

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.287 OF 1999

The State of Maharashtra,
Through Police Station,
Gangakhed.

...APPELLANT

VERSUS

- 1) Laxman s/o Kundlik Murkute,
Age-57 years, Occu:Agri.,
R/o-Zola, Tq-Gangakhed,
Dist-Parbhani,
- 2) Suryakant s/o Patloba Murkute,
Age-39 years, Occu:Agri.,
R/o-As Above,
- 3) Madhav s/o Satwaji Dahiphale,
Age-34 years, Occu:Agri.,
R/o-As Above,
- 4) Ramdas s/o Dharmaji Murkute,
Age-39 years, Occu:Agri.,
R/o-As Above,
- 5) Dhanraj alias Daulat s/o Dnyanoba
Palwade,
Age-29 years, Occu:Agri.,
R/o-Zola, Tq-Gangakhed,
Dist-Parbhani,
- 6) Dnyanoba s/o Bhanudas Sangale,
Age-30 years, Occu:Agri.,
R/o-Sangale-Wadi, Tq-Gangakhed,

- 7) Bhaskar s/o Prabhu Bhise,
Age-32 years, Occu:Agri.,
R/o-Pimpri, Tq-Gangakhed,
Dist-Parbhani,
- 8) Balasaheb s/o Laxman Murkute,
Age-37 years, Occu:Agri.,
R/o-Zola, Tq-Gangakhed,
Dist-Parbhani,
- 9) Dnyanoba s/o Laxmanrao Murkute,
Age-34 years, Occu:Agri.,
R/o-As Above,
- 10) Shridhar Laxmanrao Murkute,
Age-32 years, Occu:Business,
R/o-As Above,
- 11) Sudhakar Laxman Murkute,
Age-29 years, Occu:Education,
R/o-Zola, Tq-Gangakhed,
Dist-Parbhani,
- 12) Pralhad Laxman Murkute,
Age-27 years, Occu:Edcuation,
R/o-As Above,
- 13) Navnath s/o Patloba Murkute,
Age-34 years, Occu:Agri.,
R/o-As Above,
- 14) Vaijnath Panditrao :Palwade,
Age-27 years, Occu:Education,
R/o-As Above,
- 15) Pandit Ba;purao Palwade,
Age-34 years, Occu:Agri.,
R/o-As Above,

16) Sanjay Murlidhar Ambilwade,
Age-30 years, Occu:Business,
R/o-Gangakhed, Dist-Parbhani,
Warik Galli, House of Narayan Damre,
Gangakhed, Tq-Gangakhed,
Dist-Parbhani.

**...RESPONDENTS
(Orig. Accused)**

...
Mr. P.G. Borade, A.P.P. for Appellant-State.
Mr. R.S. Deshmukh, Advocate for Respondent
Nos.1, 10 and 11.
Mr. J.M. Murkute Advocate for Respondent
Nos.2, 4, 7 and 13.
Mr. U.B. Bondar Advocate for Respondent
Nos.3, 5, 6, 8, 9, 12, 14 to 18.
...

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

DATE OF RESERVING JUDGMENT : 15TH JUNE,2017.

DATE OF PRONOUNCING JUDGMENT: 23RD JUNE, 2017.

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

1. This Appeal is directed against the Judgment and order dated 22nd January, 1999, passed by the Additional Sessions Judge, Parbhani, in Sessions Trial No.115 of 1992 thereby acquitting all the accused persons from the

offence punishable under Sections 147, 148, 302 read with Section 149, 324 and 325 of the Indian Penal Code (for short "I.P. Code").

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

A) Accused No.1 Laxman Kundlik Murkute is a resident of village Zola, Tq-Gangakhed, Dist-Parbhani, and at the relevant time he was the Sarpanch of the said village. There were two groups in the village and tussle was going on in between them over gaining the control of Grampanchayat.

B) On 22nd November, 1990, the rival group of the accused had been to Parbhani to give a memorandum to the Collector inter-alia mentioning that accused No.1 Laxman should be externed from the village for his criminal activities. After submitting the memorandum, the group of 25 to 30

persons returned back to Gangakhed. At Gangakhed, the said group was divided further into 3 to 4 groups. Out of said 3-4 groups, one group returned back to village Zola, whereas one group started proceeding towards Mondha area, whereas some persons scattered here and there. Some persons stayed back at Parbhani. When a group of 10 to 15 persons on their way to Mondha came near "Kabarsthan", the alleged incident had taken place.

C) According to prosecution, accused No.2 Suryakant s/o Patloba Murkute was standing on the road, and when he saw the said group of 10 to 15 persons, he remarked as to "what would happen by submitting a memorandum", and according to the prosecution case, that was the beginning point of the incident. According to prosecution, at that point of time, when exchange of abuses took place between accused No.2 Suryakant and the said group of 10 to 15 persons, accused No.1 Laxman along

with his five sons reached on the spot in a Jeep. Some other persons also reached on the spot armed with weapons like iron rods, iron pipes etc. and then the quarrel started. According to prosecution, at that point of time, accused No.1 Laxman initially stabbed Shriram s/o Sitaram Mundhe on his back and so also accused No.10 Shridhar also assaulted him by an iron rod. At that point of time, in the said quarrel, various other persons also received the injuries. Within 5 to 10 minutes the incident was over, and in the said incident Sheshrao s/o Sonba Mundhe, Pandurang s/o Dnyanoba Mundhe, Shriram s/o Sitaram Mundhe (deceased), Adinth s/o Shriram Mundhe, Tulshiram s/o Sonba Mundhe received injuries.

