

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

CRIMINAL APPEAL NO. 356 OF 1999

The State of Maharashtra .. Appellant
Through – Police Station,
Mahoor, at the instance of
Police Inspector (CID)
Shri B.H. Kachave

Versus

1. Pandurang s/o. Shankar Dhaneshwar .. Respondents
Age.65 years, Occ. PHC B.No.842 [original
accused]
*[Appeal abated against respondent No.1
as per Court's order dated 30.04.2008
passed in Cri.Application No.324/2008]*
2. Taterao s/o. Sudamrao Kamble,
Age. 55 years, Occ. HCB No.1093
3. Kamaji s/o. Tukaram Kadam,
Age. 54 years, Occ. PHC No.795
4. Madhav s/o. Vithalrao Waghmare,
Age. 44 years, Occ. PCB No.1289
5. Pandurang s/o. Mariba Kamble
Age. 44 years, Occ. PCB No.1385,

All R/o. Mahoor, Tq. Kinwat.

Mr.R.V. Dasalkar, A.P.P. for the appellant/State.
Appeal abated against respondent No.1.
Mr.R.S. Deshmukh, Advocate for respondent Nos.2 to 5.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**
RESERVED ON : 14.06.2017
PRONOUNCED ON : 14.09.2017

J U D G M E N T : [PER : S.M.GAVHANE, J.] :-

1. This appeal is directed against the judgment and order dated 03.03.1999, in Sessions Case No.195 of 1988 passed by the IIIrd Additional Sessions Judge, Nanded, acquitting the respondent Nos.1 to 5 [original accused Nos.1 to 5] of the offences punishable under sections 330, 331 and 302 read with section 34 of the Indian Penal Code [for short "the IPC"].

2. Two sessions cases i.e. Sessions Case No.191 of 1988 against accused No.1 - Madhukar Thakaji Aute, accused No.2 - Taterao Sudamrao Kamble [who is also accused No.2 in Sessions Case No.195 of 1988] and accused No.3 - Madhav Vithalrao Waghmare, for the offences punishable under sections 330 and 331 read with section 34 of the IPC and Sessions Case No.195 of 1988 for the

offences punishable under the sections mentioned in para No.1 (supra) of this judgment, against present respondents, were tried together and by the common judgment, dated 03.03.1999 passed by the III Additional Sessions Judge, Nanded, the accused in both the cases were acquitted of the offences with which they were charged.

3. Criminal Appeal No.355 of 1999 was filed by the State against acquittal of accused Nos.1 to 3 in the said case, of the offences punishable under sections 330 and 331 read with section 34 of the IPC with a prayer for leave to appeal. Said prayer for leave to appeal was rejected by the Division Bench of this Court [Coram : Vagyani & Patil,JJ.] by order dated 22.08.2002.

4. The present Criminal Appeal No.356 of 1999 was filed with applications for condonation of delay caused in preferring appeal and for leave to appeal. The delay has been condoned by the Division Bench of this Court

[Coram : Marlapalle & Zoting, JJ.] on 22.07.2002 and the leave to file appeal has been granted by Division Bench of this Court [Coram : Vagyani & Patil, JJ.] as per order dated 22.08.2002. Accused No.1/Respondent No.1-Pandurang s/o. Shankar Dhaneshwar died during pendency of the appeal and hence appeal abated against him as per order dated 30.04.2008. Thus, the appeal proceeded only against respondent Nos.2 to 5.

5. The prosecution case is as under :-

A) In the year 1987, out of accused in Sessions Case No.195 of 1988, accused Nos.1 and 2 were serving as a Police Head Constables while accused Nos.3 to 5 were serving as Police Constables in Police Station, Mahoor, Tq. Kinwat, Dist. Nanded. So also, out of accused in Sessions Case No.191 of 1988, accused Nos.2 and 3 are respectively accused Nos.2 and 4 in Sessions Case No.195 of 1988, and accused No.1-Madhukar Thakaji Aute in said case was Police Sub-Inspector at the relevant time of

incident in 1987 in above said police station. So also, one deceased Police Head Constable Gangadhar Namdev More was attached to the said police station in the year 1987.

B) The deceased Baliram Bhilla Pawar was resident of Ashta Tanda (Wadsa). He was arrested by Police of Mahoor Police Station on 24.06.1987 at about 04.00 p.m. in connection with Crime No.39 of 1987 for the offence punishable under section 380 of the IPC, registered against him in Police Station, Mahoor. The Head Constable – Taterao Kamble [accused No.2 in both the cases] was making investigation in the said crime registered against the deceased – Baliram Pawar. Accused No.2 produced the deceased accused Baliram before the JMFC, Kinwat on 25.06.1987 and the deceased accused Baliram was remanded to Police Custody till 30.06.1987. Thus, the deceased Baliram was in Police custody remand from 25.06.1987 and he was detained in the lock-up of Police Station, Mahoor from 25.06.1987.

