

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

CRIMINAL APPEAL NO.322 OF 1999

The State of Maharashtra
Through P.I.Dharangaon
Police Station, Tq. Erandol,
Dist. Jalgaon.

APPELLANT
[ori.complainant]

VERSUS

1. Rajesh Pitambar Sonwane,
age 25 yrs., r/o. Paldhi
Idgah Bardi, Tq.Erandol,
Dist. Jalgaon.
2. Arjun Eknath More,
age 30 yrs.,
R/o. Dongaon, Tq.Erandol,
Dist. Jalgaon.
3. Pitambar Totaram Sonwane,
age 60 yrs., r/o. Paldhi Idgah
Bardi, Tq.Erandol, Dist.Jalgaon
4. Gautam Pitambar Sonwane,
age 20 yrs., r/o. Paldhi Idgah
Bardi, Tq.Erandol, Jalgaon.
5. Sunil Pitambar Sonwane,
age 22 yrs. r/o. Room No.9,
Govt. Quarter, Near Collector
Bungalow, Jalgaon.

RESPONDENTS
[ori.accused]

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Mr.S.J.Salgare, APP for the Appellant - State
Mr.K.C.Sant, Advocate for Respondent Nos.1
to 5.

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

Reserved on : 08.06.2017
Pronounced on : 22.06.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Appeal is filed by the appellant - State, challenging the judgment and order of acquittal dated 28th April, 1999, passed by the IIIrd Additional Sessions Judge, Jalgaon in Sessions Case No.212/1998.

2. The prosecution case in nutshell is as under:

One Gulab Raghunath Patil [PW-2], President of Shivsena Party for Erandol Division, was coming by road to Paldhi from Erandol on 10th July, 1998 at 5.00 p.m. He saw the persons gathered at the left side of the road near Paldhi village on Chandsar Road. On verification, he found that the dead body of one person was lying by the side of the road, and there were various injuries on different

parts of the dead body. The palm of the dead body was cut, and there were injuries on head, hips etc. and the body was lying in pool of blood. He, therefore, went to village Paldhi outpost, and reported the incident to the Police as per the complaint [Exh.23]. The Police Sub-Inspector, Shivram Deoram Mali [PW-22] was on duty at outpost Paldhi. He reduced into writing the complaint lodged by Gulab Raghunath Patil [PW-2] and rushed to the place of incident, which was just 200 meters from S.T. stand. The Police Sub Inspector also found the dead body lying in the pool of blood, and therefore, he called two panchas and recorded inquest panchnama [Exh.28] in presence of the panchas. He also recorded the panchnama of the place of incident in presence of panchas [Exh.31] and seized simple mud and blood stained mud from the place of incident. The Police Sub-Inspector found that, there were blood stains

from the dead body to some distance, and therefore, he followed the path where the blood stains were found lying. He himself and panchas reached to the house of the accused Rajesh Sonwane near Idgah Bardi hutment area. The blood stains were found right from the dead body up to the hut, and therefore, the Police Sub Inspector along with panchas entered into the hut, belonging to the accused Rajesh Pitambar Sonawane. One *suri* was found stained with blood, and one weapon having wooden handle lying on the cot in the hut. Both these weapons were stained with blood. The Police Sub-Inspector seized those weapons in presence of panchas under panchnama. He also found some clothes on the cot such as shirts, suit pants, etc. He seized those clothes and sealed those in presence of panchas. He also seized the simple mud and blood stained mud. A panchnama [Exh.31] in this regard was prepared in

presence of panchas. The Police Sub Inspector Shivram Mali was entrusted with the investigation of Crime bearing No.100/1998, registered on the basis of the complaint lodged by Gulab Raghunath Patil. The dead body was sent for postmortem to Civil Hospital, Jalgaon.