D) When the said quarrel was going on, the police also received a telephonic message that a quarrel was going on, and therefore, police rushed to the spot of incident. However, on reaching the spot of incident, police found that nobody was

present on the spot and police were told that the injured had already reached the police station and so police returned back. In the police station, five persons in an injured conditions were present and so they were immediately taken to the hospital. Dr. Siddhartha Bhalerao (PW-1) and Dr. Ramgopal Biyani (PW-2) were the doctors attached to the Government Hospital, Gangakhed. Dr. Siddhartha Bhalerao (PW-1) examined Sheshrao s/o Sonba Mundhe, Pandurang s/o Dnyanoba Murkute, Shriram s/o Sitaram Mundhe, Tulshiram s/o Sonba Mundhe and Adinath s/o Shriram Andhale. On examination of Shriram s/o Sitaram Mundhe (deceased), police found that he had received serious injuries. Investigating Officer Navnath s/o Kishanrao Dhole, P.S.I. (PW-10) asked the doctor as to whether said Shriram was in a position to give a statement or not, and on examination, doctors certified that said Shriram was in a position to give a statement, and therefore, his statement was recorded. According

to P.S.I. Dhole, he even sent a letter to the Executive Magistrate requesting him to record the dying declaration. However, sensing the danger of death, P.S.I. Navnath Dhole recorded the dying declaration of Shriram s/o Sitaram Mundhe. Unfortunately, within an hour or so, said Shriram s/o Sitaram Mundhe succumbed to death.

E) Police then recorded a statement of Dnyanoba s/o Nivrutti Murkute in the form of a complaint and on the basis of the said report, police registered an offence bearing Crime No.253 of 1990.

F) Meanwhile, the two injured persons from the other party also had reached to the police station and they were accused No.1 Laxman s/o Kundlik Murkute and accused No.2 Suryakant s/o Patloba Murkute. Police had registered their complaint also, and referred them for medical examination. Doctors examined these two injured

persons i.e. Laxman s/o Kundlik Murkute (accused No.1) and Suryakant s/o Patloba Murkute (accused No.2). There is a controversy as to who reached first in the police station and amongst the two rival groups actually who lodged the complaint first.

G) After Crime No.253 of 1990 was registered for the offence punishable under Sections 307, 148, 149, 324 and 325 of the I.P. Code, the investigation started. Various statements were also recorded on the very same day including the statements of injured persons like Pandurang s/o Dnyanoba Mundhe, Sheshrao s/o Sonba Mundhe, Adinath s/o Shriram Andhale, Tulshiram s/o Sonba Mundhe etc.

H) As Shriram s/o Sitaram Mundhe succumbed to death, his inquest panchnama was then carried and his dead body was sent for the postmortem purposes and Dr. Ramgopal Biyani (PW-2) carried

out the postmortem. On the next day morning, police went to the spot of incident and reduced into writing a scene of offence panchnama.

I) Police had seized various articles by drawing a panchnama to that effect, and police arrested the accused persons.

J) While accused No.1 Laxman and accused No.10 Shridhar were in the custody, they expressed a desire to give a memorandum statements and their memorandum statements were also recorded and in pursuance to the memorandum statements, the seizures were made and in the said seizures, a weapon for the commission of an offence, a knife (Article No.8) was recovered at the instance of the information given by accused No.1 Laxman. A pipe and iron rods were also seized at the instance of an information given by accused No.10 Shridhar.

K) Thereafter all the seized articles were sent to Chemical Analyzer, Aurangabad for Chemical Analysis and ultimately after collection of the sufficient evidence, police had filed a charge-sheet in the Court of J.M.F.C., Gangakhed as far as present case is concerned. Police had also filed a charge-sheet of the counter-case in the very same Court.

L) The learned J.M.F.C., Gangakhed committed the case to the Court of Sessions as the offences charged against the accused were exclusively triable by the Court of Session. However, the counter-case was not committed to the Court of Session and the learned J.M.F.C., Gangakhed ultimately tried the counter-case and acquitted the accused therein.

M) The Charge was framed. All the accused pleaded not guilty and therefore, claimed to be tried.

3. After recording the evidence and conducting full fledged Trial, the Additional Sessions Judge, Parbhani acquitted all the accused from all the offences with which they were charged, and hence this Appeal by the State.

4. Heard learned A.P.P. appearing for the State and learned counsel appearing for respective Respondents-accused, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. Prosecution has examined PW-1 Dr. Siddharth Pandurang Bhalerao. He deposed that on 22nd January, 1990, he was working as a Medical Officer at Civil Dispensary, Gangakhed. One Sheshrao s/o Sonba Mundhe was brought to his

dispensary by police station, Gangakhed and thereafter he examined him at 4.00 p.m. PW-1 Dr. Siddharth deposed that he found following injuries on the person of Sheshrao s/o Sonba Mundhe:-

1. CLW over temporal area size 1 cm. X 1 cm. X 1/2 cm. Nature of the injury was simple and the age was three hours.

2. Fall of two teeth upper jaw incisor swell fallen.

Fresh bleeding was present. There was clot on the Gingual margins on 5 cm. X 2 cm. X 1cm. Over lying lip was injured. Nature of injury was grievous, caused by hard and blunt object. Age was within three hours.

3. Contusion over right knee size 2 cm. X 1 cm. tenderness was present. Nature of injury was simple Age within three hours caused by hard and blunt object. He further deposed that injuries were possible by Article Nos.10 or 11 (iron rods).

