresponding injury were sufficient to cause death, in ordinary course. He deposed that injuries mentioned in Column No.17 are possible by Article No.1 Gupti, which was shown to him.

. During the course of cross-examination, PW-3 Dr. Avinash Ruikar stated that police sent copy of the inquest and he received the same before postmortem, that is why he has mentioned the history of assault in Column No.5 of Exhibit 54. He stated that he has not mentioned in his postmortem report that injuries mentioned in Column No.17 received by sharp cutting weapon. he stated that he was not sure regarding the weapon while giving the opinion regarding the cause of death. He stated that it is very difficult to say that the injury sustained to the deceased were

caused only by Article No.1, which was shown to him. He stated that irrespective of the edges of weapon the dimensions of injury may be equal or less or even more than the length, width and breadth of weapon due to elasticity of the skin. He stated that the person if is handling the Article No.1 and if he uses force, then the assailant may cause minor injury to the palm on his hand, if there is no handle to it. He further stated that there was no damage to heart but there was damage to chest wall.

7. Prosecution examined PW-7 Dr. Sanjay Murlidhar Shinde. He deposed that on 2nd November, 1995 as per the police memo of Azadnagr police station, he examined one Rajendra Rambhau Yadav (accused No.1). He deposed that during examination he has not found any external injury on the person of Rajendra. Accordingly he issued certificate, which is at Exhibit-65. He further deposed that on the very day he collected blood sample of Rajendra

in a phial and he also then taken the nails of Rajendra of both hands, and the same were handed over to the police constable.

8. To prove its case, the prosecution examined the informant PW-1 Santosh Dada Pawar. He deposed that he knows all the accused persons. They are from his village Ambode. He knows the deceased Anant Babaji Yadav. Anant was known as Balu Babaji. He deposed that all the accused are the agriculturists and they reside in joint family. He was educated upto F.Y.B.A. He deposed that the deceased Anant was educated up-to M.A. The brother and father of the deceased Anant are doing the agricultural work and they are agriculturists. He knows Yashwant Yadav, Pandrang Ishwar, Uttam Kashiram and Dashrath Motiram Kadam of his village. Dashrath was the driver on the tractor of Babaji Yadav, father of the deceased. Accused Nos.3 and 5 are the real brothers of accused No.1 Raju. Accused No.2 Zumber is the real

uncle of accused No.1 Raju.

. PW-1 Santosh Pawar further deposed that the incident took place on 2nd November, 1995. On that day he engaged the tractor of Anant Babaji for carrying the gunny bags of Jawar for selling in the market. Yashwant Yadav, Murlidhar Yadav, Pandurang Yadav have also put food grains in the said tractor. They started at about 10.00 a.m. from village Ambode. In the tractor gunny bags of food grains of Uttam were also carried. Dashrath was the driver of the tractor. Anant and other persons who carried their food grains to Dhule, were on the said tractor. They halted their tractor near village Ajang. They noticed accused No.1 Raju, accused No.4 Dinesh and accused No.6 Balu were standing near village Ajang, who were on motorcycle. He further deposed that they took the said tractor to Fule Market and reached in the market at about 11.30 a.m. and they halted their tractor at the place where auction took place in

the market yard.

. About the main incident, PW-1 Santosh Pawar deposed that he himself, deceased Anant came out from the market yard for taking tea, in the hotel known and styled as "Shiva Hotel" owned by one Baliram. He deposed that said hotel owner is also from their village Ambode. At that time, they noticed accused no.1 Raju and his companion were standing on the road in front of the hotel. At that time, accused Raju gave call to the deceased Anant. Then Anant came out from the hotel. He also followed Anant. He deposed that he noticed that, accused No.1 Raju gave blow of Gupti on the right side below the chest of Anant. After assault, accused Raju ran away from the spot along with his companions. The deceased Anant sustained bleeding injury. He deposed that he caught hold Anant. He further deposed that he himself along with constable Kedar took the injured Anant in civil hospital, Dhule. He deposed that accused Zumber,

accused Ulhas, Dinesh Pandurang, Gangaram and Balu Zumber were accompanied with Raju at the time of assault. After assault, all these accused persons ran away from the spot. He deposed that before they reached to the hospital, the deceased Anant succumbed to the injury. He deposed that at the time of incident accused Balu caught hold deceased Anant and the other accused were giving threat not to interfere in the quarrel. He deposed that accused Gangaram and Balu Gangaram were giving threats to them. He deposed that he also noticed Bhila Hari Patil and Shantaram Dada Pawar on the spot.