3. On 11th July, 1998, the Head Constable Shivdas Shankar Saindane [PW-16] produced the clothes of the deceased and they were seized in presence of panchas under panchnama [Exh.33]. The dead body was handed over to the relatives of the deceased i.e. his father Popatrao Rama Sonwane for funeral after postmortem. The Police Sub-Inspector Shivram Mali recorded the statements of Popat Rama Sonwane and 15 other witnesses on that day. On the same day, he also arrested the accused Rajesh Pitambar, Arun Piambar and recorded the statement of Taher Subhan Patel [PW-4], who was the alleged eye witness to

the incident. The accused Sunil Pitambar was having injury on his right hand, and therefore, he was got examined through Medical Officer. On 13th July, 1998, the shirt of accused Rajesh Pitambar was seized in presence of panchas in consequence of the information given by the accused Rajesh. The Police Sub Inspector Shivram Mali recorded the statement of witnesses on 14th July, 1998 and 15th July, 1998. He also received the postmortem notes. On 16th July, 1998, the accused Pitambar Totaram Sonwane agreed to produce bicycle, and accordingly, produced the same and his information was reduced into writing in the form of memorandum [Exh.63], and the bicycle was seized in consequence of the information under panchnama Exh.64. On the same day, the sickle was also seized in consequence of the information given by the accused Pitambar Totaram Sonwane as per memorandum and panchnama Exhs.37 and 38. On

17th July, 1998, one *suri* was also seized in consequence of the information given by accused Gautam Pitambar Sonwane under memorandum and panchnama Exh.60 and 61 in presence of panchas. On 18th July, 1998, the accused Arjun More agreed to produce the *gupti* in presence of panchas, and consequently, produced the same and it was seized as per memorandum and panchnama Exh.47 and 48. The Police Sub Inspector obtained blood samples of accused persons on 20th July, 1998 and interrogated the witness and sent the seized articles to Chemical Analyser, Aurangabad, on 27th July, 1998 for analysis along with forwarding letter Exh.49.

4. During investigation, the Police Sub Inspector Shivram Mali found that, the deceased was one Sanjay Popat Sonwane, resident of Jalgaon, as some R.T.O. papers and photographs and other papers were found in the pocket of deceased. During

investigation, it was further found that, the deceased Sanjay Sonwane was doing social work and was active member of Dalit Panthar. He used to be with accused Rajesh Pitambar Sonwane. It was found by deceased Sanjay that, during election accused Rajesh Sonwane collected money from the people, and did not distribute it among the workers. There was dispute on account of this between the deceased Sanjay Sonwane and accused Rajesh Sonwane. The accused Sunil Sonwane, brother of accused Rajesh, was serving in the Local Fund Audit Office at Jalgaon as a peon, and he was residing in Room No.9 in the same building in which the deceased Sanjay was residing along with his parents. On 16th April, 1998, there was quarrel between mother of the deceased and wife of accused Sunil on account of the tap water. There were complaints and counter-complaints in this regard. Since then, the accused Rajesh,

Sunil, Gautam and Pitambar used to abuse Sanjay and others. On the same day, accused Gautam had been to Sanjay along with a sickle in his hand to kill him. However, there was settlement. At that time he threatened Sanjay Sonwane that, he will not be kept alive and no matter as to how much amount he will have to spend for the same. During the course of further investigation, it was transpired that, Popat Rama also gave a written representation to Superintendent of Police, Jalgaon and Lokmat Office prior to 12th June, 1998. It revealed during investigation that, accused Rajesh Sonwane was removed from the post of District Head of Dalit Panthar, Jalgaon, at the time of Lok Sabha Elections in the year 1998, and deceased Sanjay Sonwane was appointed on the said post in place of accused Rajesh Sonwane, by the President of the Dalit Panthar Party, Shri Namdeo Dhasal.

