

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

CRIMINAL APPEAL NO.192 OF 1999

1. Mukunda Vitthal Patil,
Age 33 years,
2. Dharmendra Naransing Valvi,
Age 24 years
3. Ananda Raman More,
Age 22 years
4. Ashok Vitthal Patil
Age 38 years
5. Raman Rambhau More,
Age 44 years.

All R/o Baherpura Area
Nandurbar, District Dhule

(and all are in jail at present) ... APPELLANTS

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri V.D. Sapkal, Advocate for appellants
Shri S.B. Pulkundwar, A.P.P. for respondent
.....

WITH

CRIMINAL APPEAL NO.191 OF 1999

Anant @ Ananda Vasant Joshi,
Age 23 years,
R/o Nandurbar, District Dhule ... APPELLANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri P.C. Patel, Advocate for appellant
Shri S.B. Pulkundwar, A.P.P. for respondent

WITH

CRIMINAL APPEAL NO.193 OF 1999

The State of Maharashtra ... APPELLANT

VERSUS

1. Ravindrasing Mohansing
Pardeshi, Age 38 years,
2. Rajendra Karansingh Valvi,
Age 25 years,
3. Sudam Vitthal Patil,
Age 29 years,
4. Kashinath Daga Marathe,
Age 60 years,
5. Girish Dinanath Deshmukh,
Age 23 years,
6. Himmat Sampat Saindane
Age 35 years,
7. Anil Hiralal Patil,
Age 23 years,

All R/o Baherpura Area,
Nandurbar, District Dhule. ... RESPONDENTS

.....
Shri S.B. Pulkundwar, A.P.P. for appellant
Shri P.D. Bachate, Advocate for respondent No.1.
Shri P.R. Nangare Advocate for R.No.2, 3, 5, 6 & 7(appointed)

Shri P.C. Patel, advocate for respondent No.4 (appointed)

.....

WITH

CRIMINAL APPEAL NO.469 OF 1999

Mukund Vitthal Patil,
Age adult, Occ. Business,
R/o Nandurbar, Maharashtra
(presently undergoing the
term of imprisonment for life
in the Nasik Road Central Prison) ... APPELLANT

VERSUS

The State of Maharashtra
(At the instance of P.S.O.,
Nandurbar Town Police Station) ... RESPONDENT

.....

Shri P.C. Patel, Advocate for appellant
Shri S.B. Pulkundwar, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.186 OF 2000

Ashok Vitthal Patil,
Age adult, Occ. Business,
R/o Nandurbar, Maharashtra
(presently undergoing the
term of imprisonment for life
in the Nasik Road Central Prison) ... APPELLANT

VERSUS

The State of Maharashtra
(At the instance of P.S.O.,
Nandurbar Town Police Station) ... RESPONDENT

.....

Shri Rajendra S. Deshmukh, Advocate for appellant

Shri S.B. Pulkundwar, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.261 OF 2000

Dharmendra Karansingh Valvi,
Age adult, Occ. Business,
R/o Nandurbar, Maharashtra
(presently undergoing the
term of imprisonment for life
in the Nasik Road Central Prison) ... APPELLANT

VERSUS

The State of Maharashtra
(At the instance of P.S.O.,
Nandurbar Town Police Station) ... RESPONDENT

.....

Shri P.C. Patel, Advocate for appellant
Shri S.B. Pulkundwar, A.P.P. for respondent

.....

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

Date of reserving judgment : 20th July, 2017

Date of pronouncing judgment : 6th September, 2017.

JUDGMENT (PER SUNIL K. KOTWAL, J.)

1. Criminal Appeal No.192/1999 is filed by convicted
accused No.6 and 9, 10, 12 and 13 against the judgment and
order passed by Sessions Judge, Dhule in Sessions Case
No.112/1994. The respondent is the State of Maharashtra.

2. Criminal Appeals No.191/1999, 469/1999, 186/2000 and 261/2000 are the appeals preferred by original convicted accused No.11, 6, 12 and 9 respectively. Criminal Appeal No.193/1999 is filed by the State against the judgment and order of acquittal of accused No.1 to 5, 7 and 8. All these appeals are disposed of by this common judgment.

3. Facts leading to institution of these appeals are that, accused No.1 was prosecuted for the offence punishable under Section 120-B of the Indian Penal Code and accused No.2 to 13 were prosecuted for the offences punishable under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code; Section 307 read with Section 149 of the Indian Penal Code; Section 324 read with Section 149 of the Indian Penal Code and under Section 3 read with 25 of the Arms Act, 1959 as well as under Section 37(1)(3), punishable under Section 135 of the Bombay Police Act. Accused No.12 was also prosecuted for the offence punishable under Section 201 of the Indian Penal Code.

4. Prosecution case in brief is that, on 24/2/1994 in the morning hours, Morcha was arranged at Nandurbar, protesting against act of the Municipal Council, Nandurbar, imposing

reservation on the prime piece of land, which was reserved for Jijamata Education Institution. At that relevant time, accused No.1 was the President and accused No.13 was the Councilor of Municipal Council, Nandurbar. Madhukar Onkar Varsale (deceased) was one of the B.J.P. worker as well as Secretary of Youth Wing of B.J.P. Party, Nandurbar. On the other hand, at that relevant time, Congress I Party was ruling party and accused No.1 to 13 were active members of Congress I Party. Deceased Madhukar took prominent part at the time of this protest procession, which went to the office of Assistant Collector, Nandurbar, where the representation was submitted by representatives of the said procession. As per prosecution case, on account of prominent part taken by the deceased Madhukar at the time of protest procession, the leaders of Congress I Party got annoyed. In the result, conspiracy was hatched to rid off deceased Madhukar.

5. On the same day, at about 10.00 to 10.30 p.m., deceased Madhukar along with his friends Shekhar Patil (P.W.1), Dilip Tarachand Patil, Anil Ashok Waghare (P.W.4), Shankar Dagadu Marathe (P.W.5) and other total 8 to 9 persons went to have a cup of tea as usual, to the tea stall which belonged to Bhuteshwar Tamboli (P.W.10). After having cup of tea, they

started returning to their respective residences. When deceased Madhukar, Shekhar Patil (P.W.1), Anil Waghare (P.W.4), Shankar Dagadu Marathe (P.W.5), when reached in Baherpura area at Tari Petha Road, suddenly, accused No.2 to 13 appeared on the spot from behind the deceased Madhukar and others. That time, some of these assailants were armed with deadly weapons like swords, sword sticks and dagger. They stabbed deceased Madhukar repeatedly, as a result of which, he suffered multiple wounds and fell to the ground in pool of blood. Shekhar Patil (P.W.1) tried to intervene, but during that attempt, he was also injured by accused No.9 Dharmendra Valvi by sword. He sustained grazing injury on the right side of his chest. All the assailants were identified by the witnesses present on the spot along with the deceased Madhukar. Shankar Marathe (P.W.5) immediately rushed to the nearby residence of deceased Madhukar and informed his family members about the occurrence. In the meantime, some of the assailants threw their weapons on the spot and all assailants bolted away from the spot. Autorickshaw was immediately called and the injured Madhukar was initially taken to the nearby Police Station. The concerned Police Station Officer referred the injured to J.P.N. Hospital, Nandurbar with M.L.C. Memo. The Medical Officer examined injured Madhukar in J.P.N. Hospital and declared him

as "dead". By that time, family members of deceased, who reached on the spot, came to know that Madhukar was taken to the hospital. Rajendra Varsale (P.W.2), who is brother of the deceased Madhukar, came to the hospital and after knowing regarding the death of deceased Madhukar, went to Police Station and lodged F.I.R. (Exh.67) at about 1.00 a.m. on 25/2/1994. Above offences came to be registered against accused No.2 to 13.

