

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

CRIMINAL APPEAL NO. 471 OF 1999

The State of Maharashtra

APPELLANT

-VERSUS-

Sukhdeo Sitaram Amale,
Age : 37 yrs., Occu : Nil.,
R/o : Malewadi, Tq. Shrirampur,
District : Ahmednagar.

RESPONDENT

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Mr. S.D. Ghayal, APP for appellant-State.

Mr. V.R. Dhorde, Advocate for respondent.

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

DATE OF RESERVING JUDGMENT : 19TH JUNE, 2017.

DATE OF PRONOUNCING JUDGMENT: 6TH JULY, 2017.

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

This appeal is filed by the State challenging the judgment and order of acquittal dated 16th September, 1999 passed by the Additional Sessions Judge, Shrirampur in Sessions Case No. 33 of 1997, thereby acquitting the respondent i.e.

original accused for the offences punishable under Section 302 of Indian Penal Code (for short "I.P.C.").

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

A) Informant - Dattatraya Amale and the accused, who are real brothers, are residing in Gat No.118 along with their children. The accused was serving in Army and he started harassing the informant and his family members. On 27th April, 1996 at about 8.30 a.m., the complainant, who is serving in the Telecommunication Department, had gone to Shrirampur for attending his duty. While he was on duty, his wife met him in the office at 12.30 p.m. and told that the accused had cut one Mango tree, and when his son Vikas asked him as to why he has cut the said mango tree, he dragged him and beat in front of his house. Thereafter, his son Vikas had filed complaint against accused in

Haregaon Police Outpost, and he returned back to the house. Thereafter, informant Dattatraya and his wife came back from Shrirampur to their farm house. When they reached to the house, they found that, their son Vidnyan and Gokul were lying in a pool of blood. Vidnyan was lying on Ota and second son Gukul was lying near the threshold of his house. They were no more and hence, first information report came to be filed by Dattatraya in Haregaon Police Outpost against accused Sukhdeo.

B) Thereafter, the P.S.I. Suresh Bhamre (PW-9) had received message from village Sarala regarding incident of commission of murders of sons of the informant. Hence, he went to Haregaon Police Outpost, and told the Police Incharge of said Police Outpost that along with him they should go to the scene of offence, in order to see and find out what had really happened. Thereafter, he along with the police constables from Haregaon

Police Outpost went to the spot of incident and recorded the complaint of informant Dattatraya Amale and registered the offence. Thereafter, he went to the scene of offence and drew inquest panchanamas of dead bodies of Vidnyan and Gokul. He thereafter seized one axe, which was lying there at the spot and also blood stained earth. He thereafter drew panchanama in respect of scene of offence. Thereafter, he recorded the statements of the witnesses. As a part of further investigation, the map in respect of scene of offence was drawn by the Revenue Circle Inspector and the Medical Officer Mr. Madhav Jadhav, conducted the postmortem on the dead bodies.

C) Thereafter, the statement of daughter of accused by name Sonali, aged six years, who was studying in 4th standard at the time of alleged incident, came to be recorded under Section 164 of the Code of Criminal Procedure, by the Special Executive Magistrate Shri. Ramdas Januji Shinde on

13th May, 1996. In said statement, she disclosed that, she saw her father i.e. the accused Sukhdeo, while committing murders of Vidnyan and Gokul with the help of axe. It has been alleged that, Smt.Sitabai Bhaskar Gaikwad, who is the resident of village Malewadi, had also seen the accused along with an axe prior to the incident. According to the prosecution, she had gone towards the land of informant Dattatraya on the day of alleged incident in order to remove weed from his land. At that time, the wife of the informant by name Janabai met her, and told that the accused had cut the branches of her mango tree and hence, she wanted to lodge the complaint against accused Sukhdeo and accordingly she left to go to the police station. Smt. Sitabai saw Smt. Janabai, the wife of the informant and her elder son Vikas, while proceeding towards Police Station on a bicycle in order to file the first information report against the accused. Thereafter, after a period of one and half hour, while she was working

in the field of informant Dattatraya, the accused came towards her along with an axe and threatened her stating that she should not work in the land of informant Dattatraya, otherwise he would cut her into pieces. Therefore, due to threats given by accused, she got frightened. At that time she saw Vidnyan and Gokul were playing in front of their house and thereafter the accused proceeded towards them and she ran away towards her house due to fear. Smt.Sitabai also informed the son of informant Vikas that the accused had got enraged, and he should not stop there, and thereafter she went to her house.