C) While the deceased was in police custody and in police lock-up on 29.06.1987 at about 00.30 a.m., accused No.5 – P.C. Pandurang Kamble, who was on wireless duty, found that the deceased was not in police lock-up. So, he informed accused No.1-Pandurang Dhaneshwar, accused No.2-PHC Taterao Kamble and accused No.3-PC Kamaji Kadam, who was PSO of Police Station, Mahoor at that time, deceased PC – Gangadhar Namdeo More and accused No.4 – PC Madhav Waghmare that deceased is not in the police lock-up. So all of them came in front of the police lock up and gave call to the deceased, but there was no response from the deceased. They had noticed that the door of the latrine which is inside the police lock-up was closed. Therefore, they had opened the police lock-up and entered the police lock-up. They gave calls to the deceased by knocking the door of the latrine. But, there was no response from inside the latrine. Therefore, they broke open middle portion of the door of the latrine and removed the inside latch of the said door by inserting hand. After opening the door of the latrine, they noticed

that the deceased has committed suicide by hanging himself with the help of a rope tagging it to the ventilator of the said latrine and his dead body was there in the hanged position. The rope used for hanging was found prepared with the help of Dhoti of the deceased. Therefore, they had called PSI Madhukar Aute to the police station. PSI Aute reached to the police station immediately. PSI Aute informed about the incident to the higher authorities. Thereafter, accused-PHC Kamaji Kadam filed his report to the PSI Aute, stating that deceased Baliram Pawar, who was in the police lock-up of Police Station, Mahoor has committed suicide by hanging in the latrine of the lock-up. On the basis of said report, A.D.No.3 of 1987 was registered under section 174 of the Code of Criminal Procedure in the Police Station, Mahoor, on the same day i.e. on 29.06.1987 at about 00.45 a.m. and information about the same was given to the Executive Magistrate, Kinwat.

D) Thereafter, the Executive Magistrate/Tahsildar,

Kinwat came to the police station. He prepared inquest panchanama of the dead body of the deceased on 29.06.1987 during 02.30 p.m. to 04.30 p.m. The dead body was sent for post-mortem examination in the hospital of Gokunda. In the said hospital, Dr.Sudam Muneshwar [PW-8] conducted post-mortem examination on the dead body of the deceased on 30.06.1987 between 11.00 a.m. to 01.00 p.m. Dr. Muneshwar issued post-mortem report [Exh.92] and opined that the deceased died due to asphyxia caused by hanging secondary to shock. The blue colour underwear on the person of the deceased was seized by PSO, Mahoor on 30.06.1987. CPI Galphade started enquiry in the A.D. No.3 of 1987 and it appears that subsequently enquiry in the said A.D. was made by the complainant-PI Shri B.H. Kachve [PW-9],Special DIG (CID). PI-Kachve on 14.12.1987 in Police Station, Mahoor seized Roll Call [Order Book] of the staff members in the police station from 22.05.1987 to 23.07.1987, which includes allotment of duties to the staff members of the said police station on 28.06.1987, patrolling book of accused No.2-Taterao

Kamble for the period from 27.10.1986 to 16.08.1987, note book of accused No.5-Pandurang Kamble for the period from 01.03.1987 to 21.07.1987, one page panchanama of arrest of deceased accused Baliram Pawar in Crime No.39 of 1987 for the offence under section 380 of the IPC, dated 24.06.1987 and office copy of remand report dated 25.06.1987 with order on it of the JMFC, Kinwat, when the deceased was produced before the said Magistrate, under panchanama in presence of two panchas. So also Shri Kachve wrote a letter dated 09.05.1988 [Exh.57] to Dr.L.K. Bade – Professor and HOD seeking his opinion as to whether injuries at Sr.No.1 to 20 mentioned in column No.17 of the post-mortem report are not injuries and as to whether cause of death given by the Medical Officer on 01.07.1987 that “died due to asphyxia caused by hanging” is correct. Thereafter, he collected opinion of Dr.Bade. Prior to that Circle Police Inspector, Kinwat on 29.06.1987 prepared panchanama of spot of incident i.e. lock-up in Mahoor Police Station, where the dead body was seen hanged, in presence of two panchas. So also

photographs of the dead body in hanging condition [Exhs.60 to 77] were taken. Shri Kachve recorded statements of wife of deceased, Shaikh Hakim [PW-5], to whom the deceased on 28.06.1987 at about 08.00 a.m., while he was being taken to the Government Hospital, as he had stomach ache, on the way disclosed that in the night accused Aute, Kamble and PC Waghmare had beaten him on his stomach by fist and kick blows and therefore there was pain, and Shaikh Yasin [PW-4] who was sleeping near the lock up in Mahoor Police Station in the night intervening between 28.06.1987 and 29.06.1987, where the deceased was kept, who allegedly saw the accused assaulting the deceased for extracting information in the crime registered against him.

E) Thereafter, PI – Kachve on the basis of material collected in the enquiry in A.D. Case No.3 of 1987 found that the accused are responsible for death of the deceased. Therefore, on 19.03.1988, he lodged complaint/ FIR in Police Station, Mahoor on behalf of the State

alleging that while the deceased was in the police lock-up in the night intervening between 27.06.1987 to 28.06.1987, accused Nos.1 to 3 in Sessions Case No.191 of 1988 beat the deceased by fist and kick blows. Therefore, he had pains in his stomach. Therefore, when he was being taken to the hospital by accused Nos.2 and 3 in the said case on 28.06.1987 at about 08.00 a.m., the deceased disclosed the same to PW-2 Mangalsing and requested said Mangalsing to save him. After medical examination on the said date, the deceased was again detained in the lock-up of Police Station, Mahoor. All accused Nos.1 to 5 in Sessions Case No.195 of 1988 were on duty in Police Station, Mahoor at 08.00 p.m. of 28.06.1987 to 08.00 a.m. of 29.06.1987. In the night intervening between 28.06.1987 and 29.06.1987, PW-4 Shaikh Yasin, who used to sleep in Police Station, Mahoor and who was sleeping in the Police Station at the said night, had seen at about 00.30 a.m. that accused No.1 and accused No.4 had assaulted the deceased by fist and kick blows. Therefore, the deceased became unconscious. After