6. Initially, the investigation was carried out by the then Circle Police Inspector Shri R.K. Rathod (P.W.21), who prepared inquest panchanama and referred the dead body of the deceased Madhukar for post mortem examination. Dr. Rajeshwar Thakre (P.W.12) performed autopsy examination of the dead body of deceased Madhukar. Investigating Officer had also drawn spot panchanama (Exh.138) of the scene of offence and seized one blood stained sword, sword stick, two plastic handles of sword stick and 4 blood stained wooden pieces of the handle of sword stick as well as one handle of the sword. Specimen of blood mixed earth as well as normal earth were obtained from the spot. During the course of investigation, accused No.1, 2, 3 and 4 were arrested on 25/2/1994. Thereafter investigation was handed over to P.I. Shri Kharote (P.W.23). He started recording

statements of the witnesses as well as seized blood stained clothes from eye witness Shekhar Patil (P.W.1). Record of Octroi Check Post of Municipal Council was seized where the accused No.1 paid visit after the incident. Blood stained clothes of accused No.2, 3 and 4 were seized. After arrest of accused No.5 to 9, their blood stained clothes were seized under panchanama. As per disclosure statement made by accused No.7 and 9 at their instances, additional weapons of the offence were seized. On 4/3/1994, accused no.10 and 11 were arrested. Sketch map (Exh.135) of the spot of incident was obtained. Accused No.12 had surrendered before Nasik Police and he was brought to Nandurbar and he was arrested. Accused No.13 was arrested by Bombay Police and he was brought to Nandurbar on 14/3/1994. As per disclosure statement given by accused No.11 and 13, weapons of the offence were seized. On 24/3/1994, all seized muddemal was referred to Chemical Analyser, Aurangabad for its examination. After completion of the investigation, charge sheet was submitted against accused No.1 to 13 before Judicial Magistrate, First Class, Nandurbar.

7. Offence punishable under Section 302 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to the Sessions Court, Dhule. Charge was

framed against accused No.1 under Section 120-B of the Indian Penal Code against accused No.2 to 13 for the offences punishable under Sections 147, 148, 323, 302 read with Section 149 of the Indian Penal Code. Separate charge was also framed against accused No.12 for the offence punishable under Section 201 of the Indian Penal Code. All accused pleaded not guilty and claimed trial.

8. Defence of the accused is of total denial. They contended that, entire case is fabricated against them by local rival political leaders, taking advantage of the fact that Madhukar Varsale was found lying in injured condition at the relevant time. He was assaulted by unknown assailants. The rival political party took advantage of this situation and concocted false F.I.R. and prepared false witnesses to falsely implicate the accused in the case.

9. After considering the evidence placed on record, learned trial Court pleased to convict accused No.6, 9, 10, 11, 12 and 13 for the offences punishable under Sections 147, 148, 323 read with Section 149; under Section 302 read with Section 149 of the Indian Penal Code and under Section 3 read with 25 of the Arms Act and also under Section 37(1)(3) of the Bombay Police

Act. The convicted accused were sentenced to suffer imprisonment for life and fine of Rs.5000/- each for the offence punishable under section 302 read with Section 149 of the Indian Penal Code. Separate sentence was not imposed under Sections 147, 148, 323 read with Section 149 of the Indian Penal Code and under Sections 3 read with 25 of the Arms Act as well as under Section 37(1)(3) read with 135 of the Bombay Police Act. Accused No.1 was acquitted of the offence punishable under Section 120-B of the Indian Penal Code and accused No.2, 3, 4, 5, 7 and 8 were acquitted of all the offences with which they were charged. Accused No.12 was also acquitted of the offence punishable under Section 201 of the Indian Penal Code. Therefore, these counter criminal appeals arise.

10. In the case at hand, homicidal death of deceased Madhukar is not disputed by the defence. Otherwise also, Dr. Rajeshwar Thakre (P.W.12), who performed autopsy examination of the dead body on 25/2/1994 in between 8.30 a.m. to 9.05 a.m., has proved the post mortem notes (Exh.81). From the testimony of this witness, it emerges that, he noticed following 11 incised wounds :-

- (1) Incised wound on chin, oblique, sharp edged, 6 cm. long, muscle depth.

- (2) Incised wound below 12th rib left side, horizontal 3 x 1 cm.
- (3) Incised wound below umbilicus left side 3 x 1 cm.
- (4) Incised wound on right hypochondrium, triangular shaped, dimensions are 2 x 2 x 2 cm.
- (5) Incised wound, in anterior axillary line in 4th intercostal space, left side 3 x ½ cm.
- (6) Incised wound on left arm, medially horizontal 2 x 1 cm. muscle depth.
- (7) Incised wound on left arm medially below injury No.6, oblique, 2 x ½ cm. muscle depth.
- (8) Incised wound on left renal angle area, horizontal 6 x 2 cm. muscle depth.
- (9) Incised wound on right forearm in middle 1/3rd dorsolaterally 2 x ½ cm. muscle depth.
- (10) Incised wound on right thigh just above knee joint anteriorly, horizontal, 4 x 5 ½ cm. muscle depth.
- (11) Incised wound on left thigh just above knee joint anteriorly, horizontal, 4 x ½ cm. muscle depth.

This medical expert has also proved the internal corresponding injuries to the spleen, small intestine, colon, on ileum, left lung, pericardium and upper chamber of the heart of the deceased. He opined that, these all injuries were ante mortem and the cause of death was due to multiple penetrating wounds on heart, lung, spleen and intestine. According to this witness, irrespective of state of health, the person sustaining such injuries was bound to die immediately after infliction of all these injuries. This expert witness has also made it clear that, all

the above injuries are possible with sharp and pointed instrument.

11. In the entire cross-examination of this witness, the nature of above referred injuries as well as cause of death of the deceased is not at all disputed by the defence. The entire cross-examination was concentrated on the point of probable time of death and the nature of the injuries found on the body of witness Shekhar Patil (P.W.1). Therefore, taking into consideration testimony of Dr. Rajeshwar (P.W.12), corroborated by post mortem notes (Exh.81), we have no hesitation to hold that deceased Madhukar died of homicidal death.

12. Now we propose to examine whether prosecution can further establish that accused No.2 to 13, with requisite intention or knowledge, caused the homicidal death of deceased. Learned defence counsel raised objection that, motive behind the murder is not established by the prosecution. Contention of learned Advocate for the accused is that, no evidence has been placed on record by prosecution to establish that on 24.2.1994 at noon hours, deceased Madhukar was member of procession which was arranged in protest to reservation of land reserved for Jijamata Educational Institution. He also pointed out that, deceased

Madhukar was also involved in other various criminal cases and he had many enemies. In reply, learned A.P.P. for the State has drawn our attention towards resolution of Municipal Council, Nandurbar, dated 5/2/1994 regarding the reservation of Survey No.185/1B.

13. No doubt, from the cross-examination of prosecution witnesses, it emerges that deceased Madhukar was a small worker of B.J.P. Party and he was not at all related with Jijamata Education Society. Therefore, he had no reason to join the protest procession for reservation of land of the said educational institution. No witness is examined by prosecution who participated in the said protest procession along with deceased Madhukar to establish that he actually participated in the protest procession. On the other hand, from the cross-examination of Tahsildar Vasudeo Valvi (P.W.18), it emerges that, deceased Madhukar was not present when representation was given to the Prant Officer. Therefore, prosecution cannot establish that on 24/2/1994 at noon hours, deceased Madhukar played any prominent part in the protest procession. Therefore, by no stretch of imagination it can be held that on 24/2/1994, deceased Madhukar played prominent role in the protest Morcha which was arranged against Municipal reservation. Assuming

that Madhukar played any prominent role at the time of protest Morcha, however, such trifle act of a small member of a political party cannot be a reason to commit his murder at the instance of President of Municipal Council i.e. accused No.1. Therefore, contention of learned Advocate for defence is certainly acceptable that prosecution cannot establish clear motive behind murder of deceased Madhukar.

14. However, this case is not totally based on circumstantial evidence. The prosecution mainly relied on direct evidence of eye witnesses of the incident. Therefore, absence of motive does not adversely affect the fate of this case.