D) Therefore, it has been alleged that, on 27th April, 1996, when the brother of informant Dattatraya and his son Vikas went to file the first information report against the accused on the ground of beating, the accused committed murders of Vidnyan and Gokul with the help of an axe. Therefore, the first information report came

to be filed against the accused in Haregaon Police Station and it was recorded by A.S.I. Vishnu Vadge, who was on duty in the Police Outpost, Haregaon. However the said was registered as Non-cognizable offence.

E) During the course of an investigation, the clothes, which were on the persons of Gokul and Vidnyan were seized and the negatives which were in the camera, were taken by the photographer Shri. Ashok Gulaskar, who is the resident of Shrirampur and having a Photo Studio known as Gulaskar Photo Studio.

F) According to prosecution, Photographer Shri. Gulaskar took photos in respect of scene of offence and also in respect of dead bodies of Vidnyan and Gokul. At that time, the mother of deceased Vidnyan and Gokul handed over the camera to him having a roll in it. She informed him that the photos were taken regarding the incident of

beating, which had taken place in the morning, and Shri Ashok Gulaskar developed the said photos, and he handed over the same to the police with negatives of it. All the articles were sent to C.A. for chemical analysis, and the photographs were collected by P.S.I. Suresh Gaydhani, who was serving at Taluka Police Station, Shrirampur. Thereafter, the statement of photographer Ashok Gulaskar and Shri. Balasaheb Pardhe were recorded, as the photographer Balasaheb Pardhe took out the photos of mango tree, which were cut by the accused in the morning as requested by the police.

G) Shri Balasaheb Pardhe took photos of mango trees on 28th April, 1996. Shri Balasaheb Pardhe resident of Haregaon is serving as a Primary Teacher, however, he took photos as he is having camera in view of the request made by the police. The accused absconded since the date of alleged offence and he came to be arrested on 15th December, 1996. Thereafter, after receipt of C.A.

Report and after completion of investigation, charge sheet came to be filed by P.S.I. Shri. Suresh Bhamare against the accused, for having committed an offence punishable under section 302 of I.P.C.

H) Thereafter, the learned trial Court framed the charge under section 302 of the I.P.C. The said charge was read over to the accused to which, the accused pleaded not guilty and claimed to be tried. He stated that he has been falsely implicated in the said case.

I) The statement of accused under section 313 of Code of Criminal Procedure was recorded. In which he denied the prosecution case and stated that, he has been falsely implicated in the said offence.

J) During trial, the prosecution examined in all 20 witnesses namely Madhav Laxman Deshmukh,

Circle Inspector (P.W.1), who drawn the map in respect of scene of offence on 6.6.1997. Shivaji Madhavrao Autade (P.W.2), the panch witness, in order to prove inquest panchnamas in respect of dead bodies of deceased Vidnyan and Gokul, Smt. Sitabai Bhaskar Gaikwad (P.W.3), Shankar Laxman Vitekar (P.W.4), in order to prove that the axe, which was lying near the scene of offence, was attached including blood stained earth and who had also seen the branches of mango tree which were cut, Namdeo Rambhau Bharaskar (P.W.5), the panch witness in order to prove that photographer Ashok Gulaskar produced photographs in the police station and same were seized in his presence, Ashok Gulaskar(P.W.6), the photographer who had taken photos in respect of dead bodies of deceased Vidnyan and Gokul and who also developed the photos which were in Camera, Balasaheb Pardhe (P.W.7), who is serving as a Primary Teacher at village Naygaon and who had taken photos of mango tree as requested by the police, Dattatraya Autade