. PW-1 Santosh Pawar further deposed that at that time P.S.I. Rathod also came in the hospital and took his complaint in the hospital itself. Complaint Exhibit-51 bears his signature and he admitted the contents of the complaint to be true and correct. He deposed that because of some dispute in respect of fare of tractor, the

said incident took place. Then from civil hospital along with P.S.I. Rathod he came to Azadnagar police station and then he recorded his supplementary statement in the police station. Then he produced his shirt having some blood stains, before the police, which was attached under panchnama. He deposed that Article No.1 Gupti shown to him was the same, which was in the hands of accused No.1 at the time of incident.

. During the course of cross-examination, PW-1 Santosh Pawar deposed that he knows all the accused persons since his childhood. He stated that accused No.3 Ulhas was serving in Jawahar Foundation and residing at Dhule. Accused Raju and his brother Ddabhai were also staying at Dhule and running Pan stall at Dhule. Accused Gangaram was staying at Ambode and doing the agricultural work. He stated that he knows the difference between the knife and Gupti. At the time of lodging his complaint to the police station, he was knowing

that Gupti was used at the time of commission of said offence. He stated that he was in police station and during that period his supplementary statement was recorded by P.S.I. Rathod. At that time P.S.I. Rathod shown him a Gupti in the police station. At that time he told to P.S.I. that he has wrongly mentioned about the knife but it was Gupti and Article No.1 was the same Gupti. He stated that in the month of January, on 3rd January, 1996 he was again called at the police station and again his statement was recorded by police. He stated that two days prior to the said incident, some dispute took place between accused Raju and deceased Anant in respect of hiring tractor on road and that dispute was amicably settled in the village. He stated that when he himself and Anant went to the hotel Shiva, the owner of said hotel namely, Baliram Thorat was sitting on counter. Accused Raju called to deceased Anant from a distance of five feet only. The companions of the accused were near to him at

a distance of about 2-3 feet from him. PW-1 Santosh further stated that he followed deceased Anant and went to Pan stall which is adjacent to hotel and took Vimal Tobacco packet from the Pan shop, and at that time he noticed that there was some hot talk took place between accused Raju and deceased Anant in respect of hiring of tractor on road work. He stated that he also noticed that one auto rickshaw near the said spot. He also tried to intervene the quarrel in between the accused and deceased. He stated that it did happen that when he tried to intervene the quarrel, the accused Raju took away the instrument like knife from his pant which was kept near his stomach and gave the blow of it on the stomach of deceased Anant and they ran away from that spot by the auto rickshaw. He stated that at the time of lodging the complaint he only told the name of Raju to police because police did not enquire to him about the names of other assailants, so he failed to tell names of other accused at the time of lodging

complaint Exhibit-51. He further stated that at the time of recording of his supplementary statement on the very day, he did not tell the names of accused Nos.2 to 6 as his mental condition was not proper. He stated that first time on 3rd January, 1996 he told the names of accused Nos.2 to 6 at the time of recording his supplementary statement. He stated that on 3rd January, 1996 he came to know that the names of other accused persons particularly accused Nos.2 to 6 remained to be disclosed to police.

. After careful perusal of the evidence of PW-1 Santosh Pawar, he deposed that accused No.1 Raju assaulted deceased Anant by Gupti, and in the cross-examination also he was consistent and his deposition was not at all shattered. But his evidence shows that he has not stated the names of other accused persons i.e. accused Nos.2 to 6 in his complaint and so also in first supplementary statement, and he stated the names of accused

Nos.2 to 6 to the investigating officer on 3rd January, 1996 when his second supplementary statement was recorded, i.e. after two months from the date of incident which took place on 2nd November, 1995.

