

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO. 247 OF 1999**

The State of Maharashtra,
Through P.S.O. Police Station,
Dindrud, Tq. Majalgaon, Dist. Beed.

...APPELLANT

-VERSUS-

1. Sopan S/o Banshi Khalge,
Age : 35 yrs, Occu. Labour,
R/o. Pimparkhed, Tq. Majalgaon,
Dist. Beed.

2. Shrawan S/o Banshi Khalge,
Age : 25 yrs, Occu. & R/o. As above.

...RESPONDENTS

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

Mr. K.D. Bade Patil, Advocate for Respondent Nos.1 and
2.

...

WITH**CRIMINAL REVISION APPLICATION NO. 122 OF 1999**

Badrinath S/o Rajaram Sable,
Age : 35 years, Occu. Agriculture,
R/o. Pimparkhed, Taluka Majalgaon,
District Beed.

...APPLICANT

-VERSUS-

1. Sopan S/o. Banshi Khalge,
Age : 35 years, Occu. Labour,
R/o. Pimparkhed, Tq. Majalgaon,
District Beed.

2. Shrawan S/o Banshi Khalge,
Age : 25 years, Occu. Labour,
R/o. Pimparkhed, Tq. Majalgaon,
District. Beed.
3. The State of Maharashtra,
Through P.S.O. Police Station,
Dindrud, Tq. Majalgaon,
District. Beed.

...RESPONDENTS

...

Mr. V.D. Salunke, Advocate for the applicant.
Mr. K.D. Bade Patil, advocate for Respondent Nos.1 and
2.
Mr. S.J. Salgare, APP for R/3-State.

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

DATE OF RESERVING JUDGMENT : 7th JUNE, 2017.

DATE OF PRONOUNCING JUDGMENT: 23rd JUNE, 2017.

JUDGMENT (PER S.S. SHINDE, J.):

Criminal Appeal no. 247 of 1999 is filed
by the State and Criminal Revision Application
no.122 of 1999 is filed by the original informant,
challenging the Judgment and Order dated 29th
January, 1999, passed by 4th Additional Sessions
Judge, Beed in Sessions Case No.86 of 1994,

thereby acquitting Respondent nos.1 and 2 (original accused nos. 1 and 2), from the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code").

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

A) On 5th October, 1990 at about 3.30 to 4.00 p.m., when the informant Badrinath Rajaram Sable, resident of Pimparkhed, Tq. Majalgaon, Dist. Beed was sitting alone in his agricultural land near his Saw Mill, he heard commotion from the hutment area of the road, which is near the hut of one Asaram Sambhaji Athwale. The commotion was going on amongst some persons. The informant heard the shouts as "Meloze Mala Vachva, Dhava, Dhava" (i.e. save me, I am dying). The informant rushed to that spot. On seeing him the present accused and three others, namely Annasaheb Sable, Ashok Annasaheb Sable and Raosaheb Bhanudas Nipte ran

away. Ashok and Raosaheb were having knives, while the present accused and Annasaheb were armed with sticks. When the informant came in front of the hut of Asaram Athwale, he saw his father namely Rajaram Keshavrao Sable lying on the road. The informant asked him as to what had happened, thereupon injured Rajaram told that the present accused and other three persons named above beaten him by means of sticks on the ground that the criminal cases filed by Rajaram himself and the informant against them, should be withdrawn. The younger brother of the informant namely Datta had immediately followed him to the spot of incident.

B) Thereafter, the informant asked Datta to call their agricultural servants, namely, Ashok Namdev Dhage, Jaganath Maruti Sable, Vishnu Mahadev Sable and the brother, Rameshwar. Then Parmeshwar brought the tractor and trolley belonging to injured Rajaram. Thereafter, he shifted in trolley by the agricultural servants

and the informant. He was taken to Wadwani in that tractor and then from Wadwani in the jeep to the District Hospital, Beed. The injured Rajaram reached the District Hospital, Beed at about 7.00 p.m. and the Medical Officer after examination declared him dead.

C) The Medical Officer gave intimation to the Police Station, Beed (City) about the unnatural death of Rajaram. P.S.I. Kanade went to the District Hospital, Beed and recorded the statement of the informant Badrinath, which came to be treated as the First Information Report. Thereafter, the said crime was registered in Police Station Beed (City) by zero number, since the spot of incident was within the local limits of Dindrud Police Station. The said crime was referred to the Police Station Dindrud. On that report, Crime No.105 of 1990 came to be registered in Police Station, Dindrud for the offences punishable under Sections 147, 148, 302 read with

Section 149 of the I.P.C.