(P.W.8), who alleged to have give lift to Janabai, the mother of deceased Vidnyan and Gokul and her son Vikas on his motorcycle up to village Haregaon, as they wanted to file the complaint against the accused. Vikas Amale (P.W.9), who is the brother of deceased Gokul and Vidnyan, Vishnu Vadge(P.W.10), A.S.I. who had recorded the complaint filed by Shri Vikas against the accused on 27th April, 1996 on the ground of beating and which was treated as Non-cognizable offence, Dadasaheb Thombare (P.W.11), who carried clothes of deceased Vidnyan and Gokul and blood stained earth for chemical analysis on 30th May, 1996, which were produced by P.H.C. Shri. Ratnakar Makasare on 28th May, 1996 in respect of deceased Vidnyan and Gokul, Bhimraj Mohan Thakkar (P.W.13), the panch witness in order to prove that clothes were seized in his presence on 28th April, 1996 in respect of deceased Gokul and Vidnyan, Sonali Sukhdeo Amale (P.W. 14), who is the daughter of accused, Shri. Ramdas Shinde (P.W. 15), who

recorded statement U/Sec.164 of Code of Criminal Procedure on 13th May, 1994, Medical Officer Madhav Jadhav (P.W.16), who conducted postmortem in respect of dead bodies of Vidnyan and Gokul, the informant Dattatraya Amale (P.W. 17), the brother of accused, P.S.I. Suresh Gaydhani (P.W.18), the Investigation Officer, P.S.I. Suresh Bhamre (P.W.19) and P.H.C. Kishor Bhosale (P.W. 20), who had taken Kumari Sonali the daughter of accused (P.W.14) at Ahmednagar in order to record her statement under section 164 of Code of Criminal Procedure.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted the respondent - accused for the offence punishable under section 302 of the I.P.C. Hence this Appeal by the State.

4. The learned A.P.P. appearing for the State submits that, the Medical Officer (PW-16)

deposed that, death of Vidnyan and Gokul was homicidal and injuries caused on their person were by an axe (Article-5). It is submitted that, the statement of Ku. Sonali (PW-14) was recorded by the Special Executive Magistrate (PW-15) on 13th May, 1996. Though PW-15 disowned the said statement during her cross examination before the Court, the testimony of the Special Executive Magistrate (PW-15) is sufficient to hold that, her statement was voluntary and there was no reason to disbelieve her statement, which was recorded by him. She was witness to the occurrence of the incident and she saw the accused and her father, while committing murders of Vidnyan and Gokul. In his submission, since the Special Executive Magistrate stated in his evidence that, he recorded the statement of PW-14 as per her narration, and therefore, though Ku. Sonali (PW-14) retracted her statement before the Court, nevertheless, the said deserves to be believed. The said piece of evidence can form basis for

conviction of the respondent. There was no reason for discarding the evidence of Vikas (PW-9), who is brother of deceased Vidnyan and Gokul. The learned A.P.P. also submits that, the trial Court ought to have considered the morning incident, which had taken place, wherein the accused slapped Vikas and to that effect, the prosecution has brought on record the proof in the nature of photographs. It is submitted that, Sitabai (PW-3), saw the accused prior to the incident along with an axe and while proceeding towards Vidnyan and Gokul even though she did not see the actual occurrence of incident. Previous and subsequent conduct of the accused after the incident are the relevant considerations while appreciating the evidence in its entirety. It has stated by PW-3 that, the accused threatened her and told her not to work in the field of the informant. The said threat was given soon before the incident, and therefore, PW-3 ran away from the land of the informant, wherein she had been there to remove

weed. In respect of morning incident of beating Vikas (PW-9) by the accused, the Non-Cognizable Offence was registered in the Police Station. The prosecution did prove that, there was incident in the morning and to that effect the information was given to the Police Station. Evidence of Dattatraya (PW-17), who is father of the deceased has not been properly considered by the trial Court. In fact the respondent is his real brother, and therefore, he had no grudge in his mind, and hence, the possibility of false implication of the respondent in the commission of offence is completely ruled out. There is also evidence of Sitabai (PW-3), who stated that, Vikas and his mother were proceeding by bicycle of PW-8 to lodge the complaint to the Police Station in respect of the morning incident of beating of Vikas by the accused. Even Vikas and his mother traveled by his motorcycle to reach to the Police Station. Therefore, the learned A.P.P. submits that, the appeal deserves to be allowed.

