

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.243 OF 2000

The State of Maharashtra,
Through Public Prosecutor,
High Court Bench at Aurangabad.

... APPELLANT

VERSUS

- 1) Bhatu Narayan Patil,
Age-25 years,
R/o-Bhadgaon, Tq-Sakri,
Dist-Dhule,
- 2) Vilas Bhatu Patil,
Age-19 years,
R/o-Bhadgaon, Tq-Sakri,
Dist-Dhule,
- 3) Kailas Ratan Patil (Deore),
Age-28 years,
R/o-Deur, Tq-Sakri,
Dist-Dhule,
- 4) Sopan Bhatu Patil,
Age-22 years,
R/o-Bhadgaon, Tq-Sakri,
Dist-Dhule,

... RESPONDENTS

...

Mr.S.J. Salgare, A.P.P. for Appellant.
Mr.N.B. Suryawanshi Advocate for Respondent
Nos. 1 to 4.

...

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

DATE OF RESERVING JUDGMENT : 3RD JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 19TH JULY, 2017.

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

1. This Appeal is preferred by the State challenging the Judgment and order dated 23rd February, 2000, passed by the Additional Sessions Judge, Dhule in Sessions Case No.26 of 1997, thereby acquitting original accused Nos.1 to 4/ Respondent Nos.1 to 4 from the offence punishable under Section 302 read with Section 34 and Section 447 read with Section 34 of the Indian Penal Code (in short "I.P. Code").

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

A) It is the case of the prosecution tht Damu, Ravan, Dashrath and Dattu are the four

brothers. Dattu is said to be the elder. In the year 1971, partition had taken place amongst these four brothers and the ancestral properties came to be partitioned. Narayan Patil is said to be the real paternal uncle of the aforesaid four brothers. Accused No.1 Bhatu is said to be son of Narayan Patil, in the sense accused No.1 Bhatu is said to be the cousin of the aforesaid four brothers. This Bhatu Narayan is said to have two sons, namely Vilas and Sopan (accused Nos.2 and 4). Vakil is said to be the son of Narayan Patil. Thus, it can be said that Bhatu and Vakil are the sons of Narayan Patil. As the ancestors of Dattu and his three brother and the ancestors of Bhatu and Vakil remained joint for a pretty long time, they had been possessing the landed properties in joint. In due course of time, the partition had taken place. Consequently, a piece of land came to be divided in sub-divisions. The land of Bhatu Narayan is adjacent to the land of Dattu Kalu. It is being said that even on a trifle matters, the

dispute had taken place between Bhatu Narayan, Vakil Narayan on one hand and Dattu Kalu and his three brothers on the other hand. Complaints were filed. They fought the litigation in Civil Court as well as in criminal Courts. This rivalry culminated by taking away lives of four innocent boys who were in their prime youth.

B) Another cause of this rivalry was that the piece of land belonging to Dashrath Kalu and Damu Kalu was adjacent to the land of Bhatu Narayan. Ravan Kalu sold his piece of land to Bhatu Narayan. There was a well which was in common. These four real brothers and their cousin were having equal share in that well water. Day to day the water level of that well started diminishing. No remedy was left open before Dashrath but to dig a separate well to irrigate his crops. The well which was dug independently by Dashrath was adjacent to the common well. Bhatu Narayan also dug a separate well. On account of

that fact, the water level of all the wells in the vicinity had reduced and none of them was in a position to get sufficient water to irrigate their crops. Since that day, the enmity which was already in existence, started worsening.

C) It is the case of the prosecution that in the night of 22nd April, 1996, deceased, namely, Vijay - aged 15 years, Dipak - aged 13 years, Tatyabhau - aged 13 years and Ramdas - aged 19 years, were sleeping in a piece of land known as Guntara. The accused armed with a deadly weapon, namely axe, went there. They had given blows by means of an axe on the person of those four boys. Out of four boys, three boys succumbed to their injuries, whereas the fourth boy died after the interval of eight to ten days.