15. In this matter, accused No.1 was the then President of Municipal Council, Nandurbar, who is charged only under Section 120-B of the Indian Penal Code. Under Section 120-A, the criminal conspiracy is defined as under :

120-A. Definition of criminal conspiracy :-

When two or more persons agree to do, or cause to be done –

- (1) an illegal act, or
 - (2) an act which is not illegal by illegal means,
- such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

16. Therefore, charge under Section 120-B cannot be framed against only one person. Conspiracy can be in between two and more persons and one person cannot conspire with himself. Therefore, charge under Section 120-B of the Indian Penal Code only against accused No.1 is basically defective.

17. Otherwise also, to establish the guilt of accused No.1 under Section 120-B of the Indian Penal Code, prosecution has placed reliance on testimony of Constable Shinde (P.W.11) who has proved the presence of accused No.1 at Octroi Checkpost at Nandurbar at 11.30 p.m. i.e. on the date of the incident. However, it cannot be ignored that, accused No.1 was the then President of Municipal Council, Nandurbar and as a part of his duty, he may pay surprise visit to any Octroi Checkpost at midnight hours. Therefore, visit of accused No.1 at midnight to Octroi Checkpost, Nandurbar cannot establish a link of circumstantial evidence to connect accused No.1 with criminal conspiracy to commit murder of deceased Madhukar.

18. Second circumstance which has been placed on record by prosecution is visit of accused No.1 to Police Station when he came to know about the occurrence of the incident. Even from the testimony of the then Dy. Superintendent of Police, Amalner Shri Dhoom (P.W.22), it emerges that, after receiving intimation of the occurrence from P.I., Nandurbar Police Station Shri Rathod at about 12.30 a.m., he rushed to Police Station, Nandurbar and found accused No.1 having exchange of words with some persons who belonged to B.J.P. Party. Therefore, Shri Dhoom (P.W.22) intervened and asked accused No.1 to sit in the office of Police Inspector. By that time, B.J.P. Leader Balasaheb Pathak reached to Police Station and informed that, some of his workers had seen some accused persons running towards the house of accused No.1 situated at Pardeshipura, Nandurbar. Thereafter accused No.1 made telephone call to his residence and informed his family members that if police arrives, they should be allowed to search the house. Thereafter, Dy. Superintendent of Police Shri Dhoom (P.W.22) removed the telephone receiver from the hand of accused No.1. However, on the basis of such evidence, conclusion cannot be drawn that accused No.1 intimated, some harboured accused in his house about the probable search by the police. This act can

be innocent act of the accused No.1 to direct his family members to cooperate the police if they tried to take search of the house. Therefore, this isolated act of accused No.1 is not sufficient to establish that accused No.1 hatched conspiracy to commit the murder of deceased Madhukar.

19. The last piece of evidence placed on record by prosecution is the testimony of Madhukar Marathe (P.W.3) and Shankar Marathe (P.W.5), who claim that they heard somebody saying that accused No.12 and 13 have proceeded towards Dhule Road and, therefore, they went to that area and saw accused No.12 running towards Dhule Road whereas accused No.13 running towards house of accused No.1. Admittedly, none of the accused were found in the residence of accused No.1 when it was searched by police. Therefore, on the basis of such weak evidence, prosecution cannot establish charge under Section 120-B of the Indian Penal Code against the accused No.1. The view taken by learned trial Court while acquitting the accused No.1 is probable view and we do not find any reason to interfere the order of acquittal of accused No.1, passed by learned trial Court.

20. Regarding accused Nos.2 to 13 prosecution has

placed on record two sets of evidence i.e. "direct evidence" and "circumstantial evidence". Initially we will proceed to examine the circumstantial evidence available against the accused persons. The circumstantial evidence is in the form of recovery of blood stained clothes from the person of accused as well as recovery of blood stained weapons of the offence as per disclosure statements of the accused.

21. To prove the seizure of blood stained clothes from the accused persons, prosecution has placed reliance on the testimony of Kashinath Marathe (P.W.15), who deposes that on 28.02.1994 in his presence and in presence of second panch Ratilal, police seized clothes from accused No.2 Rajendra and accused No.3 Sudam Patil. This witness was not knowing the names of these accused persons, however, he has identified accused Nos.2 and 3 at the time of recording of his evidence. However, the testimony of this panch witness is not reliable for the reason of absolutely vague statement before the Court regarding seizure of the clothes. He nowhere deposes that exactly which clothes were seized from the possession of which accused person. From his cross-examination, it also emerges that he works in the hotel of one Kashinath Dube which is adjacent to the Police Station and he acted as a panch in near

about 1000 to 1200 cases. Therefore, on the basis of vague testimony of such habitual police panch the prosecution cannot prove seizure of blood stained clothes from accused No.3 Sudam under seizure memo (Exh.121). The seizure panchnama (Exh.122) of the seizure of clothes of accused No.2 Rajendra is of no help to the prosecution for the simple reason that panch Kashinath (P.W.15) nowhere deposed in his evidence regarding existence of blood stains on the clothes of any accused person.

22. Even Investigating Officer Prabhakar Kharote (P.W.23) vaguely deposes regarding seizure of clothes from accused Nos. 2, 3 and 4 on 28.02.1994. This important police witness casually deposed before the Court that on 01.03.1994 he arrested accused Nos. 5, 6, 7, 8 and 9 and seized their clothes under panchnamas (Exh.97 and 98). This witness nowhere deposed that at the time of seizure of clothes from accused persons he ever detected blood stains on their clothes. Thus, it is suffice to say that the evidence placed by prosecution regarding seizure of the clothes from the accused persons is absolutely vague and unreliable.

23. To establish recovery of blood stained weapons of the offences as per the disclosure statements of accused, which is

relevant under Section 27 of the Evidence Act, the prosecution has examined panch Promod (P.W.13). When the prosecution can establish that weapons of the offence were recovered as per the information given by accused when they were in police custody and the seized weapons were used in commission of the offence, then only the information given by accused to the police leading to discovery of weapons of the offence will become relevant under Section 27 of Evidence Act. In the case of **"Shankar Gopal Patil V/s State of Maharashtra"**, reported in **[2000 ALL MR (CRI) 186]**, the Division Bench of this Court ruled that, Section 27 of the Evidence Act requires witness to prove in his deposition, statement of the accused, which relied upon to discover the object and the fact of accused keeping or concealing the object at a particular place. Supreme Court in the case of, **'Amit Singh Bhikamsing Thakur V/s. State of Maharashtra'**, reported in **[AIR 2007 SC 676]** has summed up various requirements of Section 27 of the Evidence Act, which are reproduced as follows:

"(i) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provisions has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence

connecting it with the crime in order to make the fact discovered admissible.

(ii) The fact must have been discovered.

(ii) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(iv) The persons giving the information must be accused for any offence.

(v) He must be in the custody of the police officer.

(vi) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(vii) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

24. Panch Pramod (P.W.13) deposes before the Court that on 15.03.1994 alongwith one Hiralal Mali this witness was called by police to Police Station, Nandurbar at about 11.00 a.m. and that time accused No. 13 Raman More was present at Police Station. According to this witness, in his presence police recorded the statement (Exh.84) of accused No.13 Raman and thereafter accused No.13 Raman took the police and panchas to one Pan Shop and he took out one blood stained dagger (Katyar), which was kept behind one photo frame outside the said Pan Shop. He has also proved the seizure panchnama (Exh.85). From his testimony, it further emerges that on the

same day at about 5.00 p.m., again in presence of same panchas, police recorded statement (Exh.86) of accused No.11 Ananda Gondhali and thereafter accused No.11 Ananda took the police and panchas near the hotel of accused No.13 Raman More and after climbing on the roof of that hotel, accused No.11 Ananda produced two sword sticks before the police. This witness has proved seizure panchanama (Exh.87). However, this witness nowhere deposed regarding the exact information given by accused No.11 Ananda and accused No.13 Raman to the police in police custody. The vague statement of this panch witness that in his presence police recorded statement of these both accused is not sufficient to prove the exact information given by accused No.11 Ananda and accused No.13 Raman which leads to recover one dagger and two sword sticks. Thus, in view of the legal principles set out by this Court in the case of **Shankar Gopal Patil Vs. State of Maharashtra** (cited supra) as well as by the Apex Court in the case of **Amit Singh V/s State of Maharashtra** (cited supra), the evidence of this panch Pramod (P.W.13) falls short to establish the discovery of weapons (Article 44 to 46) in accordance with the statements given by accused Nos.11 and 13 to the police. As the statements of accused Nos.11 and 13 itself are not proved, it will not be relevant under Section 27 of the Evidence Act. Otherwise also,

as per the statement (Exh.84) of accused No.13 Raman More, the dagger was thrown on the roof of Pan Stall and as per recovery panchnama (Exh.85), the said dagger was seized from the roof of Pan Stall. Thus, the oral testimony of Pramod (P.W.13) is totally in conflict with the contents of memorandum (Exh.84) and recovery panchnama (Exh.85). Thus, the testimony of Pramod (P.W.13) is unreliable.