D) The inquest panchnama was prepared and the postmortem was carried out and the necessary inquest panchnama was done. The clothes on the person of deceased were seized. Thereafter, the Investigating Officer sent the inquest panchnama, seized clothes, seizure panchnama in respect of the clothes of deceased Rajaram and the provisional death certificate of deceased Rajaram to the Police Station, Dindrud along with the report.

E) The Investigation Officer conducted the investigation, prepared spot panchnama and recorded the statement of the witnesses. It was transpired during the investigation that the present accused and the three others were involved in the said incident. The Investigating Officer could not arrest the present accused, as they were absconding since the date of incident.

F) The Investigating Officer collected the plain earth and blood smeared earth from the spot of incident and sent it along with clothes of deceased Rajaram to Chemical Analyzer for chemical analysis. P.S.I. Pathan received the reports of the Chemical Analyzer in respect of those articles. Thereafter, after completion of the investigation, the P.S.I. Pathan submitted charge-sheet against the other three accused persons on 3rd January, 1991 by showing the present accused as absconding.

G) Thereafter, accused no.1 was arrested on 8th July, 1994, while accused no.2 was arrested on 17th July, 1994. After their arrest, a supplementary charge-sheet came to be filed against them in the Court of Judicial Magistrate, First Class, Majalgaon on 20th July, 1994 for the aforementioned offences.

H) The case being exclusively triable by the Court of Sessions, the Magistrate committed the said case to the Sessions Court.

I) A charge for the offence punishable under Section 302 read with 34 of the I.P. Code was framed and explained to all the accused persons. The accused persons pleaded not guilty and claimed to be tried. As per the defence of the accused, due to previous rivalry, they have been falsely implicated in the said offence. They also totally denied that, they were absconding.

3. After recording the evidence and conducting full fledged trial, the Trial Court acquitted all the accused persons from the offence punishable under Section 302 of the I.P. Code. Hence this Appeal by the State and Criminal Revision Application by the original informant.

4. We have heard the learned A.P.P. appearing for the appellant and the learned counsel appearing for the respondents at length. With their able assistance, we have carefully perused the entire evidence.

5. At the outset, it is necessary to make reference to Criminal Appeal No. 93/1993, which was filed by the State before the High Court, seeking leave to file appeal against co-accused Annasaheb Anatrao Sable, Ashok Annasaheb Sable and Raosaheb Bhanudas Nipte. In the said matter, the High Court had refused leave to file appeal and confirmed the judgment and order of acquittal passed by the trial Court. It appears that, with detail reasons, the judgment and order dated 28th September, 1992, which was passed in case of aforementioned co-accused, who were separately tried, has been confirmed by the High Court.

6. Be that as it may, since the present

respondents, who were separately tried and acquitted, and against the said judgment and order the State's Appeal is admitted, we proceed to consider the said appeal on its own merits.

7. Prosecution has not examined the Medical Officer, who examined deceased Rajaram, who opined the cause of death of deceased Rajaram as *"Cordiorespiratory failure due to Head injury ē Intracranial haemorrhage c multiple injuries over body due to blunt & hard weapon"*. However, the prosecution did not examine the Medical Officer. His evidence was also considered by the trial Court in separate trial of co-accused – Annasaheb, Ashok and Raosaheb and co-accused were acquitted.

8. The prosecution examined Vaijnath Fakirrao Jadhav as PW-1. He was examined to prove the inquest panchnama. The another panch Rustum was also examined. He stated in cross-examination that he is close relative of Badrinath and

Narayan.

9. The prosecution examined Mahadev Vithoba Sable as PW-2, who also acted as a panch for drawing the panchnama of place of incident. He stated that, there was pool of blood on the spot. The said place was the house of Baburao Dhage. He stated further details about the manner in which the panchnama was carried out and prepared. He stated that, he know Rajaram Sable. He owned the fields known as "Sheri" and "Gabar". At a distance of 75 feet from the house of Baburao Dhage, there is a field known as "Sheri". The field known as "Gabar" is at a distance of 100 feet from the house of Baburao Dhage. There was Saw-Mill in the field known as "Gabar". He further stated that, he heard voice "Melo Re Baba" and on hearing the said voice, which is of Rajaram Sable, he went to the house of Baburao Dhage. At that time, he noticed that Sopan, Shravan, Annasaheb, Ashok and Raosaheb were assaulting Rajaram Sable with sticks. The

wife of Rajaram namely Kisnabai, son Badrinath, one Girjabai and Asrabai were present there. Then he stated other details about the manner in which Rajaram was beaten by the accused.