D) On 22nd April, 1996, Dashrath Kalu along with his wife went out of village Bhadgaon. Before leaving the house on 22nd April, 1996, in the

morning hours, he had called his two sons namely Vijay and Dipak to be more vigilant as at the relevant time there was a standing crop of ground-nut in that piece of land which is known as "Guntara". While leaving the house, Dashrath Kalu had given the instructions to his two sons Vijay and Dipak to take care of the standing crops even during the night hours and if necessary, they should take the assistance of their friends. Accordingly, Vijay and Dipak called their friends namely, Tatyabhau Popat Patil and Ramdas Kautik Patil.

E) In the night of 22nd April, 1996, in the house of Dashrath, his two sons Vijay and Dipak and daughters namely, Surekha, Baija and Sunanda were present. Surekha, Sunanda and Baija slept in the house of Dashrath which was in the field known as Guntara, whereas the aforesaid four boys went near the well to sleep there, which is at a very short distance from that house.

F) On 23rd April, 1996 when Dashrath returned to his village and started proceeding towards his land, he was being told by one Vinayak Uttam Patil who was working as a mason, as the construction of the well was going on, that his two sons and their two friends died as somebody killed them, for the reasons that there were number of injuries on their persons. The informant Dashrath Kalu went there. He found that Tatyabhau, Vijay and Dipak had died, whereas Ramdas was found lying in an unconscious condition. Ramdas was removed immediately from that place for being admitted in the hospital, but on his way, he succumbed to his injuries. In the complaint, informant Dashrath Kalu had expressed his doubt that the boys might have been murdered by Bhatu Narayan, Supan Bhatu and Vilas Bhatu.

G) On receiving the complaint, the offence under Section 302, 307, 447 read with Section 34

of the I.P. Code was registered. The investigating officer carried out the investigation. The panchnama Exhibit-48 of scene of offence was drawn. During the course of investigation, the axe came to be recovered from the possession of accused Vilas Bhatu. The inquest panchnamas were drawn. The post-mortem examination reports were procured. The clothes of the deceased containing the blood stains and other necessary articles were sent to Chemical Analyzer for opinion and after completion of the investigation, the charge-sheet was filed against the accused.

H) A charge for an offence punishable under Section 302 read with Section 34 and Section 447 read with Section 34 of the I.P. Code was framed against the accused 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 i.e. accused Nos.1 to 4 from the offences with which they were charged, Hence this Appeal is preferred by the State.

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 notes of evidence and in particular evidence of PW-6 Bayjabai and submits that PW-6 has witnessed the incident. He submits that overt act is attributed against all the accused persons. The prosecution has also brought on record circumstantial evidence 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.N.B. Suryawanshi, learned counsel appearing for the original accused / Respondents referring to the written notes of arguments, 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 witness PW-6 Bayjabai, 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 another eye witness PW-7 Surekha has not supported prosecution case and she turned hostile. He further submits that another witness PW-8 Vishwas, to whose house alleged eye witnesses went after seeing the incident, has turned hostile and did not support the prosecution case. He further submits that recovery of axe, i.e. alleged weapon

used in the crime, is doubtful, as the same is from the open place, accessible to all. He further submits that most material witnesses including Kesarbai, her sons, Ahilyabai who is maternal aunt of PW-6 Bayjabai, are not examined by the prosecution, so also alleged eye witness Sunanda was also not examined. Hence adverse inference under Section 114(g) of the Evidence Act requires to be drawn against the prosecution. The defence has brought on record that there was a grudge in the mind of the informant PW-5 Dashrath against the accused, on the issue of well water. There was no motive for the accused to kill the four boys. The prosecution has not brought on record the genesis of the incident. He invites our attention to the findings recorded by the trial Court 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.