sometime, accused No.3 prepared white rope in front of police lock up in Police Station, Mahoor in the said night at about 00.30 a.m. It is alleged that deceased sustained injury while he was in Police Custody due to the assault by the accused for extracting information about the articles of theft from the deceased in Crime No.29 of 1987, for the offence punishable under section 380 read with section 34 of the IPC, registered against him. Treating the said complaint of PI Kachve [PW-9] as FIR, crime No.19 of 1988 for the offence punishable under sections 330 and 331 read with section 34 of the IPC came to be registered against all the accused Nos.1 to 5/present respondents in Police Station, Mahoor and the investigation was carried by him i.e. PW-9 – PI Kachve.

F) During investigation, PI-Kachve [PW-9] seized canvas belt on 19.03.1988. He had sent the seized muddemal articles to the Chemical Analyser for analysis and report. He collected report of the Chemical Analyser. It appears that subsequently, offence under section 302

of the IPC was added in the crime already registered against the accused. After completion of the investigation PI – Kachve submitted charge-sheet in the Court of the JMFC, Kinwat against the respondents/accused for the offence punishable under sections 302, 330 and 331 read with section 34 of the IPC. As the offence under section 302 of the IPC was triable by the Sessions Court, the learned JMFC, Kinwat committed the case to the Court of Sessions, Nanded, where it came to be registered as Sessions Case No.195 of 1988 and made over to IIIrd Additional Sessions Judge, Nanded.

G) Learned III Additional Sessions Judge, Nanded framed the charge against the respondents/accused for the offence punishable under sections 302, 330 and 331 read with section 34 of the IPC, to which the accused pleaded not guilty and claimed to be tried. Their defence as it appears from the trend of the cross-examination of the prosecution witnesses and their statements under section 313 of the Code of Criminal Procedure is that death of

the deceased is suicidal and therefore they are not responsible for death of the deceased.

H) Sessions Case No.195 of 1988 against the respondents/accused and Sessions Case No.191 of 1988 against in all three accused (including present respondent Nos.2 and 4) were tried together for the offences stated earlier and common evidence was recorded in Sessions Case No.195 of 1988. The prosecution has examined in all nine witnesses and relied upon the panchanamas and documents referred to earlier. On appreciating the evidence, the learned Additional Sessions Judge, acquitted the respondent/accused in Sessions Case No.195 of 1988 of the offences punishable under sections 302, 330, 331 read with section 34 of the IPC as well as accused Nos.1 to 3 in Sessions Case No.191 of 1988 of the offence punishable under sections 330 and 331 of the IPC, by common judgment and order dated 03.03.1999 in both the cases.

I) Aggrieved by the above said common judgment and order in both the Sessions cases, Criminal Appeal bearing No.356 of 1999 came to be filed against acquittal of accused in Sessions Case No.195 of 1988, while Criminal Appeal No. 355 of 1999 came to be filed against acquittal of accused in Sessions Case No. 191 of 1988 with leave to appeal. As said earlier, leave to appeal in respect of acquittal of accused in Sessions Case No.191 of 1988 was rejected and leave to appeal against acquittal of the respondents/accused in Sessions Case No.195 of 1988 was granted. Thus, this appeal against acquittal of the respondents/accused in Sessions Case No.195 of 1988.

6. Learned APP appearing for the appellant/State has submitted that the impugned judgment and order is against the principal of law. The Trial Court has failed to appreciate the oral and documentary evidence properly and as such miscarriage of justice has been caused. The Trial Court has wrongly discarded the evidence of PW-2 Mangalsingh and PW-4 Shaikh Yasin. So also, it has failed

to consider evidence of PW-7 Dr. Pawade, who examined the deceased and noticed epic gastric tenderness and that liver and spleen were not palpable. The Trial Court has wrongly discarded the post-mortem report of Dr. Bade as well as Muneshwar. So also, it has wrongly discarded the evidence of PW-5 Shaikh Hakim. The death of the deceased was caused while he was in police custody and therefore it was bounden duty of respondent No.1 accused to explain in what circumstances death of the deceased was caused. So also, the Trial Court has not properly considered the evidence of PW-6 Bainabai – wife of the deceased. PW-8 Dr. Muneshwar, who conducted post mortem examination and found in all 20 contusions on the palmer region of both the hands and sole of both the feet of the deceased. Ligature encircled by and around neck with marking of knot $16 \frac{1}{2} \times 1 \frac{1}{2}$ inch incised. The age of the said injury was within one hour prior to death. Moreover, Doctor stated that there was fracture of right greater corm of the left 9th rib, 1 inch away from costochondral junction, which goes to show that the death of the

deceased was homicidal. Thus, learned APP has claimed to quash and set aside the impugned judgment and order and to convict the respondents/accused i.e. accused Nos.2 to 5 for the offences with which they were charged by allowing the appeal.