On scrutiny of evidence of this witness, the same runs contrary to the evidence of the other witness namely, Vaijinath Jadhav [PW-1], who has not stated that, the aforementioned persons were assaulting deceased Rajaram.

10. However, during his cross-examination, he stated that he does not remember as to after how many days of the death of Rajaram his statement was recorded by the police. His statement was recorded first time before the Court. He cannot tell the reason why his version "Melo Re Baba" is not recorded by the police. He stated that, it did not happen that on that day, we had heard commotion from the village. He cannot tell reason as to why the police mentioned in his statement

that, they heard commotion only from the side of the village. He stated before the police that, he had heard the voice of the deceased Rajaram, but he cannot tell the reason why the said statement is not appearing in his statement before the police. He denied the suggestion that, he heard the shouts of deceased Rajaram as "Melo Re Baba". He stated that, on the date of the incident he completed sowing in his field, which is towards the north of the village.

11. He further stated that, it did not happen that when he along with Asaram Dhage were coming towards the village, they found deceased Rajaram lying on the road facing downwards in front of the house of Ashrubai. He stated that, he did not state the portion mark 'A' and 'B' of his evidence before the police, but he cannot tell as to why police mentioned the said portion in the statement before the police. He stated before the police that, they had noticed Sopan, Shravan,

Annasaheb, Ashok and Raosaheb assaulting the deceased Rajaram Sable with sticks but he cannot tell why the said fact is not mentioned in the statement before the police. He stated before the police that when Asaram and he himself went near the hut of Baburao Dhage, Kisnabai Badrinath, Girjabai and Asrabai were present there, but police did not mention the said fact in his statement. He stated before the police that the assailants were assaulting on the face, head and back of the deceased Rajaram, but he cannot tell why the said statement is not appearing in the evidence before the police. He stated before the police that, Sopan gave a blow of stick on the head of Rajaram and due to that bleeding injury was sustained by the deceased Rajaram and he fell down, but he cannot tell the reason why the said statement is not appearing in his statement before the police. During cross examination, he stated that, accused Sopan and Shravan are the sons of Bansi Khalge. The accused are residing at Pune

since last eight years. They used to visit village Pimparkhed intermittently. He denied the suggestion that, the accused are residing at Pune since last ten to twelve years. He also denied the suggestion that, he was serving with deceased Rajaram and that he is a near relative of the deceased Rajaram, and therefore, he is deposing false against the accused. He denied the suggestion that, he did not know anything about the incident and deposing falsely on the say of Badrinath Sable. He stated that, at the time of preparing spot panchnama Exh.20, he himself and one Dnyanoba Dhangar were present.

Since, the evidence of this witness suffers from serious omissions and also improvements and therefore, rightly disbelieved by the trial Court.

12. It appears that, the star witness examined by the prosecution was Girjabai Haribhau Mule (PW-3), who according to the prosecution

witnessed the incident. However, Girjabai (PW-3) turned hostile. She stated in her deposition that, she did not identify the assailants of deceased Rajaram. She was cross-examined by the A.P.P. at length. However, nothing useful to the prosecution has been elicited from her cross-examination. As per the prosecution case, it appears that, on raising shouts by Girjabai, Kisnabai and Ashrubai came to her house.

13. The prosecution examined Kisnabai Rajaram Samble as PW-6, who deposed before the Court that, Girjabai (PW-3) raised her hand to call her to the spot of incident. She saw accused Sopan, Shravan and three others namely Ashok, Annasaheb and Raosaheb beating deceased Rajaram by means of sticks. Deceased Rajaram sustained injuries on his head, back and near his right eye. Blood was oozing from his injuries. Deceased Rajaram fell down on the ground. Accused and three others pushed her and ran away towards south alongwith

sticks. She stated that, when the said incident had taken place, she was in her land called as "Gabar". She further stated that, when they heard the shouts of deceased Rajaram from the side of hutment area, he was shouting "Melo Melo, Dhava Dhava" and she went towards the spot of incident and then Badrinath followed her.