25. Prosecution has also placed reliance on testimony of panch Hiralal Mali (P.W.16) who proved recovery of knife (Article-34) as per the disclosure statement of accused No.7 Himmat Saindane as well as recovery of sword (Article-35) as per the disclosure statement given by accused No.9 Dharmendra Valvi. However, after going through the testimony of panch Hiralal Mali (P.W.16) it emerges that he nowhere deposes regarding exactly what disclosure statement was given by accused No.7 Himmat Saindane and accused No.9 Dharmendra Valvi. Therefore, as the statements of accused Nos.7 and 9, which leads to discovery of knife and sword, are not established by the prosecution, the recovery of knife and sword will not be relevant under Section 27 of the Evidence Act.

26. Another important aspect is that, from the cross-

examination of Hiralal Mali (P.W.16), it emerges that, in this case he acted as a panch in six panchnamas, though his residence is at the distance of half kilometer from Police Station, Nandurbar. From the cross-examination of this witness, it emerges that at that relevant time he used to work as a Secretary of Nandurbar City Bhartiya Janta Party and the second panch Pandurang was Taluka President of Nandurbar Bhartiya Janta Party. From his cross-examination, it becomes clear that this panch witness as well as second panch Pandurang are the active members and Office Bearers of Bhartiya Janta Party, Nandurbar, and therefore, on the basis of the above discussed vague testimony of these interest panch witnesses, the prosecution cannot establish recovery of knife and sword as per the disclosure statement of accused No.7 Himmat and accused No.9 Dharmendra.

27. Even the testimony of Investigating Officer Prabhakar Kharote (P.W.23) regarding the statements given by accused No.7 Himmat and accused No.9 Dharmendra leading to discovery of knife and sword is absolutely vague. This responsible police officer nowhere deposes exactly in which words statements was given by these both accused persons. More surprising thing is that, the Investigating Officer Kharote (P.W.23) nowhere deposes exactly from which places knife and sword were produced by

accused No.7 Himmat and accused No.9 Dharmendra. Therefore, otherwise also the testimony of Investigating Officer Kharote (P.W.23) is of no help to establish the recovery of weapons of offence as per disclosure statement given by accused Nos.7 and 9.

28. As discussed above, the evidence placed on record by prosecution in the form of recovery of blood stained clothes from the possession of accused persons and recovery of weapons of offence as per disclosure statements given by accused persons, is absolutely unreliable to connect any of the accused persons with the alleged crime of murder. Otherwise also, the learned defence Counsel has rightly pointed out that the prosecution has not examined the custodian of muddemal as well as carrier of the muddemal by police station to establish that muddemal was in the same sealed condition from the date of seizure till it reaches to Chemical Analyzer, on 24.03.1994. From the forwarding letter (Exh.194), it emerges that, on 24.03.1994 all the muddemal articles were referred to Chemical Analyzer, Aurangabad for examination. Thus, it was kept at Police Station, Nandurbar till 24.03.1994. It is the duty of the prosecution to establish that the seized muddemal articles were kept throughout in a sealed condition from the date of seizure till its delivery to Chemical

Analyzer. In the case of "**State of Maharashtra V/s Prabhu Gade**", reported in (**1995 CRI.L.J. 1432**), the Division Bench of this Court ruled that it is the duty of the prosecution to show that from the time of recovery of muddemal articles till the time they were sent to C.A., they were kept throughout in a sealed condition. This is imperative because the possibility that the prosecution may have put human blood on the seized articles during that interregnum cannot be ruled out. However, in absence of evidence of custodian of the muddemal articles and its carrier to Chemical Analyzer, Aurangabad, the prosecution cannot rule out the possibility of tampering of the muddemal articles when they were kept at Nandurbar Police Station, for a considerable long period. On this count also the circumstantial evidence placed on record by the prosecution in the form of recovery of blood stained clothes from the possession of accused persons and recovery of blood stained weapons of offences is unreliable.

29. Now, turning to direct evidence. Prosecution has placed reliance on testimony of three eye witnesses, (1) Shekhar Tarachand Patil (P.W.1), who also sustained injury at the time of occurrence (MLC Exh.82); (2) Anil Waghare (P.W.4) and Shankar Dagadu Marathe (P.W.5); and (3) Rajendra Onkar Varsale

(P.W.2) is the brother of deceased Madhukar, and this witness is informant, who lodged F.I.R. (Exh.67). However, oral testimony of Rajendra Varsale (P.W.2) does not carry much importance for the simple reason that he is not eye witness of the occurrence and he reached on the spot after knowing about the occurrence through Shankar Marathe (P.W.5). Bhuteshwar Shankar Tamboli (P.W.10) is a tea stall owner, whose tea stall was visited by deceased along with Shekhar Patil (P.W.1), Shankar Marathe (P.W.5) and other 6 to 7 friends, few minutes before the occurrence of the incident. Balu Marathe (P.W.9) is the autorickshaw driver by whose rickshaw the injured Madhukar was taken to Police Station, Nandurbar and thereafter to J.P.N. Hospital, Nandurbar, where the deceased Madhukar was declared "dead". A.P.I. Pundlik Sonar (P.W.14) is the Police Station Officer who was present at Police Station, Nandurbar at the relevant time of the occurrence and who received and registered F.I.R. (Exh.67). Ashok Pundlik Joshi (P.W.17) is Clerk in Municipality, Nandurbar, who produced the register of visit by accused No.1 to the Octroi Checkpost at the relevant time of the incident. Vasudeo Valvi (P.W.18) is the then Tahsildar, Nandurbar, who has proved the promulgation of prohibitory order issued by Collector under Section 37(1)(3) of the Bombay Police Act. Raghunath Patil (P.W.20) is the then Revenue Circle Officer

who prepared sketch map (Exh.134) of the scene of the offence. Rohit Rathod (P.W.21) is the Circle Police Inspector, Prabhakar Kharote (P.W.23) is the investigating officer who carried out rest of the part of the investigation after 25/2/1994. Yadao Dhoom (P.W.22) is the then Dy. S.P.

30. From the testimony of Shekhar Tarachand Patil (P.W.1), it emerges that, on the date of incident at about 9.30 a.m., local front known as "Nagari Aghadi" had taken protest procession against the reservation imposed by Municipal Council, Nandurbar on the prime land reserved for Jijamata Education Society, run by Dr. Dilip More at Nandurbar. According to this witness, deceased Madhukar was leading the protest procession, which ended at Assistant Collector's Office, Nandurbar. This part of the evidence is already discussed in the initial part of the judgment. Therefore, no more discussion is required regarding the motive behind the murder of Madhukar. Otherwise also, in **Sheo Shankar V/s State of Jharkhand**, reported in **(AIR 2011 SC 1403)**, Apex Court ruled that, if the Court, upon proper appraisal of deposition of eye witnesses, comes to the conclusion that, the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential.