5. The Investigating Officer during the

course of investigation came to know that, on 10th July, 1998, the deceased Sanjay Sonwane left the house at about 9.00 a.m. so as to go to office of RTO as he wanted to obtain driving license for plying an auto-rickshaw. He came back home at 1.30 p.m., and again went to RTO office on bicycle. The deceased Sanjay, however, did not come back to house till late hours in the night, and thereafter the police reached to the house of Popat Rama i.e. father of Sanjay, at about 12.00 p.m. and informed him that, Sanjay is murdered at Paldhi, and that his dead body is brought to Civil Hospital, Jalgaon. From the statement of witnesses recorded by the Investigating Officer Shri Shivram Mali, it was revealed that on 10th July, 1998, some of the witnesses found deceased Sanjay running away from the house of accused Rajesh in an injured condition, and his right wrist was as good as detached from the upper portion of the hand,

and he was found running towards Chandsar road. The accused persons were following Sanjay along with weapons in their hands like sickle, gupti, razor, etc. The accused Pitambar Sonwane was following Sanjay on bicycle, and he followed him up to Chandsar road nearby a liquor shop. On the Chandsar road near liquor shop by the side of the road on left side, the accused persons assaulted Sanjay with weapons in their hands and Sanjay succumbed to the injuries sustained by him. All the accused persons therefore intentionally and knowingly caused the death of Sanjay Popat Sonwane, and also caused grievous hurt to him with the instruments like sickle, gupti, razor, etc. It is alleged that, on account of political enmity as well as the other enmity already described, the accused persons killed Sanjay Popat Sonwane in furtherance of their common intention. As already stated, after due investigation a

charge sheet was filed in the court of the Judicial Magistrate First Class, Erandol, and subsequently, case was committed to the Court of Session. The trial Court framed charge for the offence punishable under Sections 302 r/w.120B, 302 r/w.34, 326 r/w.120B and 326 r/w.34 of the Indian Penal Code. After full-fledged trial, the trial Court acquitted all the accused, hence this Appeal filed by the State.

6. Heard the learned APP appearing for the appellant – State. He submits that, there is direct evidence in the nature of eye witnesses. The evidence of the eye witnesses corroborates with each other. There is also corroboration from the medical evidence as well as C.A. report. He invites our attention to the entire evidence brought on record by the prosecution and submits that, the manner in which Sanjay was assaulted, and due to severe assault by deadly weapon, Sanjay

[deceased] lost his life. Therefore, he submits that, the view taken by the trial Court was not possible and in the light of the evidence available on record the order of acquittal deserves to be quashed and set aside and accused deserve to be convicted for the commission of serious offences as alleged against them.

7. On the other hand, learned counsel appearing for the respondents—accused invites our attention to the findings recorded by the trial Court and submits that, possible view has been taken by the trial Court. Upon appreciation of the evidence of the witnesses, the trial Court found that their evidence suffers from omissions, contradictions and improvements. If the prosecution claims that, the respondents—accused chased Sanjay [deceased], in that case the Investigating Officer ought to have recorded the statements of the eye witnesses

immediately. There is considerable delay in recording the statements of the eye witnesses, and the same creates doubt about the prosecution claim that, respondents-accused participated in the commission of alleged offences and as a result Sanjay died.

8. Learned counsel further submits that, Sanjay [deceased] was involved in more than one serious criminal offences, and the criminal cases were pending against him for outraging modesty of woman and also for the offence punishable under Section 302 of the Indian Penal Code, and therefore, the involvement of other persons in the commission of alleged offence cannot be ruled out. He submits that, though the blood of the accused and also deceased was sent to the C.A.; their blood group is not determined. Though prosecution claims that, C.A. found blood of same blood group on the clothes of the accused as well as deceased, in absence

of determination of blood group of deceased and accused the C.A. report received by the Investigating Officer in respect of having blood stains of same group on clothes of accused as well as deceased is of no avail to the prosecution.

9. We have given careful consideration to the submissions of learned APP appearing for the appellant-State, and learned counsel appearing for the respondents-accused. With their able assistance, perused the entire evidence so as to find out whether the view taken by the trial Court is plausible, and the findings of acquittal recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

10. It appears that, the prosecution examined as many as 22 witnesses. There are details about name of said witnesses etc.,

and the same is extensively discussed by the trial Court, and therefore, it is not necessary to repeat/reproduce their names, suffice it to say that, as and when it is necessary the reference will be made to them.