5. On the other hand, the learned counsel appearing for the respondent submits that, the testimony of Sonali (PW-14) has no probative value at all. She turned hostile. Merely because the Special Executive Magistrate is examined, is not sufficient ground. The trial Court has recorded the reasons to discard his evidence. The evidence of Vikas is only on motive. He has not witnessed the alleged incident. He is interested witness. The testimony of Sitabai (PW-3), who claims to have seen the accused along with an axe and proceeding towards Vidnyan and Gokul, suffers from serious omissions and improvements. The defence has brought on record the material omissions in her evidence. There are also omission in the testimony of Vikas (PW-9). The evidence of PW-3 and PW-9 is contradictory. In fact the procedure followed by the Special Executive Magistrate (PW-15) while recording the statement of Sonali (PW-14) was totally contrary to the Rules. It was

not expected from him to record her statement in the question and answer form. The trial Court has commented in detail about the procedural flaw in recording such statement. It is submitted that, if the prosecution evidence is considered in its entirety, the said does not inspire confidence, and therefore, the trial Court has rightly extended the benefit of doubt in favour of the respondent and acquitted him. The reliance of the prosecution that, the respondent absconded after commission of alleged offence is not true. It is possible that, the accused may run away due to fear in the mind, and therefore, the said subsequent conduct of the accused alone cannot form the basis for conviction of the accused. The learned counsel appearing for the respondent/accused pressed into service the exposition of law by the Supreme Court in the cases of ***Dhal Singh Dewangan V/s State of Chhattisgarh***¹, ***Sujit Biswas V/s State of Assam***²,

1 Criminal Appeal Nos. 162-163 of 2014

2 (2013) 12 SCC 406

Harendra Narain Singh etc. V/s State of Bihar³ and Ram Kishan Singh V/s Harmit Kaur⁴, and submits that, the appeal filed by the State may be rejected.

6. We have given careful consideration to the rival submissions advanced by the learned A.P.P. appearing for the State and the learned counsel appearing for the respondent/accused. With their able assistance, we have carefully perused and scrutinized the entire notes of evidence brought on record by the prosecution. It is true that, the Medical Officer (PW-16) after postmortem of bodies of Vidnyan and Gokul stated that, their death was homicidal. Investigating Officer recovered an axe from the spot itself. He also expressed opinion that, the injuries noticed by him in the cases of both the deceased were ante-mortem. As and when it is necessary, we will make reference to the evidence of PW-16.

3 AIR 1991 SC 1842

4 1971 DGLS(SC) 640

7. The prosecution so as to prove the commission of offence by the respondent examined Dattatraya (PW-17), who is father of Vikas (PW-9) and deceased. In his evidence, he stated that, he had constructed one house in Gat No.118 of village Malewadi. The said land is known as Sarala Shiwar. He further stated that, deceased Vidnyan was 14 years old and deceased Gokul was 11 years old on the date of incident. The house of accused is at a distance of 50 to 60 feet from his house. The accused has three children. From the date of incident, he was staying with his wife and three children in the said house. During the incident, the daughter of accused was 7 to 8 years old. His other two children were younger to the daughter. The accused was serving in Army prior to the incident. He stood retired from the Army six months prior to the incident. The accused used to harass the family members of Dattatraya without any cause. He used to consume liquor and harass

them. He used to beat his children under the influence of liquor.

The alleged incident took place on 27th April, 1996. On the date of incident, he was in his office on duty. He joined his duty at 8.30 p.m. on that day at Shrirampur. At about 12.30 p.m., his wife met him in the office at Shrirampur. She told about the incident. She also told him about the morning incident of cutting down mango tree by the accused belonging to them. He has further narrated the details about morning incident. He stated that, the accused dragged Vikas and bet him in the morning. Thereafter, his wife and Vikas went to Police Station and lodged a complaint. Thereafter, he himself and his wife went to their house. When they went to the house, they saw dead body of Vidnyan was lying on the Ota and dead body of Gokul was lying inside the threshold. They were not alive. Thereafter, the first information report was lodged by him. During

course of investigation, the police visited the spot. They drew panchanama. The dead bodies were taken to Shrirampur for postmortem by police. He remember the type of clothes, which were on the person of his deceased children. He stated the discretion of those clothes. In reply to query put to him that, what about Vikas, he stated that, after registration of the first information report with Haregaon Police Station, he back to home. Vikas met him and his wife on the way while they were proceeding to their house.