7. The learned APP, to support his submissions that evidence of PW-2 was sufficient to attract the offence alleged against the accused and that the said solitary evidence is trustworthy, has relied upon the ratio laid down in the case of **Masalti Vs. State of Uttar Pradesh, 1965 AIR (SC) 202**, wherein it has been held that under the India Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, where an evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. But, where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the

conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. It is no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt the test like the one which the High Court has adopted in dealing with the present case.

8. So also, learned APP for the State in support of his submission also relied upon ratio in the case of **Mohan s/o. Mahadeo Lohare Vs. State of Maharashtra, 2003 (1) Mh.L.J.940,** and in para 17 of said decision, it has been observed as under :-

17. It must be borne in mind that the Court should always be slow in acting on the evidence of hostile witness and, as a rule of prudence, it should require corroboration by other reliable evidence. The evidence of hostile witness may not be rejected outright because such witness makes different statements at

different times. Some witnesses may choose not to support the prosecution before the Court and turn hostile. However, that by itself would not prevent the Court from finding any accused guilty of the charge, if there is otherwise acceptable evidence in support of the prosecution. When a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no reason to reject his testimony in toto. The Court is not precluded from taking into account the statement of a hostile witness. In fact, it is not necessary to discard the same in toto and can be relied on partly, provided the statement of such hostile witness elucidated in the cross-examination by the Public Prosecutor inspires confidence. Hostile witness is not necessarily a false witness. Granting of permission by the Court to the Public Prosecutor to cross-examine his own witness does not amount to an adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse to the party calling him and not that the witness is wholly untruthful. Mere fact that the cross-examination of a witness by the party calling him does not make him unreliable so as to exclude the evidence from the consideration altogether. Similarly, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relevant effect of his testimony. Merely because the prosecution obtains permission to cross-examine a witness by treating him as hostile, it would not efface the value of the evidence of the hostile witness. If such evidence is corroborated by other evidence, there is no legal bar to convict the accused. It must also be borne in mind that the testimony of a hostile witness is acceptable to the extent it

is corroborated by that of a reliable evidence. On the backdrop of this legal position, there is absolutely no quarrel with the proposition laid down by the Apex Court as well as the Division Bench of this Court in the above referred cases, cited supra by the learned Addl. Public Prosecutor. However, what is pertinent is to see whether the evidence of such hostile witness is corroborated by the other evidence adduced by the prosecution in order to unfold the prosecution case.

9. On the other hand, learned Advocate appearing for the respondents/accused submitted that 21 injuries mentioned in the post-mortem report are not mentioned in the inquest panchanama. In the post mortem report in column No.18, fracture of right greater corm of arid bone and fracture of left 9th rib is mentioned and said injuries are ante-mortem. However, it is clear from the cause of death given in post-mortem report that the death was caused due to asphyxia caused by hanging, secondary to shock and therefore it cannot be said that death of the deceased was caused due to injuries, as argued by the learned APP. The learned Advocate further submitted that the view taken by the Trial Court that the prosecution

has failed to prove offences alleged against the accused is a possible view and it is not the case that there is error in appreciating the evidence by the Trial Court. Therefore, according to learned Advocate appearing for the accused, there is no ground to interfere with the impugned judgment and order of acquittal of the accused and as such he has prayed to dismiss the appeal.

10. To support his submissions, learned Advocate for the respondents has relied upon the decision in the case of Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108, and Bihari Nath Goswami Vs. Shiv Kumar Singh, 2004 (9) SCC 186. In the case of Krishan Chander (Supra), it was held that when a prosecution witness turns hostile, his testimony cannot be discarded altogether. In the case of Bihari Nath (Supra), it was held that in case of appeal against acquittal, interference by the Appellate Court is permissible only when there was clinching and substantial reason for doing so. We have perused the facts and ratio laid down in both the decisions.

11. Since this appeal is against acquittal, it is necessary to refer to the guidelines given in Murlidhar alias Gidda and another Vs State of Karnataka, (2014) 5 SCC 730 wherein in para No.12, the Apex Court has held thus:

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulshiram 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. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (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. Gopalkrishna,

(2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, 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 power 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 findings 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 of 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."

12. There is no dispute that against the deceased – Baliram, Crime No.39 of 1987 for the offence punishable under section 380 of the IPC was registered in Police Station, Mahoor, on the complaint of one Shivram Pawar and in connection with the said crime, the deceased was arrested by the Police Station, Mahoor on 24.06.1987. He was remanded to police custody from 25.06.1987 till 30.06.1987 and in the meantime when he was in lock up of Police Station, Mahoor, he died in the night intervening between 28.06.1987 to 29.06.1987.

13. The case of the prosecution is that for extracting information about the above said crime registered against the deceased, the accused assaulted him and therefore death of the deceased was homicidal; while according to the accused the deceased committed suicide while he was in the lock up-of Police Station, Mahoor. To prove homicidal death of the deceased, the

prosecution has relied upon evidence of Dr. Sudam Muneshwar [PW-8], post-mortem report [Exh.92], letter [Exh.94] addressed to Dr. Muneshwar by Police Inspector, CID Crime, Nanded, reply [Exh.95] given to the said letter by Dr. Muneshwar and opinion Exh.57 given by Dr. Bade to PSI, CID Crime, Nanded, reply to letter of PSI, CID Branch dated 28.04.1988 and panchanama of spot of incident [Exh.55] prepared by the Tahsildar, Kinwat, Camp at Mahoor, where dead body was found in hanged condition and another panchanama of spot of incident [Exh.59].

14. Dr. Sudam Muneshwar [PW-8] has deposed that on 29.08.1987 at 11.15 p.m. the dead body of the deceased Baliram was brought to morgue by Head Constable Mathpati and Sukhdeo Mohan as it was referred by the Tahsildar, Kinwat along with requisition letter. He conducted post-mortem examination on the dead body on 30.06.1987 between 11.15 p.m. to 01.00 a.m. According to Dr. Muneshwar, on external examination, he found following injuries on the deadbody:-

1. Contusion on the thenar eminence of the left hand 3" x 2" irregular shape, margins raised with below upward direction, within 24 hours, hard and blunt.
2. Contusion on the hypothenar eminence of the left hand, 3" x 1 ½" irregular shape, margins raised with below upward direction within 24 hours, hard and blunt.
3. Contusion on the left palm, 4" x 1 ½" irregular shape, margins raised, with transverse direction.
4. Contusion on the palmar surface of the left index finger, 2" x 2/4", irregular shape, margins are raised with below upward direction.
5. Contusion on the palmar surface of the left middle finger, 2 ¼" x 3/4" irregular shape, margins are raised with below upward direction.
6. Contusion on the palmar surface of the left ring finger, 2 ¼" x 3/4", irregular shape, margins are raised with below upward direction.
7. Contusion on the palmar surface of the left little finger, 2" x 1/2" irregular shape, margins are raised below upward direction.
8. Contusion on the palmar surface of the left thumb 2 1/4" x 3/4", irregular shape, margins are raised with below upward direction.
9. Contusion on the thenar eminence of the right hand 3" x 2" irregular shape, margins are raised with below upward direction.

10. Contusion on the hypothenar eminence of the right hand, 2 $\frac{1}{2}$ " x $\frac{1}{4}$ ", irregular shape, margins are raised with below upward direction.

11. Contusion on the right palm, 4" x 2 $\frac{1}{4}$ ", irregular shape, margin raised with transverse direction.

12. Contusion on the palmar surface of the right index finger, 2 $\frac{1}{2}$ " x $\frac{3}{4}$ " irregular shape, margins are raised with below upward direction.

13. Contusion on the palmar surface of the right middle finger, 2 $\frac{1}{3}$ " x $\frac{3}{4}$ ", irregular shape, margins are raised with below upward direction.

14. Contusion, on the palmar surface of the right ring finger, 2" x $\frac{1}{2}$ ", irregular shape, margins are raised with below upward direction.

15. Contusion on the palmar surface of the right little finger, 2" x $\frac{1}{2}$ ", irregular shape, margins are raised below upward direction.

16. Contusion on the palmar surface of the right thumb 2 $\frac{1}{4}$ " x $\frac{3}{4}$ " irregular shape, margins are raised below upward direction.

17. Contusion on the sole of the right foot, 5" x 4" irregular shape, margins are raised with antero-posterior direction.

18. Contusion on the sole of the left foot, 5 $\frac{1}{2}$ " x 4" irregular shape, margins are raised with antero posterior direction.

19. Contusion on the left hypocendrium, 3" x 2" irregular shape, margins are raised with transverse direction.

20. Contusion on the epigestrium, 2 1/2" x 2", oval in shape, margins are raised.

. According to Dr. Muneshwar the age of above injury Nos.1 to 20 was within 24 hours. They were caused by hard and blunt object. The injury Nos.1 to 20 were sufficient to cause shock. Dr. Muneshwar further deposed about injury No.21, which is as under :-

"Contused groove of the ligature encircled on the around the neck and interrupted below the right mastoid process at the site of the knot with marking of knot 16 1/2" x 1/2 ", encircled shape, margins raised and congested. Direction from above the thyroid cartilage and directed obliquely upward laterally and backward and encircled the whole neck."

15. According to Dr. Muneshwar the age of said injury was within one hour prior to death. The type of weapon was rope and nature of injury was grievous. He stated that the above injuries were ante-mortem injuries. He stated that on palpation of fracture of right greater corm of thyroid bones within one hour prior to death was

noticed. So also he deposed that there was fracture of left 9th rib, 1 inch away from costochondral junction caused within one hour prior to death by hard and blunt object, which was grievous. He found following internal injuries:-

Thorax – left side 9th rib was fractured, 1" away from its costochondral junction.

Larynx - traches and bronchi-congested, trachea and bronchi contains bloodstained fluid.

Right lung – congested.

Left lung – congested.

Right atrium and right ventricle contains blood.

Abdomen – Contusions were present on the elrigasterum and hyporendrum as shown in column No.17.

Peritoneum – ruptured corresponding to the right side of the injury on spleen.

16. Dr. Muneshwar further deposed that in his opinion the cause of death of the deceased was due to "asphyxia caused by hanging secondary to shock". Accordingly he issued post-mortem report Exh.92. He stated that above mentioned injuries on the person of the

deceased were sufficient to cause death of the deceased in ordinary course of nature.

17. In the cross-examination, Dr. Muneshwar has admitted that in Kinwat Police Station, Crime No.40/88 was registered against him on the allegation of giving contrary opinion to post-mortem examination. He volunteers that the said crime was registered against him falsely with intention that he would not stand in the present case as a witness in the capacity of medical officer. He also stated that he had given opinion on 01.07.1987. So also he stated that on 01.07.1987 he had given short opinion [provisional cause of death certificate] and he opined that the death was caused due to asphyxia caused by hanging. He had denied that he had issued certificate as to cause of death at the instance of PI Kachve.

18. The post-mortem report Exh.92 issued by Dr. Muneshwar also shows that said Doctor noticed external as

well as internal injuries as noted above on the person of the deceased, at the time of conducting post mortem examination and further it also shows that deceased died due to asphyxia caused by hanging secondary to shock. Thus, on the basis of evidence of Dr.Muneshwar [PW-8] and post mortem report Exh.92, an inference can be drawn that said Doctor noticed fracture of ribs of the deceased and on the basis of said evidence of the Doctor and post mortem report, an inference can be drawn that the deceased died due to asphyxia caused due to hanging secondary to shock.

19. As per prosecution case during investigation on 26.01.1988 letter was sent to Dr.Bade by the Investigating Officer and his opinion was sought on the post mortem report Exh.92 and said Doctor issued letter Exh.57 dated 09.05.1988 in the form of his opinion as requested by the Investigating Officer. On perusal of said opinion/letter Exh.57, Dr. Bade has opined that the injuries mentioned in column No.17 are not injuries. In

black and white photograph No.2 there is a ligature mark and the position of the ligature is as observed in a case of hanging and most of the time it is suicidal, so also he opined that in coloured photograph No.1, there is streak of dribbling of saliva from the mouth and it is important finding in case of hanging. Moreover, finally he opined that the injuries mentioned in column No.17, Sr.Nos.1 to 20 are not injuries. The cause of death given by the Medical Officer on 01.07.1987 that the deceased died due to asphyxia caused by hanging is correct. Thus, there is consistency in the evidence of Dr.Muneshwar, opinion Exh.57 given by Dr. Bade and PM report Exh.92 regarding cause of death i.e. death due to asphyxia caused by hanging.

20. The panchanama of spot of incident Exh.55 prepared by the Tahsildar, Kinwat during enquiry of A.D. Case No.3 of 1987 shows that panchanama of spot of incident i.e. the lock-up in Mahoor Police Station along with latrine in the said lock up was prepared by the

Tahsildar in presence of three panchas on 29.06.1987 and at the time of said panchanama, it was noticed that in the latrine the dead body was hanged to the ventilation and height of the said ventilation was 8 ½ feet and the dead body was hanged with the help of rope prepared with Dhoti. So also another panchanama of spot of incident Exh.59 shows that it was prepared in presence of panchas including panch PW-1 Baburao Mundade. In the said panchanama the situation of spot of incident i.e. lock up in Mahoor Police Station and latrine in the said lock was noted in the detail as well as about 12 articles including 3'5" rope of dhoti were seized as per the said panchanama. Moreover, it is noted in the said panchanama that at the time of inspection of latrine, panchas and enquiry officer in A.D.Case – Circle Police Inspector noticed signs of fingers of foot on the wall, suggesting that the deceased climbed before he hanged himself with the help of rope tied to the ventilation. Thus, the above referred circumstances noted in panchanama Exh.55 and 59 about situation of the spot of incident and the

fact that the dead body was found in hanged condition in the latrine in the lock-up also suggest that the death of the deceased was caused due to hanging.

21. So also, panch-Bapurao Satwaji Mungale (PW-1) in whose presence spot panchanama (Exh.55 as per record and Exh.42 as per deposition) was prepared has also stated that he was shown one room i.e. lock-up. It was having a door with net. He entered the lock up. One Dhoti was spread on the floor. The borders of the Dhoti were in torn condition. One gunny bag was lying on the Dhoti. There was one latrine attached to the lock-up. The latrine was having door, but one plank of the door was broken and was lying there. There was one window to the latrine. He also found that the dead body of one Baliram Bhila Pawar was hanging by a rope made of border of Dhoti and it was tied with the bars of the window. He stated that he found that there were marks of fingers of one leg on the wall. So also, in the cross-examination, he stated that height of the room was 9 to 10 ft. The same

was height of latrine. The ventilation of latrine was at a height 7 ft from the floor. The finger prints of the foot were found on the upper portion of tap of water. He stated that one iron bar was lying near the latrine. There was no visible injury on the person of the deceased except ligature mark. Thus, the evidence of PW-1 shows that he saw the dead body in hanged condition in the latrine in the lock-up of police station. He was called for preparing panchanama of spot of incident Exh.55. Moreover, he also noticed ligature marks on the neck of the deceased. The evidence of Dr.Muneshwar, post mortem report Exh.92 and opinion Exh.57 given by Dr.Bade show that there was ligature mark on the neck of the deceased, which ligature marks are seen in case of hanging. It is clear that ligature marks encircled shape margin raised which obliquely upwards, laterally upward and encircled whole neck as per external injury No.21 noted by Dr. Muneshwar were found and therefore it can be said on the basis of it that the death of the deceased was caused due to hanging and his death was suicidal.