9. The prosecution examined PW-2 Uttam Kashiram Yadav. He deposed that he knows all the six accused persons and they are from his village Ambode. He deposed that incident took place on 2nd November, 1995. On that day he kept his Bajara for taking to the market committee in a tractor of deceased Anant @ Balu. He himself, Santosh, Pandurang Ishwar, Yashwant Murlidhar were in the tractor and Dasharath was driving the said tractor. They started from Ambode at about 10.00 to 10.15 a.m. and reached at Dhule Market Committee at about 11.00 to 11.15 a.m. and they halted their tractor in a market yard. Then Santosh Pawar and deceased Anant went to the hotel for taking tea. Then he himself and Bhanu Sarak

went towards the hotel for taking tea after them, to the hotel known and styled as "Hotel Shiva". Then Anant paid the bill of tea. He deposed that when they were taking tea, that time accused Raju was standing in front of hotel and some 5-6 companions were also with him and Raju called Anant out of hotel and some quarrel took place between accused Raju and Anant. He deposed that he noticed from a distance of 4 to 5 feet that accused Raju assaulted Anant by Gupti on right side of his stomach. Because of the said assault Anant sustained bleeding injury and then fell down on the ground. At that time 4-5 persons were also with accused Raju. He deposed that he could not identify those persons and cannot tell their names, except accused Raju.

. During his cross-examination, PW-2 Uttam Yadav he stated that no scuffle took place between the accused and deceased, except exchange of words. He stated that he has not seen from where

accused Raju took out the Gupti and where it was kept. He stated that he only saw that Raju gave a blow of Gupti to deceased. He stated that his supplementary statement was recorded by police after 1 to 1 and 1/2 months. He denied that he was not present at the time of incident and he does not know anything about the incident.

. Thus, evidence of this witness PW-2 Uttam is consistent that accused No.1 Raju assaulted deceased Anant. But PW-2 Uttam admitted in his cross-examination that he could not identify those persons and could not tell their names, who were present along with accused No.1 Raju at the time of incident.

10. The prosecution examined PW-4 Dashrath Motiram Thorat. He was working as a driver on the tractor of deceased Anant. He deposed about the earlier incident dated 28th October, 1995, at which time, Zumbar Shiva, Balu Zumbar, Ravindra

Pandurang Yadav, Santosh Pandurang, Gangaram Rambhau, Dinesh Pandurang, Rambhau Shiva Yadav threatened deceased Anant that they will kill him. He further deposed that, at that time respected persons in the village convinced both the parties not to quarrel between themselves.

. About the main incident, PW-4 Dashrath Thorat deposed that on 2nd November, 1995 they lodged Jawar crop in the tractor and thereafter reached near village Ajang. He deposed that Yashwant Murlidhar Yadav, Pandurang Ishwar Thorat, Uttam Kashiram Yadav, Santosh Dada Pawar, deceased Anant Dadaji and he himself were on the tractor. He deposed that they halted the tractor near village Ajang. At that time he noticed the accused Raju, accused Dinesh and accused Balu on the motorcycle. He further deposed that then they started their tractor. Then at about 11.00 to 11.30 they reached in the market yard at Dhule. He deposed that then deceased Anant and Santosh went

outside for taking the tea in hotel and he was waiting near the tractor. He deposed that Uttam Kashiram also followed deceased Anant. He deposed that after half an hour Uttam Kashiram came running to him and told him that accused Raju had assaulted deceased Ananta by Gupti. So he rushed to the spot and he noticed that Santosh and one police constable already carried deceased Ananta by auto rickshaw and he also noticed some blood stains on the road.

. During the course of cross-examination, PW-4 Dashrath Thorat stated that on the day of incident police had not recorded his statement and allowed him to go. He stated that till the date of his deposition in the Court police had not made enquiry with him. He stated that for the first time he was deposing about the incident in the Court. He stated that he was deposing first time in the Court that he noticed accused Raju, Dinesh and Balu near village Ajang on motorcycle. He

stated that he knows Bhanudas of his village Amobde and on that day he did not notice the said person in the cotton market.