In her cross examination, she stated that, the blood oozing from the injuries on the head and face of deceased Rajaram had fallen on her saree. However, it is relevant to mention that, the prosecution did not bother to send her saree to Chemical Analyzer, so as to find out whether as a matter of fact, the blood was fallen on her saree, and further the said blood was of the blood group of deceased Rajaram. As already observed, admittedly, the said saree was not seized by the Investigating Officer. She also stated that, she does not remember the colour of saree worn by her at the time of incident. She

cannot tell the description of cloths of the assailants. She cannot tell the names of the other villagers, who were present on the spot of incident. She stated before the police that, she heard the shouts of Rajaram from the side of hutment as "Melo, Melo, Dhava Dhava", but she cannot tell the reason why the said statement is not appearing in her statement before the police. She stated before the police that, deceased Rajaram had sustained injuries on his head, back and near his right eye, and that blood was oozing from the said injuries, however, the said fact is not appearing in the statement recorded by the police. The fact that, though she stated before the police that, she made deceased Rajaram to sit and she informed Badrinath (PW-5) that, Rajaram was beaten by the accused and three others on account of non-withdrawal of previous case, however, the same does not appear in the statement recorded by the police. Her evidence was recorded by the Court, when the case was tried against

other three assailants namely, Annasaheb, Ashok and Raosaheb. She further stated that, she did not tell before the Court that, Girjabai (PW-3) had given call to her by raising hand. Therefore, if the evidence of this witness is considered in its entirety in the light of admissions given by her in the cross-examination, the same makes it untrustworthy to base the conviction of the accused on her testimony. As already mentioned, her evidence was recorded in the case of co-accused and the said co-accused were acquitted by the trial Court and Criminal Appeal No. 93/1993 filed by the State, challenging the said order of acquittal was not entertained by this Court and leave to file appeal was refused by the judgment and order dated 20th July, 1993.

14. The prosecution examined Parmeshwar Sukhdev Ghatul as PW-7. He stated in his evidence that, he was going to his land by Surdi road. He saw that, accused Sopan, Shrawan and three others

namely Annasaheb, Ashok and Raosaheb were beating deceased Rajaram by sticks in front of the house of Asrabai (PW-4). He proceeded to rescue deceased Rajaram, at that time, Annasaheb and Ashok restrained him and threatened that, he would be beaten in the same way like Rajaram if he tries to intervene. Then he went to the village and raised shouts. Then he went to the house of Rajaram.

During his cross-examination, he stated that, he stated before the police that, at the time of the incident, he was proceeding by Surdi road, however, the police have not mentioned in his statement about the same. It is also not appearing in the police statement that, at the relevant time, he was going to his agricultural land. Though he stated before the Court that, he was going to rescue deceased Rajaram at that time, Annasaheb and Ashok restrained him, the said fact is not mentioned in his police statement. Though he stated before the Court that, Jambabai met him

near Maruti temple and he informed her about the incident, however, the said fact is not appearing in the police statement. Though he stated in his deposition before the Court that, he went to the house of deceased Rajaram and informed about the incident to his mother Subhadrabai and, he took Subhadrabai to the spot of incident, the said statement is not appearing in the statement before the police. His evidence suffers from omissions and also improvements, and therefore, rightly discarded by the trial Court.

15. The prosecution examined Asrabai Baburao Dhage as PW-4. During examination in chief she stated that, she knows deceased Rajaram. She knows the accused, who were present before the Court. Her house is situated near hutment area to the north of Surdi road. It is facing towards south. She stated that, the incident took place on Friday at about 4.00 p.m. i.e. before about eight years. At that time she was cutting corns of

Bajra in her agricultural land situated near her house. Girjabai P.W.3 gave call to her from her house. She came to the door of her house. She saw that accused Sopan and Shrawan were beating deceased Rajaram by means of sticks on his head and back in front of her house on Surdi road. Deceased Rajaram had sustained bleeding injuries. She stated that, Kisnabai and Badri came to the spot of the incident from their saw mill. Kisnabai offered water to deceased Rajaram. Mahadev (P.W.2), Vishnu, Asaram and Jagannath, who were servants of deceased Rajaram came to the spot of the incident from the side of the land named "Sheri". The accused ran away towards south along with the sticks. Then the villagers gathered there. Deceased Rajaram was taken to Wadwani on tractor. Her statement was recorded by the police.

However, during cross-examination, she stated that, she did not state before the police names of any other persons than the accused before

the police as the assailants of deceased Rajaram. She did not state before police that one Ashok Sable, Annasaheb and Raosaheb Nipte ran away along with the sticks from the spot of the incident. She cannot tell as to why it is mentioned in her statement before the police that the above named three persons ran away alongwith the sticks from the spot of the incident. She stated that, when she went to the door of her house from her land she saw that Kisnabai had taken the deceased Rajaram on her lap and was offering him water brought by Girjabai PW-3. She further stated that, the police had recorded her statement in front of her house. At that time so many persons had gathered there including Badri. She denied the suggestion given to her that, Badri asked her to take the names of the present accused as the assailants of deceased Rajaram.