22. It is true that as per the evidence of Dr. Muneshwar [PW-8] internal injuries i.e. left side 9th rib was fractured 1 inch away from its costochondral junction and peritoneum rupture corresponding to right side of injury on spleen was noticed. But, merely because said internal injuries were noticed by the doctor at the time of post mortem examination and Dr. Muneshwar as per Exh.94 opined that rupture of spleen mentioned in column No.21 of post mortem report is sufficient in ordinary course of nature to cause death is not sufficient to say that death of the deceased was caused due to said injury as Dr. Muneshwar as well as Dr. Bade have stated that the death of the deceased was caused due to asphyxia caused by hanging secondary to shock. Another reason to say so is that it is not the case of the prosecution that the accused strangled the deceased with the help of rope and caused his death. For the above reasons, we hold that the prosecution has failed to prove beyond doubt that death of the deceased is homicidal and the Trial

Court has rightly held so, by answering point No.3 in the negative.

23. It is held that the prosecution has failed to prove that death of the deceased is homicidal and it is found that the death of the deceased is suicidal. Assuming for the sake of argument that the death of the deceased is homicidal, let us consider whether the accused are responsible for death of the deceased, for causing injuries to him as alleged by the prosecution and committed offences punishable under sections 302, 330 and 331 read with section 34 of the IPC as alleged by the prosecution. To prove these offences, the prosecution has mainly relied upon evidence of eye witnesses PWs 2,4 and 5, Dr. Jivan Pawade [PW-7], the Investigating Officer [PW-9] and CA Report Exh.106.

24. Now coming to the evidence of Mangalsingh Jadhav [PW-2], he stated that the deceased was arrested by Mahoor Police Station on 24.06.1987 and Police took his

remand. On 28.06.1987 he reached at Mahoor S.T. Stand at about 8.00 a.m. to 9.00 a.m. and alighted from the bus. Thereafter, he was standing near Pan shop of one Osman. At that time he saw Baliram Pawar (deceased) along with 2-3 constables. The deceased was handcuffed. Among three constables with the deceased one was Kadam [accused No.3] and another was Taterao [accused No.2] and that he does not know name of third police person. He deposed that the deceased gave call to him and the deceased informed him that police persons are beating him and he requested him to save him. He deposed that he requested Taterao not to beat deceased Baliram and Taterao said to him that till that time the deceased was simply beaten and onwards he will be illtreated by putting chili powder on his person. The police persons took deceased to the hospital. Then he proceeded for his work.

25. In the cross-examination PW-2 has admitted that on the complaint of Bharat Ramesh Jadhav, offence was registered against him on the allegation that on

06.01.1987 he caused damage to his crops. He stated that he does not remember if there was Chapter Case No.15 of 1987 made against him. He admitted that he was prosecuted in connection with the offence of rioting under section 353 and 332 of the IPC regarding incident dated 29.06.1987 as per Crime No.46 of 1987 of Mahoor Police Station. He stated that he had told police while giving statement that deceased Baliram gave call to him, but he could not assign reason for omission of the same in his statement. Thus, his evidence that the deceased gave call to him is omission in his statement before police and there was improvement while deposing before the Court. He, of-course, denied that he had no meeting with the deceased and no talk took place with the deceased and Head Constable Taterao. He denied that he is deposing false against accused as Head Constable Taterao and Head Constable Kadam filed criminal case against him. So also he denied that there were police cases against him in Mahoor police station and therefore he had unrest against police persons of said police

station and because of vengeance he is deposing false against the accused. When there was omission as above in the statement before police of this witness that deceased Baliram had called him and when there were cases against him registered in Mahoor Police Station as noted above, his evidence that deceased told him that three police constables including accused Nos. 2 and 3 who were taking the deceased to the hospital, had beaten to him and the deceased requested him to save him and thereupon he requested police head constable accused Nos. 2 and 3 not to beat the deceased is not believable. Another aspect to be noted is that even if it is said that he met deceased on 28.06.1987 and deceased had told him that accused beat him as claimed by him, that does not mean that particular accused has assaulted deceased at a particular time and caused particular injury to deceased, so as to say that due to said injury the death of the deceased was caused. Another reason to arrive at this conclusion is that PW-2 is not witness to the alleged beating to the deceased by accused Nos.2 and 3 and his evidence is of hear-say

nature.

26. The evidence of PW-4 Shaikh Yasin [PW-4] is that the incident took place about 10 years before. He had gone to Police Station, Mahoor at about 9.00 p.m. and went to sleep in police station at short distance from lock-up. In that night accused No.3 HC Kadam and accused No.5 PC Pandurang Kamble were on duty in the police station. In that night at about 01.00 a.m., he woke up for urine and thereafter he came back to his place. At that time accused No.5 was on duty near wireless, which was near lock-up. Accused No.5 gave call to one culprit who was inside the lock-up, but said culprit did not give any response. Thereafter, PW-5 focused light of torch inside lock-up, but the culprit was not seen. Therefore, accused No.3 picked key and opened the lock-up and at that time accused HC Dhaneshwar [since deceased], accused No.2-Taterao Kamble and PC Mahadeo Waghmare [accused No.4], who were in another room in the police station came near police lock up. They noticed that the culprit