11. In order to find out whether the death was homicidal, suicidal or accidental, the prosecution examined Dr.Jayantilal Ramnarayan Jaju as PW-5, who carried out the postmortem on the body of deceased Sanjay and found following external injuries on his person:

1. Traumatic amputation of both radius and ulna near wrist joint [right]. Only small flab of skin is attached. Skin edges are slightly bruised and reddish in colour.
2. Incised wound 2" x 1" x muscle deep, spindle shaped, with clean cut skin edges on right deltoid region, horizontal in direction, posterior end is deeper than anterior end, colour red.

3. Traumatic amputation of right index finger at base and of right middle finger in the middle of the proximal phalanx. Skin edges are clean and reddish.
4. Irregular shaped flaps of skin with cutting of deep structures and ulna [left] near wrist joint [left] skin edges are bruised and reddish.
5. Incised wound 4" x 2" bone deep on left forearm anteriorly, in the mid region, horizontal in direction, middle part of wound is deeper than both ends. Skin edges are slightly bruised and reddish.
6. Incised wound 2" x 1" x muscle deep horizontal, middle part of left forearm, posteriorly edges clean cut and red.
7. Incised wound 1" x $\frac{1}{2}$ x bone deep near t0 injury No.6 colour red.
8. Penetrating wound 1" x $\frac{1}{2}$ " x 2" deep on 2nd intercostal space 2 $\frac{1}{2}$ " above left nipple. Edges clean cut and red.

9. Penetrating wound 1" x 1/2" x 2" deep on left 6th intercostal space 1" below and medial to left nipple, edges clean cut and red.
10. Penetrating wound 1" x 1/2" x 2" deep on left 8th intercostal space on anterior axillary line clean cut edges and red in colour.
11. Incised wound 5" x 1" x bone deep horizontal on left temporo-frontal region. The wound is deeper in middle part. Edges are slightly bruised colour red.
12. Incised wound 5" x 1" x bone deep oblique extending from left mastoid process to lower part of left occipital region. The wound is deeper in the middle region. Edges are slightly bruised and red.
13. Incised wound 1" x 1/4" x cutting pinna of left ear. Edges slightly bruised and red.
14. Incised wound 2" x 1" x 1" on lateral aspect of left foot, near

heel. Edges clean cut and red vertical in direction.

15. Multiple stab wounds 1" x 1/2" x muscle deep, 3 [three] on right buttock and 6 [six] on left buttock. Both edges of wounds are clean cut and are elliptical in shape. Blood clots present. Reddish colour.

16. Superficial linear abrasions total 6 [six], measuring various lengths from 4" to 6". Colour reddish.

All these injuries were ante mortem.

12. He has also noticed:

1. Traumatic amputation of both radius and ulna near lower end [right].
2. Traumatic amputation of ulna [left] lower end.
3. Fracture of parietal bone [left] with brain matter seen.

13. In addition to this, the following internal injuries were seen:

1. mastoid process [left] lacerated,

blood clots around both injuries of the scalp of red colour were seen.

2. laceration 2" in length of left parital lobe, with red blood clots and destruction of manages.
3. Punctured wound opposite injury No. 8, 9 and 10 as described in colo No. 17 on left chest.
4. Punctured in pleura, left lung pale. Collapsed and punctured at upper end.
5. Paricardium punctured anteriorly at the apex
6. Heart was empty punctured wound 3/4" in length at apex anteriorly up to left ventricle.
7. ruptured of diaphran of abdomen and peritonium left side, oblique to injury No.10 as described above.

The afore-mentioned injuries are stated to be ante-mortem in nature by Dr.Jayantilal Jaju [PW-5] and opinion

expressed that, Sanjay died on account of shock and hemorrhage due to the injuries. Dr.Jayantilal Jaju [PW-5] noticed 16 external and 7 internal injuries, which are already described in detail herein before. The prosecution proved the postmortem report through Dr.Jayantilal Jaju [PW-5]. The defence disputed time of death of Sanjay and not the findings recorded by PW-5 that, Sanjay died homicidal death.

