

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.97 OF 1999

The State of Maharashtra
Through PSO Neknoor,
Tq. & Dist. Beed.

...APPELLANT

VERSUS

1. Limbaji s/o Kashinath Survase,
Age: 65 Years, Occu: Agri.,
R/o Kumbhari, Tq. & Dist. Beed.
2. Raosaheb Dharmraj Survase,
Age: 70 Years, Occu: Agri.,
R/o as above.
3. Digambar Sahebrao Survase,
Age: 65 Years, Occu: Agri.,
R/o as above.
4. Manohar Uttamrao Survase,
Age: 30 Years, Occu: Agri.,
R/o as above.
5. Bhaskar @ Bandu Digambar Survase,
Age: 19 Years, Occu: Edn.,
R/o as above.
6. Mohan Yada Kale,
Age: 60 Years, Occu: Labour,
R/o as above.
7. Baburao Digambar Survase,
Age: 29 Years, Occu: Agri.,
R/o as above.
8. Gorakh Raosaheb Wagh,
Age: 25 Years, Occu: Agri.,
R/o Waghebabhalgaon.

9. Bhausahab Limbaji Survase,
Age: 21 Years, Occu: Agri.,
R/o Kumbhari,
Tq. & Dist. Beed.
10. Panjab Limbaji Survase,
Age: 30 Years, Occu: Agri.,
R/o as above.
11. Chandrasen Bhimrao Survase,
Age: 30 Years, Occu: Agri.,
R/o as above.
12. Shahaji Raosaheb Survase,
Age: 25 Years, Occu: Agri.,
R/o as above.
13. Shivaji Raosaheb Survase,
Age: 25 Years, Occu: Agri.,
R/o as above.
14. Udhav Limbaji Survase,
Age: 32 Years, Occu: Agri.,
R/o as above. .

...RESPONDENTS

...
Mr. S.J. Salgare, APP for Appellant/State
Mr. S.S. Choudhari and Mr. V.M. Chate, Advocate for respondents
1 to 14.
Mr. C.K. Shinde, Advocate for respondent Nos. 3, 5, 7 & 11.

WITH
CRIMINAL REVISION APPLICATION NO.18 OF 1999

Popat s/o Manikrao Kokate,
alias Popat s/o Bhimrao Survase,
Aged: 34 Years, Occu: Agril.
R/o. Sahunagar, Behind Sagar Garrage,
Near Katte Bunglow,
BEED - 431 122.

... PETITIONER

VERSUS

1. The State of Maharashtra
2. Limbaji s/o Kashinath Survase,
Age: 65 Years, Occu: Agril.
R/o Kumbhari, Tq. and
Dist. Beed.
3. Raosaheb s/o Dharmraj Survase,
Age: 70 Years, Occu: Agril.
R/o as above.
4. Digambar s/o Sahebrao Survase,
Age: 65 Years, Occu: Agril.
R/o as above.
5. Manohar s/o Uttamrao Survase,
Age: 30 Years, Occu: Agril.
R/o as above.
6. Bhaskar alias Bandu s/o Digambar Survase,
Age: 19 Years, Occu: Education,
R/o as above.
7. Mohan s/o Yada Kale,
Age: 60 Years, Occu: Labour,
R/o as above.
8. Baburao s/o Digambar Survase,
Age: 29 Years, Occu: Agril.
R/o as above.
9. Gorakh s/o Raosaheb Wagh,
Age: 25 Years, Occu: Agril.
R/o Waghebabhalgaon.
10. Bhausahab s/o Limbaji Survase,
Age: 21 Years, Occu: Agril.
R/o Kumbhari, Tq. & Dist. Beed.
11. Panjab s/o Limbaji Survase,
Age: 30 Years, Occu: Agril.
R/o as above.

12. Chandrasen s/o Bhimrao Survase,
Age: 30 Years, Occu: Agril.
R/o as above.
13. Shahaji s/o Raosaheb Survase,
Age: 25 Years, Occu: Agril.
R/o as above.
14. Shivaji s/o Raosaheb Survase,
Age: 25 Years, Occu: Agril.
R/o as above.
15. Udhav s/o Limbaji Survase,
Age: 32 Years, Occu: Agril.
R/o as above.

... **RESPONDENTS**

Mr. M.G. Kolse-Patil, Advocate for petitioner.

Mr. S.J. Salgare, APP for respondent/State.

Mr. S.S. Choudhari, Advocate for respondent Nos. 2 to 15.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 14/07/2017
PRONOUNCED ON : 03/08/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

. The judgment and order of acquittal of respondents, accused given in Sessions Court No. 53/1995 which was pending in the Court of learned Additional Sessions Judge, Beed is challenged both in appeal and in revision. The accused were tried for offences punishable under sections 302, 307, 149, 148 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for

short) and also for offence of wrongful restraint etc. A brother of deceased has filed the revision. Both the sides are heard.

2) During the course of arguments, the death certificates in respect of accused No. 1 -Limbaji Kashinath Survase, accused No. 8 - Gorakh Raosaheb Wagh and accused No. 14 -Udhav Limbaji Survase came to be filed and this fact is not disputed. The appeal needs to be disposed of as abated as against these three accused persons. But, entire evidence needs to be considered as the charge was for offences punishable under sections 302, 307 r/w. 149 of IPC.

3) The facts leading to the institution of the two proceedings can be stated in brief as under :-

There were two political groups in village Kumbhari. The election to Village Panchayat held in the year 1994 was separately contested by these two groups by forming two panels. The Village Panchayat consist of seven members. It is contended that the panel of accused No. 14 - Udhav won three seats and the panel of deceased Mahavir won four seats. After the election, the two sides came together and they unanimously chose Udhav, accused No. 14, as their Sarpanch.

4) The dispute again started between two groups when the question of allotment of Gharkuls, small houses to be constructed for implementation of Government scheme through Village Panchayat arose. It is the case of the prosecution that Udhav wanted to allot Gharkuls to persons of his side, but Mahavir was asking to see that poor persons get Gharkuls. As Udhav was not ready to listen, Mahavir asked his four members to resign so that the Village Panchayat is dissolved. It is contended that the resignations were not accepted by the authority and they were returned. On the contrary, it is the case of defence that it was not an attempt to dissolve the Village Panchayat, but it was an attempt to move no confidence motion by calling special meeting, but the group of Mahavir could not succeed in calling such meeting.

5) On 31.8.1994 first informant Sumant (PW 6), the injured eye witness Vashisht (PW 10) and deceased Mahavir went on motorcycle of Sumant to Beed to meet Member of Legislative Assembly ('MLA' for short) Shri. Navale in connection with aforesaid dispute. They could not met MLA on that day and they stayed back in Beed till 1.9.1994. On 1.9.1994 Mahavir and

Sumant met MLA and then all the three started to return back to Kumbhari on the same motorcycle (bearing No. MXR-6620). They took 2 to 3 brief halts on the way. At the relevant time, Sumant was riding the motorcycle. They reached the spot of offence at 9.30 p.m. On this spot, the road virtually goes through the river and on both the sides of banks of river, there is slope and at the relevant time there was mud in the river. Sumant slowed down the speed due to these circumstances at this point.

6) As soon as the motorcycle entered the bed of river, all the accused persons, 14 in number, emerged from the side of bushes which were present on the bank of river and they were all armed with weapons like swords, scythes (sickles), choppers and sticks. Some were holding torches. The first blow of sword was given by accused No. 14 -Udhav on the neck of Mahavir from backside. Due to this blow all the three persons on the motorcycle fell with the motorcycle. Then other accused started assaulting all the three persons, who were present on the motorcycle with aforesaid weapons. When the assault was made, they used the torch light. When the first informant sustained a blow of stick on his leg, he somehow escaped and

ran away. But he witnessed the incident from the bushes where he was hiding after escaping from the spot. Mahavir was assaulted with the aforesaid weapons. Vashisht was also assaulted. When the assailants, accused felt that Mahavir and Vashisht were dead, they left the spot.

7) Sumant was afraid and he somehow went to a cattleshed situated in the vicinity of the spot to hide himself. After some time Vashisht regained consciousness. He went towards hutment area to the house of one Gaikwad for shelter and there he stayed on that night. From that house Vashisht contacted his relatives of other station. He was also afraid. In the morning, Vashisht went towards bus stop from where the first bus leaves towards Beed. Neknoor Police station is situated at the distance of 5 to 6 k.m. from the spot of offence and Vashisht wanted to go there. Sumant also reached to the stop. The person who was called from other village by Vashisht also came there and then these three persons went to Neknoor Police Station. Vashisht was severely beaten. In the police station, Sumant gave report and on that basis, crime came to be registered. As Vashisht had sustained injuries and there was excessive bleeding, he was immediately referred to Rural

Hospital. After examining him, Rural Hospital referred him to District Hospital Beed. Vashist was admitted there. On 3.9.1994 the Investigating Officer recorded statement of Vashist by visiting District Hospital.

8) Sumant took the police to the spot of offence. The police Inspector Shri. Ramdas Ingawale drew the spot panchanama in the presence of the panch witnesses. From the spot of offence many articles which include iron bar, the scabbard of sword, many Chappals and motorcycle of Sumant came to be taken over and seized. There was blood everywhere and even pieces of flesh and bones of deceased were lying there. Inquest panchanama was prepared in presence of panchas and the dead body was referred for post mortem (P.M.) examination. P.M. was conducted on 2.9.1994.

9) During the course of investigation, the statements of some villagers from Kumbhari came to be recorded. On the same day i.e. on 2.9.1994 accused Nos. 1 to 7 came to be arrested. Accused No. 8 came to be arrested on 3.9.1994. Remaining accused were not available. Accused Nos. 9 to 13 came to be arrested on 7.10.1994. Till the date of filing of

chargesheet, accused No. 14 - Udhav was absconding and he was shown absconding in the chargesheet. During the course of investigation, the clothes of accused were taken over under panchanamas. Some weapons were recovered on the basis of statements given by the accused persons and they came to be seized. Clothes of the two injured persons viz. Sumant and Vashisht came to be taken over. Clothes of deceased were also taken over. Blood samples of the all injured and all the accused were collected. All these articles were referred to Chemical Analyser (C.A.). After completion of investigation, chargesheet came to be filed for aforesaid offences. Subsequently, accused No. 14 also surrendered and the case was tried against all the 14 accused for the offence of murder of Mahavir, for offence of attempt of murder of Sumant (PW 6) and attempt of murder of Vashisht (PW 10) and also for the offence of rioting and for holding dangerous weapons. They were tried for offence of unlawful restraint also.

10) The prosecution examined in all 14 witnesses to prove the offences. The statements of accused were recorded under section 313 of Cr.P.C. and the accused took the defence of total denial. Accused No. 10 examined defence witnesses to

prove his defence of *alibi*. After hearing both the sides, the Trial Court acquitted all the accused by giving benefit of doubt to them.

11) In view of the nature of allegations against the accused persons, it is not necessary to consider the offence of wrongful restraint. The offence of murder and attempt of murder of two injured witnesses need to be considered. The offence punishable under section 148 of IPC also can be considered against the accused persons.

12) Before considering the evidence given, this Court feels it necessary to mention the relationship of the accused with each other. Accused Limbaji Survase was father of main accused Udhav. Accused Bhausahab Survase and Punjab Survase are other two sons of Limbaji. Baburao Survase and Bhaskar alias Bandu Survase are the sons of Digambar Survase. Shahaji Survase and Shivaji Survase are the sons of Raosaheb Survase. Chandrasen Bhimrao Survase, accused No. 11, is a step brother of deceased Mahavir. Accused Gorakh Wagh is not resident of village Kumbhari, but a girl from village Kumbhari is given in marriage to this accused and so, he is son-in-law of

Kumbhari. The remaining accused are residents of village Kumbhari. The surname of the deceased was Survase and he was also from Bhavki of main accused Udhav.

13) It is not disputed by accused that Mahavir was murdered on the spot of which spot panchanama is prepared in the present matter. On 2.9.1994 after registering crime, police went to the spot of offence and prepared the spot panchanama in the presence of panch witnesses. Inquest panchanama was also prepared and the dead body was referred for autopsy. Spot panchanama is proved in evidence of Bhimrao Payal (PW 1). He hails from village Ambilwadgaon. He has identified the articles which were taken over from the spot of offence and the panchanama is proved as Exh. 74.

14) The evidence of Bhimrao (PW 1) and the spot panchanama at Exh. 74 show that the spot was shown by injured eye witness Sumant (PW 6) and it was prepared between 9.40 a.m. and 10.50 a.m. The spot is situated at the distance of half furlong from village Kumbhari and it is on western side bank of river Kumbhari. On eastern side of river, there is slum area, hutment of village Kumbhari. The river

crosses east west road and it is north south in direction. Due to the existence of river bed and as per the oral evidence which this Court is discussing at proper place, the road is descending towards the bed of river both from east side and west side. There is no house in the vicinity of the spot and on either side, there were bushes. There was mud on the spot as it was river bed and the incident took place in the month of September. In the cross examination of this witness, it is brought on the record that the depth of the river bed was 4 to 5 feet at this spot and this spot is not visible from the houses situated on either side of the river.

15) The evidence of spot panchanama and of Bhimrao (PW 1) further show that at the spot atleast at two places, there were virtually pools of blood and there was blood at many other places. There were pieces of flesh and bones of the deceased lying everywhere on the spot.

16) The evidence on spot panchanama further shows that one empty scabbard of sword was found there. The dead body of Mahavir was lying at the distance of 7 ft. from one pool of blood. Two leather Chappals were lying near the dead body

and at the distance of 10 ft. one leather Chappal was lying. At the distance of 15 ft. of dead body, motorcycle bearing No. MXR/6620 was lying and its clutch was in broken condition. At the distance of 18 ft. from the dead body, in a bag there was one white cloth containing bananas and that was lying near the motorcycle. At the distance of 30 ft. on eastern side one more leather Chappal was lying. At the distance of 30 ft. on eastern side, one red colour chargeable battery of Jaikisan Company was lying and it was in working condition. At the distance of 40 feet from the dead body, one more leather Chappal was lying, but it was on southern side in the bed of river. At the distance of 50 ft. on eastern side, but on the northern side of the bank one more Chappal was lying. At the distance of 55 ft. from the spot of incident on eastern side of the river and towards north side one iron bar was lying and on the same northern side, one gunny bag, sack having iron bar was lying, but it was at the distance of 100 ft. from the spot. It also showed that on south and north side, there were Babool trees on that side i.e. eastern side of the bank creating bushes. Under the spot panchanama, samples of earth mixed with blood and ordinary earth and all the aforesaid articles came to be taken over and seized. This evidence is not much disputed by the defence. This evidence is sufficient to infer

the involvement of many assailants in the crime. There are many other circumstances to draw such inference.

17) The inquest panchanama at Exh. 37 is admitted by the defence. It was prepared between 8.40 a.m. and 9.45 a.m. This document shows that Sumant had given the report and on that basis, crime was registered and panchanama was prepared in that crime. The dead body was identified by Bhimrao, father of deceased Mahavir. The panchas noticed that there were bleeding injuries over the dead body, which were as under :-

- (a) on forehead,
- (b) on right eye, having 4 inch length caused by sharp weapon,
- (c) on nose,
- (d) on backside of neck, having length of 9 inches and having shape of half moon,
- (e) on both shoulders caused by sharp weapon,
- (f) on both hands at wrist and both wrists were amputated due to these injuries,
- (g) right hand fingers amputated,
- (h) on right ankle caused by sharp weapon,
- (i) on left side of chest caused by sharp weapon,

- (j) on right side of chest caused by sharp weapon,
- (k) on left thigh, big injury of sharp weapon,
- (l) on backside of both the legs tendon cutting of both the legs
- (m) other three on left leg caused by sharp weapon,
- (n) two caused by sharp weapon on right leg and
- (o) injuries on back.

18) The inquest panchanama at Exh. 37 shows that the clothes which were on the person of the deceased were having cuts due to aforesaid injuries inflicted on the deceased. The inquest panchanama shows that even panchas formed opinion that sharp weapons were used against the deceased.

19) The inquest panchanama at Exh. 37 shows that in a pocket of the clothes, there were two gold rings and there was gold Kanth (कंठ) i.e. necklace on the neck. There was I-Card of the deceased showing that he was Vice President of Tahsil branch of political party Shivsena. There was one pamphlet on his person in which for his party there was call given to persons to participate in the agitation against the activities of rival group. There were currency notes and handkerchief. There was his

photograph and photograph of one girl and there was list of articles which is ordinarily called as Yadi mentioning names of the articles which are to be gifted by the two sides of marriage to each other in the marriage. The panchas gave opinion that the death was caused due to the aforesaid injuries. The number of articles found on the spot suggests inference that many persons were involved in the incident. It is not the case of anybody that any assailant was injured in the incident and circumstances also indicate the same thing. They lead to the inference that virtually no opportunity was there to the deceased to escape or to resist.

20) The defence has not disputed seriously the evidence on autopsy and that evidence is consistent with the evidence of inquest panchanama. The evidence of P.M. report is being discussed subsequently, after discussing the evidence given by the two injured witnesses like Sumant (PW 6) and Vashist (PW 10). There is also other circumstantial evidence against the accused like presence of blood stains on clothes of some accused and recovery of some weapons from some accused on which there was blood. The evidence on motive is also given and on that, there is not much dispute.

21) Sumant (PW 6) hails from village Kumbhari. He was in the company of deceased as his brother was member of the Village Panchayat and the said brother was of the group of deceased Mahavir. The tenor of cross examination shows that the presence of this witness is not seriously disputed as it is suggested to him that while leaving the village, the deceased had informed to his father that he was proceeding to other village. Further, the motorcycle of this witness was found on the spot of offence and according to him, he sustained injuries in the incident. It is not disputed that he knew all the accused who faced the trial. These circumstances need to be kept in mind while appreciating the evidence of Sumant (PW 6).

22) Sumant (PW 6) has given evidence that in the year 1994, two groups of Mahavir and Udhav had formed two separate panels for contesting elections of Village Panchayat. It is not disputed that the Village Panchayat consist of seven members. Evidence is given that four members of the group of Mahavir were elected and three members of the group of Udhav were elected. He has deposed that after contesting the election these two rival groups had come together and due to that,

Udhav was elected as Sarpanch of the village. The evidence of Sumant (PW 6) shows that the dispute started over allotment of Gharkuls which were to be constructed as per the scheme of Government which was to be implemented through Village Panchayat. He has deposed that due to the dispute, Mahavir took the step like sending resignations of four members of Village Panchayat of his group to see that the Village Panchayat itself is dissolved. The evidence shows that the resignations were not accepted and they were returned. The accused have contended that the group of Mahavir wanted to call special meeting of Village Panchayat for moving no confidence motion against Udhav, but in that they had failed. Thus, it is not disputed that Mahavir was interested in preventing Udhav, accused No. 14 to act as a Sarpanch.

23) The evidence of Sumant (PW 6) shows that he, deceased and Vashisht left Kumbhari for Beed on 31.8.1994 to meet M.L.A. Shri. Navale. He has deposed that he was in the company of deceased, but on 31.8.1994 they could not meet Shri. Navale and so, they stayed back in Beed in the house of Prakash, brother of deceased. He has deposed that on 1.9.1994 he and Mahavir met M.L.A. and after having talk with him, they

were returning to Kumbhari on motorcycle bearing No. MXR/6620 and they left at 7.00 p.m. In the cross examination, it is brought on the record that Mahavir used to take motorcycle of uncle of Sumant. It is also brought on the record that Mahavir had sold motorcycle to a person from Beed prior to the incident. In any case, it is not disputed that Sumant (PW 6) was having control over the aforesaid motorcycle.

24) The evidence of Sumant (PW 6) shows that they took brief halts on the way and they reached the spot of offence at about 9.30 p.m. He has deposed that at the relevant time, he was riding the motorcycle, behind him, there was Vashisht as pillion rider and after Vashist, Mahavir was sitting as second pillion rider. He has deposed that as at the spot of offence, there is slope, he slowed down the speed of the motorcycle. He has deposed that then all the accused rushed towards them with weapons like axes, swords, sticks and some were having torches.

25) Sumant (PW 6) has given evidence that accused Nos. 1, 8, 9, 11 and 14 were having swords, accused Nos. 2, 3, 6 were having sticks and accused Nos. 4, 5, 7, 12 and 13 were

having axes. He has given evidence that all these accused then assaulted all the three persons who were on the motorcycle No. 6620 by using aforesaid weapons.

26) Sumant (PW 6) has given specific role played by some accused. He has deposed that first blow was given by accused No. 14 - Udhav of sword on the neck of deceased from backside, accused No. 11 gave blow of sword on the left ear of Vashist and accused No. 2 gave blow of stick on his right thigh. He has given evidence that due to the assault, all of them fell from motorcycle. He has given evidence that he somehow ran away towards shrubs, bushes to save himself. He has deposed that it was dark, but he took care to hide himself in the shrubs and from there, he witnessed the incident. He has deposed that due to the torches used by the accused, he could see the remaining part of the incident. He has deposed that he saw that all the accused assaulted the deceased and Vashisht with aforesaid weapons. He has deposed that when the accused felt that both Mahavir and Vashisht were dead, they left the spot and went away, towards the house of accused No. 14.

27) Sumant (PW 6) has deposed that from the spot of

offence, he went towards a cattleshed situated at the distance of 200 to 250 ft. for hiding himself. He has deposed that when it was dawn, he went towards the bus stop and he noticed that Vashisht was there and then both of them boarded the bus for going to Neknoor Police Station. He has deposed that police sent Vashisht to Rural Hospital and then recorded the report given by him. The report of Sumant (PW 6) is proved as Exh. 97. He has given evidence that he was also referred for medical examination.

28) In the cross examination of Sumant (PW 6), it is brought on the record that his brother was a member of Village Panchayat and he had won the election as member of panel of Mahavir. He admits that he used to meet Mahavir almost daily and he used to go to M.L.A. Shri. Navale with Mahvir and also to one Vijay Bahir. It is brought on the record that the deceased was worker of political party Shivsena. However, the evidence shows that the Village Panchayat elections were not contested by political parties.

29) The evidence of Sumant (PW 6) in cross examination shows that the wife of accused No. 6 was member of Village

Panchayat at the relevant time and she belongs to the group of accused No. 14 - Udhav. It is suggested to him that he and Mahavir were trying to make his brother Sarpach of Village Panchayat and for that, they were trying to remove Udhav from the post of Sarpanch. This suggestion is denied. But, this suggestion shows the tenor of cross examination and it also shows that the defence was admitting that there was the motive for the offence. During cross examination, it is only disputed that the dispute had started due to differences over the allotment of houses which were to be constructed under Gharkul scheme.

30) In the cross examination of Sumant (PW 6) it is brought on the record that Mahavir always used to go to Beed. The tenor of cross examination shows that defence is not disputing that the motorcycle bearing No. MXR/6620 belongs to Sumant (PW 6). He has admitted that at the relevant time, he was not holding licence to drive the motorcycle. But, this admission cannot lead to inference that Sumant was not able to ride the motorcycle or at the relevant time, he was not riding the motorcycle. He has admitted that the deceased was occasionally using the motorcycle of his maternal uncle

Madhukar Waghmare. But, this admission cannot lead to inference that Sumant (PW 6) was not present on the spot at the relevant time.

31) In the cross examination of Sumant (PW 6), it is brought on the record that on 31.8.1994 he and deceased had gone to Zilla Parishad Office, Tahsil Office and Panchayat Samiti Office and they had also met one Inder Mule to whom motorcycle was sold by the deceased as Inder Mule had not paid the purchase price to Mahavir. He admits that on the night between 31.8.1994 and 1.9.1994 they had stayed in the house of Prakash, brother of deceased in Beed. In the cross examination, it is brought on the record that on 1.9.1994 also he and Mahavir were in the company of each other and they had visited some places of Beed. The evidence shows that Vashist had not given them company in Beed, though he had come to Beed with them on the same motorcycle. In the cross examination, he has given particulars of the halts taken by them on the way back to Kumbhari on 1.9.1994. The evidence given by Sumant (PW 6) in cross examination shows that his evidence remained unshattered and he could answer each and every question put to him during cross examination without hesitation.

The evidence of Vashisht (PW 10) which is being discussed at other place is consistent on aforesaid material points with the evidence of Sumant (PW 6).

32) Sumant (PW 6) has given evidence that first blow was given by accused No. 14 - Udhav and due to that, they fell from motorcycle and then both Mahavir and Vashisht were attacked. During cross examination, it is suggested to Sumant (PW 6) that due to torch light focused on his face, he could not see anything at the time of incident, but he has denied that suggestion. Further, suggestion of the defence that when he and Mahavir had left the village on 31.8.1994, Mahavir had informed to his father that they were proceeding to village Vahali shows that defence is not disputing that Sumant (PW 6) was in the company of Mahavir. This suggestion also shows that the accused knew that Mahavir was out of station.

33) In the cross examination of Sumant (PW 6), it is brought on record that his house is situated at the distance of around 1 k.m. from the spot of offence. However, it needs to be kept in mind that he was terrified due the incident.

34) Sumant (PW 6) has deposed in the cross examination that he, Vashisht (PW 10) and two other persons had boarded the bus on the next morning. He has deposed that he only was in the company of Vashisht. However, he has deposed that Yuvraj Gangawane and Raghu Gangavane had come to bus stop to see Vashisht. It is brought on the record in the cross examination of Sumant (PW 6) that when the bus crossed some distance, one Maruti Payal, relative of Vashisht (PW 10) boarded the bus. Suggestion was given to him in cross examination that relatives of Mahavir had come to the bus stop, but he has denied it. Due to this evidence brought on record in cross examination, there is consistency in the evidence of Sumant (PW 6) and the evidence of Vashisht (PW 10) on the events which took place after incident and till the giving of report to police.

35) In the cross examination of Sumant (PW 6), it is suggested to him by the defence that Suit No. 220/1981 was filed against Bhima, father of the deceased by accused No. 11 for relief of partition and it was decreed and due to that they were interested in falsely implicating accused No. 11 in such a case. This suggestion is denied. This suggestion can be used

against accused No. 11 also as it shows that accused No. 11 had a feeling that the deceased was hurdle in his way as he was leading one political group in the village.

36) It is already observed that motorcycle of Sumant (PW 6) was found on the spot of offence and the tenor of the cross examination also shows that the defence has not seriously disputed that Sumant used to remain in the company of deceased and on the day, when Mahavir left village Kumbhari, Sumant was in his company. The other suggestions given in respect of the incident itself also show that the presence of Sumant on the spot is not seriously disputed by the defence. In addition to these circumstances, there is evidence of Dr. Sayyed (PW 12), who examined Sumant on 3.9.1994 at 10.15 p.m. He found abrasion with scab over the middle third of the front of his right leg and the abrasion was of the size of 1/3" x 1/3". The age of the injury is given as more than 24 hours and the certificate is proved as Exh. 113. Opinion is given by the doctor that such injury can be caused by hard and blunt object. In the cross examination, it is suggested that it can be self inflicted injury. The presence of the injury and the age of the injury gives corroboration to the version of Sumant (PW 6) that he was

present on the spot and he also sustained injury, but he escaped and ran away. There is more circumstantial check to the evidence of Sumant (PW 6) and that is of seizure of clothes. Prabhakar (PW 5), panch witness from village Neknoor has given evidence that on 2.9.1994 Sumant produced his blood stained pant before the police and the panchanama at Exh. 94 of seizure was prepared by police in his presence between 2.30 p.m. and 2.50 p.m. The defence virtually declined to cross examine this witness and evidence of this witness is not disputed. There were so many blood stains on the pant and the pant is given number as Article 17. There was human blood on this pant. This circumstance is consistent with the version of Sumant and it gives more corroboration to his version. The sum and substance of the evidence of Sumant (PW 6) is that almost all the accused were holding sharp weapons, they used the weapons against Mahavir and Vashisht (PW 10) and the object of this mob was to finish these two persons. It can be said that specific role of only three accused is described by him and this circumstance is being discussed at later stage.

37) Vashisht (PW 10), other injured eye witness knew the accused as he was in touch with village Kumbhari right from

his childhood. He was working as a driver on the truck of the deceased since two and half months prior to the date of incident. This witness knew that there was dispute between the deceased and accused No. 14 due to politics. But, his evidence shows that he was not directly involved in the politics. It is not disputed by defence side that this witness knew the accused persons.

38) Vashisht (PW 10) has deposed that on Wednesday, he, Mahavir and Sumant (PW 6) went to Beed on motorcycle of Sumant and on that day, they stayed in the house of Prakash, brother of the deceased. He has deposed that the deceased, Sumant had visited places from Beed in connection with the work on the first day and on 1.9.1994 also they had visited various places, but he had not given company to them. He has given evidence that when the work was over, the deceased and Sumant had returned to the house of Prakash and from there, he, deceased and Sumant had left on the same motorcycle for village Kumbhari. He has given account of brief halts taken by them on the way to Kumbhari in his evidence.

39) Vashisht (PW 10) has given evidence that Sumant

was riding the motorcycle at the relevant time, he was sitting as a first pillion rider and behind him, the deceased was sitting as the second pillion rider on the motorcycle. He has deposed that at about 9.30 p.m. when he reached the spot of offence, the speed of the motorcycle was slowed down and then all of a sudden, all the accused came near motorcycle with weapons like swords, axes, scythes, iron bars and torches (2 to 3 torches). Vashisht (PW 10) has deposed that accused No. 14 gave blow of sword on the neck of deceased and then the motorcycle fell down.

40) Vashisht (PW 10) has described the role played by all the accused in the attack made on him and also on the deceased and Sumant (PW 6). He has given evidence that blows of scythe were given by accused No. 10 on his left arm and right forearm. He has deposed that accused No. 11 gave blow of sword on his left ear, accused No. 5 gave blow of axe from blunt side of axe on his back, accused No. 7 gave axe blow on left knee and left calf, accused No. 13 gave blow on right shoulder and accused No. 8 gave blow of sword which he tried to evade and then the blow hit both his palms and knees.

41) Vachisht (PW 10) has given specific evidence in respect of assault made on the deceased and he has deposed that accused No. 14 had given blow of sword on the neck of deceased, accused Nos. 1 and 9 had used swords during the attack made on the deceased, accused Nos. 4 and 12 had used axes for attacking deceased and accused Nos. 3 and 6 had used sticks for attacking the deceased. Vachisht (PW 10) has also given evidence that all the accused had assaulted all the three persons, who were on the motorcycle and that way he has tried to show the active participation of all the accused in the incident. He has given evidence that accused No. 2 had given stick blow to Sumant. He has given evidence that Sumant somehow escaped and ran away.

42) Vachisht (PW 10) has given evidence that due to the assault made on him, he collapsed and he became unconscious. He has given evidence that he regained consciousness after about one hour and then he went towards the huts situated in the vicinity on the eastern side and he entered the house of one Vishnu Gaikwad. He has deposed that he took the shelter in the house of Gaikwad on that night due to fear. He has given evidence that he requested Gaikwad to give his message to

Maruti Payal and it was given through Raghu. He wanted help for shifting him to hospital. Maruti is resident of Ambilwadgaon.

43) Vashisht (PW 10) has given evidence that early in the next morning, he went to bus stop and Sumant came there. He has given evidence that Maruti Payal also came and from there, they went to Neknoor Police Station. He has given evidence that he was referred to first Neknoor Government Hospital by police and from there, he was shifted to District Hospital, Beed. He has deposed that though he was referred to the hospital, Sumant remained in the police station. He has given evidence that he was indoor patient for many days in District Hospital. Evidence is brought on record on motive in the evidence of PW 10. In the evidence, he has identified all the accused and also the weapons used which are shown to be recovered by police. He has admitted that PW 6 used to participate in the political activities, but his evidence does not show that he himself had shown interest at any time in the politics.

44) Vashisht (PW10) has admitted in the evidence that Vishnu Gaikwad, the owner of the house, where he had taken

shelter, is relative of Sumant. But, he has deposed that on that night, it was not known to him. He admits that he did not narrate the incident to Gaikwad and also to Maruti before reaching the police station. Though these admissions are there, the tenor of the cross examination does not show that the defence was disputing that he was present on the spot when assault was made. It is suggested to him that father of deceased and Sumant (PW 6) had asked him to give the names of accused and so, he has given the names of the accused. He denied this suggestion. It does not look probable that he falsely implicated the accused when attempt on his life was also made. Cross examination of Vashisht (PW 10) shows that in the year 1993 he was witness in a criminal case which was registered on the report given by deceased Mahavir. He admits that in the same year, a case was filed against him and deceased Mahavir in Beed Court. However, the suggestions and the record do not show that in those cases, accused persons were involved. It can be said that Vashisht (PW 10) was close to the deceased, but only due to this circumstance, inference is not possible that he has deposed falsely and his entire evidence needs to be discarded.

45) In the cross examination of Vashisht (PW 10),

contradiction is proved which is to the effect that in previous statement, it was disclosed that on 2.9.1994 Sumant had come to the house of Gaikwad and from there Sumant and Vashisht (PW 10) had together left for bus stop. This cannot be called as material contradiction and due to this, the evidence of this witness cannot be discarded. He has not taken the names of witnesses like Yuvraj and Raghu. Their names are taken by Sumant (PW 6), but one needs to kept in mind that Vashisht (PW 10) had no interest in politics and more persons were known to Sumant. In any case, this circumstance also cannot go to the root of evidence of these two witnesses. It can be said that the defence wanted to suggest that PW 6 and PW 10 ought to have made disclosure about the incident to Yuvraj and Raghu and these two witnesses ought to have been examined by prosecution. When there is direct evidence and there is corroboration of circumstances to direct evidence, the prosecution cannot be expected to give more circumstantial evidence. It needs to be kept in mind that virtually terror was created due to assault and they must have made an attempt to see that without getting noticed, they are able to reach the police station.

46) Dr. Sayyed (PW 12) has given evidence to prove the injuries which were found on the person of Vashisht. He examined Vashisht on 2.9.1994 at about 8.15 a.m. Doctor found following injuries on the person of Vashisht.

"1. Incised wound over the left temporal and occipital region of the scalp, size 4"x 3/4" x 3/4" , transverse in direction, margins regular, elliptical in shape, blood clot present.

2. Incised wound over the left palm from the base of the middle finger to the hypothenar eminence, size 4"x 1/2" x 1/2", oblique in direction, margins regular.

3. Incised wound on left palm from index to middle finger, size 3"x 1/2"x 1/2", transverse in direction, margins regular.

4. Incised wound over the left palm over thenar eminence, size 3"x 1/2" x 1/2" , oblique in direction, margins regular.

5. Incised wound over left palm over hypothenar eminence, 4"x 1/2"x 1/2", oblique in direction, margins regular.

6. Abrasion over the right forearm, upper third, size 3"x 1/3", oblique in direction, margins irregular.

7. C.L.W. over dorsum of the right wrist, size 3"x 3/4" x 3/4", boule shaped, margins irregular.

8. Incised wound over right palm, over the hypothenar eminence, size 1 1/2"x 1/2" x 1/2", margins regular and transverse in direction.

9. Incised wound over the front of the left knee,

size 1" x $\frac{1}{3}$ " x $\frac{1}{3}$ ", margins regular, vertical in direction.

10. Abrasions three in numbers, over the left side of the apex of the nose, size $\frac{1}{2}$ " x $\frac{1}{4}$ " each, vertical in direction, margins irregular.

11. Incised wound over left right side of the upper lip, size 1" x $\frac{1}{3}$ " x $\frac{1}{3}$ ", oblique in direction, margins regular.

12. Incised wound over the right side of the upper back, size 3"x1"x1", elliptical in shape, margins regular, transverse in direction.

13. Incised wound over the upper third of the left upper arm, size 4"x $\frac{1}{3}$ "x $\frac{1}{3}$ ", transverse in direction, margins regular.

14. Abrasion over the top of the left shoulder, size 3"x $\frac{1}{3}$ ", transverse in direction, margins irregular."

Doctor has given opinion that these injuries were sustained by Vashisht within 24 hours of examination and they were caused by sharp weapons like swords and axes. The M.L.C. prepared by this doctor is duly proved as Exh. 112 and it is consistent with the oral evidence of doctor. In view of nature of injuries, which were sustained by Vashisht (PW 10), this Court holds that the explanation given by Vashisht that giving treatment to him was necessary and so, he was referred to the hospital and F.I.R. of PW 6 was recorded first, needs to be accepted. It is already

observed that there is no inconsistency on material points in the evidence of these two witnesses. The injuries also explain the delay caused in recording the statement of PW 10 which is hardly of one day after the registration of the crime.

47) Due to the aforesaid circumstances, the submission of defence that due to political rivalry, an attempt was made to falsely implicate more persons of opposite side and for that the delay was caused in registering the crime and recording the statement of Vashisht has no force. The evidence of Vashisht (PW 10) shows that his relations with accused persons were not strained prior to the date of incident. Though some record is produced to show that after the date of incident some cases were filed against each other, that circumstance cannot be considered for appreciating the evidence of PW 10. On 31.8.1994 and 1.9.1994, Vashisht (PW 10) had not given company to the deceased in Beed. This circumstance shows that he was not that interested in politics. He was shifted to Beed from hospital of Neknoor immediately and it was necessary for Police Officer to start investigation after registration of the crime and to take steps to see that no more incident takes place due to the incident in question and so, it cannot be said that the

statement of PW 10 ought to have been recorded immediately and only after that he ought to have been referred to Government Hospital. To this witness also, it is suggested in the cross examination that he had no opportunity to see the assailants as the focus of torches light was directed on his face. This suggestion is denied by him. It is already observed that he knew all the accused and when torches were in the hands of some of accused, it can be said that he had opportunity to see the others and particularly, the persons who were attacking him in the light of some torches. In view of the number of injuries sustained by him, it can be said that not much importance can be given to the circumstance that his statement was recorded by police on next day. At the most, it can be ascertained as to whether there is more corroboration to his evidence and as to whether any of the accused can be given benefit of doubt due to existence of some circumstances. Medical evidence given by Dr. Sayyed (PW 12) is consistent with the version given on the incident by PW 10 on the injuries sustained by him.

48) While describing the assault, Vashisht (PW 10) has given evidence that deceased was also assaulted in his presence and he could see that assault. He has given specific role played

by the accused in assault made on the deceased. Thus, specific role is attributed to accused Nos. 1, 4, 9, 12 and 14 that they had used sharp weapons against the deceased. Medical evidence shows that all the injuries which were found on the dead body were caused by sharp weapons. Vashisht (PW 10) has deposed that accused Nos. 3 and 6 used sticks against deceased Mahavir. But, considering the nature of injuries, it can be said that injuries caused by sticks were not noticed on the dead body. Severe force was used when the blows were given by using sharp weapons on the person of deceased and that can be seen from the injuries which were found on the dead body.

49) The description of the injuries found on the dead body of Mahavir is given in the inquest panchanama and that is already mentioned. The P.M. report at Exh. 100 is proved in the evidence of Dr. Abhiman (PW 7). He conducted the P.M. examination on 2.9.1994 between 12.45 p.m. and 4.00 p.m. He found following injuries on the dead body.

- "1. Laceration on right temporal region, 3"x 1/2", upto bone in depth, transverse in direction.
2. Lacerated wound on right side of fore-head, 4"x1", 1/2" in depth, verticle in direction.
3. Laceration of right side of nose, 2"x1/2" .

4. Laceration of occiput of the skull, 13"x2", extending upto brain in depth, transvers in direction.
5. Lacerated wound over the base of the neck, posteriorly, 11"x 2" , 3" in depth, transverse in direction, 7th cervical vertebra fractured.
6. Lacerated wound over right scapula, 5"x2", upto bone in depth.
7. Lacerated wound over right deltoid, 4"x 1/2" of skin depth.
8. Laceration on right hand below elbow, 7"x3" and 1½" in depth, oblique in direction.
9. Amputation of right hand at wrist joint, amputated part is attached to body by skin ventrally.
10. Lacerated wound over right thumb, 1½"x½" , 1 cm in depth.
11. Right index finger, distal phalanx amputated.
12. Lacerated wound of 11"x9" and 3" in depth over left shoulder and left scapula, vertical in direction, due to which head of the left humerus dislocated.
13. Laceration on left arm, 4"x½" over triceps muscle, skin depth, vertical.
14. Left hand amputated at wrist joint, amputated part attached to body by skin, ventrally.
15. Left index, middle, ring and little finger amputated from proximal phalanx.
16. Laceration on left thigh on middle third, 6"x2" and 2" in depth, transverse in direction.

17. Laceration on right thigh above knee 3"x1" and 1½" in depth, oblique in direction.
18. Laceration on left tendo calcaneum, 3"x1" and ½" in depth, transverse in direction.
19. Laceration over right calf, 7"x3" and 2" in depth.
20. Laceration over right tendo calcaneum, 6"x1" and 1" in depth transverse in direction."

50) Injury No. 5 found on the neck of the dead body shows that it was inflicted from backside. The evidence given by PW 6 and PW 10 shows that Mahavir was pillion rider and was sitting on extreme backside. In the F.I.R. also, similar description of incident was given by PW 6. In all 20 visible surface wounds were found on the dead body and as per the opinion given by the doctor, all of them can be caused by weapons like swords and axes. Considering the size of the injuries and particularly depth of the injuries, inference is easy that much force was used at the time of giving of each blow. Both hands of the deceased were amputated and fingers were also amputated. By making assault from backside the main tendons of the legs of deceased were cut and that can be seen from the injury Nos. 18 and 20. Though some injuries are described as laceration, in view of nature of injuries and the

opinion given by the doctor, this Court holds that there is no reason to disbelieve the opinion evidence and it can be safely accepted. Even empty scabbard of sword was found on the spot showing that sword was used in the incident. Opinion of the doctor has the base and the opinion is to the effect that the appearance of the injury depends on the part of the body where the injury is inflicted like injury Nos. 2, 5, 9 to 19. This Court holds that the medical evidence is consistent with the oral evidence of PW 10 and PW 6 so far as the assault which was made on deceased is concerned. At the cost of repetition, it needs to be observed that probably hard and blunt object like stick was not used against the deceased though there is such evidence against the accused Nos. 3 and 6. Due to these circumstances, the evidence as against accused Nos. 3 and 6 needs more close scrutiny. Similarly, Dr. Sayyed (PW 12) has given evidence that injury which was found on the back of PW 10 cannot be caused by hard and blunt object which is inconsistent with the version that blunt side of axe was used by accused No. 5 against PW 10. Due to this circumstance, the evidence as against accused No. 5 needs a more close scrutiny.

51) In addition to the medical evidence, there is more

circumstantial check to the evidence of Vashisht (PW 10). Dadarao (PW 8) who is from village Neknoor acted as panch witness when the clothes of Vashisht were seized by the police on 3.9.1994 in the hospital. The panchanama is duly proved as Exh. 102. This evidence and Article Nos. 32 and 33 show that clothes had cuts, they were in torn condition and there was blood on the clothes. This evidence is consistent with the oral evidence of PW 10. In the evidence of Bhimrao (PW 1), the panchanama of seizure of clothes of the deceased is proved as Exh. 76. They were taken over when the dead body was taken for conducting P.M. examination. These clothes show that there were cuts and the clothes were found in torn condition. This evidence is consistent with the oral evidence of PW 6 and PW 10. This evidence is not much disputed as the fact of homicidal death is not disputed.

52) The panchanama in respect of seizure of clothes of accused No. 3 was prepared in presence of Bhimrao (PW 1). The seizure was made after house search. There are many members in the family of accused No. 3. Further, the clothes were allegedly already washed. No blood was detected on these clothes. So, no circumstantial check is available to direct

evidence given against accused No. 3.

53) In the evidence of Dayanand (PW 4), panch witness, the seizure of clothes of accused Nos. 1, 2 and 4 to 7 is proved and the panchanama is proved as Exh. 91. They were arrested immediately i.e. on 2.9.1994. Only the clothes of accused No. 3 were taken over from his residential place. The C.A. report in respect of these clothes is being discussed at later stage.

54) Dayanand (PW 4) has given evidence that one more panchanama, Exh. 92, was prepared when the clothes of accused Nos. 9 to 13 were seized by police on 7.12.1994. The evidence about seizure of clothes and weapons is challenged by the defence by contending that these articles were not properly closed and sealed and there was the possibility of tampering with the articles like putting, sprinkling blood on these articles. It can be said that there is not much force in this submission as only on few articles blood was detected.

55) Navnath (PW 2), panch witness has given evidence that on 9.10.1994 accused Nos. 9, 11, 12 and 13 gave statements to police in his presence and in the presence of other

panch witnesses that they were ready to produce the weapons. His evidence shows that all the four accused were taken together to various places. However, his evidence show that accused No. 9 Bhausahab Survase only produced two axes from the field of Bhausahab and they were found in concealed condition. These articles are given number as Articles 52 and 53 and they are identified by Navnath (PW 2) in the Court. These articles were having labels. According to Navnath (PW 2), accused No. 9 then produced a sword which was not having handle, Article 54 and that was seized under the same panchanama under Exh. 78. On this article, there was no label when evidence was recorded. As per the C.A. report, human blood was detected on this sword. There are inconsistencies and defects of aforesaid nature in the evidence. The evidence of Investigating Officer (PW 13) is also not that convincing on aforesaid points.

56) Rajabhau (PW 3) is other panch witness from Neknoor. He was panch witness on inquest panchanama, spot panchanama and also statement given by accused No. 5. He has given evidence that on 10.9.1994 accused No. 5 gave statement under section 27 of the Evidence Act and he showed readiness

to produce weapon axe. Memorandum of this statement is proved as Exh. 82. He has given evidence that accused No. 5 then produced two axes and one stick which were found concealed under the heap of fodder near his cattleshed. The seizure panchanama of these weapons, Exh. 86 is proved in the evidence of PW 3. These articles are identified by this witness as Articles 36, 37 and 38. This evidence remained unshattered.

57) Rajabhau (PW 3) has given evidence that accused No. 2 gave statement to police in his presence on 10.9.1994 and he showed readiness to produce stick. Memorandum of this statement is proved as Exh. 83. Rajabhau (PW 3) has given evidence that accused No. 2 then produced a stick from his cattleshed which was seized under panchanama at Exh. 87. The stick is described as Article No. 39. Such sticks are readily available in the village. The sticks were not sent to C.A. Thus, as a circumstance, it cannot give corroboration to oral evidence.

58) Rajabhau (PW 3) has given evidence that accused No. 4 gave statement to police on 10.9.1994 and he showed readiness to produce the axe. Memorandum of his statement is proved as Exh. 84. Evidence is given by this panch witness that

accused No. 4 then produced one axe which was in his cattleshed. The panchanama of seizure of axe is proved as Exh. 88 and this Article is described as Article No. 40.

59) Rajabhau (PW 3) has given evidence that accused No. 6 also gave statement on the same day to police in his presence that he will produce the stick. Memorandum of his statement is proved as Exh. 85. Rajabhau (PW 3) has given evidence that accused No. 6 then produced a stick from cattleshed and it was seized under panchanama at Exh. 89. The stick is described as Article 41. What is observed in respect of evidence of recovery of stick from accused No. 2 is applicable to this evidence given against accused No. 6.

60) Much was argued in respect of the recovery of the weapons by police on 10.9.1994 on the basis of so called statements given by the aforesaid accused under section 27 of Evidence Act. It was submitted that the recovery was very late and when these persons were known as accused to police, during house search also these weapons could have been recovered. Though there is such possibility, the circumstances that they were not available to police till 10.9.1994 also cannot

be ignored. Thus, the accused became available when police were on the verge of completion of investigation. Though they were not declared as absconding, the fact remains that they were not available to police. So, the aforesaid evidence which can be used for corroboration cannot be discarded straight way but it needs to be ascertained as to whether the evidence can be relied upon due to other circumstances.

61) Bajirao (PW 9), panch witness of Neknoor has given evidence that on 16.10.1996 accused No. 11 gave statement to police in his presence and showed readiness to produce the weapon chopper. Memorandum of this statement is proved as Exh. 104. Evidence is given by Bajirao (PW 9) that accused No. 11 then took the police, panchas to the field of accused No. 11 and from there he produced the weapon chopper which was in concealed condition. The seizure panchanama at Exh. 105 is proved in the evidence of Bajirao (PW 9). The article recovered is described as Article No. 55. Bajirao did not know anybody from village Kumbhari and that can be seen from his evidence and he can be definitely said as independent witness.

62) Manik is other panch witness and he is from village

Daithna (Ghat). He has given evidence that clothes of accused No. 8 were taken over by the police on 3.9.1994. Accused No. 8 is dead. The articles are described as Article No. 34 and already this Court has observed that this evidence can be considered to ascertain the truth.

63) Ramdas (PW 13), P.S.I., who made investigation has given evidence on the instances like recording of F.I.R. on 2.9.1994, preparation of spot panchanama and inquest panchanama on 2.9.1994, arrest of accused Nos. 2 to 7 on 2.9.1994, seizure of their clothes. He also recorded statement of Vashisht (PW 10) in Civil Hospital on the next date. He has given evidence on the statements given by accused Nos. 2, 4, 5, 6 under section 27 of Evidence Act before panch witnesses on 10.9.1994. He has given evidence on the recovery of weapons on the basis of statements made by these witnesses and he has given evidence that the articles were properly closed and sealed.

64) Evidence of Ramdas, Investigating Officer (PW 13) shows that he arrested accused Nos. 9 to 13 on 7.10.1994 and after their arrest, he took over their clothes under panchanama. He has given evidence on the statement given by accused No. 9

to him in the presence of panch witness on 9.10.1994 under section 27 of the Evidence Act and according to him, the two documents at Exhs. 118 and 119 were prepared by him. His evidence as against the accused Nos. 9, 12, 13 is somehow ambiguous and it cannot be accepted in view of the settled position of law. He has tried to say that accused Nos. 9, and 10 to 13 together had gone towards the spot from where weapons were recovered and accused Nos. 12 and 13 together produced two axes. However, he has given evidence against accused No. 9 that he separately produced sword which was not having fist.

65) Investigating Officer (PW 13) has given evidence that on 6.10.1994 accused No. 11 gave statement under section 27 of the Evidence Act and on that basis weapon chopper was recovered. This evidence is consistent with the record and the evidence of panch witnesses.

66) The C.A. Report at Exh. 46 shows that blood group of deceased Mahavir was 'O', the C.A. Report in respect of blood of injured Vashisht (PW 10) at Exh. 47 shows that his blood group is 'AB' and the C.A. Report in respect of blood of Sumant (PW 6) which is at Exh. 48 shows that his blood group is 'A'.

Unfortunately, the Trial Court has missed Exh. 48 and due to that some incorrect observations are made and it is held that there is inconsistency in the oral evidence and circumstances.

67) The aforesaid evidence if considered together shows that accused No. 4 - Manohar was arrested on 2.9.1994. No blood was found on his clothes if C.A. Report is considered. But, human blood was detected on the axe which was recovered on the basis of statement given under section 27 of Evidence Act by this accused. Accused No. 5 - Bhaskar alias Bandu was also arrested on 2.9.2994. No blood was detected on his clothes, but human blood was detected on axe which was recovered on the basis of statement given by him under section 27 of Evidence Act. Accused No. 9 - Bhausahab came to be arrested on 7.10.1994. No blood was detected on his clothes, but human blood was detected on sword which was recovered on the basis of statement made by him under section 27 of the Evidence Act. Accused No. 11 - Chandrasen was arrested on 7.10.1994. No blood was detected on his clothes and blood was not detected on the weapon chopper recovered on the basis of statement given by him under section 27 of Evidence Act. He is step brother of deceased Mahavir. He was not available till 7.10.1994

and that can be said in respect of accused Nos. 9 to 13. Accused No. 10 - Punjab was arrested on 7.10.1994. Human blood was found on his clothes which were taken over after his arrest. It is already observed that the evidence about recovery of weapons in respect of accused Nos. 10 to 13 given by Investigating Officer is not that convincing and acceptable and it is not consistent with the evidence of panch witnesses and the record. Accused No. 7 was arrested immediately on 2.9.1994 and on one of his cloths, human blood was detected. Stick is shown to be recovered from accused No. 6, but stick was not sent to C.A. Office.

68) While appreciating the evidence, the relationship of accused *inter-se* also needs to be kept in mind. Accused Nos. 12 and 13 are sons of accused No. 2 and accused no. 2 is also uncle of accused No. 4. Accused Nos. 12 and 13 were not available to police till 7.10.1994. Specific allegations are made by Vashisht (PW 10) against accused No. 13 that he gave blow of sharp weapon on the right shoulder of Vashisht. Similarly, specific allegation is made by Vashisht (PW 10) against accused No. 12 that he assaulted the deceased with axe. Similar evidence is given by Vashisht (PW 10) against accused no. 4

that he assaulted deceased with axe. As against accused No. 2, both PW 6 and 10 have given evidence that he gave blow of stick on the legs of PW 6 and there is corroboration to that evidence. Accused Nos. 9 and 10 were also not available till 7.10.1994. They are real brothers of main accused, accused No. 14 and so, they had strong motive. There is specific evidence as against accused No. 10 that he assaulted Vashisht (PW 10) by using sharp weapon. Similarly, specific evidence is given against accused No. 9 by PW 10 that he used sword against the deceased. The sword is recovered and human blood was detected on the sword on the basis of statement given by accused No. 9. Accused No. 7 - Baburao is son of accused No. 3 - Digamber. Digamber is real brother of Bhimrao and deceased was nephew of Digamber. Specific evidence is given as against accused No. 7 by PW 10 that accused No. 7 assaulted him on left knee and left calf by using axe. Human blood was detected on the weapons recovered at the instance of accused Nos. 4, 5 and 9 and human blood was detected on the clothes of accused Nos. 7 and 10.

69) It is not the case of any of the accused that injury was sustained by the accused in the incident. It can be said that

the incident was virtually planned in such a way that there was no opportunity to the deceased to resist. There was no other alternative before Sumant (PW 6) than to run away considering the strength of the opposite side. But the remaining two persons like Vashisht (PW 10) and the deceased could not escape and they could not resist.

70) The discussion made above shows that to the direct evidence of Sumant (PW 6), there is sufficient corroboration of circumstantial evidence. His clothes were having blood stains which were taken over on the 2.9.1994 itself. There was injury to his right leg, but he could not be referred to hospital immediately as there was necessity to make progress in the investigation and he was taken to the spot of offence on that day. The record shows that it is PW 6 who had taken the police to spot of offence. The Investigating Officer was busy in making investigation on 2.9.1994 and so, it can be said that not much can be made out due to circumstance that PW 6 was examined by the doctor on 3.9.1994. Inference is possible that due to the brutal murder of Mahavir, who was leader of one group, tension was created in the village and the persons involved in the political rivalry from the side of Mahavir were afraid due to

murder of their leader. In F.I.R., PW 6 had mentioned the names of all the accused and due to that, not much can be made out of the circumstance that police statement of PW 10 was recorded on the next day. Some observations are already made in that regard. There is more than sufficient corroboration of circumstances to the direct evidence of PW 10. The circumstances that PW 6 could describe the specific role of only three accused cannot make out much in favour of defence as there are other circumstances which are already discussed and the evidence is sufficient to infer that he somehow escaped and ran away. His evidence about the presence of most of the accused remained unshattered.

71) There are some discrepancies with regard to the recovery of weapons and the recovery of blood stained clothes. When there is direct evidence not much importance can be given to non recovery of some weapons. There is the evidence of medical officer which supports the direct evidence. In the present matter, there is recovery of some weapons and on the spot also empty scabbard of sword was lying. When the provision of section 149 of IPC is available, only the active role played by the persons who were members of unlawful assembly

needs to be proved. Due to the availability of this provision, not much importance can be given to other circumstances like a particular weapon which was used by a particular accused as per the direct evidence was not recovered at his instance. The discussion made above shows that the circumstances have given rise to doubt only in respect of active role played by accused Nos. 3 and 6 and also about their presence. There is no circumstantial check to the direct evidence given as against them. Evidence given as against them can be separated from the evidence which can be believed and so, this circumstance cannot go to the root of the entire case of prosecution. Accused Nos. 1, 8 and 14 died during the pendency of the matter. But the discussion of the evidence made above shows that there is strong evidence available against accused Nos. 1, 8 and 14.

72) Accused No. 10 has given defence evidence to prove his defence of *alibi*. He was working as driver with M.S.R.T.C. at the relevant time. He has examined Kachru (D.W. 1) conductor and Shriram (D.W. 2), Assistant Traffic Inspector to show that on 1.9.1994 and 2.9.1994 he was on duty. The conductor has given evidence that on 1.9.1994 they had taken the bus to Pachangri and there they had taken halt as they were to leave on return

journey on the next morning from that village. He has tried to say that on night between 1.9.1994 and 2.9.1994 accused No. 10 was in his company and so, there is no question of his involvement in the incident. His evidence in cross examination shows that he has avoided to inform on many things. Suggestion is given that the distance between Pachangri and Kumbhari is less than 25 k.m. According to D.W. 1, their bus had reached Pachangri at 7.45 pm. If the distance was less than 25 k.m. it was possible for him to go to Kumbhari, take part in the incident at 9.30 p.m. and then return to Pachangri.

73) When there is defence of *alibi*, it is necessary to show that it was not possible for the accused to remain present at two spots at the same time. The record which is produced through the evidence of D.W. 2 - Assistant Traffic Officer does not show that accused No. 10 was expected to stay in village Pachangri. As per the muster roll, he was marked as present on 1.9.1994 and 2.9.1994, but the attendance roll shows that from 3.9.1994 he proceeded on leave. He was on leave from 3.9.1994 to 23.9.1994 and thereafter, he was absent on duty till 31.9.1994. Further muster is not produced. As per the discussion made, he came to be arrested on 7.10.1994. These

circumstances are not certainly in support of the innocence of accused No. 10. It is not his case that any interim relief like interim anticipatory bail or interim bail was granted in his favour. Thus, this Court has no hesitation to hold that the evidence on *alibi* is not sufficient to prove this defence.

74) The aforesaid discussion shows that there was more than sufficient evidence for conviction of accused Nos. 2, 4, 5, 7 and 9 to 13. The Trial Court has given such reasons for acquittal of all the accused which cannot sustain in law. The reasons can be summed up as follows :-

- (i) The Trial Court has held that PW 6 and PW 10, the two injured eye witnesses are not reliable as there was delay caused in giving F.I.R. and there was delay caused in giving police statement by PW 10. For disbelieving them more importance is given to the circumstance that the injury sustained by PW 10 on back was caused by sharp weapon. But the oral evidence is given to the effect that blunt side of axe was used by accused No. 5. The Trial Court had not kept in mind that it was a night time and many persons had made assault simultaneously on the deceased, PW

10 and to some extent on PW 6. In such a case, it is necessary to ascertain as to whether the accused named were involved in the incident, whether they were members of unlawful assembly and what weapon was used. That approach was not used and due to that grave error is committed by the Trial Court.

(ii) The Trial Court had not seen the C.A. Report in respect of the blood sample of first informant and due to that, it is held that there is no explanation with prosecution about the blood of group 'A' detected on some articles. The Trial Court has gone ahead with the reasoning in wrong way and has held that there is possibility of manipulation. When one of the injured was having blood group 'A', one injured was having blood group 'AB' and the deceased was having blood group 'O' and when it is not the case of any accused that he had sustained injury in the incident, not much importance could have been given even if there was some inconsistency in C.A. Report and the oral evidence. Similarly, on the point of medical opinion evidence, the Trial court has not kept in mind law

developed on such opinion. Reliance can be placed on this point on the observations made by the Apex Court in the case reported as **(2005) Cri.L.J. 4111 [State of Punjab Vs. Hakam Singh]**. The observations are as follows :-

"whenever, there is conflict between medical evidence and ocular testimony normally ocular testimony should be preferred unless it belies fundamental facts."

(iii) The Trial Court has committed serious error in holding that the evidence on motive given by the prosecution is not sufficient and it was not convincing. It is already observed that there is more than sufficient evidence on record and the evidence shows that it is not disputed that there was political rivalry between the two groups. The defence itself has brought on record the motive in the form of litigation so far as accused No. 11, who is step brother of deceased is concerned. Further, when there is the direct evidence, motive does not play important role. Only on the basis of nature of injuries inflicted on the person of

deceased, it can be said that a decision was taken by these persons to finish Mahavir.

(iv) The Trial Court has given much importance to a circumstance that in some instances of seizure, there is possibility that the property seized was not properly closed and sealed in packets. One witness has given admission that after affixing labels of panch witnesses on articles, the articles were visible. In view of this circumstance, the Trial Court has held that there was possibility of tampering with the articles by the investigating agency. The Trial Court has taken the support of some observations made by this Court in the cases reported as **1995 Cri.L.J. 1432 (BOMBAY HIGH COURT) [State of Maharashtra Vs. Prabhu Barku Gade]** and **1996 Cri.L.J. 3147 [Ashraf Husain Shah Vs. State of Maharashtra]**. There are some observations in these cases, but they were made in view of the facts of those cases. The facts of each and every case are always different and what is held on the basis of facts of one case cannot be repeated in other case having different facts. Further, in the

present matter, circumstances were to be used only for corroboration. This Court has no hesitation to observe that even if the evidence on the recovery of clothes of the accused and the recovery of weapons at the instance of accused on the basis of statements given under section 27 is ignored, other evidence is sufficient to prove the offences for the reasons already discussed.

(v) One observation made by the Trial Court that the evidence is doubtful in nature as the dead body was lying at some distance from motorcycle is not only untenable, but it is shocking. The evidence shows that many assailants were involved and even though there was no opportunity to resist, the victim must have tried to avoid the blows. There was not much distance between the place where the dead body was lying and the place where the motorcycle was lying and that is already quoted. This circumstance shows that the Trial Court had chosen altogether unacceptable approach and there is possibility that it was done as the Trial Court was thinking that due to involvement of many

persons, it was not possible for it to separate the truth from falsehood. Due to that the Trial Court found excuses of this nature.

(vi) The Trial Court has discussed the circumstance that to some extent the evidence of PW 6, the first informant has no corroboration of the evidence of PW 10. The Trial Court was expected only to consider the consistency. Two witnesses are not expected to give same account when the incident of present nature takes place. Further, the Trial Court ought to have kept in mind that PW 10 was present on the spot till the end, but PW 6 somehow escaped from the spot and probably immediately after the starting of the assault. The evidence of PW 6 in such a case can be considered only on the point of involvement of the accused in the incident, for ascertaining as to whether they were present on the spot at the relevant time. He was expected to say something as who had given blow to him and that is done by PW 6. Thus, on this point also, the Trial Court has committed grave error.

(vii) The Trial Court has held that due to night time and as it was dark, it was not possible for PW 6 and PW 10 to see as to who was assaulting the deceased. This is again surprising and shocking observation. This Court is avoiding to discuss the circumstance like the light available from moon and stars in the night time. But, there is specific evidence that torches were used by the assailants. One such torch was found on the spot when spot panchanama was prepared. Further, it can be said that use of the torch was to ascertain that the person who was being assaulted was Mahavir and due to that it can be said that in the light of some torches, there was opportunity to PW 6 and PW 10 to see and identify the assailants. Thus, on this point also, the Trial Court has committed grave error.