was not in the police lock-up. He deposed that he therefore gave push to the door of latrine but the door did not open. Thereafter, accused No.1 brought Kusa and gave it to him. He with the aid of Kusa broke the latrine door. Then by putting his hand inside, he removed insite bolt of the door and the door was opened. After opening the door, he saw the culprit in hanging condition to the latrine ventilator. Then, they all came out. Thereafter, one police person went to call PSI Aute. PSI Aute came and rebuked/scolded police persons for breaking the door of latrine. He stated that then he went to bed to sleep in police station and he came to know that said culprit was Baliram. He has not supported the prosecution case as he has denied portions marked "A" and "B" in his statement before Tahsildar that the accused in lock up demanded water to him, while he was giving water to the accused Mohril Dhaneshwar and Police Constable Waghmare came there and abused him saying whether he was giving water, then asked him to go to sleep and that in the night at about 12.30 hours he had

heard noise of shouts from the police station and he woke up and when he went to lock up, he heard shouts from the lock-up and saw that Mohril Dhaneshwar and Head Constable Waghmare were giving fist and kick blows and assaulting with the help of belt to the deceased etc. Thus, on the basis of evidence of this witness at the most it can be said that in the night of the incident, the deceased was found in the latrine of the police lock up in hanging condition and his evidence is of no help to the prosecution to state that accused assaulted deceased and caused his death as alleged.

27. The next eye witness is PW-5 Shaikh Hakim who had allegedly met deceased on 28.06.1987 at 08.30 a.m. and while deceased was being taken to Government Hospital, the deceased gave him call and told him about the beating to him by the accused, has not supported the prosecution, as he has denied portion marked "A", in his statement before police that on 26.06.1987 in the morning at 08.30 a.m. while he was proceeding from bus stand

towards Kumbhar Galli from different side of Government Hospital, the deceased gave him call and at that time the deceased was with two police persons and he was handcuffed and the deceased told him that in the night Aute Saheb, Jamadar Kamble and Police Constable Waghmare severely beat him by fist and kick blows and there is stomach pain and he said him to look after him.

28. PI Kachve [PW-9] Investigating Officer has stated that portions marked "A" and "B" in the statement of PW-4 are correct which are marked at Exh.123 and portion marked "A" in statement of PW-5 is correct which is marked at Exh.124. But when PWs-4 and 5 have denied truth of above referred portions marked Exh.123 and 124 in their statements, said portion marks are of no help to the prosecution to connect the accused with the death of the deceased.

29. The evidence of Dr. Jivan Pawade [PW-7] is that while he was attached to Primary Health Center, Mahoor as

a Medical Officer, on 28.06.1987 patient Baliram Bhila Pawar/deceased was brought by police constable Shelke in the morning for treatment, who was complaining of pain in his abdomen since morning. According to him, on examination he found general condition of the patient was fair and on local examination he found epigastric tenderness present and that liver/spleen not palpable. He stated that there was no external sign on injury over the abdomen and accordingly Exh.84 certificate was issued. He was not cross-examined on behalf of the accused. Exh.84 certificate issued by this Doctor does not show that the deceased made any complaint to the Doctor against the accused alleging that he was assaulted by the accused. Had it been the case that the deceased would have been assaulted by any of the accused while he was in custody of the police, earlier to his examination on 28.06.1987, he would have definitely made complaint against accused to the Doctor. Therefore, merely because there was pain in the abdomen of the deceased, when he was examined by the Doctor as above, it cannot be said

that the accused were responsible for pain in abdomen or that his death was caused due to said pain when cause of his death was asphyxia due to hanging. As observed earlier, the evidence of Dr. Pawade [PW-7] is of no help to connect the accused with the death of the deceased.

30. For the reasons discussed above, the evidence of PWs 2,4,5 and 9 is no help to the prosecution to state that the accused assaulted deceased in the night intervening between 28.06.1987 and 29.06.1987 and as a result, caused him injuries which resulted into his death as alleged.

31. The next evidence relied upon by the prosecution is Exh.106 – report of Chemical Analyzer in respect of analysis of cut chuddi [underwear] of the deceased, which shows that human blood was detected on the said article. When the alleged eye witnesses PWs 2,4 and 5 have not supported the prosecution case, it cannot be said that human blood found on the cut chuddi of the deceased was

due to injuries caused by the accused. Therefore, the Chemical Analyzer's report is of no help to the prosecution to connect the accused with the death of the deceased. So also the evidence referred to above is not sufficient to infer that all the accused Nos.1 to 5 caused hurt or grievous hurt to the deceased. As such, we hold that the prosecution has failed to prove offence under sections 302, 330 and 331 read with section 34 of the IPC against the accused.

32. The Trial Court has properly appreciated the evidence adduced by the prosecution and on observing that the prosecution has failed to prove the above said offences beyond reasonable doubt against the accused/ respondents, rightly acquitted the accused of the offences punishable under sections 302, 330 and 331 read with section 34 of the IPC by the impugned judgment and order. The said view taken by the Trial Court is thus reasonably possible view and it is not the case that findings recorded or the reasons given by the Trial Court

are perverse or erroneous. Therefore, there is no reason to interfere with the impugned judgment and order of acquittal of the accused. Therefore, the appeal being devoid of merits, same is liable to be dismissed. Accordingly, we dismiss the same. Bail bonds, if any, of the accused/respondent Nos.2 to 5 stand cancelled.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]