31. From the testimony of Shekhar Patil (P.W.1), it reveals that, on the date of incident at about 10.00 to 10.30 p.m., along with deceased Madhukar, Anil Ashok Waghare (P.W.4), Dilip Tarachand Shinde, Vinod Waghare, Rajendra Vasant Shinde, this witness had gone to the tea stall of Bhuteshwar Tamboli (P.W.10) near Jyoti Guest House of Station Road, Nandurbar. After having the tea, after 10 to 15 minutes, they started returning to their respective residences. On way, Rajendra Shinde, Hemant Shinde and Vinod Waghare returned to their respective residences. When along with deceased Madhukar these remaining friends were passing by Tari Petha Road, at that time, suddenly, accused No.2 to 13 came from back side of these witnesses and deceased. Accused No.11 Anant @ Ananda Joshi, accused No.6 Mukund Patil, accused No.10 Ananda More stabbed deceased Madhukar by their sword sticks in the stomach of Madhukar respectively. Accused No.12 Ashok Patil stabbed Madhukar in stomach by sword which was in his hand and accused No.9 Dharmendra Valvi stabbed Madhukar by sword from back side. Accused No.13 Raman More inflicted katyar blow on the hands and legs of deceased Madhukar. That time, accused No.2, 3 and 7 had caught hold deceased Madhukar and accused No.4, 5 and 8 surrounded Madhukar and they were pushing away the other persons present on the spot. While

collapsing to the ground, deceased Madhukar told Shankar Dagadu Marathe to informed his residence about the occurrence. When Shekhar Patil (P.W.1) tried to intervene, that time, accused No.9 Dharmendra Valvi inflicted sword blow on the body of this witness and that time, the sword just grazed right side of the chest of this witness and thereby this witness also sustained injury. When family members of deceased Madhukar reached on the spot, accused persons threw the weapon on the spot and bolted away. Later on, people from neighbourhood gathered on the spot and one autorickshaw was called. Shankar Patil (P.W.1) and his other friends took injured Madhukar who was lying in the pool of blood to Police Station, Nandurbar, by the same autorickshaw. Police handed over letter to hospital and immediately Madhukar was rushed to the hospital. However, the Medical Officer, who examined Madhukar, declared that Madhukar was dead. From the testimony of this witness, it emerges that, his injury was also treated in the same hospital and his clothes were stained with the blood of deceased Madhukar. His clothes were cut on the spot where this witness sustained injury. On 25/2/1994, those blood stained clothes of this witness were seized by police at his residence and panchanama was drawn. This witness has identified his clothes at Articles 8, 9 and 10. Version of Shekhar Patil (P.W.1) is fully

corroborated by second eye witness Anil Waghare (P.W.4) and Shankar Marathe (P.W.5), in all material particulars, since their visit to tea stall along with deceased and assault to the deceased Madhukar by accused No.6, 9 to 13 by respective weapons, gupti and sword. According to Shankar Marathe (P.W.5), after the occurrence, he immediately went to the house of Madhukar and informed his brother about the incident. When Shankar Marathe (P.W.5) returned to the spot from the residence of Madhukar, he noticed that, all accused were running away towards Gandhi Statue.

32. Even Rajendra Varsale (P.W.2), who is the brother of deceased, has fully corroborated the version of Shankar (P.W.5) by deposing that, on the date of incident, at about 10.30 p.m., deceased Madhukar had gone for cup of tea and when all family members were about to sleep, that time, Shankar (P.W.5) called this witness from courtyard and informed that Madhukar was assaulted by accused Ashok, Mukund, Raman and Dharmendra and his friends. According to this witness, when he reached on the spot, that time the assailants were running away towards Gandhi Statue area and Madhukar was lying on the spot in injured condition.

33. From the testimony of this witness, it further emerges that, Madhukar was taken to Police Station, and from there, to the hospital. Therefore, when this witness rushed to the hospital, he came to know that Madhukar was dead. After preparation of inquest panchanama, Rajendra (P.W.2) went to Police Station and lodged F.I.R. (Exh.67) at about 1.00 a.m.

34. Learned Advocate for the accused persons raised objection that the inquest panchanama (Exh.61) was drawn in between 12.05 a.m. to 12.35 a.m. on 25/2/1994 and F.I.R. (Exh.67) is registered at 1.00 a.m. on 25/2/1994 and station diary entry (Exh.89), dated 24/2/1994 shows that, police officer went on the spot and started search of the accused persons, which indicates that, the F.I.R. must be prior to 1.00 a.m. on 25/2/1994, which is suppressed by the prosecution. It is also pointed out that, Crime No.36/1994 is mentioned in the inquest panchanama. Reliance was placed on following cases :

- (1) Hemraj & ors. Vs. State of Haryana
[2005 CRI.L.J. 2152 (S.C.)]
- (2) State of Andhra Pradesh Vs. Punati Ramulu & ors.
[AIR 1993 SC 2644]
- (3) Bijay Singh & anr. Vs. State of Bihar
[2002 CRI.L.J. 2623]
- (4) Haryana Shiledar Vs. State of Maharashtra
[1999 ALL MR (CRI.) 298]

- (5) Dipak Vs. State
[2002 ALL MR (CRI.) 1930]

35. No doubt, in the case at hand, after the occurrence, initially the injured Madhukar, who was lying on the spot, was taken to Police Station, Nandurbar by Shekhar Patil (P.W.1) and his other friends. From the testimony of Shankar Marathe (P.W.5), it further emerges that, at Police Station, when he reached by autorickshaw along with injured Madhukar and other friends, he went inside the police station and informed the police regarding assault to Madhukar and thereafter Police gave him a memo and asked him to take Madhukar to the hospital. Even Police Head Constable Laxman Wasave (P.W.19) supported this version by deposing that, on 24/2/1994 at night he was working as Station House Officer and that time, the injured was brought to police station in rickshaw by 2 to 4 persons and that time, Shekhar Patil (P.W.1), who was holding injured in the rickshaw, told his name. Therefore, this witness immediately issued a memo (Exh.65) to the hospital. This witness has also proved Station Diary entry No.46 (Exh.89). After going through the testimony of this Police Head Constable (P.W.19), it becomes crystal clear that, all the details of the occurrence were not disclosed to him by the persons who brought the injured to Police

Station. Even in the memo (Exh.65), only cryptic information regarding assault to Madhukar Varsale is mentioned. The second memo (Exh.132) issued by this witness to Honourary Magistrate, Nandurbar on 24/2/1994, requesting him to record dying declaration of Madhukar Varsale indicates cryptic information of stabbing to Madhukar Varsale. Thus, the cryptic information given by witnesses to Head Constable Wasave (P.W.19) regarding assault to Madhukar cannot be treated as F.I.R. which must disclose the occurrence of cognizable offence. Despite searching cross-examination of prosecution witnesses by defence counsel it has not been brought on record that, prior to lodging F.I.R. (Exh.67), some other third person had given all details of the occurrence to the Police Station about commission of cognizable offence. Therefore, it cannot be said that, true F.I.R. is suppressed by the prosecution, which was lodged prior to arrival of Rajendra Varsale (P.W.2) to Police Station. In the circumstances, the F.I.R. (Exh.67), proved by Rajendra Varsale and A.P.I. Sonar (P.W.14) cannot be treated as bad under Section 162 of the Criminal Procedure Code. The factual position in above cited authorities by defence counsel was altogether different than the factual position of the present case. Therefore, the ratio of these authorities is not applicable in the case at hand. We do not find any substance in the preliminary objection

raised by defence counsel.

36. Learned counsel for the accused assailed the evidence of prosecution witnesses (P.W.1, P.W.4 & P.W.5) on the ground that their testimony is not consistent with each other. Learned Advocate for the accused place reliance on **Hajinder Singh Vs. State of Punjab** reported in **(AIR 2004 SC 3962)**. In that case, Apex Court was considering the reliability of chance witnesses, whose evidence and version in F.I.R. found to be contradictory to the evidence of other witnesses. In that case, the evidence of witness was not relied even on the ground that he watched the incident from considerable distance with the aid of moonlight. However, in the case at hand, Shekhar Patil (P.W.1), Anil (P.W.4) and Shankar Marathe @ Kadam (P.W.5) are almost consistent regarding stabbing of deceased Madhukar by accused No.6, 9 to 13. No doubt, minor discrepancies arise in the testimony of Anil (P.W.4) and Shankar (P.W.5). However, these discrepancies do not shake the basic versions of these witnesses that in their presence accused No.6, 9 to 13 stabbed Madhukar Varsale by gupti, sword, dagger and knife. It cannot be ignored that, capacity of every person to memorize the occurrence and to reproduce it in the open Court differs from person to person. So, in natural course, even in the testimony of

truthful witnesses, there may be minor variance regarding the sequence of occurrence, exact weapon used by accused persons and actual part played by each accused person.