16. She deposed that, she stated before the police that the present accused had beaten

deceased Rajaram on his head and back and caused him bleeding injuries, but she cannot tell as to why the said statement is not appearing in the statement before the police. She denied the suggestion given to her that she did not know anything about the incident except the fact that Kisanabai had taken deceased Rajaram on her lap and was offering him water. After she went to the door of her house, the sons of deceased Rajaram came to the spot of the incident and they took him to Wadwani on tractor. The said sons of deceased Rajaram were Badri and Parmeshwar. She did not know as to how the dead body of Rajaram was dealt with in the hospital. She did not state before the police that the post-mortem examination of the body of deceased Rajaram was held. She deposed that, she stated before the police that the servants of deceased Rajaram, namely, Mahadev P.W.2, Vishnu, Asaram and Jagannath came to the spot of the incident from the side of the land named "Sheri" and the accused ran away towards

south alongwith sticks, but she cannot state reason as to why the said statement is not appearing in her statement before the police. She stated before the police that Kisnabai and Badri came to the spot of the incident from their saw mill, but she cannot tell the reason as to why the said statement is not appearing in her statement before the police.

17. The prosecution examined Badrinath Rajaram Sable as PW-5. He stated that, deceased Rajaram was his father. The name of his mother is Kisnabai. He has four brothers namely, Bhagwan, Parmeshwar, Baliram and Datta. One Jambabai is his aunt. At the time of the incident they all were residing together. They possess agricultural land called "Gabar" situated to the west of the village. He stated that, the incident took place on Friday i.e. on 5th October, 1990 at about 3.30 to 4.00 p.m. on Surdi road in front of the house of Asrabai PW-4. At the time he was at saw -

mill. His mother Kisnabai also was there. He stated that, deceased Rajaram, his aunt and grandmother were at their house when Kisnabai and he himself had gone to saw-mill. On that day Mahadev PW-2, Asaram, Vishnu and Jagunnath were sowing Jwar in the land called "Sheri". He heard commotion from the side of the hutment area at about 3.30 to 4.00 p.m. He heard the shouts of deceased Rajaram namely "Melo Re Dhava, Dhava". He immediately went to the hutment area. Kisnabai was just ahead of him. He saw from the distance of about 100 ft. that the accused present there and Annasaheb Sable, Ashok Sable and Raosaheb Nipte were beating the deceased Rajaram by means of sticks. They were giving stick blows on the head, face and back of deceased Rajaram. Due to that the deceased Rajaram fell down on the ground. The deceased Rajaram had sustained bleeding injuries. At that time Mahadev P.W.2, Asaram, Vishnu and Jagunnath also came from the land "Sheri". His aunt also came from the side of the village. Asrabai P.W.4

was in front of her house while Girjabai P.W.3 was in the courtyard of her house. When they rushed to the spot of the incident the accused and above named assailants ran away, along with sticks. His mother offered water to the deceased Rajaram. The said water was brought by Girjabai P.W.3. He asked the deceased Rajaram as to why he was beaten. He replied that all the assailants had asked him to withdraw all the cases instituted by himself and PW-5 and beat him.

18. He stated that, his brother Parmeshwar came to the spot of the incident. He brought tractor from near our saw-mill. They boarded the deceased Rajaram on the trolley of the tractor and led him to Wadwani. They reached Wadwani at about 5.00 p.m. They placed the deceased Rajaram in a jeep at Wadwani and led him to the District Hospital at Beed. His mother, aunt and Asaram had accompanied the deceased Rajaram. The Medical Officer examined the deceased Rajaram and declared

him as dead. The police had come to the Hospital after Medical Officer examined the deceased Rajaram.

19. He stated that, his father had instituted a criminal case against the father of the present accused and others. He also had filed a criminal case against Ashok Annasaheb Sable, Raosaheb Nipte and the father of the present accused. The deceased Rajaram and this witness had lodged reports in respect of the same cases to Police Station, Dindrud on 23.9.1990 and 29.9.1990 respectively. He stated that, the present accused were residing at Pimparkhed at the time of the incident. After the incident they ran away.

20. During his cross examination, he stated that, his evidence has been recorded in respect of the present incident in Sessions Case No.19/1991. He did not remember as to whether he has stated before the Court that he did not see Asrabai

P.W.4, Girjabai P.W.3 and Ranubai Athwale on the spot till they left for Wadwani from the spot. He stated that, when his father i.e. deceased Rajaram drunken water, at that time his mother Kisnabai, aunt Jambabai, their servants namely Mahadev P.W.2, Asaram, Vishnu, his brothers Parmeshwar and Dattatraya, some women from Zopadpatti and witness himself were present. He stated that, deceased Rajaram was the maternal cousin of the mother of the then M.L.A. of Majalgaon namely Radhakisan Patil. Radhakisan Patil had contested the Assembly Election in year 1989. At that time Ashok Anasaheb Sable was the Sarpanch while Annasaheb Anantrao Sable was the police patil of their village. Narayan Dak was contesting the Assembly Election against Radhakisan Patil. He did not remember as to whether Bajirao Jagtap also was one of the candidates contesting that election. Deceased Rajaram and this witness were canvassing for Radhakisan Patil. Ashok Sable was the Sarpanch of our village since 1985. He did not

know as to whether Ashok Sable and the present accused were the supporters of Narayan Dak. The deceased Rajaram was having a rival group against Ashok Sable. He did not know as to whether the present accused were belonging to the group of Ashok Sable. In the Assembly Election Radhakisan Patil got elected. He denied that, after the election the deceased Rajaram and this witness started giving benefit of the Govt. Scheme to the persons of their group. He denied that, they deprived the present accused of the Government scheme for construction of a house. He did not remember as to whether there was a scheme for financial assistance to the landless persons to construct houses. He denied that, they extended the benefit of the scheme for construction of houses of Asrabai P.W.4.

21. He stated that, there is a branch of Marathwada Gramin Bank of Kawadgaon. He denied that, the deceased Rajaram was creating hurdles in

the way of the villagers in getting loan from that bank for construction of houses. He did not know as to whether the deceased Rajaram had obstructed the father of the present accused namely Banshi in getting loan from the bank of Kawadgaon. He denied that, the deceased Rajaram and he himself were harassing the persons of the group of Ashok Sable for getting the benefits of all the government schemes.

22. He stated that, Banshi Khalge had lodged a report against Sandipan Khalge, Asaram Athwale and the witness himself to Police outpost Wadwani on 29.9.1990 on the allegations that they had beaten him on 28.9.1990. He did not know as to whether Annasaheb Sable had taken Banshi Khalge to Police outpost Wadwani on his own bullock cart. He denied that, he had lodged false report against Banshi Khalge and others on 29.9.1990 to give counter blast to the report lodged by Banshi Khalge. He stated that, he had lodged the report

on 29.9.1990 in Police outpost Wadwani only. He denied that, he pressurized the police through Radhakisan Patil and got registered false report against Banshi Khalge and others on 29.9.90. He denied that, he was deposing falsely that, the present accused ran away from village Pimparkhed after the incident.

23. He stated that, he did not remember as to whether he had talks with Kisnabai or Asaram after he reported about the incident to P.S.I. Kandade. He did not remember as to whether he informed Kisnabai and Asaram after lodging the report Exh.37 that, he mentioned the names of five assailants of deceased Rajaram. He did not remember as to whether he had any talks with Kisnabai and Asaram about the incident until the charge-sheet was filed by police. He did not remember as to whether the saree of Kisnabai was stained with blood when she had taken deceased Rajaram on her lap. He did not remember as to

whether the police seized the saree of Kisnabai. He denied that, Kisnabai, Jambabai, Asaram and this witness consulted each other in the District Hospital, Beed as a result of that consultation, he lodged report Exh.37 against five persons including the present accused. He denied that, to take revenge of the previous rivalry he lodged false report Exh.37. He has stated in the report Exh.37 that on 5th October, 1990 at about 3.30 to 4.00 p.m. he alone was sitting in the saw-mill. He did not remember as to whether he had stated before P.S.I. Kanade while lodging report Exh.37 that Kisnabai was also present in the saw mill. The fact that Kisnabai was sitting with him in the saw mill, is not mentioned in his report Exh.37.