. PW-1 Dr. Siddharth further deposed that he also examined on the same date one Pandurang

s/o Dnyanoba Murkute. On examination, he found following injuries on the person of Pandurang s/o Dnyanoba Murkute:

1. Incised injury over frontal bone region, size 1 cm. X 1.5 cm. X 1 cm. bleeding was present. Clothes were soiled with blood. Nature of injury was grievous, caused by sharp cutting object. Age within 2 to 3 hours.

2. Swelling over right cheek size 2 cm. circular in shape injury was tender. Caused by hard and blunt object. Age within 2 to 3 hours. Nature grievous.

3. Swelling over mandible right side, size 2.5 cm. X 1.5 cm. X 1.5 cm. Injury was tender, caused by hard and blunt object. Age within 2 to 3 hours, simple in nature.

. PW-1 Siddharth further deposed that, on the same day one Shriram s/o Sitaram Mundhe was admitted in the hospital. To record the statement of Shriram Sitaram Mundhe, police officer had come to the hospital. He further deposed that the

concerned police asked in his presence as to whether the patient Shriram Sitaram Mundhe was in a position to give a statement or not. He examined the patient clinically and gave an opinion that the patient Shriram Mundhe was in a position to give a statement. He reduced into writing his opinion and signed below it. PW-1 Dr. Siddharth was shown the said recorded endorsement and his signature below it. He deposed that endorsement was in his handwriting, he identified his signature on it and further deposed that the contents are correct. He deposed that statement was reduced into writing in his presence.

. In cross-examination PW-1 Dr. Siddharth deposed that he did not receive any letter from the police station requesting him to examine these patients. He admitted that on the very same day he examined Laxmanrao Murkute (accused No.1) and Suryakant Murkute (accused No.2). He stated that injury No.1 in Exhibit 50, an injury certificate

with respect to Laxmanrao, is a grievous injury and might have been caused by a sharp cutting weapon.

6. Prosecution examined PW-2 Dr. Ramgopal s/o Madanlal Biyani. He deposed that on 22nd November, 1990 he was attached to Gramin Rugnalaya, Gangakhed as medical officer. He deposed that on the said day, one Shriram s/o Sitaram Mundhe (deceased) was admitted in the hospital as sent by police. He deposed that he examined the said patient and admitted him as an Indoor Patient. He deposed that on examination, he found following injuries on the person of Shriram s/o Sitaram Mundhe:-

1. Incised wound 3 X 1/2 X 6.5 cm. over eighth inter-coastal space, Right back-side, vertical 7 cm. from mid-line. Fresh red bleeding present from wound. Soft tissues of lungs were destroyed. Dhoti, Banyan and shirt were stained

with blood, profused bleeding occurred and bleeding was also present from mouth and nostrils.

2. Lacerated wound 2 X 1/2 X 1.10 cm. at vertex of the head in mid-line, vertical, clotted bright red blood was present over wound.

3. Lacerated wound 1 and 1/2 X 1/4 X 1.10 cm. over right parietal bone, vertical, one and half cm. from mid-line and 7 cm. behind parietal fronto joint clotted bright red blood present over wound. Scalp hairs and face was stained with blood.

. PW-2 Dr. Ramgopal further deposed that injury No.1 was dangerous to life and caused by sharp cutting edged substance and injury Nos.2 and 3 are simple injuries and might have been caused by hard and blunt objects. He deposed that all the three injuries might have been caused within one to three hours. He further deposed that injury No.1 as explained in Exhibit-53 (injury certificate)

was possible by a weapon like Article No.8 - a knife. He further deposed that injury Nos.2 and 3 as explained in Exhibit-53 could be caused by an iron pipe - Article No.9.

. PW-2 Ramgopal further deposed that he also examined one Adinath s/o Shriram Andhale on the very same day as he was also brought by police for medical examination. He noticed following injury on the person of Adinath, in his clinical examination:

Incised wound size 1.5 X 0.5 X 0.50 cm.
over right back side, vertical 5 cm.
below the lower end of Scapula. Clotted
fresh red blood present over wound.
Blood stains over that Bush-Shirt and
Pant present. Soft tissues were cut,
wound was spindle shaped, margins were
even and clean cut. Injury was grievous
in nature and seems to be caused by
sharp cutting edged substance and age
was one to three hours.

. PW-2 Ramgopal further deposed that the above injury was dangerous to life and in the absence of medical aid, the injury was sufficient to cause the death in ordinary circumstances. He further deposed that the said injury was possible by a weapon like Article No.8 - a knife.

. PW-2 Ramgopal further deposed that on the very same day, one Tulshiram s/o Sonba Mundhe was also brought by police for examination and accordingly he (PW-2) examined him. He deposed that he found following injuries on the person of Tulshiram s/o Sonba Mundhe:-

1. Lacerated wound 3 X 2 X 1.10 cm over left knee at outer and upper quadrangle,
2. Lacerated wound 3 X 1/2 X 1.10 cm. over left knee at lower border in mid-line, horizontal,

3. Lacerated wound 2.5 cm. X 1.4 cm. X 1/10 cm. over left eye brow, horizontal at lateral half part.

4. Contusion 5 cm X 4 cm. over left thigh, outer-side at neck of the femur bone.

5. Contusion 3 cm. X 2 cm. over lower eye-lid.

6. Contusion 3 cm. X 2.5 cm. over left forearm backside of the junction of lower one third and middle one third.

. PW-2 Ramgopal further deposed that all lacerated wounds show clotted bright red blood on contusions were bright red in colour and all above injuries were simple in nature and seems to be caused by hard and blunt object and age was about one to two hours.