14. Dr.Jayantilal Jaju [PW-5] stated that, Sanjay died on account of shock and hemorrhage due to injuries mentioned in column nos.17, 18, 19 and 20, and accordingly, he prepared postmortem notes. He stated that, the deceased might have died not less than 12 hours prior to postmortem, and the injuries may be possible by weapons like Articles 7, 8, 14, 15 and 16 shown to him.

During his cross examination, he fairly conceded that, he has not given any opinion about the exact time of death before postmortem. The rigor mortis was seen completely developed on the body, and therefore, the death must be prior to 6 to 12 hours. He stated that, the injuries might have been caused within 12 to 24 hours. The deceased might have been died within 2-3 minutes after receiving injuries. However, he cannot state whether all the injuries sustained were inflicted at one and the same time. He has also stated that, the dead body was cold at the time of inquest. However, he did not mention about the said fact in the postmortem notes. In the medical jurisprudence, the cold means the just like or below room temperature i.e. below 97.3 degree Fahrenheit. The suggestion was given to him that, it will take at least 20 to 24 hours to become a body cold i.e. up to the

room temperature, however, he denied the said suggestion. However, he stated that, it requires around 24 hours.

Two things are clear from his evidence, *firstly* he did not tell the exact time of death, and *secondly*, he could not tell whether all the injuries sustained were inflicted at one and the same time.

15. The prosecution examined Popat Rama Sonwane as PW-1. He is father of deceased. He stated that, Sanjay was in politics since two years and worked with accused Rajesh Sonwane. Accused Rajesh Sonwane was posing himself as the President of Uttar Maharashtra Dalit Panthar. Popat [PW-1] further stated that, accused Rajesh is the son of his real uncle. Accused Rajesh used to come to his house. Accused Rajesh resided with his son for about two years at Jalgaon. He further stated *inter se* relationship between the

accused amongst each other. He further stated that, accused Rajesh used to collect money for the election purpose by cheating the people. Accused Rajesh was dismissed from the post of President, and in his place Sanjay was appointed as President, and therefore, the quarrel used to take place between accused Rajesh and Sanjay. Popat Sonwane [PW-1] has also stated details about enmity developed between Sanjay [deceased] and accused Rajesh after appointment of Sanjay as President of Uttar Maharashtra Dalit Panthar.

Popat Sonwane [PW-1] further stated that, on 10th July, 1998, his son had been to RTO office for license. He came back home at 1.30 p.m. and again he went back to the office at 2.00 p.m. Popat Sonwane [PW-1] came from the office at 6.00 p.m. However, Sanjay did not come as usual by 7.00 p.m. and then the Police came at about 11.30 to 12.00 p.m. in his house, and told him that, Sanjay was

murdered at Paldhi and the dead body was brought to the Civil Hospital. Then he went to the Civil Hospital and noticed injuries all over the body of the Sanjay. Then he went to the Police Station at about 2.00 a.m. He received the dead body of Sanjay on 11th July, 1998.

16. During his cross examination, he stated that, due to appointment of Sanjay as President of Dalit Panthar for Uttar Maharashtra in place of accused Rajesh, he had grudge in his mind. However, Popat [PW-1] did not file any complaint or suit against Rajesh Sonwane prior to the alleged incident. He has denied other suggestions given by the defence counsel. It appears that, the prosecution examined Popat [PW-1] so as to prove the motive. However, it appears from his evidence that, the allegations are general in nature. When the prosecution

examined eye witnesses, the motive loses its importance.

17. It appears that, so far main incident is concerned, as submitted by learned APP, there are two main witnesses namely Taher Subhan Patel [PW-4] and Arun Tarachand Nannaware [PW-11], who alleged to have seen the incident. Taher Patel [PW-4] in his deposition stated that, two years preceding the date of incident, he was serving in the liquor shop of one Narayan Seth at Paldhi. The said shop is at a distance of 25 feet on Chandsar Road. The said shop opens at 9.00 a.m. and closes at 9.00 p.m.