The entire prosecution case appeared doubtful to the trial Court and therefore the Respondents are acquitted. Therefore, he submits that the Appeal deserves to be dismissed. In support of his submissions, learned counsel Mr. Suryawanshi has placed reliance on the reported Judgments in the case of the State of Bihar vs. Mohammad Khursheed¹, Nachhettar Singh and others vs. the State of Punjab², Chandrappa vs. State of Karnataka³ and Shivasharanappa and others vs. State of Karnataka⁴.

6. The prosecution has examined PW-1 Bansidhar Gaikwad, the circle inspector who had drawn the map of scene of offence, Exhibit-46. He deposed that he was working as Revenue Inspector at Sarki. On the strength of the report of the police station Sakri, on 6th June, 1996 he had drawn the map of the place of incident. He went to Bhadgaon on 6th June, 1996 in the field of Damu

1 A.I.R. 1971 S.C. 2268

2 1976 Cri. L.J. 691

3 A.I.R. 2007 S.C. (Supp) 111

4 (2013) 2 S.C.C. 705

Kalu. He went to the place of incident and drawn the map.

. During the course of his cross-examination, he admitted that he had drawn the map of the field of Damu Kalu where the incident took place. He admitted that to the west and to the north of the said land, there is a forest area. He admitted that village Vaghane is at a distance of 3 K.m.s from the land of Damu Kalu. He admitted that villages namely Rahud, Juna Rampura, Kakane, Bajbai Shevali and Kalgaon are within the range of 3 to 4 K.m.s from the land of Damu Kalu. He further admitted that it had come to his notice at the time of drawing the map that the heap of mud (soil) which is adjacent to the well was having the height of 10 feet from the ground level. He further admitted that the distance between the place of incident i.e. the land of Damu Kalu and village Bhadgaon is 1 K.m. approximately. He was unable to say exactly that, in the year 1995 to

1997 there was no electric supply to the entire villages of Sakri Taluka throughout the day i.e. on Monday.

7. PW-2 Nimba Bedse is a panch to the spot panchnama Exhibit-48. PW-3 Kashinath Gavali and PW-4 Ravindra Namdeo Pawar are the panchas to recovery of axe, at the instance of accused No.2 Vilas, which was kept on Bandh of land. PW-11 Rohidas Vitthal Jadhav is an investigating officer. He deposed about the manner in which he has carried out the investigation.

8. The prosecution examined PW-5 Dashrath Kalu Patil, who is informant in this case. He deposed that he has two sons namely, Vijay and Dipak. He has one daughter namely, Sharada. At the time of incident Vijay was 15 years old and Dipak was 13 years old. He has three brothers namely, Dattu, Damu and Ramu. He deposed that accused No.1 Bhatu Narayan is his cousin brother. Bhatu has two

sons namely, Supan and Vilas. He further deposed that he has a piece of land within the limits of village Bhadgaon, which land is known as "Guntara". His land is adjacent to the land of accused No.1 Bhatu Narayan. There is a well in the portion of Bhatu Narayan. The said well is common having share of he himself, his brother Damu Kalu, accused No.1 Bhatu Narayan and two brothers of Bhatu namely, Vakil Narayan and Rupchand Narayan. At the time of incident, they all sharers had been fetching the water jointly from the said well. He was not getting sufficient water from the said well and therefore four months prior to the incident he dug a separate well in his portion, which is approximately at a distance of 70 feet from the common well. Bhatu Narayan also dug his separate well in his land two months after he dug the well. There was sufficient water in his well, whereas there was no sufficient water in the well of accused No.1 Bhatu. He further deposed that before the incident, a quarrel had taken place

between he himself and accused No.1 Bhatu. In the year 1991, accused Nos.1, 3, 4 and others had cut his pipeline for which he had filed a complaint against them and he was threatened by accused Nos.1, 4 and their supporters to withdraw the complaint. Thereafter accused No.4 set on fire his mango tree by thorny fencing. He deposed that the only cause for enmity between him and accused was the well water.