37. When the oral testimony of these three eye witnesses is fully corroborated by medical evidence of Dr. Rajeshwar Thakre (P.W.12), who has proved total 11 incised wounds on the body of deceased, merely on the ground of minor discrepancies emerging in the testimony of these truthful witnesses, their evidence cannot be disbelieved. Reference can be made to the case **Shivappa Vs. State of Karnataka** reported in **(2008 Cri.L.J. 2992)**, wherein Apex Court ruled that, minor discrepancies or some improvements would not justify rejection of the testimony if otherwise found reliable. Some discrepancies are bound to occur because of sociological background of witnesses as also time gap between date of occurrence and date on which they gave deposition in the Court. In **State of U.P. Vs. Krishna Master** reported in **AIR 2010 SC 3071**, Apex Court ruled that, minor discrepancies occurred in oral evidence which are not touching the core of case, cannot be a ground for rejection of evidence entirely. Normally, where exist discrepancies which are due to errors of observations, mental disposition, shock and horror at the time of incident, unless they

go to root of matter, such discrepancies do not make evidence unreliable.

38. Therefore, only because Shankar Patil (P.W.5) is silent regarding part played by accused No.11 and 13, his testimony cannot be disbelieved, when otherwise he is absolutely reliable witness. Similarly, because Anil Waghare (P.W.4) does not speak about act played by accused No.13 at the time of occurrence, his entire testimony cannot be doubted.

39. On the other hand, Shekhar Patil (P.W.1) is absolutely consistent regarding part played by accused No.6, 9 to 13 at the time of actual assault to deceased Madhukar. It must be noted that, Shekhar Patil (P.W.1) also sustained grazing injury on the right side of his chest when accused No.9 inflicted sword blow on his body. This version of Shekhar (P.W.1) is also supported by Anil Waghare (P.W.4) as well as Dr. Rajeshwar Thakre (P.W.12). Dr. Thakre (P.W.12) deposes before the Court that on 25/2/1994 at about 12.15 a.m., he examined Shekhar (P.W.1) and found fresh incised wound over right lateral chest between 11th and 12th rib. The said injury was horizontal of size 4 x ½ cm. and skin deep. He also opined that, the injury was possible by sharp object. The injury certificate of Shekhar Patil

(P.W.1) was proved at Exh.82. Dr. Rajeshwar (P.W.12) has specifically stated in his evidence that, injury to Shekhar Patil cannot be self inflicted injury on the said location of body. Despite searching cross-examination by defence counsel, Dr. Rajeshwar (P.W.12) stood constant regarding his opinion that the injury sustained by Shekhar Patil (P.W.1) cannot be self inflicted injury. Thus, Shekhar Patil (P.W.1) is important eye witness who also sustained injury at the hands of accused No.9 at the time of occurrence. Law regarding evidentiary value of injured witness is absolutely clear. Hon'ble Supreme Court had occasion to consider this aspect in **Abdul Sayeed Vs. State of M.P.**, reported in [**(2010) 10 SCC 259**], in which it is held that :

"Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness'.. . . . "

40. Even seizure memo (Exh.93) of the shirt and banian of Shekhar Patil (P.W.1) shows that, the shirt and banian of this witness were found cut on the respective portion where this

witness sustained horizontal incised wounds. In the circumstances, presence of Shekhar Patil (P.W.1) on the spot at the time of occurrence cannot be at all doubted.

41. The evidence of Shekhar Patil (P.W.1) and other eye witnesses is also assailed by defence counsel on the ground of delay in recording statements of the witnesses by investigating officer. No doubt, from the cross-examination of Shekhar Patil (P.W.1), it emerges that, on the date of incident, he was present at police station throughout the night. However, from testimony of investigating officer Kharote (P.W.23), it emerges that, he recorded statement of Shekhar Patil (P.W.1), Anil Waghare (P.W.4) and other witnesses on 26/2/1994 and seized clothes of Shekhar Patil under panchanama (Exh.93). This police witness cannot be blamed for delay in recording statements of witnesses because, on account of lethargy on the part of A.P.I. Shri Rathod (P.W.22), the investigation was handed over to Shri Kharote (P.W.23) on 25/2/1994 at evening. So also, in the F.I.R. (Exh.67), which was registered at Police Station on 25/2/1994 at 1.00 a.m., the name of Shekhar Patil and other witnesses are mentioned as eye witnesses. In F.I.R., it is also specifically mentioned that Shekhar Patil (P.W.1) had sustained injury at the time of occurrence. Therefore, there is no possibility of

preparation of these witnesses, suitable to the prosecution case or there is no possibility that the injury found on the body of Shekhar Patil (P.W.1) can be self inflicted injury. Even from the cross-examination of A.P.I. Rathod (P.W.21), it emerges that, only on account of his negligence, he did not record the statement of eye witnesses at the earliest and he did not seize the blood stained clothes of Shekhar Patil (P.W.1) though he noticed the same. However, legal position is absolutely clear that negligence on the part of lethargic investigating officer like Shri Rathod (P.W.21) cannot be a ground to give benefit of doubt to the accused persons, when otherwise testimony of eye witnesses is reliable and truthful. In **Bodhraj Vs. State** reported in [(2002) 8 SCC 45], **Banti Vs. State** reported in [(2004) 1 SCC 414], Apex Court ruled that, it cannot be laid down as a rule of universal application that if there is any delay in examination of witnesses, the prosecution version becomes suspect. In **Ram Bihari Yadav Vs. State of Bihar** reported in (AIR 1988 SC 1850), Apex Court ruled that, when the direct testimony of the eye witnesses inspires confidence and fully establishes the prosecution version, the failure or omission or negligence of police officer cannot affect credibility of the case of prosecution.

42. Learned defence counsel has drawn our attention to **Baby alias Sebastian & anr. Vs. Circle Inspector of Police, Adimaly** reported in **(AIR 2016 SC 3671)**; **Audumbar Vs. State** reported in **1999 CRI.L.J. 1936**; **State Vs. Ashok** reported in **[2005 BCI 27 (Bombay)]** and submitted that, conduct of the eye witnesses is abnormal as they did not inform any third person regarding occurrence of the incident till their statement was recorded by police on 26/2/1994.

43. However, Shekhar Patil (P.W.1) has brought on record in his cross-examination that, when family members of the deceased enquired with him about the incident, that time, he informed them everything which was within his knowledge. Even from the testimony of P.W.5, it emerges that, immediately after the occurrence he went to the residence of deceased and informed his brother about the incident. So also, in the F.I.R., names of every accused persons are specifically mentioned and details of the occurrence are included. P.W.2 was not eye witness of the incident. Thus, the only source of information for P.W.2 was the information furnished by P.W.1, P.W.4 and P.W.5. In the circumstances, it cannot be said that, after the occurrence, eye witnesses did not disclose the incident to anybody.

44. From the cross-examination of investigating officer Rathod (P.W.21), it also emerges that, though on 25/2/1994 he saw the eye witnesses and blood stained clothes on the person of P.W.1, neither he recorded his statement nor seized those blood stained clothes. This conduct of investigating officer (P.W.21) indicates that, he deliberately tried to favour and oblige the ruling party because the assailants belonged to ruling political party. Benefit of such deliberate conduct of police officers cannot be extended in favour of the accused. Other evidence placed on record is reliable and trustworthy. In the circumstances, we do not find anything abnormal in the conduct of eye witnesses. The ratio of above cited authorities, relied upon by learned defence counsel is not applicable in the case at hand due to altogether above discussed distinguishing circumstances.

45. Therefore, only on account of delay in recording statements of eye witnesses and delay in seizure of blood stained clothes of Shekhar Patil (P.W.1), their testimony cannot be disbelieved. On the other hand, C.A. Report (Exh.119) shows that, blood group of Shekhar Patil is "O". The C.A. Report (Exh.105) also shows that, on the clothes of deceased, human blood of Group "B" was found. It means that, blood group of the deceased was "B" and the same blood was found on the clothes

of Shekhar Patil (P.W.1). Detection of blood of the deceased on the clothes of Shekhar Patil also strengthens his testimony regarding his presence at the time of occurrence and part played by him while taking the deceased Madhukar to J.P.N. Hospital, Nandurbar.

46. Non-detection of blood of the group "O" of Shekhar Patil on his clothes cannot be doubted for the simple reason that the injury found on body of Shekhar Patil (P.W.1) was skin deep and, therefore, there cannot be profuse bleeding from such skin deep injury. In these peculiar circumstances, when sole testimony of Shekhar Patil is free from all infirmities, the conviction of the accused No.6, 9 to 13 can be based on his sole testimony. Otherwise also, despite searching cross-examination of Anil Waghare (P.W.4) and Shankar Marathe (P.W.5), nothing could be elicited which is sufficient to shake the basic version of these witnesses. The presence of all these witnesses at the time of occurrence is also natural and cannot be doubted. In these peculiar circumstances, the authorities **Ganesh Vs. State** reported in **(AIR 1979 SC 135)**; **Alil Vs. State** reported in **1996 CRI.L.J. 3842**; **Shamalal Vs. State** reported in **(2000(5) BOM.C.R. 638)**; **Bhagwan Vs. State** reported in **(2001 ALL MR (CRI.) 1569)** and **State Vs. Ashok** reported in

(2006 ALL MR (CRI.) 15, relied upon by defence counsel on the point of belated recording of statements of witnesses are of no help to the defence to discard the truthful testimony of these three eye witnesses.

47. The next objection raised by learned defence counsel is that, in the inquest panchanama (Exh.61), only six injuries are noted on the body of deceased Madhukar, which was prepared in between 12.05 a.m. to 12.35 a.m. on 25/2/1994. However, in post mortem notes (Exh.81), 11 incised wounds are mentioned. According to defence counsel, the 5 additional injuries mentioned in post mortem report are created later on by the investigating officer in collusion with workers of B.J.P. Party. Our attention was drawn to the case of **Maula Bux Vs. State of Rajasthan** reported in **(1983 SCC (1) 379)**. In that case, the medical officer found 6 injuries on the dead body of deceased at the time of autopsy examination, which were possible as a result of fall. However, inquest panchanama was otherwise. In such event, Apex Court found that, police officer who prepared inquest panchanama was not an expert in medical jurisprudence and, therefore, inquest panchanama cannot be preferred than expert opinion of medical officer who performed autopsy examination.

48. However, in the case at hand, the inquest panchanama was prepared after 12.05 a.m. on 25/2/1994. But from the testimony of Dr. Rajeshwar (P.W.12), it emerges that, Madhukar Varsale was brought on 24/2/1994 at 11.50 p.m. and that time, he noted down 11 incised wounds and its locations with relevant sketches at Exh.80. Same injuries also reflected in post mortem notes (Exh.81). So also, Dr. Rajeshwar (P.W.12) is constant regarding his opinion that all the 11 incised wounds and corresponding internal wounds are ante-mortem injuries. This material on record absolutely rules out the possibility of fabrication of additional wound on the body of deceased Madhukar after preparation of inquest panchanama. In these peculiar circumstances, the above cited authority relied by defence counsel is not applicable and the objection raised by defence counsel can be safely dispelled.

49. Next objection raised by defence counsel is that, the time of death as per post mortem report does not support the prosecution story. Learned defence counsel has pointed out that, at the time of preparation of inquest panchanama (Exh.61), the dead body was found cool. According to defence counsel, this indicates that, Madhukar died much prior to the time of occurrence of the incident and his body was merely thrown on

the spot of incident by unknown assailants.

50. However, this theory of defence counsel is not acceptable for the simple reason that, Dr. Rajeshwar (P.W.12) has brought on record in his cross-examination that, body cools down immediately if there is heavy loss of blood of peripheral circulatory failure. In the case at hand, total 11 incised wounds were found on the body of deceased. Some wounds were penetrating wounds which damaged even the internal organs like spleen, heart and intestine of the deceased. Even the clothes of the deceased were soaked with his own blood. This indicates that, there was profuse bleeding to the deceased, which resulted into early cooling down of his body. In the circumstances, only because layman panchas found the dead body of Madhukar cool at 12.05 a.m. at the time of inquest panchanama, inference cannot be drawn that the time of death of Madhukar was much earlier than time of the occurrence at 11.15 a.m.

51. So also, only because partially digested food was seen in the stomach of deceased, as mentioned in post mortem notes (Exh.81) and Rajendra Varsale (P.W.2) admitted that, before going for tea, meal was not taken by the deceased Madhukar, conclusion cannot be drawn that time of death of

deceased was much earlier than time of occurrence of the incident. The reason for this conclusion is that, Rajendra (P.W.2) is not expected to know whether Madhukar had eaten any food article before returning to his house. Therefore, overmuch importance cannot be given to the semi-digested food in the stomach of deceased Madhukar. Learned defence counsel placed reliance on **Surender Singh Vs. State of Punjab** reported in [**1989 SCC (Suppl.) 221**], wherein medical evidence regarding time of death and presence of semi-digested food in the stomach of deceased created considerable doubt about prosecution case that deceased had been attacked at about 3.00 to 4.00 a.m. However, as observed above, in the case at hand, the circumstances before this Court are altogether different. Therefore, the ratio of that authority is not applicable in the case at hand.

52. So also, when testimony of three eye witnesses is trustworthy and reliable, only on the basis of cooling of the body and finding of semi-digested food in the stomach of deceased, the reliable ocular evidence cannot be discarded. In **Darbara Singh Vs. State of Punjab** reported in [**2012 CRI.L.J. 4757 (SC)**], Apex Court ruled that, unless oral evidence is totally irreconcilable with medical evidence, the oral evidence would

have primacy.

53. One more objection was also raised by learned defence counsel that, no evidence is placed by prosecution regarding source of light on the spot of incident and, therefore, identification of assailants by eye witnesses at midnight hours is impossible. However, learned trial Court has dealt with this objection carefully. Trial Court has pointed out that, the incident occurred one day prior to full-moon night. The incident occurred at about 11.30 p.m. Therefore, the moon must be over much ahead and in such situation, there will be sufficient moonlight to watch the occurrence by eye witnesses who were very much close to the assailants. So also, accused persons were not strangers and witnesses were knowing all the accused persons since before the occurrence. In the circumstances, mis-identity of assailants is not possible. By examining Raghunath Patil, Revenue Circle Officer (P.W.20), prosecution has also proved sketch map (Exh.134) of the scene of offence. In this sketch map, street light is shown at a distance of merely 30 ft. from the spot of occurrence. Two more street lights are also shown nearby the spot of occurrence. Prosecution has also proved that, in the night of incident, there was uninterrupted electricity supply in Nandurbar city. Therefore, non-availability of sufficient source

of light on the spot of incident is totally ruled out by the prosecution.

54. The next limb of the argument of learned defence Counsel is that, though the family members of the deceased and other nearby residents gathered on the spot, their evidence is withheld by the prosecution, and therefore, adverse inference needs to be drawn. Learned defence Counsel has placed reliance on "**Hem Raj and others V/s State of Haryana**", reported in [**2005 CRI.L.J. 2152 (SC)**] wherein adverse inference was drawn for the reason of omission to examine independent eye witness.

55. In reply, learned A.P.P. submitted that, none of the nearby resident or relative of the deceased had seen occurrence and, therefore, on account of their non-examination, adverse inference cannot be drawn.

56. From the testimony of Rajendra Varsale (P.W.2), who is the brother of deceased, it emerges that, when he came to know about the occurrence from Shankar Marathe (P.W.5), he immediately rushed to the spot of incident alongwith his family members and that time assailants were running away towards

Gandhi Statue area. It means that when the family members of the deceased reached on the spot, by that time accused were leaving the spot after finishing their task. Thus, obviously none of these family members of the deceased are eye witnesses who could have unfolded the prosecution story. So also, from the cross-examination of the eye witnesses, it emerges that at the time of occurrence, all nearby residents had gone to sleep. These nearby residents gathered on the spot only when the assault was over and deceased was lying on the spot in the pool of blood. Therefore, by examining these neighbours, no additional material would have been brought on record which is essential to establish the guilt of the accused. On the other hand, the examination of such witnesses would have been only additional burden on record. In the circumstances, on account of non-examination of such witnesses, adverse inference cannot be drawn against the prosecution. The ratio of the above-cited authority is of no help to the defence.