On 10th July, 1998, he was on duty in the shop. At about 4.30 p.m. he came out of the shop for urinal and noticed that, one boy running from Idgaon Nagar area. He was running towards bus stand. Taher [PW-4]

noticed the injuries on his hand. Taher [PW-4] stated that, the distance between liquor shop to bus stand is approximately 150 feet. He saw four persons running after said boy. One person came from Chandsar road on bicycle. The four persons following that boy caught hold him near canal [chari]. They caught hold his collar and fell him down. According to this witness, two assailants were holding knives [suri]; one was holding vastara i.e. an instrument used for the purpose of cutting hair, and remaining two were holding gupti and sickle. One person came on bicycle. He left the bicycle and caught hold the said boy. He was holding sickle. Accused Pitambar was riding cycle. Taher [PW-4] stated the role played by the accused persons, and also identified them before the Court. According to this witness, number of persons gathered at the spot, and the accused were threatening them that, they

would kill them if they report the incident to the Police. The accused persons ran along with weapons. According to this witness, he told the accused that, he will give statement to the Police as the incident had happened near their liquor shop. The accused did not say anything to him and ran away. The prosecution claims that, this witness identified the assailants and also weapons in the Court.

During his cross examination by the defence counsel, he stated that, he went after accused persons to tell them that, he will state the incident to the Police. He went after them at a distance of 150 feet, and then, he went to the shop. One Amrya and one Anna, the servants, were in the shop when he went in the shop. He was there till 9.00 p.m. Anna closed the shop as usual. Number of customers had been to the shop on that day. He did not tell the incident to any of the

customers or Amrya or Anna. The shop is facing towards highway. The place where the boy was lying is at the distance of about 25 feet from said shop. The boy was crying loudly. He did not see Anna or Amrya coming out to the shop to see the incident. The entire incident was continued for half an hour. No police man came on the spot during incident. One of the boy went at the police station and also one Zilla Parishad Member Gulabrao Patil went to the Police Station and lodged the report. Thereafter, the Police arrived at the scene of offence. There was crowd on the spot. He was present at the spot for about 20 minutes and then he came in the shop. The incident was continued for about 10 minutes even after he went back to the shop. He saw the assailants running away from his shop. At the cost of repetition, he stated that, he went on his own to tell the accused that, he is going to depose against them.

He stated that, he does not know full name of any of the accused persons. Then he says that, he knows their full names. He saw the incident from the distance of about 10 feet. He claimed that, he identified all the accused and also identified the weapons in their hands at the time of commission of an offence.

It appears that, though the alleged incident had taken place on 10th July, 1998, he went to the Police Station on 12th July, 1998, at the evening time, to give the statement. He stated that, till that time he did not state the incident to anybody. He admits that, the police asked him as to where he was for two days from the date of incident. He did not tell his owner or to Amrya and Anna that, he went to give statement before the Police. At the cost of repetition, again he stated that, he told the

accused that, he is going to report against them.

If the deposition of this witness is considered in its entirety, it does not inspire confidence. In the first place, he went to the Police Station for recording his statement belatedly on 12th July, 1998. No reasons are forthcoming from him why belatedly he went after two days to give such statement to the Police, and more particularly when he repeatedly told the accused by traveling the distance of 150 feet that he is going to give statement to police and also to depose before the Court for their involvement in the alleged incident. In the first place, it is highly improbable that, he had courage to tell the accused that he is going to give statement to police and depose before Court against them for their involvement in the commission of offence, when they were having deadly weapons in their

hand, and they were threatening that, if anybody reports the incident to the Police, they will kill the said person. If this witness had courage to tell the accused that, he is going to depose against them, in that case his conduct not to tell about the incident to Amrya or Anna or any other person or the owner of the liquor shop, though after the said incident, he was serving in the liquor shop till 9.00 p.m. and giving statement to the Police after two days of incident creates serious doubt about his claim that he actually witnessed the incident. His conduct appears to be unnatural inasmuch as till he went to the Police station and gave statement on 12th July, 1998, he did not tell anything about the incident, either to his other colleagues; who were working with him or the hotel owner or any other person for two days, when he noticed such ghastly incident.