24. He deposed that, he stated before the police that, he heard the shouts of deceased Rajaram as "Melo re Dhava, Dhava" while recording the report Exh.37, however, he cannot tell as to why the said statement is not appearing in his

statement before the police. He deposed that, he stated before the police that Kisnabai went to the spot of the incident before him, but this statement is not appearing in the statement before the police. He deposed that, he stated before the police that, he had seen the present accused and three others beating the deceased Rajaram by means of sticks from the distance of about 100 feet, but he cannot tell reason as to why the said statement is not appearing in his police statement. He deposed that, he stated before the police that, the present accused and three others gave stick blows on the head, face and back of the deceased Rajaram and due to that he fell down on the ground, however, the said statement is not appearing in his statement before the police. He deposed that, while recording the report, he stated that, Mahadev P.W.2, Asaram, Vishnu and Jagannath came to the spot of the incident from the land of Sheri when deceased Rajaram fell down. He cannot tell the reason as to why the statement

that, after he went to the spot of the incident, he sent his younger brother Datta to their land "Sheri" to call their servants namely Ashok Dhage, Jagannath Sable, Vishnu Sable and brother Parmeshwar in the report at Exh.37. He did not remember as to whether he has stated before police that when he came to the road in front of the hut of Asaram Athawale, he saw deceased Rajaram lying on the ground. He denied the contents of portion marked 'B' of report Exh.37. He deposed that, he had stated before police that his aunt also had come to the spot of the incident from the side of the village, but the said statement does not find place in the report. He deposed that, he stated before the police that when they all rushed to the spot of the incident, the accused and other assailants ran away alongwith sticks, but the said statement is not appearing in the report Exh.37 in the same fashion. He deposed that, he stated before the police that, Girjabai P.W. 3 brought water from her house and Kisnabai offered it to

deceased Rajaram, but he cannot tell reason as to why said statement is not appearing in report Exh.37.

25. He stated that, when he had gone to the spot of the incident so many villagers had gathered there besides Girjabai P.W.3, Asrabai P.W.4 and Kisnabai. He cannot say the names of those villagers as he did not remember them now. He had no talks with Girjabai P.W.3 and Asrabai P.W.4 until deceased Rajaram was placed on trolley of the tractor. He denied that, he went to the spot of the incident only after receiving the message that deceased Rajaram was lying there unconscious. He denied that, they lifted deceased Rajaram when he was in unconscious condition and took him to Wadwani in a trolley of the tractor. He denied that, he was deposing false that Girjabai P.W.3, Asrabai P.W.4 and Kisnabai were present on the spot of incident. He deposed that, he stated before the police that Girjabai PW-3,

Asrabai P.W.4 and Kisnabai were present on the spot of the incident, however, he cannot tell the reason as to why the said statement is not appearing in his statement before the police. He deposed that, he stated before the police that, his father was raising shouts and that he saw the accused beating him by means of sticks from the distance of about 100 feet, but he cannot state the reason as to why the said statement is not appearing in his statement before the police. He stated before the police that, Mahadev P.W.2, Asaram, Vishnu and Jagannath came to the spot of the incident from the land called "Sheri" and that, his aunt came there from the side of the village, but he cannot state the reason as to why the said statement is not appearing in his statement before the police. He deposed that, he stated before the police that Girjabai P.W.3 brought water from her house and Kisnabai offered it to the deceased Rajaram by taking him on her lap, but he cannot tell the reason as to why the

said statement is not appearing in his statement before the police. He denied that, he has lodged false report against the accused due to previous rivalry. He denied that, he is deposing false that when he went to the spot of the incident, he asked him as to why he was beaten, and that, he replied that all the assailants beat him asking him to withdraw the cases instituted by him and this witness. He denied that, deceased Rajaram was unconscious when he went to the spot of the incident and that he did not talk to this witness. He denied that, the accused are not responsible for the death of his father Rajaram.

26. The prosecution examined Annasaheb Bhimrao Kanade as PW-8. He stated that, in the month of October, 1990 he was attached to Beed City Police Station as Senior P.S.I. On 5th October, 1990, P.S.O. received an intimation from the Medical Officer, District Hospital, Beed about the death of one Rajaram Keshav Sable. On

receiving that intimation, he went to the District Hospital, Beed. Son of deceased Rajaram namely Badrinath PW-5 met him in the hospital. He orally informed about the incident before him. He further stated details about how crime is registered. He thereafter prepared the inquest panchnama. He stated that, thereafter, he sent letter to Civil Surgeon, District Hospital, Beed for conducting post-mortem examination of the dead body of Rajaram and accordingly post-mortem examination of the dead body of Rajaram was conducted on 6th October, 2010. He stated that, he seized the clothes, which were on the person of deceased Rajaram by drawing panchnama. He thereafter obtained the provisional death certificate in respect of Rajaram Sable from the Medical Officer, District Hospital, Beed and he handed over dead body of Rajaram Sable to Badrinath PW-5.