. PW-2 Ramgopal further deposed that Shriram s/o Sitaram Mundhe succumbed to death at

4.35 p.m. on 22nd November, 1990. He informed death of Shriram to the police. After police drew an inquest panchnama, he carried out the postmortem of Shriram.

7. Upon careful perusal of evidence of medical officers PW-1 Dr. Siddharth Bhalerao and PW-2 Dr. Ramgopal Biyani, it is abundantly clear that not only the prosecution witnesses suffered the injuries but also the accused persons sustained injuries during the incident. It appears from careful perusal of the medical evidence that accused No.1 Laxman suffered one grievous injury. PW-1 Dr. Siddharth, during his cross-examination, stated that injury No.1 in Exhibit 50 i.e. injury certificate in respect of the injuries sustained to accused No.1 Laxman, is a grievous injury and might have been caused by sharp cutting weapon. It is true that other injuries suffered by the accused persons are simple in nature.

8. Before we discuss the evidence of eye witnesses, it would be apt to discuss about the dying declaration at Exhibit 48-A. We have carefully perused the contents of said dying declaration of Shriram Sitaram Mundhe. The said dying declaration was recorded by the Investigating Officer Navnath Dhole (PW-10). Admittedly, there is no mention in the said dying declaration that the same was read over to the declarant Shriram and that he admitted the contents of the said dying declaration. Upon careful perusal of the evidence of investigating officer, he stated that before dying declaration was recorded, medical officer PW-2 Dr. Ramgopal Biyani did not make an endorsement and orally told that Shriram was in a fit condition to give the dying declaration. An endorsement given by the medical officer is after recording the said dying declaration. It is true that upon careful perusal of the contents of the said dying declaration, Shriram (deceased) stated that Laxman assaulted

him by knife and Shridhar (son of Laxman), has also assaulted him by iron rod. He also stated that other persons accompanying him were also assaulted by the group headed by Laxman. It appears that spot of incident stated by deceased Shriram is near the 'Jamge building'. We find considerable force in the argument of learned counsel appearing for the Respondents that all other witnesses have stated different spot of incident i.e. near 'Kabarsthan'. Upon careful perusal of the dying declaration, we find that the signature of the declarant Shriram is after considerable space from the last sentence of the dying declaration, which creates suspicion in the mind, whether the contents of the dying declaration were narrated by Shriram himself or otherwise. Admittedly, scribe of the dying declaration is not examined by the prosecution. There was serious allegation of accused persons as against Investigating Officer that his investigation was biased.

. Keeping in view the injuries sustained by Shriram, it was necessary for the medical officer to have the proper medical examination of Shriram and then put an endorsement about his consciousness and well orientation to give such dying declaration. It is true that in view of the exposition of law by the Supreme Court in the case of Laxman vs. State of Maharashtra¹, even in absence of endorsement of medical officer, if from the other circumstances and evidence the dying declaration inspires confidence, the same can be simply believed. However, in the peculiar facts and circumstances of this case and keeping in view serious injuries suffered by Shriram, in our opinion the medical officer should have taken proper care to give endorsement even before recording the dying declaration and also his presence was necessary during the course of recording such dying declaration. We also find

¹. 2002 Cri.L.J. 4095

considerable force in the argument of learned counsel Mr. R.S. Deshmukh appearing for Respondent Nos.1, 10 and 11 that circumstances brought on record clearly indicated that office of the Executive Magistrate was nearby the Government Hospital, Gangakhed and it was possible for the Investigating Officer to call the Executive Magistrate so as to record the dying declaration of Shriram, since it is well settled that the dying declaration recorded by the Executive Magistrate stands on much higher footing vis-a-vis the dying declaration recorded by the other officers/persons. The afore-said contention advanced by the counsel Mr. Deshmukh appearing for Respondent Nos.1, 10 and 11 is fortified by the exposition of law by the Supreme Court in the case of Khushal Rao vs. State of Bombay², wherein it is observed that the dying declaration recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and,

2 A.I.R. 1958 S.C. 22 (V 45 C 4)

as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character. Be that as it may, the dying declaration of Shriram Sitaram Mundhe recorded by the Investigating Officer, does not inspire confidence so as to rest the prosecution case on the said dying declaration and reverse the acquittal of the Respondents-accused.

9. Now, we turn to discuss the evidence of prosecution witnesses, who as per the prosecution case, are the eye witnesses.

10. The prosecution examined PW-3 Sheshrao s/o Sonba Mundhe, who is injured eye witness to the incident. He deposed that incident took place eight years ago and on 22nd November, 1990. He deposed that Laxman Murkute from their village was

causing a nuisance to the other villagers and therefore police had initiated an externment proceedings against him. In that connection witness himself and other villagers had been to Parbhani to give a memorandum to the Collector. On that day witness himself along with Tulshiram Mundhe, Shriram Sitaram Mundhe, Dnyanoba Nivrutti Murkute and other villagers numbering about 30 to 32 went to Parbhani. He further deposed that they submitted a memorandum to Collector at Parbhani, in between 11.00 to 12.00 a.m. He deposed that by railway they returned back to Gangakhed. They reached Gangakhed at about 2.00 p.m. Some 10 to 12 out of them started going towards the Bazar area via S.T. Stand.

. About the main incident, PW-3 Sheshrao Mundhe deposed that on their way to Bazar, Suryakant Patloba Murkute met them. He is a resident of their village. Suryakant (accused No.2) told them in Marathi, "NIVEDAN DEVOON KAI

WAKDE HONAR AAHE" (what will be the use of memorandum). He further deposed that thereafter an exchange of words took place between Suryakant and them. Immediately thereafter, Laxman Kundlik Murkute (accused No.1) and his five sons- Balaji, Dnyanoba, Shridhar, Sudhakar and Pralhad came in a jeep, and they started abusing them. Thereafter ten persons came on the spot of incident. The said persons were - Madhav Stwaji Daiphale, Dharmaji Dnyanoba Palode, Pandit Bapurao Palode, Ramdas Dhanaji Murkute, Vijanath Pandit Palode, Navnath Patloba Murkute, Dnyanoba Sangle from Sangle-wadi, son of Sanjay "Sonar" and Bhaskar Prabhu Bhise of Pimpri. PW-3 Sheshrao identified accused No.16- Sanjay Ambilwade, accused No.9 - Dnyanoba Murkute, accused No.11 - Sudhakar Murkute, accused No.5 - Dhanraj Palwade and other accused persons. He further deposed that these persons started abusing them. He deposed that these persons were holding iron rods and iron pipes in their hand. These persons started assaulting them. He deposed that

accused No.10 - Shridhar Laxman Murkute assaulted Shriram Sitaram Mundhe by an iron pipe. Accused No.10 - Shridhar hit Shriram on his head. Laxman Murkute (accused No.1) stabbed Shriram Sitaram Mundhe by a knife on his back. Laxman Murkute (accused No.1) also stabbed Adinath Shriram Andhale on his back, by a knife. Laxman Murkute (accused No.1) then took an iron rod from Pralhad and gave two blows to witness himself (PW-3 Sheshrao), one on the face and another on the head. PW-3 Sheshrao deposed that because of the assault on his face, he received an injury on his lips and so also his incisors were uprooted, four in number. He deposed that he also had a head injury which was bleeding in nature. He deposed that accused Sudhakar assaulted on his leg by iron rod. Because of this his knee became swollen. He deposed that Pralhad also assaulted on his leg by an iron pipe. He deposed that his brother Tulshiram Sonba Mundhe was also assaulted by these persons by an iron rod and an iron pipe. These

persons also assaulted Pandurang Dnyanoba Murkute by an iron rod and iron pipe. These persons also assaulted by them by fist and blows. He deposed that thereafter they all went to Gangakhed police station. Police took them to the hospital in their Jeep. He deposed that Dnyanoba Murkute lodged a report in the police station. He deposed that Shriram succumbed to death on the very same day in the hospital. This witness was thoroughly cross-examined by the defence.

11. During the cross-examination of PW-3 Sheshrao Mundhe, it is brought on record by the defence that the spot of incident was crowded area. There were two parties/groups in the village Zola. One of the group was headed by accused No.1 Laxman. Since 1965 to 1990 Laxmanrao Murkute was the Sarpanch of village Zola. It has also come on record that Laxmanrao Murkute was elected Sarpnch, unopposed on many occasions. In the year 1990, a panel of Laxmanrao won the elections and the panel

of Tulsiram or Sopan lost the elections. It has also come on record that deceased Shriram never contested the election. There was no any property dispute between accused No.1 Laxmanrao and deceased Shriram. Shriram was never an accused in any case initiated by Laxmanrao. Laxman has also lodged the complaint about the same incident dated 22nd November, 1990, and all the accused are acquitted from the counter-case tried by the Magistrate, registered on the basis of First Information Report lodged by accused Laxman. In so many words, this witness has stated that the road on which incident had taken place is crowded area and the people from Mondha reach to S.T. Stand and the city through the said road. However, it is to be noted that in the present case only PW-5 Adinath Shriram Andhale is examined as an independent witness. Upon careful perusal of cross-examination of PW-3 Sheshrao Mundhe, he denied that they beat Suryakant with fists and blows and so also by shoes and 'Chappals'. It is

further stated that he did not see injuries on the person of Suryakant. No exchange of abuses took place at the time of incident. PW-3 Sheshrao further stated that he did not see the bleeding injuries on the person of Laxman at the place of incident. He did not see any injury on the person of Laxman till he left the place of incident. He did not see injuries on the person of Suryakant. It appears that suggestion was given that when Laxman alighted from the jeep he was surrounded by the persons from his rival group, however this witness has denied the said suggestion. He denied that Laxman after receiving a severe injury, failed down on the ground due to giddiness. He also denied that there was free fight between the two groups. Therefore, on the whole PW-3 Sheshrao stated that no injuries were received by the accused persons during the said incident. It is also relevant to mention that in his cross-examination he stated that when Laxman snatched away an iron bar from Pralhad, they were at a

distance of about 7 to 8 feet from him. At that time he did not see a knife with Laxman. This witness, at second breath, stated that Laxman was holding knife. He also admits in cross-examination that prior to the incident in question no complaint was lodged against Laxman and Laxman was not convicted in any criminal case. He also admitted that Laxmanrao is a respectable and a rich person in the surrounding area of Gangakhed. He further stated that distance between the place of incident and the lodge in front of S.T. Stand is about 200 feet. In front of the shops of Laxmanrao in Mondha area, there is liquor shop in the Jamge building. From the spot of incident, it takes about 5 to 10 minutes walk to reach to the Jamge building in which a country liquor shop is situated. Therefore, it appears that spot of incident as stated by this witness is at 5 to 10 minutes distance by walk from the Jamge building, which is stated as spot of incident by deceased Shriram. PW-3 Sheshrao further stated that

incident was over within 5 to 7 minutes.

