

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

CRIMINAL APPEAL NO. 371 OF 1999

The State of Maharashtra
Through P.I.
Hingoli (Rural) Police Station,
Tq. & Dist. Hingoli

APPELLANT

-VERSUS-

1. Parshu S/o Ramji Khillare
Age : 55 years, Occ : Agri.,
2. Dhanaji Parshuram Khillare
Age : 23 years, Occ : Agri.,
3. Natha Namdeo Sirsat
Age : 45 years, Occ : Agri.,
4. Shamrao Sonaji Jamdhade
Age : 32 years, Occ : Agri
(Dead),
5. Daulat Parshu Killare
Age : 27 years, Occ : Agri.,
(Dead)
6. Dinkar Shampati Dhavase
Age : 27 years, Occ : Agri.,
7. Punjaji Maribad Dhavase
Age : 28 years, Occ : Agri.,
8. Pratap Amruta Dhavase
Age : 29 years, Occ : Agri.,
9. Rajkumar Maroti Gavali
Age : 21 years, Occ : Agri.,

10. Mariba Punjaji Dhavse
Age : 32 years, Occ : Agri.,
11. Udhav Maroti Gavali
Age : 25 years, Occ : Agri.,
12. Maroti Ghanshayam Gavali
Age : 50 years, Occ : Agri.,
13. Namdeo Natha Sirsat
Age : 30 years, Occ : Agri.,
14. Jairam Sambhaji Dahavase
Age : 45 years, Occ : Agri.,
15. Tatyrao Chapati Dhavse
Age : 27 years, Occ : Agri.,

All R/o Devthana,
Tq. & Dist. Hingoli.

RESPONDENTS

...

Mr. R.V. Dasalkar, APP for appellant-State.
Mr. P.M. Gaikwad, Advocate for respondent nos. 1
to 3 and 6 to 15.

...

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

**DATE OF RESERVING JUDGMENT : 20th JUNE, 2017.
DATE OF PRONOUNCING JUDGMENT: 4th JULY, 2017.**

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

This appeal is filed by the State

challenging the judgment and order of acquittal dated 17th June, 1999 passed by the Additional Sessions Judge, Hingoli in Sessions Trial No. 28 of 1995, thereby acquitting the respondents i.e. original accused nos. 1 to 3 and 5 to 15 for the offences punishable under Sections 147, 148, 302, 337, 149 of the Indian Penal Code (for short "I.P.C.").

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

A) The first information report (for short "F.I.R.") against all accused persons Exh.60 dated 23rd May, 1994 was filed by Mokinda Kishan Dhawse, resident of Devthana, Tq. Hingoli with Police Station, Hingoli (Rural). Deceased Bhima was elder brother and Vishwanath is younger brother of the informant. All three brothers were living separately from last ten years. At about five to six months before the incident dated 22nd May,

1994, Kailash son of Maroti Gavli died in an accident at Dhamni Phata-Kalamnuri road. Accused Maroti and others were thinking that, deceased Bhima has committed murder of Kailash and in said matter, Bhima was arrested for few days and then was released.

B) It is the case of the prosecution that, on 22nd May, 1994, informant Mokinda was sitting infront of his house. His uncle Laxman Dhawse was sitting with witness Shamrao Dhawse, infront of the house of Laxman. House of Laxman and the informant are adjoining to each other and there is open space infront of their house. House of deceased Bhima is also at short distance from their house. Since death of Kailash, accused Dinkar used to go to the house of witness Laxman Dhawse and used to thump arms. At the time of the incident, the accused Dinkar came infront of the house of Laxman and looked at him and thumped arms. Laxman asked him, why he is doing so. In