57. Learned defence Counsel has also pointed out that though Shekhar Patil (P.W.1) and Shankar Marathe (P.W.5) visited the Police Station, Nandurbar alongwith injured Madhukar, they did not take pains to lodge F.I.R. and, therefore, there is inordinate delay in lodging F.I.R.

58. However, learned A.P.P. has rightly pointed out that, when Madhukar was taken to Police Station by these witnesses, that time they were not aware that he was dead. Therefore, when these witnesses were under impression that Madhukar was in an unconscious condition, the need of that moment was to take Madhukar to the nearest hospital, so that his life could have been saved. Therefore, none of the friend of deceased Madhukar can be blamed for not lodging F.I.R. and shifting Madhukar at first to the hospital. Another important aspect to be quoted is that when Medical Officer Dr. Rajeshwar Thakre (P.W.12) declared that Madhukar was dead, naturally his friends as well as family members would have gone under shock. In the circumstances, certainly everybody would take some reasonable time to come out of the shock of sudden assault resulting the death of Madhukar. The incident occurred at about 11.30 p.m. and F.I.R. was lodged within 1 and 1 ½ hour i.e. at 1.00 a.m. Considering the above discussed circumstances, it cannot be said that there was any inordinate delay in lodging F.I.R. and on account of delay there was possibility of concoction of false case against accused persons. Hence the objection raised by defence Counsel can be dispelled.

59. The other circumstances which corroborate the oral testimony of the eye witnesses are the spot panchnama (Exh.138) which shows that there were two pools of blood on the spot and blood stained sword as well as sword sticks were lying on the spot. The C.A. Report indicates that blood of the deceased was found on the said spot as well as on the articles found on the spot. A lame attempt has been made by defence Counsel by making capital of two pools of blood at the distance of 12 ft. from each other. However, the possibility cannot be ruled out that at the time of actual assault, the deceased Madhukar would have moved upto the distance of 12 ft. from the first spot of assault. The eye witnesses may miss such happening due to sudden shock of assault. Therefore, only because pools of blood were found at two places, inference cannot be drawn that the deceased was assaulted at some other place and later on he was thrown on that spot. On the other hand, in view of the above discussed clinching evidence of three eye witnesses, the pool of blood at two different spots cannot be viewed with suspicion.

60. Thus, the evidence placed on record shows that the actual occurrence of assault has been proved by three truthful eye witnesses. Even tea stall owner Bhuteshwar Tamboli (P.W.10) corroborates the version of prosecution witnesses

regarding the visit of deceased and his friends to his tea stall. This witness also noticed that, after the visit of deceased and his friend to his tea stall, accused persons also came to his tea stall and went away by the road to the direction in which deceased and his friends had gone. Even prompt lodging of F.I.R., mentioning presence of Shekhar Patil (P.W.1) on the spot fully corroborates the version of eye witnesses. No doubt, in cross-examination Rajendra Varsale (P.W.2) has given many irrelevant admissions. However, much importance cannot be given to these admissions as Rajendra Varsale (P.W.2) was not eye witness of the occurrence and he lodged F.I.R. only on the basis of hearsay information received from the other witnesses. The contention of learned defence Counsel is not acceptable that tea stall owner Bhuteshwar Tamboli (P.W.10) deposed under the influence of police as he was encroacher. However, the Police Department has nothing to do with the illegal tea stall of Bhuteshwar Tamboli (P.W.10). Only the Municipal Council, Nandurbar can take legal action against such illegal tea stall. However, despite situation that accused No.1 was the then President and accused No.13 was the Councilor of Municipal Council, Nandurbar, this witness stood constant. This circumstance itself indicates that he is truthful witness.

61. Regarding the objection raised by learned Advocate for defence that, inquest panchanama was prepared before the registration of F.I.R. at Police Station, it is suffice to say that, under Section 174 of the Code of Criminal Procedure, Inspector Rathod (P.W.21) can prepare inquest panchanama without waiting for registration of F.I.R. or offence against the assailants. Probably, in the inquest panchanama, the crime number was subsequently added by investigating officer (P.W.21). As observed above, only on the ground of defect in investigation, truthful testimony of eye witnesses cannot be discarded. Therefore, the above said objection raised by defence counsel holds no water.

62. In the circumstances, we are fully satisfied that the learned trial Court is fully justified while convicting accused Nos.6, 9 to 13 for the offences punishable under Section 147, 148, 323 read with Section 149, 302 read with Section 149 of I.P.C. as well as under Section 25 of the Arms Act and under Section 135 of Bombay Police Act. It follows that Criminal Appeal No. 192 of 1999 filed by these convicted accused being devoid of merit, deserves to be dismissed.

63. Criminal Appeal No.193/1999 is preferred by State

against the acquittal of accused No.1 to 5, 7 and 8. Trial Court acquitted these accused persons on the ground that accused No.4 and 5 did not play any role in the incident of riot and the evidence regarding part played by accused No.2, 3, 7 and 8 is confusing on account of the role they played in the incident.

64. We have already assigned reasons justifying the acquittal of accused No.1. So far as evidence available against accused No.2 to 5, 7 and 8, at the outset, we must observe that, in the testimony of all 3 eye witnesses, they have not whispered single word regarding any overt act on the part of accused No.4 and 5 at the time of occurrence. So also, if the evidence available against accused No.2, 3, 7 and 8 is scrutinised carefully, it emerges that, Shekhar Patil (P.W.1) initially deposes that, accused No.2 and 7 pushed other persons away. However, subsequently he has changed his version and deposed that, accused No.2, 3 and 7 had caught hold of Madhukar Varsale and accused No.4, 5 and 8 had surrounded them. Later on, again this witness deposes that, accused No.5 and 7 pushed the others back. To the contrary, according to Anil Waghare (P.W.4), at the time of incident, accused No.2, 7 and 8 surrounded them, but except this, he does not speak regarding other overt act on the part of accused No.2, 7 and 8. Climax is that, Shankar (P.W.5)

has not whispered a single word against accused No.2 to 5, 7 and 8 regarding their part played at the time of assault to deceased Madhukar. Though these three eye witnesses have named all accused No.2 to 13, they are silent as to which weapons were in the hands of accused No.2 to 5, 7 and 8. Therefore, as observed by trial Court, the evidence placed on record against these acquitted accused is confusing regarding their presence and role played in the incident. Considering such type of evidence available against accused No.2 to 5, 7 and 8, learned trial Court found it proper to extend the benefit of doubt in their favour. The view taken by learned trial Court cannot be termed as perverse i.e. the view against record. In **Vijaybhai Bhanabhai patel Vs. Navnitbhai Nathubhai Patel & ors.** reported in **(AIR 2004 SC 4607)**, Apex Court expressed that, unless there is perverse or erroneous appreciation of evidence, the Court should be slow in reversing the finding of acquittal in an appeal against acquittal. Therefore, as observed above, the view taken by learned trial Court while acquitting the accused No.1 to 5, 7 and 8, was plausible view and, therefore, we do not find any reason to interfere the judgment and order of acquittal of accused No.1 to 5, 7 and 8.

65. Accordingly, we have come to the conclusion that, all

the appeals filed by convicted accused as well as appeal preferred by the State against the acquittal deserve to be dismissed. Hence, the following order :

ORDER

(i) Criminal Appeals No.191/1999, 192/1999, 193/1999, 469/1999, 186/2000 and 261/2000 stand dismissed. The judgment and order passed by Sessions Court, Dhule in Sessions Case No.112/1994 is confirmed.

(ii) Under Section 437-A of the Code of Criminal Procedure Code, accused No.1 to 5, 7 and 8 shall execute before the trial Court bail bonds with sureties for the amount of Rs.15,000/- (Rupees fifteen thousand) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/