. Upon careful perusal of cross-examination of PW-3 Sheshrao, it is abundantly clear that he has shown ignorance about the injuries suffered by the accused persons. He tried to suppress the genesis of the incident, in as much as he stated that there was no scuffle between two groups. At one point he stated that there were no two groups in village Zola. The spot of incident stated by this witness and spot of incident stated in dying declaration by Shriram, appears to be two different places. Therefore, it can safely be stated that this witness has not disclosed the full truth about the starting point of the incident and also the manner in which the incident had taken place and how the accused persons have suffered injuries including one grievous injury suffered by accused No.1 Laxman i.e. injury No.1 as stated by PW-1 Dr. Siddharth in his cross-examination.

12. The prosecution examined PW-4 Tulshiram s/o Sonba Mundhe, another injured eye witness to the incident. He deposed that incident took place eight years ago. Some 25 persons on the day of the incident had come to Parbhani to submit a memorandum to the Collector requesting him to extern Laxmanrao (accused No.1). He deposed that along with him, Dnyanoba Nivrutti Murkute, Shriram Sitaram Mundhe, Sheshrao Sonba Mundhe, Tukaram Nivrutti Murkute and Sopan Nivrutti Murkute were with him amongst their group of 25 persons. Accordingly they submitted a memorandum. After submitting the memorandum, they returned back to Gangakhed.

. Regarding the main incident, PW-4 Tulshiram Mundhe deposed that five to 7 seven persons from their group including witness himself started going towards the town in a Bazar area. They came upto "Kabarasthan". At that spot,

Suryakant Patloba met them and he told us in Marathi, "NIVEDAN DEWOON TUMCHYANE KAI WAKDE HONAR AAHE". Immediately thereafter, Laxmanrao (accused No.1) and his five sons reached on the spot in Jeep. He deposed that the names of the sons of Laxmanrao are Balasaheb, Dnyanoba, Shridhar, Sudhakar and Pralhad. He deposed that immediately followed by the above persons, six persons from their village also reached on the spot. These six persons were - Navnath Patloba, Pandit Bapuro, Vaijnath Pandit, Ramdas Dharmaji, Madhav Satwaji and Dhanraj Dnyanoba. He deposed that these persons were holding the iron rod and the iron pipes. They started abusing the witness and other persons from his group and the quarrel started. He deposed that in the said quarrel Shridhar Laxman assaulted Shriram Sitaram by an iron pipe on the head. Immediately thereafter, accused Laxman stabbed Shriram in his back by a knife. He deposed that he was standing near them. He deposed that Shridhar then assaulted to the witness by an iron

pipe causing an injury to his head. He deposed that he received the injury above his eye-lid due to the said iron pipe and as a result, blood started trickling. He deposed that thereafter Sudhakar by an iron rod assaulted him on his left knee, on his leg and on his left shoulder. He deposed that as a result he fell down on the ground. Thereafter the assailants ran away from the said spot. He deposed that thereafter he went to Shriram and saw that Sheshrao had received injury to his lip. He deposed that he saw that blood was oozing from the injuries that Shriram had sustained. He deposed that thereafter by rickshaw, he went to the police station.

. During the course of cross-examination, PW-4 Tulshiram stated that he contested the Grampanchayat election twice, on both the occasions against Laxman (accused No.1) and once he won the election and once he lost. He stated that he himself was a Sarpanch in between 1972 to

1976. He stated that one panel was headed by Laxman, whereas another panel was headed by him for two elections. In other elections also these two groups continued. He stated that Laxman had lodged the complaint against him and others with respect to the same incident dated 22nd November, 1990 but the Court acquitted the accused in that case. He stated that he did not notice any injury on the person of Suryakant as there were no injuries at all. There were no exchange of hot words or the abused hurled in between Suryakant and them. He stated that he did not notice any injury on the person of Laxman. He stated that after Laxmanrao and his sons alighted from the jeep, they immediately did not start assaulting but there was initially a conversation between Laxmanrao and the members of the group of the witness.

13. Upon careful perusal of cross-examination of PW-4 Tulshiram, he stated that he did not

notice any injury on the persons of Suryakant or Laxman. There was no exchange of hot words or abuses hurled in between Suryakant and prosecution witnesses. He also like PW-3, tried to suppress the genesis of the incident and also has not disclosed the manner in which the incident had taken place. He denied that accused persons also suffered injuries. Admittedly, both these witnesses i.e. PW-3 Sheshrao and PW-4 Tulshiram are the interested witnesses, in as much as they both claim that they belong to group of deceased Shriram Mundhe.