. Thus it is clear from the evidence of this witness PW-4 Dashrath Thorat that he has not witnessed the incident.

11. The prosecution has examined PW-5 Bhilajirao Hari Patil. He deposed that he has no relations with the accused and deceased and his family. He deposed that the incident took place on 2nd November, 1995. On that day at about 10.30 a.m. he was returning to his house from the field as usual. While returning to house he noticed Ananda Tana, Baban Bavadu and Shantaram Dada in the bed of river near the Maroti Temple, they were chit-chatting and so he went near them. He deposed that at that time Ananda Tana Kadam told him that Gangaram Rambhau told him that on that day murder of Anant would take place at Dhule. He further

deposed that he went to market yard, Dhule. He further deposed that he noticed that 10 to 15 persons were gathered in front of hotel Shiva. He rushed to the said spot and that time he noticed that accused Zumbar Shiva gave Gupti to accused Raju and said Zumbar also asked said Raju to finish Anant and at that time accused Raju assaulted to the deceased Ananta on his chest by said Gupti. He deposed that he also noticed that accused Ulhas Rambhau and Dinesh Pandurang caught hold deceased Anant @ Balu. He deposed that all the accused persons including Gangaram were threatening not to intervene in the quarrel and if anybody intervene, they will finish him also. He deposed that so they were unable to rescue the deceased from the hands of accused. He deposed that he himself, Santosh, Uttam and Shantaram were present on the spot at that time.

. During the course of his cross-examination, PW-5 Bhilajirao Patil stated that

there were no any cross-terms in between he himself and the accused. He stated that his statement was recorded on 16th November, 1995 by P.I. Rathod at Dhule. He stated that at the time of his statement before the police he has stated that Ananda Tana told him (PW-5) that Gangaram told him that on that day the murder of Ananta would take place at Dhule. He was unable to assign any reason as to why police have not incorporated that portion in his statement. He stated that before the police he stated that on the spot he noticed Santosh, Shantaram and Uttam. He was unable to assign any reason as to why the name of Uttam is not incorporated in his statement. He further stated that he noticed the mob in front of hotel so by crossing the mob he reached said Balu. He stated that accused Ulhas Rambhau and accused Dinesh Pandurang caught hold both the hands of deceased Ananta. He did not remember whether before using the Gupti, accused Raju beat the deceased Ananta with fist blow or slaps. He stated

that within a few seconds the accused Zumbar gave Gupti to Raju and accused Raju assaulted it to Ananta. He stated that at that time the distance between him and Ananta was about 10 to 15 feet. He stated that then accused Raju ran away from the spot with Gupti and other accused also ran away from the spot in auto rickshaw. He stated that he did not know whether the accused family and family of deceased were on cross terms with each other.

12. The prosecution examined PW-6 Ananda Tanaji Kadam. He deposed that he knows all the accused because they are from his village Ambode. He deposed that he knows Shantaram Dada Pawar, Baban Bhavadu Yadav and they are from his village. He deposed that the incident took place on 2nd November, 1995 on Thursday. He deposed that at about 9.00 to 9.30 a.m. he was proceeding towards his field. Then on the way one Gangaram Rambhau Yadav met him and told him that today the murder of Balu would take place at Dhule. He deposed that

Balu is son of Babaji Yadav. He deposed that he immediately proceeded towards Dhule. He deposed that while returning from field to his house at about 10.00 to 10.30 a.m. one Shantaram Dada Pawar and Baban Bhavadu Yadav met him in the bed of river. He deposed that then he told to these two persons that murder of Balu was going to take place at Dhule. He deposed that meanwhile Bhila Hari Pawar came there and then he returned to his house. He further deposed that thereafter he went to Dhule and in the market Dashrath Motiram Kdam met him and told that the murder of Balu took place.

. During the course of cross-examination, PW-6 Ananda Kadam stated that 15 days after the incident, police recorded his statement and during those 15 days he was at Ambode.