During his cross examination, he stated that, he was serving as a Police Sub Inspector

since last 14 years. He did not record the statement of any person giving the address of the accused of Pune. He has not brought any record of Police Station, Dindrud to show that he had gone to Pune in search of the accused. He was unable to say the exact location of the house where the accused were residing at Pune. He did not inform any police station in the State of Maharashtra regarding the fact of absconding of the present accused. He stated that, Badrinath (PW-5) did not state before him that deceased Rajaram was raising shouts as "Melo Re, Dhava, Dhava". Badrinath PW-5 did not state before him that Kisnabai PW-6 was ahead of him when he went to the spot of the incident. He stated that, Badrinath PW-5 had not stated before him that he had seen the present accused and three others beating the deceased Rajaram by means of sticks from the distance of about 100 feet. He stated that, Badrinath P.W.5 had not stated before him that when all the above named persons rushed to the spot of the incident,

the accused and other assailants ran away. Badrinath P.W.5 had not stated before him that Girjabai P.W.3 brought drinking water and Kisnabai P.W.6 offered it to deceased Rajaram.

27. The prosecution has examined Asaf Alikhan Abdul Hamid Khan Pathan as PW-9, who is Investigating Officer in the said crime. In his examination-in-chief, he has deposed about the manner in which he has carried out the investigation of the crime.

During his cross-examination, he admitted that, he was knowing that there were disputes between five assailants named by him, on one hand and the deceased Rajaram on the other. He stated that, he was knowing that the deceased Rajaram was a relative of the then M.L.A. Radhakisan Patil. He stated that, he got information that the accused Shravan and Sopan were residing at Pune. He further stated that, he did not try to record

the statement of any person from Pune where the said accused were residing. He stated that, he does not remember as to who were sent by him to Pune in search of the absconded accused. He stated that, he recorded the statement of Mahadev P.W.2 as per his say. He stated that, PW-2 did not state before him that he had heard the shout as "Melo re Baba". The contents of portion marked 'B' of the statement of Mahadev P.W.2 have been rightly recorded by him as per his say. Portion marked 'B' is Exh.51. He stated that, Mahadev P.W.2 had not stated before him that he had heard the voice of the deceased Rajaram and that, Mahadev P.W.2 had not stated before him that he had noticed Sopan, Shravan, Annasaheb, Ashok and Raosaheb assaulting the deceased Rajaram with sticks. He stated that, Mahadev P.W.2 had not stated before him that when Asaram and PW-2 had gone near the hut of Baburao Dhage, Kisnabai, Badrinath, Girjabai and Asrabai were present there. He stated that, Mahadev P.W.2 had not

stated before him that the assailants were assaulting on the face, head and back of the deceased Rajaram. He stated that, Mahadev P.W.2 had not stated before me that Sopan gave a blow of stick on the head of the deceased Rajaram and due to that bleeding injury was sustained by the deceased Rajaram and that he fell down. He admitted that, Mahadev P.W.2 had not stated before him that Kisnabai took the deceased Rajaram on her lap and offered him water.

28. After considering the entire evidence brought on record by the prosecution, the trial Court has come to the conclusion that, the ocular evidence is not cogent, consistent and dependable, there is no circumstantial evidence to connect the accused with the alleged incident. The trial Court has further observed that, the oral evidence on which the entire prosecution case is standing, is not strong enough to establish the guilt of the accused beyond reasonable doubt. The trial Court

further observed that, it cannot be held that, the accused inflicted stick blows on deceased Rajaram and caused him injuries, resulting into his death and the trial Court has concluded that, the prosecution failed to prove that, the accused in furtherance of their common intention, caused bodily injuries to Rajaram Sable with intent to cause his death or with the knowledge that, he would die as a result of those injuries.

29. Upon independent scrutiny and re-appreciation of entire evidence brought on record by the prosecution, it clearly emerges that, there are serious omissions, contradictions and improvements in the evidence of prosecution witnesses which goes to the root of the prosecution case and makes said evidence unworthy and unreliable. We are therefore of the view that, the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

The view taken by the trial Court is plausible view. The Supreme Court in the case of **Muralidhar alias Gidda and another Vs. State of Karnataka**¹ in para 12 held thus:-

12. The approach of the appellate Court 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*,

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[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 supplied]

30. Therefore, in the light of discussion herein above, the Appeal filed by the State and also Criminal Revision Application filed by the complainant stand dismissed. Bail bonds, if any, stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]