14. The prosecution examined PW-5 Adinath s/o Shriram Andhale, an independent eye witness. He deposed that incident took place on 22nd November, 1990. He deposed that on that day some 25 to 30 people had come to Parbhani to give a memorandum demanding that Laxman Murkute be externed. These persons were inclusive of Sopan Nivrutti Murkute, Sheshrao Sonba Mundhe, Tulshiram Sonba Mundhe,

Shriram Sitaram Mundhe. He deposed that he had gone to Gangakhed on that day to sell green chillies. He deposed that when he reached near "Kabarastan, on his way to S.T. Stand, he saw that the quarrel was going on amongst the villagers of his village. He deposed that amongst the said gathering, he identified Laxman Kundlik Murkute, Balaji Kundlik Murkute, Dnyanoba Laxman Murkute, Shridhar Laxman Murkute, Sudhakar Laxman Murkute, Pralhad Laxman Murkute, Suryakant Patloba Mundhe, Navnath Patloba Mundhe and others. He further deposed that he went near them to see what was going on. He deposed that at that point of time accused Laxman Kundlik Murkute assaulted him by a knife on his right hand and due to said assault, he received bleeding injury. So he ran away from the spot and concealed his identity by hiding. Thereafter accused Laxman Kundlik Murkute and his associates ran away from the said spot. He deposed that he again reached on spot and found that Shriram Sitaram Mundhe, Tulshiram Sonba Mundhe,

Sheshrao Sonba Mundhe and Pandurang Dnyanoba Murkute were found in an injured condition. He further deposed that Shriram Sitaram Mundhe succumbed to death in the hospital while doctors were treating him.

. During his cross-examination, PW-5 Adinath has also not mentioned about the injuries sustained by the accused persons. Therefore, he has also not stated true version of the actual incident.

15. PW-6 Pandurang s/o Dnyanoba Murkute deposed that incident took place on 22nd November, 1990. He further deposed that at the relevant time he was taking education in college at Gangakhed. He further deposed that at about 2.00 to 2.30 p.m. after the college he started proceeding towards S.T. Stand. He came upto the corner of "Kabarstan". He deposed that a quarrel was going on. He deposed that Laxman Kundlikrao

Murkute and 15 to 16 others were assaulting the persons who had gone to submit a memorandum. At that point of time, accused Pralhad Laxman Murkute pelted sharp edged stone to the witness causing an injury above his right-side eye-lid. Accused Shridhar Laxman Murkute gave him blows on his mouth. Thereafter Balaji Laxman assaulted him by a stick on his right hand palm and so also on his back. His right-hand palm was swollen. He deposed that thereafter the assailants ran away from the spot. He further deposed that thereafter he saw Shriram Sitaram Mundhe, Tulshiram Sonba Mundhe, Sheshrao Sonba Mundhe, Adinath Shriram Andhale were there in an injured condition. He further deposed that Shriram Sitaram Mundhe succumbed to death while he was in hospital.

. It appears that PW-6 Pandurang Murkute is a chance witness, in as much as he was not present on the spot of incident when the quarrel was started. He stated that when he reached near the

crowd quarreling, he came to know that quarrel was going on amongst the persons belonging to his village. He admits that between two groups quarrel was going on. However, he has also not mentioned how the accused persons suffered the injuries.

16. PW-7 Bhagwan Pandurang Phad was a panch to the seizure panchnama of knife, discovered at the instance of accused No.1 Laxman Murkute. Upon perusal of evidence of PW-7 Bhagwan, it appears that recovery of knife at the instance of accused No.1 Laxman was from the open space nearby Babool tree. As per the deposition of this witness, the said knife was concealed by the side of road which passes from S.T. Stand. Therefore, it is abundantly clear that such alleged recovery of knife at the instance of accused No.1 Laxman from the open and accessible place to anybody, loses its significance. This witness has admitted in his cross-examination that the place from where knife was produced, was an open place and anybody can

have access to said place. He admitted that there are no special marks to identify the said knife.

17. Keeping in view the exposition of law by the Supreme Court in the case of Maslati and others vs. The State of Uttar Pradesh³, the evidence of partisan and interested witnesses needs to be carefully scrutinized and considered. In case of an unlawful assembly, it is desirable to have truthful version of true eye witnesses. Keeping in view the evidence of alleged injured and eye witnesses, they have not disclosed the true version of the incident. They have not stated that there was scuffle and both groups were fighting with each other and even the accused persons suffered injuries. As observed above, the alleged recovery of knife at the instance of accused Laxman loses its significance and cannot be believed in view of the fact that knife was recovered from open and accessible place to all,

³ A.I.R. 1965 S.C. 202

and also there were no special identification marks on the said knife. Where there is an unlawful assembly and there are number of persons fighting each other from two groups, in absence of specific case of the prosecution supported by the clinching evidence that Laxman was holding knife and he, as a matter of fact, assaulted Shriram by said knife and other prosecution witnesses, it would be travesty of justice to cause the interference in the order of acquittal. The Supreme Court in the case of *Muralidhar alias Gidda and another vs. State of Karnataka*⁴ 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.*

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

State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415.

It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the

following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and (iv) Merely because the appellate Court on re-appreciation and re-evaluation of the

evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

[Underlines added]

18. PW-8 Ramrao Namdeo Andhale was examined as a panch witness to the recovery of iron rod at the instance of accused No.10 Shridhar Murkute. The alleged iron rod appears to have been recovered from the place accessible and open to all. It is stated by this witness that the said iron rod was recovered from the 'Besharmi' trees situated near Zola Fata.

19. PW-9 Subhash Dnyanoba Chate was a panch to the seizure panchnama of clothes of Sheshrao (PW-3) and Adinath (PW-5).

20. PW-10 Navnath Kishanrao Dhole was the investigating officer. He deposed about the manner in which he has carried out the investigation of the crime. He further deposed that after giving opinion by the doctor that injured Shriram was conscious and he could record the statement, he recorded statement of injured Shriram s/o Sitaram Mundhe, Exhibit 48-A.