. PW-5 Dashrath further deposed that on 22nd April, 1996 at 8.00 p.m. his two sons namely, Vijay and Dipak left the house to go to the land to sleep there. While leaving the house they told that they will fetch the water from the well and he should come to the land in the next morning. On the next day morning at about 8.00 to 8.30 a.m. one Vinayak Uttam came to him and told that his sons were murdered. He went there and found that four dead bodies were lying in his land known as Guntara. On the same day he went to the police

station and filed a complaint. He did not see Vilas and Supan there and therefore he presumed that they might have absconded. He expressed suspicion against the accused persons.

. During the course of cross-examination, PW-5 Dashrath admitted that in his village he is having an inimical terms with number of persons. He further admitted that at the time of filing complaint, he had expressed his suspicion against one Vishwa Bhoju and his sons, Mahendra, Bhaskar and those two who were digging his well. He denied that before the police he had expressed doubt against Santosh Gorakh and Sunil Santosh. He admitted that Santosh Gorakh and Sunil Santosh were arrested by the police. He stated that he said before the Magistrate that on Monday, i.e. on the day of incident, there was no electric supply. He admitted that he has not stated before the police that the accused had broken his pipeline and therefore the quarrel had taken place. He

admitted that he has not stated before the police that two months before the incident accused set on fire his mango tree. He admitted that as Bhatu dug the well, the water level of his well had reduced to a greater extent.

9. The prosecution has examined PW-6 Bayjabai Pandurang Nikam. She deposed that at village Bhadgaon her maternal aunt Ahilyabai is residing. She is the sister of her mother. Vakil Narayan is the husband of Ahilyabai. Dashrath Kalu is brother of Vakil Narayan. Bhatu Narayan is brother-in-law of her maternal aunt. The incident took place on 21st April, 1996. Her maternal aunt resides in the house which is in the land with her two daughters namely, Surekha and Sunanda, and at the time of incident she was residing in the said house.

. About the incident, PW-6 Bayjabai deposed that at about 11.00 to 11.30 p.m. they woke up

from the sleep. Supan told them to leave that place and he had given threats to them. They stayed in the house for some time. They came out of the house. Surekha had given the call to her paternal uncle, but there was no response. They started proceeding towards Dashrath Kalu's land as they thought that the boys might be sleeping there. They reached upto the coconut tree. They saw that, Supan and Vilas were removing the counterpane. There were four boys who were sleeping. They heard their noise. They saw that Supan and Vilas were giving blows by means of an axe. The younger daughter of her maternal aunt was frightened. They then went to the land of Kesarbai and they had disclosed the incident to Kesarbai. They stayed there during the whole night. On 23rd April, 1996 she herself, Surekha and Sunanda returned to the house and they had disclosed the entire episode which had taken place during night time, to her maternal aunt Ahilyabai. She further deposed that thereafter they went to the spot of

incident and saw that boys were found lying on the cot and saw that all four boys were found smeared with blood. She deposed that the distance between that coconut tree and the place where those boys were lying is 100 feet.

. During the course of her cross-examination, PW-6 Bayjabai stated that at the relevant time she was studying in 9th standard in a school at Lakhamapur. At that time Sunanda might be of 7 to 8 years. As those were days of summer holidays, she came to Bhadgaon. She admitted that except the family members of her maternal aunt, she does not know the names of any other persons of Bhadgaon. She admitted that at Bhadgaon she was not on the visiting terms to the house of anyone. Fifteen days before the incident she came to Bhadgaon and she stayed in the house of her maternal aunt which is in the land, consistently for a period of fifteen days. She admitted that the distance between the place of incident and the

house may be 600 feet. She stated that it did not happen that they had seen the incident from their house. They had witnessed the incident from the well. They were standing at the distance of 1 to 1 and 1/2 feet from the well. She admitted that she herself, Surekha and Sunanda slept in the house of Kesarbai. Even though Surekha told Kesarbai about the incident, neither Kesarbai nor her sons went to the spot of incident. She admitted that sons of Kesarbai are major and married. She admitted that neither she herself nor Surekha and Sunanda disclosed the incident which they had witnessed in the night, to the persons who had assembled on the spot of incident including P.S.I. and other police personnel. She admits that at that time her maternal aunt did not disclose the incident to P.S.I. or to other constables or the persons assembled there. Her statement was recorded by the Magistrate. She admitted that she did not say before the Magistrate that they woke up at about 11.00 to