13. PW-8 Dilip Motiram Salve is a panch witness to the seizure panchnama of Gupti at the

instance of accused No.1 Raju. He deposed that accused No.1 Raju himself produced the said Gupti which was kept in the said Pan shop situated at Agra Road, near Jain Mandir. Accordingly, panchnama was prepared on the spot. This witness was cross-examined by the defence. In his cross-examination, he stated that some criminal cases were lodged against him. He denied that he was the habitual panch of Azadnagar police.

14. PW-9 Kisan Ziparu Chaudhari is a panch witness to the seizure panchnama of blood stained shirt of the informant Santosh Pawar. PW-10 Ravindra Jagannath Kolpe is a panch witness to seizure panchnama of the clothes of the deceased and accused. But this witness turned hostile and did not support the prosecution case.

15. PW-11 Babaji Mukund Yadav is the father of deceased Anant. He deposed that Anant died in 1995. He deposed that about 4 to 5 months prior to

the said incident, there was Grampanchayat election in their village. His elder son namely Dinkar was elected from Ward No.3 and it was decided that he was to be elected as Deputy Sarpanch of village. He deposed that Zumbar Suba Yadav, his cousin brother, opposed to the name of Dinkar and therefore his son Dinkar withdrew the name from the election and since then they were in cross-terms. He further deposed that in the month of March, 1995 he purchased tractor in the name of his son Bhaskar, and one Dashrath Motiram Kadm was the driver on the said tractor and deceased Anant was looking after the management of the said tractor. He deposed that after 4 to 5 months the accused also purchased tractor. He deposed that 7 to 8 days prior to the incident he had given his tractor on hire on the road. One Bhalerao was the contractor on the said work. He further deposed that few days prior to the incident, all the accused persons Santosh Pandurang, Ravindra Pandurang had quarreled with his son and all the

accused told his son that because of the tractor owned by him, they were not getting the work of putting water on the road and also threatened him to kill. This fact was told him by his son Anant. He further deposed that then the matter was settled. He further deposed that on 2nd November, 1995 when he went to Dhule, his driver Dashrath met him on the road and narrated the incident about the murder of his son Balu @ Anant. This witness was cross-examined by the defence.

16. PW-12 Ravindra Bhaurao Kedar, is a police constable. He deposed that on 2nd November, 1995 he was attached to Azadnagr police station, Dhule as police constable. On that day he himself and police constable Sayyad were on duty at cotton market gate of Dhule. He deposed that when he was on duty at about 12.00 to 12.30 p.m., he noticed that some mob was gathered in front of Bhau Hotel, near the Pan shop and he also noticed one auto rickshaw near the said mob. Then he rushed to the

said spot. He deposed that he noticed one person in a injured condition in the said auto rickshaw. He also noticed that the said person sustained bleeding injury on middle portion of chest and blood was oozing from the wound. One person namely Santosh Dada Pawar was also with injured person. He deposed that he himself took the said rickshaw in the civil hospital, Dhule along with the said injured. He further deposed that he admitted the said patient in the hospital and doctor examined the patient and opined that he was no more. This witness was cross-examined by the defence.

17. PW-13 Rohit Kashiram Rathod is the investigating officer. He deposed about the manner in which he has carried out the investigation of the crime. In his cross-examination, PW-13 Rohit Rathod stated that on 16th November, 1995 the names of the other accused were disclosed, but he has arrested them on 30th November, 1995 because they were not traced out. He denied that he was

doubtful about the participation of said accused persons in the crime and that is why he arrested them at a later stage.

18. PW-14 Krushnarao Nathu Salunke deposed that from 14th September, 1995 to 15th October, 1998 he was attached to L.C.B. Dhule as a P.I. He deposed that on 17th December, 1995 investigation of Crime No.339 of 1995 was handed over to him with all papers for further investigation from P.I. Rathod. He deposed that then on 3rd January, 1996 he recorded supplementary statement of Santosh Dada Pawar. On 19th January, 1996 he recorded supplementary statement of Uttam Kashiram Yadav. On completing the necessary investigation, he submitted charge-sheet against all the accused persons on 30th January, 1996. He deposed that Exhibit-1 shown to him is the same, it bears his signature and contents of it are correct. He further deposed that he also received the C.A. Report on 9th July, 1996 and then same was

produced in the Court. In his cross-examination, PW-14 Krushnarao Salunke denied that merely on suspicion he has filed a charge-sheet against the accused persons.

19. We have discussed the evidence of all the witnesses in detail. There is no slightest doubt in mind that three witnesses i.e. i.e. PW-1 Somnath, PW-2 Uttam and PW-5 Bhilajirao have witnessed the incident and they have, in minute details, stated about the assault given by accused No.1 Raju by Gupti on right lower chest of Anant. It has come on record that Anant died instantaneously. Even the police constable PW-12 Ravindra Kedar deposed that when he was on duty, at about 12.00 to 12.30 p.m. he noticed that some mob was gathered in front of Bhau Hotel, near the Pan shop and also noticed one auto rickshaw near the said mob. Then he rushed to the said spot. He noticed one person in a injured condition in the said auto rickshaw. He also noticed that the said

person sustained bleeding injury on middle portion of chest and blood was oozing from the wound, and one person namely Santosh Dada Pawar was also with injured person. He himself took the said rickshaw to the civil hospital, Dhule along with the said injured. He admitted the said patient in the hospital and doctor examined the patient and opined that he was no more. Nothing fruitful has been elicited during his cross-examination by the defence. Therefore, there is evidence of three eye witnesses, which gets complete corroboration from the medical evidence i.e. PW-3 Dr. Avinash Ruikar.

20. Upon careful perusal of the findings recorded by the trial Court, so far accused No.1 Rajendra @ Raju is concerned, the trial Court has not weighted the evidence brought on record by the prosecution in its proper perspective. The trial Court has given undue importance to the minor contradictions, omissions and improvements. In fact all the three eye witnesses are consistent

that accused No.1 Rajendra gave blow by Gupti on right lower chest of deceased Anant and as a result, he died on the spot. The version of the said eye witnesses gets complete corroboration from the medical evidence. The F.I.R. was registered promptly. Even the evidence of police constable PW-12 Ravindra Kedar can be taken as attending circumstances. On the whole the approach of the trial Court in acquitting accused No.1 Rajendra is not sustainable in law. So far other accused i.e. accused Nos.2 to 6 are concerned, it is true that in the first F.I.R. or even in the first supplementary statement which was recorded on the day of incident, the informant has not named them. On the whole the evidence brought on record by the prosecution against accused Nos.2 to 6 is short to reverse their acquittal and further to convict them.

21. The Supreme Court in the case of Sanjeev Kumar Gupta vs. State of Uttar Pradesh (now State

of Uttarakhand)¹, in the facts of that case, in Para 31 of the Judgment, has observed that the investigation suffers from certain flaws such as non-recovery of the weapon used by the appellant-accused and recovery of the bloodstained shirt after six days of the date of the incident. However, merely on the basis of these circumstances the entire case of the prosecution cannot be brushed aside when it has been proved by medical evidence corroborated by testimonies of the prosecution witnesses that the deceased died a homicidal death. The Supreme Court has further observed that, this Court has held in *Manjit Singh v. State of Punjab*², that when there is ample unimpeachable ocular evidence and the same has received corroboration from medical evidence, non-recovery of bloodstained clothes or even murder weapon does not affect the prosecution case.

22. In that view of the matter, we are of the

1 (2015) 11 S.C.C. 69

2 (2013) 12 S.C.C. 746

considered view that order of acquittal of Respondent Nos.2 to 6 needs no interference and to that extent, no interference is warranted. So far accused No.1 Raju is concerned, in the light of discussion in foregoing paragraphs, we hold that accused No.1 Raju committed murder of Anant, and Anant died homicidal death. In the result, the impugned Judgment and order acquitting accused No.1 Raju requires to be quashed and set aside.

23. Now we have to consider the alternate argument of the counsel appearing for the Respondents that accused No.1 Raju gave only one blow by Gupti and therefore he may be given the benefit of Exception-4 to Section 300 of the I.P. Code. If the entire evidence is considered in totality, it is true that eye witnesses have stated that there was some altercation between accused No.1 Raju and deceased Anant. Gupti was also given by accused No.2 Zumber to accused No.1 Raju. The circumstances also brought on record

that accused No.1 Raju intended the death of Anant. It is also true that all the prosecution witnesses have stated that only one blow of Gupti was given on right lower chest of Anant. However if the evidence of prosecution witnesses and in particular the evidence of PW-11 Babaji Yadav, who is father of deceased Anant, is considered, he deposed that 4 to 5 months prior to the said incident, there was Grampanchayat election in their village and his elder son namely Dinkar was elected and it was decided that Dinkar was to be elected as Deputy Sarpanch of village. He further deposed that Zumbar i.e. accused No.2 opposed to the name of Dinkar and therefore his son Dinkar withdrew the name from the election and since then they were in cross-terms with the accused. It further reveals from the evidence of PW-11 Babaji that thereafter he purchased tractor and after few months accused also purchased tractor and both the families were giving their tractors on hire for road work and other work, and

on that count relations between the family of deceased and family of accused were strained.

. If the evidence of PW-5 Bhilajirao Patil is perused, he deposed that on the day of incident i.e. on 2nd November, 1995 at about 10.30 a.m. When he was returning to his house from the field, he noticed Ananda Tana, Baban Bavadu and Shantaram Dada in the bed of river and when he went near them, at that time Ananda Tana Kadam told him that Gangaram Rambhau (accused No.5) told him (Ananda Kadam) that today murder of Anant would take place at Dhule. If the evidence of PW-6 Ananda Kadam is perused, he deposed that on the day of incident i.e. on 2nd November, 1995 at about 9.00 to 9.30 a.m. when he was proceeding towards his field, on the way one Gangaram Rambhau Yadav (accused No.5) met him and told that on that day the murder of Balu (deceased) would take place at Dhule. Thus it is clear from the evidence of PW-5 Bhilajirao and PW-6 Ananda that the incident had taken place

pursuant to specific design or plan by accused No.1 Raju. Therefore, we are unable to persuade ourselves to accept the arguments of the counsel appearing for Respondents that the case in hand is covered under the Exceptions of Section 300 of the I.P. Code., as it is evident that accused No.1 Raju had given blow of Gupti on the right lower chest of Anant i.e. on the vital part of the body, with an intention to cause death of Anant.

24. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that accused No.1 Raju committed murder of deceased Anant, and Respondent Nos.2 to 6 are entitled for the benefit of doubt. Hence we pass the following order:-

O R D E R

(I) The Criminal Appeal is partly allowed.

(II) The Judgment and order dated 30th November, 1999 passed by the Additional Sessions Judge, Dhule in Sessions Case No. 53 of 1996, to the extent of acquitting original accused No.1/ Respondent No.1 - Rajendra @ Raju Rambhau Yadav from the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

(II) Accused No.1 Rajendra @ Raju Rambhau Yadav is convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code. Accused No.1 Rajendra @ Raju Rambhau Yadav is sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/-, in default, to suffer further imprisonment for Six months. His bail bonds shall stand cancelled. The period of detention, if any, be given as set-off to him.

(III) Accused No.1 Rajendra @ Raju Rambhau Yadav shall surrender forthwith before the trial Court. The trial Court

shall ensure that immediately accused No.1 Rajendra @ Raju Rambhau Yadav is send to prison to suffer the sentence awarded to him.

(IV) So far as accused Nos.2 to 6 i.e. Respondent Nos.2 to 6 herein are concerned, order of acquittal passed against them by the trial Court is maintained, and they are acquitted from all the offences with which they were charged. Their bail bonds stand cancelled.

(V) Order of disposal of the muddemal property as per impugned Judgment and order to take effect after appeal period.

(VI) The Criminal Appeal stands disposed of, accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]