. During his cross-examination, PW-10 Navnath Dhole stated that prior to 22nd November 1990, he was aware that riot cases were lodged against both the groups of village Zola. He stated that complainant Dnyanoba Murkute and five other injured together reached the police station. He stated that on the same day, accused Laxmanrao also reached the police station in an injured condition. He stated that Laxmanrao gave a report which he reduced in writing at 2.30 p.m. A report of Dnyanoba Murkute was registered at 3.15 p.m. He denied that accused Suryakant Patloba came to the

police station and lodged the report first in order. He denied that in the F.I.R. Register, the entry of Laxmanrao Murkute is made prior to the entry of Dnyanoba Murkute. He denied that the entries in the F.I.R. Register in the name of Suryakant Patloba and Lxmanrao Murkute in sequence were torn and destroyed by him. He admitted that Page No. 0500399 and 0500400 are missing in the said F.I.R. Register. He admitted that in F.I.R. Register, there is an over writing over the timing 15.15 hours (page No.0492261). He denied the suggestion that he deliberately prepared a false record and thereby committed a fraud. He denied the suggestion that as Laxmanrao lodged a complaint against him in S.P. Office, he was on inimical terms with him. He stated that he has not mentioned as to when the recording of Exhibit 48-A (dying declaration) was started and when it was completed. He further stated that doctor orally certified that the patient was conscious to give a statement, but doctor actually reduced the

certificate into writing after the statement of Shriram Sitaram Mundhe was reduced into writing. PW-10 Navnath admitted that in a statement of Shiram Sheshrao Mundhe (Exhibit 48-A) there is no mention of the fact that the statement was read over to the witness and the witness accepted its correctness. He stated that on the spot of incident he did not notice blood stains on the ground. He stated that he was under suspension for nine months in connection with the case registered against him at Naldurg police station.

21. After perusing the evidence of PW-10 Navnath Dhole, the investigating officer and in particular, his cross-examination, we find considerable force in the argument of counsel appearing for the respective Respondents that to some extent the Investigating Officer was biased in his investigation, as the defence has brought on record that some pages of the F.I.R. Register were missing, there was over-writing in the F.I.R.

Register, and it was in dispute that amongst the two rival groups who lodged the complaint first. Further, the defence has brought on record that the Investigating Officer has not made genuine and prompt efforts to call Executive Magistrate to record dying declaration of Shriram.

22. As already discussed, the prosecution witnesses have not stated true version of the incident and only projected one version of the incident which is favourable to the prosecution. They have tried to suppress the genesis of the incident and also suppressed the starting point of the scuffle taken place between two groups. None of the prosecution witnesses have stated about the injuries sustained by the accused persons and in particular grievous injury i.e. injury No.1 suffered by accused No.1 Laxman, which is stated by medical officer PW-1 Siddharth in his deposition. The Supreme Court in the case of

Lakshmi Singh and others vs. State of Bihar⁵ held that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case. It is further held that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or

5 A.I.R. 1976 S.C. 2263

inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. It is further held that there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. It is further held that on facts and circumstances the High Court was in error in brushing aside the serious infirmity in the prosecution case regarding non-explanation of injuries sustained by the accused on unconvincing premises. The same view has been reiterated by the Supreme Court in the cases of State of Rajasthan vs. Madho and another⁶, Rehmat vs. State of

⁶ 1991 Supp.(2) S.C.C. 396

Haryana⁷, Padam Singh vs. State of U.P.⁸, State of M.P. vs. Mishrilal (dead) and others⁹, Bishna alias Bhiswadeb Mahato and others vs. State of W.B.¹⁰, Vinod Kumar Sinha vs. State of Bihar¹¹, Babu Ram and others vs. State of Punjab¹², State of Rajasthan vs. Rajendra Singh¹³, State of Uttar Pradesh vs. Gajey Singh and another¹⁴.

23. It appears from the material brought on record that the cross-complaint filed by the accused Laxman and others was tried by the J.M.F.C., Gangakhed and the case arising out of the present F.I.R. lodged by the informant Dnyanoba Nivrutti Murkute was tried by the Additional Sessions Judge, Parbhani. The Supreme Court in the case of State of Madhya Pradesh vs. Mishrilal (Dead), supra, has taken a view that

7 (1996) 10 S.C.C. 346

8 (2000) 1 S.C.C. 621

9 (2003) 9 S.C.C. 426

10 (2005) 12 S.C.C. 657

11 2007 Cri.L.J. 3984

12 (2008) 3 S.C.C. 709

13 (2009) 11 S.C.C. 106

14 (2009) 11 S.C.C. 414

cross-cases should be tried together by same court irrespective of nature of offence involved. Rational behind this is to avoid conflicting judgments over same incident. It is further observed that if cross-cases are allowed to be tried by two courts, there is likelihood of conflicting judgments. The Supreme Court has also made detail discussion in Para-7 of the said Judgment about the procedure to be followed when there are cross-cases arising out of the same incident.

24. In the light of discussion in foregoing paragraphs, we are of the opinion that the view taken by the trial Court on the basis of appreciation of evidence brought on record was plausible. On independent scrutiny of the evidence also, we find that the prosecution witnesses have tried to suppress the genesis of the incident, in as much as they have not stated the true version about the manner in which the incident had taken

place or about the injuries suffered by the accused and how they have suffered the said injuries. The alleged dying declaration at Exhibit 48-A does not inspire confidence for the reasons discussed herein-above in Para-8 of the Judgment. In that view of the matter, we are unable to persuade ourselves to cause interference in the order of acquittal.

25. For the reasons aforesaid, the Appeal stands dismissed. The bail bonds of the accused, if any, shall stand cancelled.

[S.M. GAVHANE, J.]

asb/JUN17

[S.S. SHINDE, J.]