11.30 p.m. and that, Supan threatened them and told them to leave the place. She admitted that she did not say before the Magistrate that Surekha had given the call to her paternal uncle however there was no response. She admitted that she did not say before the Magistrate that they were under the impression that boys might be sleeping in the land of Dashrath therefore they stopped near the coconut tree. She admitted that she did not say before the Magistrate that Supan and Vilas removed counterpane from the persons of those four boys and that they heard their noise. She admitted that she did not say before the Magistrate that they had seen Vilas and Supan while committing assault by means of axe on the person of those four boys. She admitted that she had stated before the Magistrate that on hearing shouts, they frightened and went to the land of Vishwas Bhoju. She admitted that she had stated before the Magistrate that Kesarbai told them better to sleep as it was night time and they would see in the

next day morning and accordingly they slept there and thereafter they did not know what had happened. She admitted that she had stated false things before the Magistrate at Sakri. She has admitted that she herself, Surekha, Sunanda and Dashrath Kalu came together in the Court. She denied the suggestion that she was deposing falsely at the instance of her aunt and Dashrath Kalu.

10. The prosecution examined PW-6A Dattu Kalu Patil. He is brother of the informant Dashrath Kalu. He has deposed about the earlier disputes and quarrels between his family members and the accused persons. He has deposed that the relations between informant Dashrath and accused were strained due to the issue of well water. He further deposed that prior to the incident Bhatu Narayan had broken the pipe of electric motor of Dashrath and thereafter Bhatu Narayan cut the mango tree which belonged to he himself and his

three brothers.

11. The prosecution examined PW-7 Surekha Vakil Sonawne. As per the prosecution case, PW-7 Surekha has also witnessed the incident. However, this witness has not supported the prosecution and turned hostile. She deposed that she herself and her two sisters were in the land, they had prepared the meal, took their meal at about 8.00 p.m. and they went to bed. She deposed that four to five hours after they went to bed, they heard the shouts. They heard the noise of weeping abruptly and therefore they went to the hut of Vishwas Bhoju and told him that they heard the sound of weeping. Thus, this witness turned hostile. This witness was cross-examined by the prosecution. However, nothing fruitful has been elicited during her cross-examination by the prosecution.

12. The prosecution examined PW-8 Vishwas Bhoja Bedse. As per the prosecution case, the eye

witnesses PW-5 Bayjabai, PW-7 Surekha and her sister Sunanda, after witnessing the incident went to the house of this witness and told the incident to him. However, this witness has not supported the case of prosecution and turned hostile. He deposed that on the day of incident he was present in his land, and during night time the daughters of Vakil Narayan namely Sunanda and others came to his house and it had come to his notice that they were weeping and he further deposed that they simply told him that he should protect them. This witness was cross-examined by the prosecution. However, nothing fruitful has been elicited during her cross-examination by the prosecution.

13. The prosecution has examined PW-9 Vinayak Uttam Bese. He deposed that after the incident on next day morning at 7.00 a.m. he went in the land of Dashrath Kalu. He deposed that Dashrath Kalu told him to go to the village to inform the villagers. He deposed that he found that four boys

were found murdered. Accordingly, he went in the village and reported the incident to the villagers.