Upon careful perusal of the evidence of Dattatraya (PW-17), his evidence can be useful for the prosecution to the extent that, the accused used to harass his family members without any cause. It is also stated by him in his evidence that, on the date of incident, as told by his wife, there was incident in the morning, wherein the accused dragged his son Vikas and beat him, and to that effect the police complaint was lodged

in the police station by his wife and Vikas. He was also informant in another incident, wherein his two children namely Vidnyan and Gokul died.

8. The prosecution examined Dr. Madhav Fakirchand Jadhav (PW-16), who examined and carried out the post-mortem of deceased Vidnyan. PW-16 stated the cause of death of Vidnyan as "incised wound over neck if leads to hemorrhagic shock due to left carotid artery cut." For cause of death of Gokul is concerned, it is stated that, "Hamorrhagic shock due to injuries mentioned in column No.17 of the post-mortem report". Therefore, there is no doubt that Vidnyan and Gokul died homicidal death.

9. The real question is who is an author of injuries caused to Vidnyan and Gokul and ultimately their death. In order to prove that respondent is an author of injuries and death of deceased, the prosecution placed heavy reliance on

the evidence of Sonali Sukhdeo Amale (PW-14). While recording statement before the Court, it appears that, since she is child witness, the preliminary enquiry was done with her, so as to find out that, she understands the sanctity of oath. It appears that, her statement under section 164 of Code of Criminal Procedure (for short "Cr.P.C.") was recorded by the Special Executive Magistrate during the course of investigation. However, upon careful perusal of her examination-in-chief, it appears that, she stated that, it is not true to suggest that, on 27th April, 1996 her father killed Vidnyan and Gokul. Sonali (PW-14) did not support the prosecution case, therefore, she was declared hostile. Thereafter, the permission was granted by the Court to cross-examine her. In her cross-examination, she specifically stated that, it is not true to suggest that, her statement was recorded by Mamlatdar on 13th May, 1996 at Nagar. It is not true to suggest that, she volunteers to give

statement before the Special Judicial Magistrate, the police tutored her and asked her to give statement before the Magistrate. She further stated that, it is not true to suggest that, she has stated before the police in her statement dated 27th April, 1996 that, on the date of incident her father has cut mango tree. Upon careful perusal of her statement, she has disowned her statement recorded under section 164 of the Cr.P.C. before the Special Executive Magistrate.

It is argued by the learned A.P.P. that, since the Special Executive Magistrate (PW-15) is examined by the prosecution and in his deposition he stated that, Sonali gave voluntary statement and the same was recorded as per her version after following due procedure. Therefore, in his submission though Sonali (PW-14) while deposing before the Court retracted from her statement under section 164 of Cr.P.C., nevertheless, in view of evidence of PW-15, the prosecution has

proved that, she had voluntarily given statement under section 164 of Cr.P.C. We cannot agree to the said submission of the learned A.P.P. for two reasons firstly, as it appears that, the Special Executive Magistrate in his deposition has stated that, it was for the first time he recorded such statement. Secondly, he did not adhere to the procedure while recording such statement. He has also showed total ignorance about the procedure prescribed in Manual published by the High Court. The trial Court after considering the evidence of PW-14 in its entirety, discarded the same. Even if the case of the prosecution is accepted that, PW-15 stated that, he recorded the statement of Sonali as per her version, in that case also at the highest his evidence can be for the purpose of corroboration. However, as already observed, Sonali (PW-14) disowned version stated in her statement recorded under section 164 of the Cr.P.C., there is no question of corroboration to her statement from the evidence of PW-15.

We have also perused the evidence of Kishor Gulabrao Bhosale (PW-20), who took Sonali to Special Executive Magistrate. In his cross-examination, he stated that, he has no documentary evidence to show that, he was asked to go to Nagar to record the statement of Sonali.

10. The prosecution has also placed reliance upon the evidence of Sitabai Bhaskar Gaikwad (PW-3) to connect the respondent with the alleged commission of offence. PW-3 in her evidence stated the details about narration of incident taken place in morning with Vikas and also Smt. Janabai. She stated that, on the date of incident, she was working in the field of Dattatraya. Janabai told her that, she would go to police station and Sitabai should remove the weed. After giving such instructions, Janabai and Vikas left field for proceeding towards police station in order to file the complaint about the incident of cutting

branches of mango trees by the accused and beating Vikas. She further stated that, the accused came towards the land of Dattatraya, where she was working after 1.30 hours and he is having axe in his hand. At that time, accused gave threat to her not to work in the land of Dattatraya, otherwise he would cut her into the pieces. She was very much afraid because of the threats given by the accused. At that time, she herself and accused were present. She further stated that, at that time Vidnyan and Gokul were playing in front of their house. In reply to the question by the A.P.P., she stated that, the distance between where she was working in the field of Dattatraya to remove the weed is about 50 feet from the house of Dattatraya. She further stated that, thereafter, the accused proceeded towards the children Vidnyan and Gokul. Therefore, she started running away towards her house on account of fear. Her house is situated on the road. When she saw Vikas, she informed him that accused has got

enraged and he should not stop there. She told Vikas that, he should not proceed further. Thereafter she sat in her house. She stated that, she can identify the axe and accordingly Article-5 i.e. axe, was identified by her before the police. She further stated that, when Janabai and her son Vikas went to the police station, the accused and his wife Asha came on a bicycle. The accused left Asha and he alone came towards the field where she was working. When the accused Sukhdeo came there, she herself, children of the accused i.e. one son, who was 2 $\frac{1}{2}$ years old and a daughter, who was 5 years old and Vidnyan and Gokul were present.

During her cross examination, she stated that, when the accused left the place after threatening her, she hid herself behind Shewari tree. She stated further details that, she resides in the house, wherein there are about 50 houses of Bhil community. She also stated that, there is

ashram on the road, which leads towards her house. Her house is on the road and is facing towards the road. There are various houses nearby her house. On the whole, she stated that, there are houses adjoining to her house and also ashram situated on the road. She further stated that, she did not disclose about the incident to the persons of her community. When Janabai started crying, she came to know regarding the death of the children Vidnyan and Gokul. She stated that, Vikas met her in between 10.00 a.m. to 11.00 a.m. Thereafter she again stated that, Vikas met her after 11 a.m. It appears that, the suggestion was given that, Janabai was her friend, however, she denied the same. At this juncture, it would be apt to reproduce hereinbelow relevant portion of her version stated in her cross-examination, which reads thus :-

"5. It is not true to suggest that Janabai was my friend. I know her

because, I had worked in her field in her land. I am residing at my house for the last 1 month. It is not true to suggest that, I have not stated in my statement before police that accused was having one axe in his hand when he met me while I was working in the land of Dattatraya. I can not assign any reason as to why the said fact is mentioned in my statement before police. It is not true to suggest that, I have not stated in my statement before police that accused left the place while in possession of an axe while he was in angry mood. Thereafter, he went towards the children Vidnyan and Gokul. I can not assign any reason as to why the said fact is not mentioned in my statement before police."

In order to find out whether the aforementioned version was stated before the Investigating Officer, at this juncture it would be relevant to make reference to the deposition of Suresh Shripatrao Bhamare (PW-19)-the

Investigating Officer. The Investigating Officer in his statement stated that, he recorded the statement of Sitabai (PW-3) as per her narration. She did not state before him in her statement, when the accused meet her, in the field i.e. while removing weed in the land of Dattatraya Amale, the accused was having axe in his hand. Sitabai (PW-3) did not state in her statement before him that, accused went towards Gokul and Vidynan along with axe in angry mood.

Therefore, upon careful perusal of the cross-examination of PW-3 and PW-19, it is abundantly clear that, the evidence of PW-3 i.e. Sitabai that, when accused met her in the field when she was removing weed in the land of Dattatraya Amale, the accused was having axe in his hand and further that, the accused went towards Vidnyan and Gokul along with axe in an angry mood is by way of omission. The entire aforementioned version from the cross-examination

of PW-3 is improvement by way of omission, and therefore, the reliance placed by the prosecution on her evidence to connect the respondent/accused cannot be accepted. Therefore, even the evidence of Sitabai (PW-3) is not useful to the prosecution.

11. The prosecution examined Vikas Dattatraya Amale (PW-9). In his deposition he stated that, he resides at village Malewadi. They are having agricultural land at Sarala Shiwar. He stated that, the incident took place about three years ago. On the date of incident, the accused cut down the branches of mango tree, which belongs to them. He saw the accused while cutting the branches of mango tree. He went towards the accused, who was standing on the bund, in order to ask as to why he cut down the branches of mango tree. Therefore, accused became angry. The accused beat him. At that time, accused was having an axe in his hand. The accused threatened him stating that, he would

kill him by an axe. However, the accused dragged him towards court-yard of his house. He informed about the said incident to his mother. He stated that, meanwhile, Sitabai came there for work of removing weed. His mother told Sitabai to remove weed as she would go to police station for filing complaint. Thereafter, he himself and his mother started proceeding on his bicycle towards Malewadi. At that time the accused and his wife also followed them on a bicycle. Thereafter, he stated details about filing of the complaint with the police station. He further stated that, subsequent to filing of complaint, his mother went to Shrirampur in order to inform his father regarding the morning incident. His mother told him to go to their house. When he went to village Malegaon, he saw Sitabai (PW-3). He asked her as to why she came to village Malewadi instead of removing weed. She told him that, he should not go towards his house. She told him that, accused became angry and he is having axe and also

threatened her. She also told him that, accused also abused his brother and he should not go towards the house. He further stated that, meanwhile his parents came there in a police jeep. He stopped the police jeep. He found that, his parents were weeping. They took him towards their house in a police jeep. On the way, he asked them, as to why they were weeping. His mother told him that, the accused killed his brothers Vidnyan and Gokul with the help of an axe. He further stated that, thereafter, they went to their house and saw that, Vidnyan was lying on the Ota and Gokul was lying near the threshold. They were having injuries on their person.

During his cross examination, he stated that, he himself and his mother left the house at about 9.00 to 9.30 a.m. in order to lodge the complaint. The complaint might have been recorded by the police at about 12.00 to 12.30 noon. He stated that, he reached village Malewadi at about

1.00 to 1.15 p.m. Sitabai is having her house on the road. He saw her while he was proceeding towards his house. She was sitting in the courtyard of her house. He further stated that, the house of Sitabai is situated on the road. There is one Maruti temple in village Malewadi. The distance between house of Sitabai and the temple is 1000 to 1200 ft. Number of persons are visiting the said temple in the morning. There are also offices of society and Gram Panchayat near the said temple. The said offices are kept open from 9.00 a.m. to 5 p.m. There is a bus-stand near Maruti temple. He further stated that, he did not remember the date on which the police recorded his statement. Witness volunteers that, he did not remember the date on which the police recorded his statement. He denied the suggestion that, he did not state in his statement before the police that, he asked his parents as to why they were weeping in the police jeep and at that time, his mother told him that, the accused killed his brothers

Vidnyan and Gokul with the help of an axe. He stated that, the statement was not read over to him by the police, however, he cannot assign any reason as to why the police have not mentioned the said fact in his statement before them. He denied the suggestion that, he did not state in his statement before the police that, when he saw Sitabai (PW-3) in village Malewadi, he asked her as to why she had come towards her house instead of removing weed, however, he cannot assign any reason as to why police have not mentioned the said fact in his statement. He denied the suggestion that, he did not state in his statement before the police that, the accused was having one axe and he threatened Sitabai and she told him so, when he meet her at village Malewadi. He cannot assign any reason as to why the police have not mentioned the said fact in his statement. He denied the suggestion that, he did not state in his statement before police that, Sitabai told him that, the accused had become very much angry and

he abused his brothers. He cannot assign any reason as to why the said fact is not mentioned in his statement before the police.

He denied the suggestion that, in his first statement before police dated 27th April, 1996, he did not state that, his brother Vidnyan took photos while the accused beating him in the morning. He cannot state any reason as to why the said fact is not mentioned in his statement before the police. He denied the suggestion that, he did not state in his statement before the police that, Sitabai (PW-3) came towards their house in the morning. He cannot assign any reason as to why the police have not mentioned the said fact in his statement before them. He denied the suggestion that, he did not state in his statement before police that, his mother told Sitabai to remove weed and she would go to police station in order to file a complaint. He cannot assign any reason why the said fact is not mentioned in his

statement before the police. He denied the suggestion that, he did not state in his statement before the police that, when he himself and his mother started proceeding towards village Malewadi, the accused and his wife also followed us on a bicycle. He cannot assign any reason as to why the said fact is not mentioned in his statement before police.

At this juncture it would be relevant to make reference to the deposition of the Investigating Officer (PW-19). The Investigating Officer in his statement stated that, he recorded the statement of Vikas Amle (PW-9). PW-9 has not stated before him that, while he was proceeding in a jeep and when he found that, his parents were weeping, he asked them as to why they were weeping and he told them that accused had killed his brothers, Vidnyan and Gokul. Vikas (PW-9) did not state in his statement before him that, he had asked Sitabai as to why he had come to Malewadi

instead of removing grass. PW-9 did not state in his statement that, when Sitabai met him, she told him that accused was having axe in his hand. He did not state that, Sitabai had told him that when she saw the accused, he was in angry mood and he also abused his brothers. PW-9 did not state before him that, he left at Haregaon Outpost by Dattatraya Autade with the help of his motor cycle. PW-9 did not state in his statement before him that, he had taken the photographs regarding the incident taken place in the morning. PW-9 did not state that, Sitabai had come to his house in the morning. PW-9 did not state before him that, his mother told Sitabai to remove weed and she would go to the police in order to file the complaint. PW-9 did not stated before him that, when he and his mother started proceeding towards police station, he and his mother also followed them.

12. In the light of discussion in foregoing

paragraphs, we are of the considered view that, the evidence brought on record by the prosecution is not sufficient to connect the respondent with the commission of alleged offence. The evidence of prosecution witnesses also shows that, the place of alleged incident is not an isolated place. The respondent has also raised the defence that, he went to village Loni and while returning back from the said place at 4.30 to 5.00 p.m., he learnt about the death of Vidnyan and Gokul and also the allegation that, he was involved in the commission of murder of Vidnyan and Gokul. Therefore, according to the defence taken by the respondent out of fear he absconded.

13. The entire case is based upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient and convincing so as to prove the offence against the respondent beyond reasonable doubt. The Supreme Court in the case of **Sharad**

Birdhichand Sarda Vs. State of Maharashtra⁵ has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other his innocence, the accused is entitled to have the benefit of one which is favourable to him.

14. The Supreme Court in the case of **Mohd. Mannan @ Abdulo Mannan V/s State of Bihar**⁶ has reiterated the principles to be borne in mind while dealing with a case based upon circumstantial evidence in evaluation of the

5 (1984) 4 SCC 166

6 (2011) 5 SCC 317

evidence adduced in the case. The Supreme Court in this case has observed thus :

"In our opinion to bring home the guilt on the basis of circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in a fanciful manner. In order to sustain conviction circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard-and-fast rule can be laid down to say that

particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case."

15. In the case of **Rajendra Wasnik Vs. State of Maharashtra**⁷, the Supreme Court held that, to sustain conviction founded on circumstantial evidence, circumstances forming chain of events should be proved which should cumulatively and unequivocally point towards guilt of accused and be incompatible with innocence of accused or guilt of any other person.

16. Therefore, taking over all view of the matter, it clearly reveals that there is no chain of circumstance so as to sustain the conviction of the respondent. The Hon'ble Supreme Court in the case of **Toran Singh Vs. State of M.P.**⁸ held that the case of the prosecution should rest on its own

7 (2012) 4 SCC 37

8 AIR 2002 SC 2807

strength and not on the basis of absence of explanation or plausible defence by the accused. In the case of **State of Punjab V/s Bhajan Singh and others**⁹, the Supreme Court held that, suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused. Another weakness of the prosecution case is that as many as four persons have been involved in this case. The Apex Court has observed that, even if it may be assumed that the dead bodies which were recovered from the place in front of the house of the accused were those of Harbans Singh and Bachan Singh deceased and that their death was homicidal, it is difficult to say whether the dastardly crime was the act of one or two culprits or of a larger number of them. In any case it is difficult to fix their identity. The Supreme Court, in case of **Kali Ram V/s. State of Himachal Pradesh**¹⁰ observed as under :

9 AIR 1975 SC 258

10 AIR 1973 SC 2773

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

17. In the result, an inevitable conclusion is that, the appeal filed by the State shall fail and accordingly, the same stands dismissed. The bail bond of the respondent-accused, if any, same shall stands cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]