reply accused Dinkar said, he wants to kill somebody today. Immediately, Dinkar rushed with Lathi in his hand towards Mokinda, and gave blow by Lathi on his head. Because of said assault, Mokinda raised shouts. At that time, witness Kausabai Khillare was passing from nearby the said place. She stopped there. Deceased Bhima, his wife Mangal were standing infront of their house. By hearing shouts of Mokinda, they rushed towards Mokinda to help him. Immediately, after reaching there, accused Udhav, Namdeo, Punjaji rushed there. Udhav and Namdeo caught both hands of Bhima and Punjaji caught his legs. Accused Dinkar rushed to Bhima with a knife (Article-12) and stabbed it deep in the chest of Bhima. Accused Natha was present there with Gupti. He stabbed that Gupti (Article-11) in stomach of Bhima. By looking this, witness Shamrao rushed to help Bhima and tried to catch Gupti from Natha. Natha assaulted by that Gupti on the palm of hand of Shamrao and caused him injury. Bhima also tried to catch Gupti by

which he got injury on his hand. At that time, other accused rushed there and started throwing stones on Mokinda, Mangal, Kausabai, Shamrao, Laxman and others to restrain them from going to help Bhima. Injuries caused by accused Dinkar and Natha were deep. Due to bleeding, Bhima immediately collapsed on the spot and died. Due to throwing of stones by the accused, the informant, his father - Kausabai, Rukhmini, Shamrao and others sustained injuries and could not help to Bhima. Immediately after stabbing, accused Natha said that, they have killed the person to whom they wanted to kill and now he asked accused persons to disperse from the place of the incident. Then all the accused went towards their houses.

(C) After accused went, Monkinda, Mangal, Kausabai, Shamrao, Laxman and others went to Bhima and found him dead. Bhima was lying there in blood pond. Due to the said incident, Mokinda and the

other persons got afraid. There was no vehicle available immediately to go to Police Station. On the next day morning, Mokinda and others went to the Police Station, Hingoli (Rural) at about 6.00 to 6.30 a.m. and lodged the complaint. PSI, Dhere registered the Crime No.64/1994 under sections 302, 337 of the I.P.C. PSI Dhere went along with his staff immediately to the place of incident and found dead body of Bhima lying there. There he found three wooden pieces, Chadar, Shirt, Bangle pieces, Chappal, one blood stained stump of Jawar and blood. He prepared inquest panchanama, spot panchanama and seized articles found at the spot. Immediately after inquest panchanama, he sent dead body of Bhima for the postmortem to the Government Hospital, Hingoli. He recorded the statements of the witnesses. The postmortem of dead body was carried out by Dr. Kamtikar. He found death of Bhima was caused by the stab injuries. He issued postmortem report Exh.71. On the same day, PSI Dhere arrested accused Dhanaji, Parasram, Natha.

On 25th May, 1994, with the help of panch at the instance of accused Natha he recovered Gupti kept hidden in his house.

D) On 27th May, 1994, with the help of panch, PSI Dhere recovered knife at the instance of accused Dinkar kept hidden by him below one stone on bundh of the land of Ramji in village Bhingi. Both articles were seized under panchanama. On 28th May, 1994, viscera of deceased was sent to the Chemical Analyzer for the examination along with blood sample of accused Dinkar. Other articles were also sent to Chemical Analyser. Mokinda, Kausabai, Shamrao and Kishan, who were injured sent for the medical examination to the Rural Hospital, Hingoli. On 23rd May, 1994, they were examined. PSI, Dhere arrested some of the accused, then he was transferred and further investigation was carried out by PSI Bhakre. After investigation was over, PSI Bhakre filed charge sheet against all the accused in the Court of Judicial

Magistrate, First Class, Hingoli. On the basis of same, R.C.C. No.303 of 1994 was registered in the Court of Judicial Magistrate, First class under Sections 302, 337, 147, 148, 149 of the I.P.C.

E) Charge against all of the accused was framed under Sections 302, 337, 147, 148, 149 of I.P.C. and under Section 135(1) of the Bombay Police Act. The charge was read over to the accused, to which the accused pleaded not guilty and claimed to be tried. The prosecution examined in all 11 witnesses.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted the respondents – original accused nos. 1 to 3 and 5 to 15 for the offences punishable under sections 147, 148, 302, 337, 149 of I.P.C. Hence this Appeal by the State.

4. Learned A.P.P. appearing for the appellant – State submits that, the case of the

prosecution rests upon direct evidence. There are more than two eye witnesses. Their evidence gets corroboration from the Medical evidence and also the other attending circumstances, and therefore, the appeal filed by the State challenging the order of acquittal of the respondents deserves to be allowed.

5. Learned counsel appearing for the respondents i.e. the accused submits that, the evidence of prosecution witnesses suffers from serious omissions, contradictions, improvements and same is untrustworthy. He submits that, Mokinda (PW-1) stated in his deposition that, accused Dinkar had Lathi with him. He rushed alongwith Lathi and gave stroke of Lathi on his head. However, the medical certificate at Exhibit-65 does not show corresponding injury to his head. It is submitted that, Investigating Officer has stated that, he did not refer the prosecution witnesses for medical examination. He submits

that, if the allegations in the first information report are perused carefully, PW-1 has not stated that, accused - Dinkar had assaulted him with Lathi. Therefore, he submits that, the evidence of PW-1 cannot be believed. He submits that, no explanation is offered by PW-1 for delay in lodging the first information report, in as much as, the alleged incident had taken place at 6.30 p.m. on 22nd May, 1994 and the first information report was registered on 23rd May, 1994. There is more than 12 hours delay in lodging the first information report. It is submitted that, the Investigating Officer in his evidence before the Court stated that, on 22nd May, 1994 the Police Station, Hingoli (Rural) got information about the murder of Bhima on that night at about 11.45 p.m. The staff of Police Station started from Hingoli to the place of incident for making enquiry and they reached to the place of incident, and to that effect, there is entry in the Station Diary. He further submits that, the evidence of the

Investigating Officer would make it clear that, he deputed the police personnels at the place of incident on the very same night. Therefore, PW-1 had no reason to cause delay in lodging the first information report. It was possible for him to immediately give information to the police, who were present on very same night of the incident. It is submitted that, PW-1 has not stated that, he had received any injury, either of Lathi or stick, in the first information report. However, in his deposition before the Court, he has stated that, he received injury by stick and also another injury by stones, which were pelted by the accused persons. It is submitted that, PW-3 - Kausabai stated that, she received injury on her head, but on perusal of the injury certificate at Exhibit-66, it shows that, the injury mentioned is on right facial. It is submitted that, the Medical Officer has stated that, the injuries sustained by the prosecution witnesses are possible by fall. He also invited our attention to the evidence of

other prosecution witnesses and submits that, the said evidence suffers from omissions and improvements. He submits that, none of the witnesses had witnessed the incident since the said incident, as alleged by the prosecution, has never happened. The respondents took defence that, on the date of incident, they were not available in the village. It is submitted that, during the cross examination of the Investigating Officer, he admitted that, on the date of incident, some of the villagers went outside the village for marriage. It is submitted that, there were offences pending against Bhima as well as Mokinda. In one of the such offences, Mokinda spent money to file application with a prayer to enlarge Bhima on bail. Said application was allowed and Bhima was released from jail. However, he did not return the amount spent by Mokinda for his release on bail, and therefore, there was scuffle between two brothers i.e. Bhima and Mokinda and hence, Mokinda killed Bhima. It is submitted that, though it is

stated by Kausabai (PW-3) that, she sustained the injury on her head, but on perusal of the medical certificate at Exh.66, it appears that, there is no corresponding injury to corroborate her version that, she sustained the injury on her head in the said incident. It is submitted that, the prosecution has tried to suppress the genesis of the incident, in as much as, though the concerned Police Station was immediately informed by the Police Patil about the alleged incident, and in turn the concerned Incharge Police Station Officer deputed the Police Personnels at the village of incident on the very same night of the incident. However, Mokinda showed total ignorance of such arrival of the police at the spot of incident on very same night. It is stated by the Investigating Officer in his evidence that, whole night, the police stayed near the dead body of Bhima. Therefore, in all fairness, Mokinda should have stated the true facts before the Court. The fact that, the first information report is lodged after

12 hours of the incident is an indicative of the fact that, there was deliberate attempt to implicate the respondents in the alleged offence, though they were not concerned with the alleged incident.

6. The learned counsel submitted that the motive alleged against the respondents/accused that, earlier one Kailas from the family of the accused died due to attack by Bhima, and therefore, accused killed Bhima, cannot be accepted. There is no evidence brought on record to suggest that, from such alleged incident of assaulting Kailas by Bhima any untoward incident had happened in between accused and Mokinda or Bhima. It is submitted that, even if the allegations are taken as it is that, Bhima assaulted Kailas six months back of the incident, however, during period of six months, there was not a single incident of assault or any scuffle between Mokinda and Bhima and the accused. It is

submitted that, the trial Court upon appreciation of entire evidence found that, the prosecution is not able to connect the accused with the alleged incident, and therefore, the benefit of doubt has been extended in favour of the accused. The learned counsel submitted that, the dead body of Bhima was lying on some distance and blood mixed mud was recovered from another spot. It shows that, Bhima was killed by Mokinda and to cause disappearance of the evidence, Bhima's dead body was removed from actual spot of incident of killing Bhima by Mokinda. It is submitted that, the Medical Officer in his cross-examination stated that, the injuries suffered by the prosecution witnesses can be due to fall.

7. The sum and substance of the arguments of the learned counsel appearing for the respondents is that, the prosecution case suffers from serious legal infirmities and also from omissions, contractions and improvements, and therefore, in

view of the settled principle of law, as has been held by the Supreme Court in the case of **Mohammed Ankoos and others V/s Public Prosecutor, High Court of Andhra Pradesh, Hyderabad**¹, if the view taken by the trial Court acquitting the accused was a possible view, and could not be said to be palpably wrong, in that case interference in the judgment of acquittal, is unwarranted. In support of contention that the entries in the case diary can be used as aid in the enquiry or trial but not as an evidence, reliance is placed on the ratio laid down in the case of **Mohammed Ankooos (supra)**. Therefore, relying upon the findings recorded by the trial Court and also the Notes of argument placed on record, the learned counsel appearing for the respondents submits that, the appeal filed by the State against the acquittal may be dismissed.

8. We have given careful consideration to

¹ (2010) 1 SCC 94

the submissions advanced by the learned A.P.P. appearing for the appellant-State and learned counsel appearing for the respondents/accused. With their able assistance, we have carefully perused the entire evidence so as to find out correctness of the findings recorded by the trial Court and the conclusions reached thereupon.

9. It is not necessary for us to elaborate on the entire prosecution evidence but we will consider the material evidence of the prosecution witnesses. The star witness of the prosecution is Mokinda (PW-1). In his evidence, he stated that, all the accused persons are from his village, and therefore, he knows them. He had another two brothers, namely, Bhima and Vishwanath. Bhima was elder brother. The incident had taken place on 22nd May, 1994 i.e. five years back. He stated that, at about 4 p.m. on the day of incident, accused Dinkar came infront of the house of Laxman. Laxman is his uncle. Laxman's house is at 10 to 15 feet

distance from his house. Accused – Dinkar came infront of house of Laxman and thumped his arm in challenging manner by looking towards his uncle Laxman. Laxman was sitting infront of his house. Laxman asked Dinkar why he is angry. At that time, Mokinda was standing infront of his house. Accused Dinkar had Lathi with him, he rushed along with Lathi and gave stroke of Lathi on his head. House of Bhima was about 15 feet from that place. His brother Bhima rushed to rescue him. Accused Udhav and Namdeo rushed to his house and they caught both the hands of Bhima. Accused Punjaji also rushed there and the other accused including Natha also came there. Accused Natha stabbed "Gupti" in the stomach of Bhima, Dinkar stabbed Rampuri knife on the left side chest of Bhima. Bhima collapsed at the spot. The Gupti and knife totally penetrated in the chest and stomach of Bhima and he sustained severe injuries and died on the spot. Other accused were pelting stones. One stone hit on the head of father of Mokinda and he fell down.

He has also stated other details.

10. Upon careful perusal of the contents of the first information report, he has not stated that, Dinkar came with Lathi and he assaulted on his head. Even in the first information report, he has not stated that, he was assaulted by the accused. Therefore, we find considerable force in the arguments of the learned counsel appearing for the respondents that, the evidence of Mokinda cannot be believed since he did not tell truth before the Court. Upon careful perusal of the contents of the first information report, nowhere it is stated that, Dinkar assaulted Mokinda on his head and Mokinda sustained injuries and also there is no corroboration from the medical evidence that, Mokinda sustained the injuries on his head. Though it is stated by Mokinda that, Dinkar assaulted by knife to Bhima, when recovered knife was shown to Medical Officer, he fairly stated that, the said knife cannot cause injury as

alleged by the prosecution. It is also not explained by the witnesses how Dinkar came in possession of the said knife when he was holding Lathi. Therefore, the evidence of Mokinda does not inspire confidence. In his evidence, he stated that, due to fear, he could not go to lodge the first information report on the date of incident and he went to the Police Station on the next day at 6.30 a.m. is completely unacceptable statement. He had no reason to have any fear. It has come in the evidence of the Investigating Officer that, he deputed the police constables on very same night on the date of incident. He stated that, the Police were present for whole night. It appears that, the Investigating Officer received the information about the incident on the very same night and then he took follow up action to depute the police personnels, and accordingly, the police went to the spot of incident and they were present for whole night. Therefore, Mokinda has suppressed this vital aspect, which goes to the root of the

matter, in as much as, his statement before the Court does not carry weight and rather it places prosecution in precarious position and makes entire prosecution case untrustworthy. Though he has stated that, five to six months before the incident, Kailash son of Maroti Gavli died at Dhamni Phata, Kalamnuri road due to accident, however, Maroti Gavli and others are thinking Bhima killed Kailas, and therefore, they had grudge in their mind and accordingly, they killed Bhima. However, the prosecution has not brought on record any evidence to show any untoward incident in preceding six months of the date of incident indicating any scuffle or quarrel in between the accused and Mokinda or Bhima.

11. It is true that, Bhima died homicidal death, however, the prosecution was unable to connect the accused with the alleged incident and the benefit of doubt is given in favour of the accused. The prosecution has also not explained

why the dead body was found on different spot, than the place from which mud mixed blood was seized. It has come on record that, dead body of Bhima was lying somewhere and blood was found on some other spot, and the prosecution has not explained about the same.

12. Investigating Officer – Madhav Parbatrao Dhere (PW-11), in his evidence has stated that, on 22nd May, 1994, he was working as Police Sub-Inspector with the Police Station, Hingoli. Next day morning of the date of incident i.e. on 23rd May, 1994, Mokinda Dhawase from village Deothana came to the Police Station. PW-11 was present in the Police Station. He narrated the incident and the same was reduced into writing. He took signature of the informant Mokinda and registered the crime. He went to the spot and prepared inquest panchanama in presence of two panchas and also seized the blood and blood mixed earth lying on the ground, and other articles were also

recovered from the spot. He further stated that, when the accused were in his custody, they made memorandum statements and accordingly, certain recovery was made from them.

During his cross-examination, he stated that, on the date of incident i.e. on 22nd May, 1994 his Police Station received information about the murder of Bhima. On that night at about 11.45 p.m. his staff members started from Hingoli to the spot of incident. Its entry was taken by Police Head Constable Buckle No. 747 in the Police Diary. He went with five constables. At that time, those police persons stayed near the dead body. They took search of accused at night. They sent the information to the police station on 23rd May, 1994. On 23rd May, 1994, investigation was caused by him. He further stated that, he cannot say definitely on which direction of dead body the blood was lying at a distance of 18 feet. There were no blood stains near the dead body. At a

distance of 18 feet blood was lying in the area of 1 to 1 1/2 feet. He was unable to say the exact location of the house of Mokinda. He further stated that, servant Mangalabai had not stated before him that, she got afraid on that night, and therefore, did not go to the Police Station to report the incident. Witness Kausabai did not state before him that, witness Shamrao got injuries of Gupti on his left hand. He did not state before him that, accused Udhav and Natha caught hold the hands and accused Punjaji caught legs of Bhima. She did not state before him that, at the time of incident, Shamrao, Mokinda, Rakhmabai, Laxman and Kishan were present there. She did not state before him that, they were pelting stones and she received injury. She did not state before him that, Mokinda, Kishan and Shamrao also got injuries due to pelting of stones. He recorded the statement of Laxman, however, he did not tell before him that, he went to help Bhima and accused Natha pulled him on the

ground. He did not tell before him that, Punjaji caught legs of Bhima from backside. He did not tell before him that, Bhima asked accused Dinkar why he was always quarreling. He also recorded the statement of witness Shamrao. He stated that, he did not tell before him that, Udhav and Namdeo caught hands of Bhima. He did not tell before him that, before incident they were sitting infront of house of Laxman. He did not state before him that, Kishan and Kausabai received injuries due to pelting of stones.

13. If the evidence of Mokinda, who is star witness of the prosecution, is considered along with the other eye witnesses and also attending circumstances, it does not inspire confidence. On material aspects, there are serious omissions, contradictions and improvements, though the Investigating Officer has received information on the same day of incident through the Police Patil, however, neither the said Police Patil or other

person, who informed the Police Patil has been examined by the prosecution. In the facts of the present case, it will have to be held that, the delay of more than 12 hours in lodging the first information report was fatal to the prosecution case, in as much as, Mokinda (PW-1) did not tell true facts in his deposition before the Court that, on the date of incident itself during night six police constables came to the village on the same night and they were present there throughout night as stated by PW-11. This Court is dealing with the appeal filed by the State against the acquittal. It is settled law that, if the possible view has been taken by the trial Court and even if another view is possible on the basis of evidence on record, is no ground to interfere in the order of acquittal. Upon appreciation of the entire evidence brought on record, the trial Court found that, the evidence brought on record by the prosecution suffers from serious legal infirmities and witnesses did not tell truth before the Court.

The contradictions, omissions and improvements made by the prosecution witnesses are not minor in nature and those are substantial in character, which makes the prosecution case unbelievable and ultimately not trustworthy.

14. Upon careful scrutiny of the evidence of the prosecution witnesses (PW-2 to PW-9), we have noticed the following inconsistencies/ improvements/ contradictions and omissions in their evidence :-

- (1) On perusal of examination in chief of PW-2 Mangal, she does not marks presence of PW-3 Kausabai and PW-5 Shamrao at the place of incident. She does not states about any injury sustained by PW-3 Kausabai and PW-5 Shamrao and Kishan, which is contrary to the record.
- (2) PW-2 Mangal in her deposition states that, rubber butts of Jairam were lying on the spot, however, on perusal of spot panchanama Exh.76 it does not seem such rubber butts were found and seized from the

spot of incident.

- (3) PW-2 Mangal states that, dead body was lying at the spot, where her husband died till arrival of the police. However, on perusal of spot panchnama at Exh.76 it is found that, blood was found at distance of 18 feet away from the dead body.
- (4) PW-2 Mangal states that, before death of her husband he never went to jail and no criminal case was filed against him. It is contrary to the admissions given by PW-1 Mokinda.
- (5) PW-3 Kausabai in her deposition states that, she had received injury on her head, but on perusal of the injury certificate, it appears that, the injury located on "right facial".
- (6) PW-3 Kausabai does not state about the presence of PW-2 Mangalbai. As already stated the presence of Kausabai was not referred by Mangalabai also.
- (7) PW-3 Kausabai stats she got injury by

stone on her head, but on perusal of her injury certificate at Exh.66, the alleged injury mentioned on the right facial. It shows that the alleged injury is not located as per her statement, and there is inconsistency in between oral and documentary evidence.

- (8) PW-3 Kausabai states that, "they told they have assaulted to the person who was to be assaulted". As such, PW-3 alleges generally and she does not support the name of Natha as alleged by other witnesses.
- (9) PW-3 Kausabai admits her relation with PW-1 Mokinda and further admits that, talk in front of the house of Laxman could not be heard from the house of Bhima.
- (10) PW-4 Dr. Subhash Kamtikar admits that, injuries found in the post-mortem are not possible by knife article 12 and further admits that, injury no.1 is not possible by article no.12.
- (11) PW-4 Dr. Subhash states that, on the same

day, he treated Shamrao, Kausabai, Mokinda, Kishan and issued their medical certificates. However, the said Medical officer had not duly proved the injuries sustained by the said witnesses.

(12) PW-4 Dr. Subhash states that, Article no.11 is like Rampuri Chaku with double edge and he did not think it is a Gupti. Considering such statements the injuries allegedly sustained by the deceased Bhima are not possible by the alleged recovered weapons as Article 11 and 12.

(13)PW-5 Shamrao in his deposition admits that, the case about theft with Nahuji was filed against him. It shows that, the said witness had also criminal antecedents.

(14) PW-5 Shamrao states that, he did not catch Gupti. This statement is contrary to the statement of PW-1 Mokinda.

(15) PW-5 Shamrao admits that, Bhima was from his Bhavaki. As such, he admits the relation with prosecution witnesses.

(16) PW-5 Shamrao states that, he told to police Udhav and Namdeo caught hands of Bhima, but he was unable to state why it is not written in his police statement. He further states that, he told to police names who accompanied to rescue Bhima, but he was unable to state why it is not written in his police statement. He states that, he told to police Mokinda was assaulted in front of his house, but he was unable to state why the words 'in front of this house of Mokinda' are not written in his police statement.

(17) PW-5 Shamrao states that, at the time of incident villagers did not come there. This statement is contradictory to statement of PW-1 Mokinda.

(18) PW-6 Laxman Ramji states that, at that time there was Lathi in his right hand and knife in the left hand. Such statement is inconsistent and contradictory to the other witnesses. He also further states that, Bhima asked Dinkar why he is quarreling, Bhima shouted and accused Natha pushed him. These statements are not

supported by other witnesses.

(19) PW-6 Laxman states that, he told the police that, he himself and Shamrao were sitting in front of his house, Bhima shouted, Udhav and Namdeo caught the hands and accused Punja caught legs from back side, however, he was unable to state why the same is not written in his police statement.

(20) PW-6 Laxman states that, before death, case of truck looting was not filed against Bhima. This statement is contrary to evidence of PW-1 Mokinda. It has come on record in the same para that, before death Bhima was arrested about murder of Kailash and he was got released on bail and he was under arrest for 7 to 8 days.

(21) PW-6 Laxman states before the police that, there was Lathi in the right hand and in the left hand there was Chaku, accused Dinkar assaulted by Lathi to Mokinda, Bhima was asked to Dinkar why he was quarreling, accused Dinkar assaulted by knife on the left side of Chest of Bhima

and he told the names of the persons, who received assault by stones, the blood of Bhima was lying at the place of incident, Lathi of Dinkar was lying there and it had blood, at 4.30 a.m. Mokinda and 4 others went to the police station. However, he was unable to state that, why the above said statements are not appearing in his police statement. Such improvements are brought on record.

(22) PW-7 Kashiram Ingole admits about the relationship with prosecution witnesses.

(23) PW-9 Kashiram Bhoyar states that, on 25th May, 1994 police called him at the house of Gyanoba Patil at his village. It means he was not called in the police Station. He further states that, accused Natha and Dinkar were present there, police persons were present there, accused Natha said that, he will produce a weapon from his house and no writing took place there. After considering such statements, the discovery and recovery of alleged weapon "Gupti" cannot be believed at all in law.

15. The trial Court upon considering the evidence of the Investigating Officer found that, the Investigating Officer did not send the prosecution witnesses for medical examination, however, the medical certificates about examination of Mokinda, Shamrao, Kausabai are placed on record. Their oral testimony that, they suffered injuries on a particular part of the body, do not get corroboration from the medical evidence. The Medical Officer has opined that, the injuries in injury certificates at Exhibit-65 to 68 can be caused by fall. The prosecution has not proved the injuries stated in injury certificates Exhibit-65 to Exhibit-68 through the Medical Officer. The Medical Officer only stated about the certificate at Exhibit-65 to Exhibit-68 on record. The trial Court observed that, the Investigating Officer when reached to the place of incident, saw blood was found at a distance of 18 feet from the dead body. All the witnesses are related to each other and deceased Bhima. The first information

report received by the Police about the incident is not brought on record by the prosecution. The belated recovery from accused Natha and Dinkar on 25th May, 1994 and 27th May, 1994 respectively, also creates doubt about it's genuineness. It also appears that, no proper procedure was followed while effecting such recovery and seizure of clothes from the accused. The Medical Officer Dr. Anantrao Kamtikar (PW-4) has stated in his cross-examination that, the injury no.2 of deceased Bhima was not possible by single sided edged weapon i.e. knife Article No.11. The trial Court has adverted to the cross-examination of Kausabai (PW-3). She did not state before the Police that, she was going to the house of her daughter Lalita and also that, accused Udhav and Namdeo caught hold the hands of Bhima and legs by Punjaji. She did not state before the police that, the hands of deceased were caught by accused Udhav and Namdeo. Witness Laxman also did not state before the police that, hands and legs of deceased were

caught by accused Udhav, Namdeo and Punjaji.

16. The defence has brought on record through cross-examination of the eye witnesses that, on the date of incident, there was marriage at some other village, and therefore, villagers went for said marriage. It appears that, the suggestion was given that, even the respondents/accused went for marriage and they were not present in the village on the said date of incident. Another suggestion was also given that, Bhima was arrested in some criminal case and for releasing him on bail, expenses were borne by Mokinda. Bhima did not return the money spent by Mokinda, and therefore, there was scuffle between Mokinda and Bhima and Mokinda assaulted Bhima and consequently, Bhima died in the alleged incident on 22nd May, 1994.

17. In the light of the discussion in the foregoing paragraphs and the findings recorded by the trial Court, we are of the considered view

that, the view taken by the trial Court was possible, and therefore, in view of the settled position in law that, even if another view is possible is no ground to interfere in the order of acquittal. The Supreme Court in the case of **Muralidhar alias Gidda and another Vs. State of Karnataka**² in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*, AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*, AIR 1954 SC 637, *Atley Vs. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*, [1970] 2 SCC 450, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*, [1973] 2 SCC

2. 2014 [4] Mh.L.J.[Cri.] 353

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]

18. In the light of discussion in foregoing paragraphs, though there is a direct evidence in the nature of eye witnesses and also Bhima died homicidal death, upon scrutiny of the entire

evidence, we are of the considered view that, the view taken by the trial Court is possible. In that view of the matter, the appeal stands dismissed. Bail bonds, if any, shall stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]