14. The prosecution examined PW-10 Dr. Subhash Gatalu More. He deposed that he conducted post-mortem on the dead bodies of Ramdas Kautik Patil, Vijay Dashrath Patil, Tateyabhau Popat Patil and Dipak Dashrath Patil. He deposed about the injuries noticed by him on the dead bodies of the above said four boys, which were mentioned by him in the respective postmortem reports. He deposed that the cause of death was "shock due to head injury". He deposed that death of all the four boys was homicidal.

15. We have discussed in detail the evidence of the prosecution witnesses. The star witness of the prosecution case is PW-6 Bayjabai. We have also made reference to her cross-examination and therefore we do not think it necessary to repeat

the same. It appears that she stated that she witnessed the incident from the coconut tree, and in second breath stated that the incident was witnessed by her from nearby the well. She stated that the distance from where she saw the incident was 100 feet from the spot of incident. However, upon perusal of the evidence of PW-1 Bansidhar Gaikwad, through whom the prosecution proved the map showing the spot and surrounding lands of the spot of incident, in the said map it is stated that well is 200 feet away from the spot of incident. Upon careful perusal of the said map, it appears that there are two coconut trees. It is not clear from the evidence of PW-6 Bayjabai, near from which tree she saw the incident. It further appears that in front of those coconut trees, at some distance there was an electric bulb. However, it has come in the evidence of PW-5 Dashrath that electricity light was not available during the concerned night. It has also come on the record that lantern at the place of incident was not

functioning at the relevant time. PW-1 Bansidhar has also stated in his evidence that to the West and North of the said land of Damu Kalu, i.e. spot of incident, there is forest area. PW-5 Bansidhar has stated in the cross-examination that, he noticed at the time of drawing map, there was heap of mud (soil), which was adjacent to the well, having the height of 10 feet from the ground level. He has also stated the distance between spot of incident and village Bhadgaon and also village Vaghane. PW-2 Nimba Bedse, in his evidence stated that, distance between three wells, which are there nearby the spot, and the place of incident is 300 feet. The prosecution is not sure from how much distance PW-6 Bayjabai saw the actual incident. PW-6 Bayjabai, as per the prosecution case who witnessed the incident, has not disclosed the said incident to police or the public who gathered at the spot on the next date. The conduct of the the prosecution witness PW-6 appears to be unnatural. The another prosecution

witness PW-7 Surekha, who, as per the prosecution case, also witnessed the incident along with PW-6 Bayjabai, turned hostile and did not support the case.

16. PW-6 Bayjabai retracted her statement made before the Magistrate and if Para-12 of her cross-examination is perused carefully, it would reflect that she retracted the statement made before the Magistrate, except she stated that when incident was told to Kesharbai, Kesharbai told them better to sleep as it was night time and they would see in the next morning, and that accordingly they slept and thereafter they did not know what had happened. The entire statement in Para-12 of the cross-examination of PW-6 Bayjabai is byway of contradictions/ retraction to the statement made before the Magistrate. The fact that PW-6 Bayjabai woke up at 11.00 to 11.30 p.m. itself does not get corroboration from any other witness. As already observed, during cross-

examination, PW-6 Bayjabai stated that she has not stated before the Magistrate that they woke up from the sleep at about 11.00 to 11.30 p.m. Apart from it, PW-6 Bayjabai stated in her cross-examination that the statement made before the police was not read over to her. Since PW-6 Bayjabai is the star witness of the prosecution, and since the incident was very sad and disturbing, in as much as four boys were killed, we have carefully perused her evidence. However, upon re-appreciation of entire evidence of PW-6 Bayjabai, we do not think that it inspires confidence. Therefore, it would be unsafe to rely upon the testimony of PW-6 Bayjabai and reverse the order of acquittal passed in favour of the Respondents. As already observed, the other witnesses turned hostile and did not support the prosecution case.

17. It is true that PW-5 Dashrath is father of deceased Vijay and Dipak. However, in his

statement given before the police at the earliest opportunity available to him, he had only expressed suspicion about the accused. However, PW-5 Dashrath admitted in his cross-examination that he had expressed his suspicion against one Vishwa Bhoju and his two sons, namely Mahendra and Bhaskar also. Even if we take the motive for the commission of offence, regarding the dispute of well water, in that case also, the another two boys who were killed i.e. Tatyabhau and Ramdas, were not from the family of PW-5 Dashrath. Apart from it, it has come in the evidence of PW-5 Dashrath that there were signs of two big sugarcane sickle blows on the person of two dead bodies. In the first place, the recovery of axe by the police is from the open place, and secondly it does not appear that sickle was recovered at the instance of the accused. The other evidence which is available on record, is not the direct evidence which would connect the accused with the commission of crime.

18. PW-10 Dr. Subhash who conducted post-mortem on the dead bodies of four boys, deposed that the cause of death was "shock due to head injury" and death of all the four boys was homicidal. However, as already discussed, there is no cogent, convincing and clinching evidence so as to connect the accused with alleged commission of crime. PW-6 Bayjabai has stated that her maternal aunt told her boys that they should take care of the standing crop in the field. It does not appear that either PW-5 Dashrath or his wife expressed apprehension that accused may attack or assault those two boys of PW-5 Dashrath.

19. As already discussed, it has come on record that PW-5 Dashrath and Bhatu Narayan had dug separate wells after the quarrel. PW-5 Dashrath stated that after Bhatu Narayan dug separate well, the quantity of water in his well was reduced. When the prosecution relied upon the

direct evidence in the nature of eye witnesses, the motive loses its importance. However, after we discussed the evidence of PW-6 Bayjabai and other eye witnesses, we have also made endeavour to examine the case of the prosecution on circumstantial evidence. The chain of circumstances on which reliance was placed by the prosecution, has not been established beyond reasonable doubt by the prosecution and there are several contradictions, omissions, discrepancies and improvements in the evidence of the prosecution witnesses in respect of various circumstances and therefore reliance could not be placed on the oral testimony of said witnesses.

20. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the findings recorded by the trial Court are in consonance with the evidence brought on record. The trial Court has taken a possible view. The Supreme Court in

the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*⁵ has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other their innocence, the accused are entitled to have the benefit of one which is favourable to them.

21. The Supreme Court in the case of *Muralidhar alias Gidda and another Vs. State of Karnataka*⁶ in para 12 held thus:-

12. *The approach of the appellate Court*

5 (1984) 4 SCC 166

6. 2014 [4] Mh.L.J.[Cri.] 353

in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*, AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*, AIR 1954 SC 637, *Atley Vs. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*, [1970] 2 SCC 450, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*, [1973] 2 SCC 793, *Lekha Yadav Vs. State of Bihar*, [1973] 2 SCC 424, *Khem Karan Vs. State of U.P.*, [1974] 4 SCC 603, *Bishan Singh Vs. State of Punjab*, [1974] 3 SCC 288, *Umedbhai Jadavbhai Vs. State of Gujarat*, [1978] 1 SCC 228, *K. Gopal Reddy Vs. State of A.P.*, [1979] 1 SCC 355, *Tota Singh Vs. State of Punjab*, [1987] 2 SCC 529, *Ram Kumar Vs. State of Haryana*, 1995 Supp [1] SCC 248, *Madan Lal Vs. State of J & K*, [1997] 7 SCC 677, *Sambasivan Vs. State of Kerala*, [1998] 5 SCC 412, *Bhagwan Singh Vs. State of M.P.* [2002] 4 SCC 85, *Harijana Thirupala Vs. Public Prosecutor, High Court of A.P.*, [2002] 6 SCC 470, *C. Antony Vs. K.G. Raghavan Nair*, [2003] 1 SCC 1, *State of Karnataka Vs. K. Gopalakrishna*,

[2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably

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

[Underlines added]

22. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed. Bail Bonds, if any, of Respondent Nos.1 to 4, shall stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]