18. Another witness namely Arun Tarachand Nannaware was examined by the prosecution as PW-11. The prosecution claims that, he witnessed the incident. In his evidence before the Court he stated that, he resides in the area known as 'Idganboradi in Paldhi. The same is towards Chandsar road. On 10th July, 1998, he came back from the field work at 2.00 p.m. It was a Friday and there was weekly Bazar of Paldhi. At about 4.00 to 4.30 p.m. he started going towards the place of bazar from his house. When he was proceeding, he found one person coming out from the house of the accused Raju Sonwane. His hand from the wrist was cut. It was not separated but it was bleeding. The said person ran towards bus stand. Four persons from the house of accused Raju Sonwane came out and ran after that person. Accused Pitambar Sonwane came out from the house of accused Raju Sonwane and followed

him on bicycle. Accused Rajesh was holding a suri. He further stated about weapons held by each of the accused in their hands, and accused were saying that, they will not leave said injured person. He went back to his home thinking that, he should not interfere. He further stated that, after waiting for about 15 minutes, he again came out from the house for going to Bazar. When he was proceeding to the place of Bazar, he found all the five accused coming towards the house of Raju. They were holding blood stained weapons. Their clothes were also stained with blood. They were saying that, if anybody tells the Police, they will cut that person in similar fashion. Thereafter, this witness went towards the place of Bazar and found the same person, who ran away from the house of Rajesh lying dead near the water channel [chari] adjacent to the highway. He was not knowing the said person at that time. He identified

the accused persons sitting in the Court room and identified the weapons, which were in their hands. It appears that, the statement was recorded after four days of the incident by the Police on 15th July, 1998. He stated that, he was out of station due to fear for four days from the date of incident.

19. During his cross examination, he stated that, he is not aware about the name of deceased. He did not tell the Police name of the deceased. Santosh Eknath Salunkhe is distantly related to him. He is not aware whether said Santosh Salunkhe is relative of deceased Sanjay. The suggestion was given to him that, there are four lanes in between his house and that of Rajesh Sonwane. However, he denied suggestion and stated that, there is only one lane in between their houses. He further stated that, there is a road from his house, which directly goes to the bus stand. It is not necessary to go to the bus stand by

crossing the house of Rajesh. Rajesh owns one tin house and one hut. Both houses are adjacent to each other.

20. He further stated that, he does not know whether Sanjay came out of the hut or tin shed. He saw him near the gate of the house. He saw him from the distance about 30-40 feet. The number of persons were on the road at that time. However, nobody obstructed accused. It appears that, he was confronted with his statement portion marked 'A' and 'B'. However, he stated that, the said portion was not stated by him to the Investigating Officer. He did not tell Investigating Officer that, all the five persons were saying not to leave Sanjay. He saw the accused person coming back at 4.30 p.m. He might have been at a distance of 500 feet from his house. He did not tell his wife that, he was going out of town after such incident. He admitted that, he went to the

police Station on 15th July, 1998 and gave his statement.

21. Admittedly, he gave statement before the Police after 5 days of the incident. Though he claims that, there is only one lane in between his house and the house of the accused. However, the defence has shown that, there are more than one lanes between the house of PW-11 and the house of accused persons. It has come in the evidence of PW-4 and PW-11 that, the number of persons were on the road; it is a day of weekly Bazar. However, none of the persons, who saw such incident, has promptly given statement to the police.

22. We have also considered the report received from the Chemical Analyzer. Admittedly, the blood group of the accused and the deceased was not determined. In absence of determination of blood group of

accused and the deceased, the report received from the C.A. loses its importance. Be that as it may, the said report can be considered as corroborative piece of evidence. However, since the evidence of PW-4 and PW-11 itself is not trustworthy, the report received from the C.A. is of no use to the prosecution.