(viii) The Trial Court has disbelieved the witnesses due to reason of non disclosure of incident by them to the persons in whose contact they had come before approaching police. It is true that PW 6 and PW 10 have admitted that they did not disclose the

incident to anybody prior to making disclosure to police, but that does not mean that the incident did not take place, they were not present on the spot and they did not disclose the names because they wanted to implicate more persons of opposite side. It is already observed that PW 6 and PW 10 were afraid and they remained alive fortunately on that night. The Trial Court has discussed the observations made in some reported cases to hold that due to non disclosure of the incident to others immediately, the witnesses cannot be believed. It is already observed that the facts and circumstances of each and every case are always different. The murder of Mahavir was committed in such a way that terror was created and nobody who had opportunity to witness the incident and particularly the persons who sustained injuries and escaped fortunately must have remained in frightened state of mind on that night. When there is such evidence from the witnesses, they could not have been disbelieved.

(ix) The Trial Court has considered one more circumstance like non examination of some witnesses

who are considered as material witnesses by the Trial Court. The persons like Gaikwad in whose house shelter was taken by PW 10 and two other persons who had come to bus stand on the next morning are held as material witnesses. At the most, these witnesses could have given evidence on the disclosures made to them. This point is already discussed. For the same reason, this Court holds that the Trial Court has committed error in holding that those were material witnesses and non disclosure of the incident to those witnesses has created doubt about the versions of PW 6 and 10.

75) The aforesaid discussion shows that the Trial Court did not make even an attempt to marshal the evidence given against each and every accused and then to appreciate the evidence given against each accused as a whole. When many accused are involved in a case like present one and when there is possibility of false implication due to the enmity between the two groups, it becomes the duty of the Court to separate the grain from chaff and accept what appears to be true and reject the rest. Even when one person was brutally murdered by

cutting him into pieces and there was an attempt on life of two others, the Trial Court did not show sincerity in making such effort. Further, it is necessary for the Court to appreciate the evidence as a whole after marshaling the evidence given as against each accused. That approach was not adopted by the Trial Court. Whatever can be called as 'evidence' under section 3 of the Evidence Act must be considered by the Court. Whether a particular piece of evidence is relevant or not relevant and whether the evidence can be believed or not believed, need to be discussed by the Court in minute details. If such approach is not used, all the accused will get acquittal when many accused are shown as involved in the crime like present one and where there are more than one eye witnesses. The Trial Court has definitely shirked the aforesaid duty.

76) When the prosecution case rests mainly on direct evidence given by the injured witnesses, circumstantial evidence can be used only to corroborate or contradict such witnesses. The circumstances do help the Court to ascertain the truth and find out the veracity of the witnesses. In every case, there are bound to be some discrepancies in direct evidence when more witnesses are available and in such a case, it is the duty of the

Court to ascertain as to whether such discrepancy has given rise to 'doubt' and then to ascertain whether the doubt is 'reasonable'. Thus, the doubt may arise from the evidence and it should not be imaginary. To ascertain as to whether the circumstance has created doubt, the evidence as a whole needs to be considered and for calling particular doubt as reasonable, the doubt must be based on reason and common sense.

77) The learned counsels for respondents, accused placed reliance on some cases reported as **1996 Cri.L.J. 3147 [Ashraf Hussain Shah Vs. State of Maharashtra]** cited supra. The effect of delay caused in giving F.I.R. and giving statement to police by eye witness is discussed. This case is considered by the Trial Court also. Sufficient discussion is made on this point by this Court already. In the present case, the so called delay caused cannot be called as fatal as the reasons for the delay are apparent even from the record. Further, only due to such delay, the evidence cannot be discarded and what is required is the close scrutiny of the evidence given by such witness. The point of delay cannot be taken that seriously when injured eye witness gives the evidence in the Court.

78) The learned counsels for respondents/accused made a submission that copy of F.I.R. was not sent to J.M.F.C. immediately and as it was sent after five days of the date of registration of the crime, there was non compliance of provision of section 157 of Cr.P.C. and this circumstance has created a possibility of false implication. On this point, the learned APP placed reliance on the case reported as **(2005) Cril.L.J. 1402 [Sunil Kumar and Anr. Vs. State of Rajasthan]**. The Apex Court has made following observations :-

"It cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the concerned Magistrate, the prosecution version becomes unreliable. It would depend upon the facts of each case. In the instant case as appears from the records the investigation was taken up immediately and certain steps in investigation were taken. Therefore, the plea that there was no FIR in existence at the relevant time has no substance. Additionally, no question was asked to the investigation officer as to the reason for the alleged delayed dispatch of the FIR. Had this been done, investigation officer could have explained the circumstances. That having not been done, no adverse inference can be drawn."

79) On the point of non compliance of provision of

section 157 of Cr.P.C., some circumstances can be quoted. In the present matter, accused No. 1 to 7 whose names were mentioned in the F.I.R. came to be arrested on 2.9.1994 itself. They were produced with remand report before J.M.F.C. on 3.9.1994. Accused No. 8 came to be arrested on 3.9.1994 and he was also produced immediately before J.M.F.C. There are remand reports available on the record and they show that sum and substance of the F.I.R. was mentioned in the remand report which includes the names of all the accused persons mentioned in the F.I.R. Thus, nothing can be made out in favour of the accused due to the circumstance of giving report to J.M.F.C. of F.I.R. after five days of the registration of the crime.

80) The learned APP for the State and the learned counsel for revision applicant submitted that the Trial Court has committed error in not appreciating the object behind sections 141 and 149 of IPC. On this point, they placed reliance on the case of **Sunilkumar** cited supra. Attention of this Court was drawn to the following observations made by the Apex Court :-

"1. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be

gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behavior of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even from some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instante.

2. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be

achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behavior at the time of or before or after the occurrence.

3. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be

made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object would also be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object.

4. Where a group of assailants who were members of the unlawful assembly proceeds to commit the crime in pursuance of the common object of that assembly, it is often not possible for witnesses to describe the actual part played by

each one of them and when several persons armed with weapons assault the intended victim, all of them may not take part in the actual assault. Therefore, it was not necessary for the prosecution to establish as to the specific overt act was done by each accused."

There cannot be dispute over the observations made by the Apex Court in the case of **Sunilkumar** cited supra. In the present matter also, in view of facts established, the only inference possible is that the assailants had gathered there to form unlawful assembly, they had formed unlawful assembly and its object was to finish their enemy viz. Mahavir. Thus, the assailants were certain about the object of unlawful assembly. They knew that Mahavir was returning to village on that night and the evidence on record is sufficient to infer that they knew that Mahavir was not alone and if required, they were required to tackle with PW 6 and PW 10. That is why many assailants had gathered there. They made assault on PW 6 and PW 10 also in such a way that they attempted to finish PW 6 and PW 10 also. PW 6 and PW 10 were close to deceased and assailants left the place with belief that PW 10 and Mahavir were dead. Thus, accused No. 2, 4, 5, 7 and 9 to 13 are guilty of the offence of murder of Mahavir by forming unlawful assembly and they are

guilty of offence of attempt of murder of PW 6 and PW 10 by forming unlawful assembly and they were armed with deadly weapons. In view of the evidence already discussed, this Court holds that due to nature of evidence, it will be sufficient in the present matter to convict the aforesaid accused for offence of murder of Mahavir punishable under section 302 r/w. 149 of IPC, the offence of attempt of murder of Sumant (PW 6) punishable under section 307 r/w. 149 of IPC and for the offence of an attempt of murder of Vashisht (PW 10) punishable under section 307 r/w. 149 of IPC. This Court intends to give minimum penalty for these offences and so, there is no need to give hearing to the accused on the point of sentence. Thus, both the proceedings filed against accused need to be allowed and following order is made.

ORDER

(I) The appeal is partly allowed. Accused Nos. 2, 4, 5, 7, 9 to 13 are convicted for the offence of murder of Mahavir under section 302 r/w. 149 of IPC and each of them is sentenced to suffer life imprisonment and pay fine of Rs.1,000/- (Rupees one thousand); in default of payment of fine, each of the accused is to undergo rigorous imprisonment for one

month.

(II) Accused Nos. 2, 4, 5, 7, 9 to 13 are convicted for the offence of an attempt of murder of PW 6 - Sumant punishable under section 307 r/w. 149 of IPC and for this offence, each of the accused is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.500/- (Rupees five hundred); in default of payment of fine, each of the accused is to undergo rigorous imprisonment for fifteen days.

(III) Accused Nos. 2, 4, 5, 7, 9 to 13 are convicted for the offence of an attempt of murder of PW 10 - Vashisht punishable under section 307 r/w. 149 of IPC and for this offence, each of the accused is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/- (Rupees five hundred); in default of payment of fine, each of the accused is to further undergo rigorous imprisonment for fifteen days.

(IV) The appeal as against accused Nos. 3 and 6 stands dismissed.

(V) The appeal in respect of accused Nos. 1, 8

and 14 stands disposed of as abated.

(VI) Accused Nos. 2, 4, 5, 7 and 9 to 13 to surrender to their bail bonds for undergoing sentence.

(VII) The aforesaid convicted accused are entitled to set off for the period for which they were already behind the bars. Office to find out the period for which the aforesaid accused are behind bars and inform to concerned authorities accordingly. Substantive sentences are to run concurrently.

(VIII) As the appeal is allowed, the purpose of Criminal Revision Application is served and so, it is disposed of accordingly.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

SSC/