23. The trial Court, upon scrutiny and appreciation of the entire evidence brought on record, reached to the conclusion that, the evidence of alleged eye witnesses i.e. Taher [PW-4] and Arun [PW-11] is not trustworthy and does not inspire confidence. As per the prosecution case, though there were number of persons gathered at the spot of incident, and the dead body was lying by the side of the highway, and also it was a day of weekly bazar, none of the persons gave prompt statement to the Police or supported the prosecution case. A mere allegation of enmity is not sufficient to prove the guilt.

The Medical Officer [PW-5] admitted in his cross examination that, he did not tell the exact time of death. There was delay in giving statement to the police by Taher [PW-4] and Arun [PW-11]. There is no corroboration to their evidence. The recovery of weapon is made after lapse of considerable time from the place which is open and accessible to all, and therefore, the said loses its significance. It is further observed by the trial Court that, the dead body alleged to have been shown cool just within half an hour of death, and as per the medical jurisprudence, it seems to be impossibility. The pieces of chapati were found in the stomach of the deceased from which it can be safely stated that, the deceased might have been died within two hours after the last meals. For sake of arguments, the hearsay evidence of Popat [PW-1] is accepted that the deceased took

meals and went to RTO office at 1.00 to 1.30 p.m. still the death of deceased must have been caused not after 3.00 to 3.30 p.m. on 10th July, 1998. The prosecution has not brought on record the evidence to show that as to how the deceased reached at Paldhi from RTO office, Jalgaon. As already stated the deceased was first seen by the prosecution witnesses at 5.00 p.m. coming out of the house of accused Rajesh on 10th July, 1998. If it is accepted that he was coming out of the house of the accused at 5.00 p.m. in that case there are no circumstances / evidence brought on record by the prosecution as to what happened in between 2.00 p.m. to 5.00 p.m., since Sanjay was at Jalgaon in RTO at 2.00 p.m. as per the prosecution case. On the whole the evidence of prosecution witnesses cannot be safely accepted. The possibility that the deceased might have died in between 3.00 to 3.30 p.m. somewhere else and his dead

body might have been brought and left by the side of the high way, also cannot be ruled out. The accused have their immovable properties at Paldhi, and therefore, the villagers knew the accused, in such circumstances, it is highly improbable that, nobody will come forward to disclose the truth.

24. The trial Court has also made reference to the suggestion given by the defence about pendency of criminal cases against deceased Sanjay. The trial Court has also reached to the conclusion that, there is considerable distance between the place where the dead body was found and the house of the accused. The trial Court has also made reference to the evidence of Investigating Officer wherein he has stated that, he interrogated the servants of the liquor shop immediately after the incident but nobody disclosed him the incident. It has come in

the evidence that, the house of the accused is surrounded by hutment and there were number of persons, who witnessed the incident of actual murder as well as alleged incident that had taken place near the house of the accused Rajesh. However, none of the person is coming forward to give the statement to the police. The alleged place of incident where the incident had taken place is just 200 meters from the bus stand and it is near highway and there is also one school and a footpath by the side of the place of incident and on that day there was weekly bazar. It is impossible that, none of the persons, who witnessed such alleged incident, has not given statement to the police. On the whole the trial Court found that, the evidence brought on record by the prosecution does not inspire confidence and it is not safe to convict the accused.

25. Upon independent scrutiny and re-

appreciation of the evidence, and in particular the evidence of eye witnesses, medical evidence and also other evidence, we are of the considered view that, the findings recorded by the trial Court are not perverse and the view taken is plausible. The Supreme Court in the case of **Muralidhar alias Gidda and another Vs. State of Karnataka**¹ in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200,

1. 2014 [4] Mh.L.J.[Cri.] 353

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 supplied]

26. In that view of the matter, we are unable to persuade ourselves to cause interference in the order of acquittal, hence, the appeal stands dismissed. The bail bonds of the respondents-accused shall stand cancelled.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE