

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

CRIMINAL APPEAL NO. 400 OF 2000

1. Shriram s/o Narayan Raut
Age: 36 yrs, occu. : agri.
R/o Mhalas Javala, Taluka
and District Beed
2. Namdeo s/o Baliram Raut
Age : 50 years, Occu. and
R/o as above.
**(Appeal abated against appellant No.2
as per Court's Order dated 19/4/2017)**
3. Radhakishan s/o Ramrao Raut
Age : 36 years, Occu. and
R/o as above.
4. Mahadeo s/o Kisan Raut
Age: 38 years, Occu. and
R/o as above.
5. Gopinath s/o Ramrao Raut
Age: 55 years, Occu. and
R/o as above.
6. Jairam s/o Narayan Raut
Age: 27 years, Occu. and
R/o as above.
7. Mahadeo s/o Baliram Raut
Age : 40 years, Occu. and

R/o as above.

8. Prabhu s/o Bhaurao Raut
Age : 30 years, Occu. and
R/o as above.
9. Ramnarayan s/o Madhav Raut
Age: 71 years, Occu. and
R/o as above.
10. Maroti s/o Madhav Raut
Age: 40 years, Occu. and
R/o as above.
11. Navnath s/o Sunderrao Khande
Age: 31 years, Occu. and
R/o as above.
12. Pralhad s/o Bhagwanrao Khande
Age : 40 years, Occu. and
R/o as above.

... APPELLANTS

(Orig. Accused Nos. 1, 2, 9,
15, 16, 18, 20, 22, 30, 34, 35 & 36)

VERSUS

The State of Maharashtra
(Copy to be served on Addl. P.P.
High Court of Bombay,
Bench at Aurangabad

... RESPONDENT

.....

Shri R.S. Deshmukh, Advocate for appellants
Shri R.V. Dasalkar, A.P.P. for State, assisted by

Shri S.J. Salunke, Advocate for original complainant

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W I T H

CRIMINAL APPEAL NO. 16/2001

The State of Maharashtra

Through Police Station, Pimpalner,

Taluka and District Beed.

... APPELLANT

VERSUS

1. Shriram s/o Narayan Raut
Age: 36 years, Occu. : Agri.
R/o Mhalas Javala,
Taluka and District Beed.
2. Namdeo s/o Baliram Raut
Age: 50 years, Occu. & R/o as above.
**(Appeal abated against appellant No.2
as per Court's Order dated 19/4/2017)**
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Age: 55 years, Occu. & R/o as above.
6. Jairam s/o Narayan Raut
Age: 27 years, Occu. & R/o as above.

7. Mahadeo s/o Baliram Raut
Age : 40 years, Occu. & R/o as above.
8. Prabhu s/o Bhaurao Raut
Age : 30 years, Occu. & R/o as above.
9. Ramnarayan s/o Madhav Raut
Age: 71 years, Occu. & R/o as above.
10. Maroti s/o Madhav Raut
Age: 40 yrs, occu. : agri.,
11. Navnath s/o Sunderrao Khande
Age: 31 years, Occu. & R/o as above.
12. Pralhad s/o Bhagwanrao Khande
Age : 40 years, Occu. & R/o as above. ... RESPONDENTS
(Orig. accused Nos. 1, 2, 9,
15, 16, 18, 20, 22, 30, 34,
35 & 36).

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Shri R.V. Dasalkar, A.P.P. for appellant/ State, assisted by
Shri S.J. Salunke, Advocate for original complainant
Shri R.S. Deshmukh, Advocate for respondents

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WITH

CRIMINAL APPEAL NO.15 OF 2001

The State of Maharashtra
through Police Station,

Pimpalner, Tq. & District Beed

... APPELLANT

VERSUS

1. Haribhau s/o Bhairuji Khande
Age 65 years, Occu. Agri.,
R/o Mhalas Javala, Tq. & Dist. Beed.
2. Dadarao s/o Ramnarayan Raut,
Age 35 years, Occu. & R/o as above.
3. Maruti s/o Haribhau Khande
Age 29 years, Occu. & R/o as above.
4. Shivaji s/o Haribhau Khande
Age 35 years, Occu. & R/o as above.
5. Rameshwar s/o Narayan Raut,
Age 26 years, Occu. & R/o as above.
6. Giyandeo s/o Ramrao Raut,
Age 35 years, Occu. & R/o as above.
7. Jalindar s/o Bajirao Raut
Age 35 years, Occu. & R/o as above.
8. Rama s/o Bhaurao Raut
Age 26 years, Occu. & R/o as above.
9. Dharmraj s/o Namdeo Raut,
Age 28 years, Occu. & R/o as above.
10. Babasaheb s/o Kishanrao Raut,
Age 50 years, Occu. & R/o as above.

11. Bhujang s/o Deorao Raut,
Age 55 years, Occu. & R/o as above.
12. Asruba s/o Madhav Raut,
Age 50 years, Occu. & R/o as above.
13. Hariram s/o Sitaram Raut,
Age 32 years, Occu. & R/o as above.
14. Navnath s/o Sheshrao Raut,
Age 29 years, Occu. & R/o as above.
15. Gangadhar s/o Baliram Raut,
Age 30 years, Occu. & R/o as above.
16. Yadavrao s/o Madhavrao Raut,
Age 45 years, Occu. & R/o as above.
17. Keru s/o Maroti Raut,
Age 25 years, Occu. & R/o as above.
18. Sitaram s/o Dashrath Raut,
Age 70 years, Occu. & R/o as above.
19. Atmaram s/o Sitaram Raut,
Age 45 years, Occu. & R/o as above.
20. Sakharam s/o Ramnarayan Raut,
Age 26 years, Occu. & R/o as above.
21. Ashok s/o Bhujangrao Raut,
Age 25 years, Occu. & R/o as above.

22. Damodhar s/o Baliram Raut,
Age 35 years, Occu. & R/o as above.
23. Raykoba s/o Limbaji Raut,
Age 44 years, Occu. & R/o as above.
24. Santram s/o Ramnarayan Raut,
Age 40 years, Occu. & R/o as above.
25. Rajaram s/o Shivnarayan Raut,
Age 30 years, Occu. & R/o as above.
26. Satish s/o Raosaheb Raut,
Age 31 years, Occu. & R/o as above.

... **RESPONDENTS**
(Ori. Accused Nos.3 to 8,
10 to 14, 17, 19, 21, 23 to
29, 31 to 33, 37 & 41)

.....

Shri R.V. Dasalkar, A.P.P. for appellant/ State, assisted by
Shri S.J. Salunke, Advocate for original complainant
Shri R.S. Deshmukh, Advocate for respondents

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**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date of reserving judgment : 18th July, 2017.
Date of pronouncing judgment : 4th August, 2017.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. Criminal Appeal No. 400/2000 is directed by
original accused Nos.1, 2, 9, 15, 16, 18, 20, 22, 30, 34, 35

and 36 against judgment and order of their conviction under Sections 147, 148, 304- II, 326, 324 and 323 read with Section 149 of the Indian Penal Code by Additional Sessions Judge, Beed in Sessions Case 69/1995 dated 29.08.2000.

2. Criminal Appeal No. 16/2001 is preferred by the State against the same judgment and order to enhance the sentence of convicted accused and to convert their conviction under Section 302 of the Indian Penal Code.

3. Criminal Appeal No.15/2001 is preferred by the State against the acquittal of original accused No.3 to 8, 10 to 14, 17, 19, 21, 23 to 29, 31 to 33, 37 and 41 in the same Sessions Trial. These three appeals are disposed of by this common judgment.

4. In Criminal Appeal No. 400/2000, appellants are the original accused and respondent is the State.

5. Prosecution case, in brief, is that at village Mhalas Jawala, on account of Grampanchayat elections two rival parties existed. One party was led by Dnyanoba Maruti Khande and other was led by accused No.1 Shriram Narayan Raut. These

both parties are on inimical terms. Limba Abaji Khande was the Sarpanch of this village at the relevant time of occurrence. Murlidhar Ramkisan Khande used to run one Fair Price Shop in the village Mhalas Jawala. However, prior to the occurrence of the incident, accused No.1 Shriram Narayan Raut succeeded in getting second Fair Price Shop in the same village. On account of Fair Price Shop, dispute started in between the parties.

6. On 10.03.1994 at about 8.30 a.m. when Mohan Laxman Khande (PW-4) went to the shop of Washer-man, that time accused Nos. 1, 2, 15, 22 and 9 went to that shop, dragged Mohan Khande out of that shop and while beating him by stick and kicks, they brought him near Maruti temple in the village. When Mohan (PW-4) started shouting, that time deceased Uddhav Khande, who was sitting near spot, tried to intervene to save Mohan from the clutches of these accused persons. That time accused No.1 inflicted single iron bar blow on the head of Uddhav Khande. He sustained bleeding injury on his head and fell down. Mohan (PW-4) and Uddhav Khande were assaulted by accused Nos. 1, 2, 9, 15, 16, 18, 19, 20, 22, 30, 34, 35 and 36 as well as by other accused persons by fist, kicks and sticks. Bhartari Uddhav Khande and Kedar Uddhav Khande as well as Rameshwar Uddhav Khande, who were the sons of Uddhav Khande, tried to save him. They were also assaulted by accused

persons by stick, fist and stones. When the persons from Khande group tried to intervene, they were also severely assaulted by accused persons by sticks, kicks and stone. Uddhav Khande (hereinafter referred as "deceased") and his son Kedari were lying on the spot when the accused left spot of the incident. By the time, Police Station, Pimpalner was informed. Therefore, P.S.I. S.S. Khan (PW-17) rushed on the spot. By that time, injured persons were admitted in Civil Hospital, Beed. Mohan Khande (PW-4) approach P.S.I. Khan (PW-17) and lodged F.I.R. (Exh.95) which was sent to the Police Station, Pimpalner.

7. Head Constable C.R. Kolhe received F.I.R. at about 12.30 p.m. and registered Crime No. 36/1994 against accused persons under Sections 147, 148, 337 and 307 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

8. Uddhav Khande succumbed to the injuries in Civil Hospital, Beed. Therefore, inquest panchnama (Exh.87) was drawn. Blood stained clothes of the deceased were seized (Exh.88). On the same day P.S.I. Khan (PW-17) prepared spot panchnama (Exh. 90) and seized 44 stones, 13 sticks, one big stone, blood stained piece of pant, gunny bag, blood mixed earth

and normal earth from the spot of the incident. On the same day accused Nos. 1 to 16 were arrested. On 11-03-1994 accused Nos. 17 to 21 were arrested. During the course of investigation axe was recovered from accused No.18 Jairam Narayan Raut, two iron bars from accused No.9 Radhakisan Ramrao Raut, one iron bar from accused No.1 Shriram Narayan Raut and 7 sticks from accused No.15 Mahadeo Kisan Raut. By that time, Dr. R.B. Deshpande (PW-12) performed postmortem examination on deceased and by submitting postmortem notes (Exh.117), opined that cause of death of the deceased was due to "cardio-respiratory failure due to head injury with fracture of skull with intracranial haemorrhage". Dr. R.G. Rambaksh (PW-13) examined injured Kedari Khande and Rameshwar Khande at Civil Hospital, Beed and Dr. B.N. Chalak (PW-14) examined other injured persons from Khande group at P.H.C. Majalgaon. After completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class at Beed against accused for the offences punishable under Sections 147, 148, 302, 326, 325, 337, 324 and 323 read with Section 149 of the Indian Penal Code and under Section 135 of Bombay Police Act. Offence punishable under Section 302 of I.P.C. being exclusively triable by the Court of Sessions, this case was committed to Sessions Court, Beed.

9. Charge was framed against accused persons for the offences punishable under Sections 147, 148, 302, 326, 324, 337 and 323 read with Section 149 of the Indian Penal Code and under Section 37 (1) read with Section 135 of Bombay Police Act. Contents of the charge were read over and explained to accused in vernacular to which accused pleaded not guilty. Defence of the accused is of total denial. According to accused, on the date of incident at about 8.30 a.m. the group of Dnyanoba Khande and Mohan Khande assaulted accused No.9 Radhakisan Raut near Maruti temple and after hearing hue and cry of Radhakisan Raut, other villagers and the persons from the group of accused No.1 Shriram rushed on the spot to save Radhakisan. That time there was a fight in between two groups and stone pelting took place. During this occurrence deceased and other persons from Khande group sustained injuries.

10. After considering the evidence placed on record, the learned trial Court pleased to convict accused Nos. 1, 2, 9, 15, 16, 18, 20, 22, 30, 34, 35 and 36 for the offences punishable under Sections 147 and 148 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 6 months and to pay fine of Rs. 100/- each on these both counts. Same accused were also convicted for the offences punishable under Section 304-II read with Section 149 of the Indian Penal Code and were

sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs. 250/- each, under Section 326 read with Section 149 of I.P.C. and sentenced to suffer Rigorous Imprisonment for 2 years and to pay fine of Rs. 200/- each, under Section 324 read with Section 149 of I.P.C. and sentenced to suffer Rigorous Imprisonment for 6 months and to pay fine of Rs. 100/- each and under Section 323 read with Section 149 of I.P.C. and sentenced to suffer Rigorous Imprisonment for 3 months and to pay fine of Rs. 50/- each. Trial Court directed that all the substantive sentences shall run concurrently. Accused Nos. 3, 28, 10 to 14, 17, 19, 21, 23 to 29, 31 to 33 and 37 to 41 were acquitted of all charges. Therefore, these appeals arise.

11. In the case at hand, prosecution has examined total 17 witnesses. Out of these witnesses, Babasaheb Lahane (P.W.1) is witness on inquest panchanama (Exh.88) as well as seizure of the clothes of deceased. Achyut Khande (P.W.2) is the witness on spot panchanama (Exh.90) wherein he found and seized blood stained piece of pant, 13 sticks, blood stained gunny bag, one large stone and 40 small stones as well as samples of the earth. After going through the cross-examination of these both panch witnesses, it emerges that, nothing could be elicited from their cross-examination to disbelieve their version. On the other hand, same spot panchanama is also used by prosecution

in counter case filed against prosecution witnesses on the basis of incident which occurred on the same date, time and place. Therefore, no more discussion is required regarding these two panchanamas. In fact, spot of occurrence near the Maruti Temple is not at all disputed by the defence.

12. Before analysing the evidence of eye witnesses, we propose to examine the circumstantial evidence placed on record by prosecution in the form of recovery of incriminating articles i.e. one axe, 3 iron bars and 7 sticks from the accused No.1 Shriram Raut, accused No.6 Jayram Raut, accused No.3 Radhakishan Raut and accused No.7 Mahadeo Raut. Bhaskar Khande (P.W.10) is the panch witness, who claims that on 13/3/1994 at Police Station Pimpalner, in his presence, accused No.6 Jayram Raut made disclosure statement (Exh.105). Accused Radhakishan agreed to produce iron bar from the flour mill of Mahadeo Raut (Exh.106) and accused No.1 Shriram Raut agreed to produce one iron bar kept in the cattle shed (Exh.107). According to this witness, accused No.4 Mahadeo Raut agreed to produce sticks kept in cattle shed of Khanderao Raut (Exh.108). It is to be noted that, even testimony of Bhaskar Khande (P.W.10) is accepted as it is, still the above referred vague statements of the accused persons cannot be termed as statement of discovery of new fact within meaning of Section 27 of the Evidence Act.

This witness nowhere says that, accused disclosed the place where the above referred weapons were 'hidden'. From the cross-examination of this witness, it emerges that, he signed the already prepared panchanama and police told him that sticks, axe and bars were seized from accused. It means that, the above referred incriminating articles were already seized by police and in presence of this witness, only recovery panchanamas were prepared. Thus, otherwise also the evidence of this witness is of no use to the prosecution to prove that as per statement given by accused in police custody weapons of the offences were seized from hidden places which were out of the sight of any other person.

13. Even evidence of P.S.I. Sharifkhan (P.W.17), who is the investigating officer, is absolutely vague regarding what statements were given by accused persons in police custody pertaining to discovery of any weapon of the offence. Vague statement of this witness that accused agreed to produce weapon of the offences is not discovery statement within meaning of Section 27 of the Evidence Act. cat has come out of the bag when this witness was subjected to searching cross-examination by defence counsel. From his cross-examination, it emerges that, this witness even could not identify accused persons from whom the weapon of the offences were recovered. By taking

name, accused No.6 Jayram, he pointed out towards accused No.9 Radhakishan as the person who made statement of discovery. This witness cannot tell whether the seized weapons were hidden or visible to anybody. Even in recovery panchanamas, it is not mentioned whether the recovered weapons were hidden or were visible to anybody. Therefore, the evidence placed on record by prosecution regarding recovery of incriminating article i.e. weapon of the offences as per disclosure statement of the accused is nothing but useless piece of the evidence and is of no help to the prosecution to connect the accused persons with the alleged crime.

14. Otherwise also, the so called recovered articles were neither kept in sealed condition at Police Station nor they were sent to Chemical Analyser to find out whether these articles bear blood stains of deceased or any injured person. Therefore, the link in between seized articles and accused persons is totally missing. As rightly pointed out by learned defence counsel, the entire circumstantial evidence placed on record by prosecution to establish the guilt of the accused is not free from infirmities and needs to be discarded in toto.

15. The third panch Mahadeo Khande (P.W.11) examined by prosecution is to prove the seizure of blood stained clothes

from injured Kedari Khande. The evidence of this witness is not seriously challenged by the defence counsel and nothing could be elicited to disbelieve the version of this witness that Articles 17 and 18, blood stained shirt and pant were seized from the possession of injured witness Shri Kedari Khande. In subsequent part of the judgment, we will consider how far this seizure of blood stained clothes is useful to the prosecution to establish the guilt of the accused persons.

16. Mohan Laxman Khande (P.W.4) is the informant who lodged F.I.R. regarding the occurrence of incident dated 10/3/1994. From the testimony of this witness, it emerges that on 10/3/1994 at about 7.30 a.m., he had been to the shop of Washerman for for taking delivery of his clothes. That time, accused No.1 to 15, 22 and 9 came to that shop, pulled this witness out of the shop and took him up to the platform of Maruti Temple. In front of Maruti Temple, these accused persons started beating Mohan Khande (P.W.4) by sticks and fist blows and when he shouted loudly, that time deceased, who was the cousin uncle of this witness, came on the spot to rescue this witness. That time, accused No.1 Shriram, uttered words "*Tumhi Khande Lok Majlet*" and inflicted iron bar blow on the head of deceased, who sustained bleeding injury on his head and fell down on the same spot. Thereafter, accused No.1, 2, 3, 4, 6, 8,

9, 10, 11, Pralhad Khande, Hari Bhairaj, Shivaji Haribhau started beating deceased who was lying on the ground. When sons of deceased namely Bhartari (P.W.3), Kedari (P.W.9) and Rameshwar tried to rescue the deceased, that time, the accused persons started beating them. During this occurrence, Kedari (P.W.9) sustained injuries on his head and leg. Even Bhartari (P.W.3) sustained injuries. When other persons from Khande group came to rescue the deceased and his sons, that time accused persons started beating them. Accused persons left the spot when deceased and Kedari were lying on the ground in seriously injured condition. Therefore, deceased Kedari and other injured persons were taken to hospital at Beed. From the testimony of this witness (P.W.4), it emerges that when police reached on the spot, this witness lodged F.I.R. (Exh.95). The testimony of this witness is fully corroborated by Bhartari (P.W.3) and Kedari (P.W.9) by repeating same story.

17. According to both these witnesses, they were also assaulted by sticks and iron bar as well as by stones and due to that assault, Kedari sustained injury on his head above left eye-brow, shoulders, lap, back and, therefore, he became unconscious. Other eye witnesses Dharmaraj Khande (P.W.5), Dinkar Khande (P.W.6), Murlidhar Khande (P.W.7), Motiram Khande (P.W.8) have also fully corroborated the version of these

witnesses regarding assault to deceased by iron rod on his head by accused No.1 and assault to the sons of deceased by other accused by sticks and stones. From the testimony of all prosecution witnesses, it also emerges that the deceased was assaulted by other accused by sticks when he was lying injured on the spot. From the testimony of these witnesses, it further emerges that, on the date of incident, the deceased succumbed to his injuries in the Civil Hospital at Beed.

18. Dr. Ramchandra Deshpande (P.W.12) has also proved the post mortem notes (Exh.117) of the deceased as well as the injuries found on the dead body and cause of death of the deceased due to "cardio respiratory failure, due to head injury, with fracture skull with intracranial haemorrhage". Medical Officer (P.W.12) opined that, the contused lacerated wound on occipital parietal region of size 2 ½ x ½ x 1 inch up to bone and contused lacerated wound of parietal region of size of 2 cm. x ½ cm. x 1 cm. with corresponding internal large extradural hematoma compressing the brain matter, were sufficient to cause death of the deceased. He also opined that these injuries are possible due to iron bar (Article 9) referred to this witness. This medical officer also found fracture and dislocation of left elbow joint and fracture of parietal right side bone of the deceased. Nothing could be elicited in his cross-examination to

shake his version. Thus, homicidal death of the deceased is established by the prosecution beyond reasonable doubt.

19. Now we have to examine whether oral testimony of eye witnesses is reliable to base the conviction of accused. Learned counsel for the accused raised objection that, prosecution has not established the motive behind the murder of deceased. He pointed out my attention towards cross-examination of Bhartari (P.W.3) wherein he has admitted that, deceased was not involved in village politics and there was no dispute in between members of his family and accused persons. Otherwise also, no evidence is placed on record by prosecution to show that the deceased had any dispute with the accused persons. On the other hand, from the cross-examination of Bhartari (P.W.3), it also emerges that, deceased never contested even Grampanchayat election of Mhalas Javala, which was the root cause for dispute in between Khande group and Raut group. Thus, there was no political rivalry in between deceased and accused to commit the murder of deceased. In the circumstances, we have no hesitation to hold that prosecution has failed to establish the motive behind the murder of deceased.

20. However, as rightly pointed out by learned A.P.P., only on the ground of absence of motive, the accused persons

are not entitled to acquittal, if otherwise the direct evidence of eye witnesses is trustworthy to establish the guilt of the accused. Learned defence counsel raised next objection that from the cross-examination of Ganpat Khande (P.W.15), who was police patil of village Mhalas Javala, it emerges that, after the occurrence of incident, for the first time he informed the police on telephone. However, Ganpat Khande (P.W.15) has deposed otherwise that though he tried to contact Pimpalner Police Station on phone, he could not make the contact and, therefore he sent private jeep to Pimpalner Police Station and thereafter police reached on the spot. Therefore, it cannot be said that police patil had informed all the details of the occurrence of the incident to the Police Station, Pimpalner on telephone. Even from the testimony of Head Constable C.R. Kolhe (P.W.16), who was the Police Station Officer on duty on 10/3/1994, it emerges that, he received information about fight at Mhalas Javala after receiving telephonic call from Tahsildar Office. Only P.S.I. Sharif Khan (P.W.17) has admitted in his cross-examination that when he reached on the spot, the police patil told him about the incident, but he did not record the information given by police patil. According to defence, the information given by police patil was the real F.I.R., which is suppressed by th prosecution.

21. However, this submission of defence counsel is not

acceptable, because, Mohan Khande (P.W.4) was the cause behind the occurrence of the incident and he was present in the village and available to P.S.I. Khan for necessary details and information. Therefore, if P.S.I. Khan preferred to obtain all the details of the occurrence from Mohan Khande (P.W.4) and obtained his F.I.R., it cannot be said that real F.I.R. was suppressed by prosecution.

22. Next objection of defence counsel is regarding inordinate delay in lodging F.I.R. However, from the testimony of P.S.I. Khand (P.W.17), it emerges that, on 10/3/1994, Police Station Officer Shri Kolhe (P.W.16) received information regarding mishap at village Mhalas Javala and thereafter P.S.I. Khan reached on the spot and recorded the First Information Report of Mohan Khande (Exh.95). From his cross-examination, it emerges that, he recorded the complaint of Mohan Khande (P.W.4) at about 10.00 a.m. to 12.30 p.m. However, Head Constbale Kolhe (P.W.16) has made it clear that he received F.I.R. (Exh.95) which was signed by P.S.I. Khan at about 12.30 p.m. and accordingly, registered Crime No.36/1994 under Sections 147, 148, 149, 307 of the Indian Penal Code. Thus, when incident occurred at 8.30 a.m. and it was received by P.S.I. Khan at about 10.00 a.m., and when Pimpalner Police Station registered F.I.R. at 12.30 p.m., it cannot be said that there was

inordinate delay in lodging the F.I.R. We do not find inordinate delay in lodging the F.I.R. which creates possibility of concoction of false case by the prosecution.

23. Learned defence counsel has pointed out that, names of all 41 accused are not mentioned in the F.I.R. In reply, learned A.P.P. submitted that F.I.R. need not contain all the details of the occurrence and names of all accused persons.

24. We do not find any substance in the objection raised by learned defence counsel for the simple reason that the F.I.R. is nothing but information to the police regarding occurrence of the cognizable offence within jurisdiction of that police station. It is not the encyclopedia which includes each and every minute details of the occurrence. We may refer "**Mukesh & anr. Vs. State of NCT of Delhi & ors.**" reported in (**AIR 2017 SC 2161**), wherein the Apex Court ruled that, F.I.R. is not an encyclopedia which is expected to contain all details of prosecution case, it may be sufficient if broad facts of prosecution case alone appear. Merely because names of accused persons not named in F.I.R., serious doubt against case of prosecution cannot be raised.

25. In the case at hand, the F.I.R. (Exh.95) shows that,

informant Mohan Khande (P.W.4) had only mentioned names of 5 accused persons and broadly he has mentioned that accused persons assaulted him and when deceased and other persons tried to rescue him, that time accused persons assaulted them by sticks and stones, and deceased was seriously injured. He has also made it clear in the F.I.R. itself that, due to confusion he could not understand the names of all remaining assailants, but approximately 15 persons assaulted him and the other persons. This information supplied by Mohan Khande (P.W.4) in F.I.R. (Exh.95) is sufficient disclosure of occurrence of the incident. Only because names of all accused persons are not mentioned in F.I.R. and only because overt act of each accused persons is not mentioned in the F.I.R., prosecution case cannot be doubted.

26. Next objection raised by defence counsel is that, all examined so called eye witnesses are interested and partisan witnesses and their statements are inconsistent with their statements before police as well as in variance with medical evidence. On the other hand, learned A.P.P. submitted that, only because witnesses are interested witnesses, on that count evidence of truthful witnesses cannot be doubted.

27. Prosecution has examined Bhartari Khande (P.W.3), Mohan Khande (P.W.4), Dharmaraj Khande (P.W.5), Dinkar

Khande (P.W.6) Murlidhar Khande (P.W.7), Motiram Khande (P.W.8), Kedari Khande (P.W.9) and Ganpat Khande, Police Patil (P.W.15) as eye witnesses of the incident. Out of these witnesses, Bhartari (P.W.3) and Kedari (P.W.9) are the sons of deceased. Dr. Rambaksh (P.W.13) has also proved injury certificate of Kedari Khande (P.W.9 -Exh.119) which shows that, Kedari sustained two contused lacerated wounds on right parietal frontal over left eye-brow, one contusion over left shoulder and contusion over left thigh as well as over right eye-brow. Dr. Rambaksh (P.W.13) has also proved that right ulna bone lower end of Kedari was fractured during the incident. This fracture injury is definitely grievous hurt. Thus, Kedari Khande is the witness who sustained grievous hurt at the hands of accused while attempting to save the life of his father (deceased). Apart from this injured witness, Dharmaraj Khande (P.W.5), Dinkar Khande (P.W.6) and Murlidhar Khande (P.W.7) as well as Motiram Khande (P.W.8) are also injured witnesses, whose injuries are proved by Dr. B.N. Chalak (P.W.14). These 5 witnesses being injured witnesses, their presence on the spot of the incident cannot be doubted.

28. In **"Mano Dutt and another Vs. State of Uttar Pradesh"** reported in **(2012) 4 SCC 79**, Apex Court ruled that, "where witness to the occurrence has himself been injured in the

incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness'."

29. Regarding contradictions and omissions, the Apex Court had occasion to consider this aspect in **"Sunil Kumar Sambhudayal Gupta"** reported in **(2010 AIR SCW 7049)**. While dealing with the issue of material of contradictions, Apex Court held that, while appreciating the evidence, the court has to take into consideration whether the contradictions/ omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety.

30. Apart from the oral testimony of Kedari (P.W.9), which is already discussed above, even Dinkar Khande (P.W.6), who is one of the injured witness, has categorically deposed before the Court that, at the time of incident, when he reached on the spot, he saw all the accused (convicted) holding sticks,

stones and iron bars and accused No.1 inflicted iron bar blow on the head of deceased and accused No.2, 16, 15 and 9 assaulted the deceased by sticks and stones. When Kedari (P.W.9) intervened, he was assaulted by stick on his head along with his brother Bhartari. Injured witness Murlidhar Khande (P.W.7) has also repeated the same story of assault to deceased and his sons by accused by sticks and iron bars. Motiram Khande (P.W.8), who is one of the injured witness, has repeated same story regarding assault to deceased on his head by iron bar by accused N.1 and assaulted Kedari and Bhartari by other accused when they tried to save their father. Apart from injured eye witnesses, Bhartrai (P.W.3), Mohan Khande (P.W.4) and Police Patil Ganpat Khande (P.W.15) have fully corroborated the testimony of all injured witnesses, specially Kedari Khande (P.W.9).

31. No doubt, learned defence counsel has pointed out certain improvements and contradictions in the oral evidence of these witnesses. However, if these omissions and contradictions are examined carefully, it becomes clear that, the inconsistencies emerging in the testimony of these injured eye witnesses do not shake the basic version of these witnesses that the above referred convicted accused persons assaulted the deceased by iron bar and stick blows. Everybody is consistent regarding the iron bar blow inflicted by accused No.1 Shriram Raut on the head

of deceased. Every injured witness has specified as to how he sustained injuries at the time of occurrence and which accused caused that injury. Therefore, when testimony of these witnesses is fully corroborated by medical evidence of Dr. Rambaksh (P.W.13), Dr. Chalak (P.W.14), who examined the injured at Civil Hospital, Beed and P.H.C., Majalgaon respectively, merely on the ground of minor discrepancies which do not shake the basic version of these witnesses, the testimonies of these important witnesses cannot be discarded.

32. Accordingly, after careful examination of oral evidence of eye witnesses, P.W.3 to P.W.9 and P.W.15, which is fully corroborated by prompt F.I.R. (Exh.95) as well as medical evidence of Dr. Rambaksh (P.W.13) and Dr. B.N. Chalak (P.W.14), we have no hesitation to hold that prosecution has proved that on 10/3/1994 at about 8.30 a.m. at village Mhalas Javala, accused No.1, 2, 9, 15, 16, 18, 20, 22, 30, 34, 35 and 36 have caused homicidal death of deceased and they have voluntarily caused grievous hurt to Kedari Udhav Khande and simple hurt to other persons, which will be discussed in subsequent part of this judgment.

33. Before coming to any conclusion, we must consider the important objection raised by learned defence counsel that,

cross Sessions Case No.91/1998 was filed against informant and other prosecution witnesses, and in the cross-examination of Dr. B.N. Chalak (P.W.14), the defence has also proved injuries sustained by accused No.16, 11, 10, 7, 5, 6, 12, 2, 14, 4 and 9. These injuries are not explained by prosecution and, therefore, possibility cannot be ruled out that the accused persons acted while exercising right of private defence. He place reliance on **Bhagwan Vs. State of Rajasthan** reported in **(2016) 13 SCC 171**, wherein benefit of doubt was given to the accused on account of suppression of genesis and origin of occurrence of the incident by prosecution as well as non explanation of death and injuries on the side of accused.

34. No doubt, from the cross-examination of Dr. B.N. Chalak (P.W.14) it emerges that, on the date of incident he also examined the accused persons and found two contused lacerated wounds and one contusion on the body of accused No.16, two abrasions and one contusion on the body of accused No.1, one abrasion on the body of accused No.10, contused lacerated wound and one abrasion on the body of accused No.7, contused lacerated wound on the body of accused No.5 as well as accused No.6. He also found one contusion and two abrasions on the body of accused No.12 and contused lacerated wound on the body of accused No.2, one abrasion and one contusion on the

body of accused No.14 as well as one contusion on the body of accused No.4 and contused lacerated wound and two contusions on the body of accused No.9. Medical Officer opined that, these injuries found on the body of accused persons are simple in nature and possible due to stick and stone blows. However, on comparison of these injuries with the injuries sustained by deceased and injury sustained by Kedari (P.W.9) and other eye witnesses. It becomes clear that injuries to accused are simple hurt. But injuries to deceased Udhav Khande and Kedari (P.W.9) are grievous hurt. Damage to prosecution witness is comparatively more than damage to accused. So also, prosecution has proved that, on the date of incident, Mohan Khande (P.W.4) was brought by the accused persons from the shop of Washerman up to Maruti Temple and at that spot, assaulted him. On that count, deceased intervened and he was assaulted along with his sons as well as other witnesses, who tried to intervene. Thus, obviously, the accused persons were aggressors who were armed with deadly weapons like iron bars, sticks and stones. Even F.I.R. lodged in counter Sessions Case No.91/1998 is not filed and proved by the defence. No defence witness is examined by the defence to prove their contentions. In the result, by no stretch of imagination it can be said that prosecution has suppressed genesis of the occurrence and accused have right of private defence. In this peculiar

distinguishing circumstance, the authority relied upon by defence counsel is not applicable in the present case. Even absence of injuries on the body of Mohan Khande (P.W.4) cannot be doubted, because he was simply beaten by fist and kick blows, which may not result visible injuries.

35. In view of above discussed oral evidence on record, prosecution has proved beyond reasonable doubt that on the date of occurrence, all the convicted accused formed unlawful assembly and they were armed with deadly weapons like iron bars, sticks and stones. Accused persons dragged Mohan Khande (P.W.3) up to Maruti Temple and started beating him. This indicates the common object of the unlawful assembly of the convicted accused persons was to cause hurt initially to Mohan Khande (P.W.3). However, the deceased Udhav Khande intervened, accused persons assaulted him severely by iron bars and sticks, which resulted into his death, due to brain injury. It shows that, on the spot of the incident, the unlawful assembly of the accused armed with deadly weapons developed common object to cause death of deceased. In the circumstances, conviction of the accused under Sections 147 and 148 of the Indian Penal Code is certainly justified. So also, for other offences, convicted accused can be roped together with the aid of Section 149 of the Indian Penal Code.

36. Now question arises whether conviction of the convicted accused persons for the offence punishable under section 304 Part II read with Section 149 of the Indian Penal Code is justified or they can be convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. Learned A.P.P. for the State placed reliance on **Jamil Vs. State of Uttar Pradesh**, reported in **(2009 ALL MR (CRI.)3736 (SC))** and submitted that, considering the various relevant factors of this case, the sentence imposed by the trial Court deserves to be enhanced. In the alternative, contention of the learned A.P.P. is that, accused deserve to be convicted under section 302 read with Section 149 of the Indian Penal Code.

37. In reply, learned defence counsel pointed out that, motive or previous enmity with the deceased is not established by the prosecution. The incident had taken place on spur of the moment because deceased tried to intervene. The antecedents of the accused is not criminal and the incident occurred only on account of internal dispute in between villagers. Learned defence counsel submitted that, it was not the case of murder and the sentence imposed by the trial Court cannot be termed as disproportionate or inadequate.

38. In the case at hand, no doubt from the cross-examination of son of the deceased, namely Bhartari (P.W.3), it has been brought on record that deceased was not involved in the village politics and his relations with the accused were cordial. As observed above, prosecution cannot establish that accused had any motive to kill the deceased. On the other hand, the incident occurred on spur of moment when deceased intervened to save Mohan Khande (P.W.4). The cause of death of the deceased was injury to the brain due to blow of iron rod inflicted by accused No.1. The prosecution witnesses deposed that, accused No.1 Shriram inflicted only one single blow on the head of deceased. The evidence available on record shows that other accused inflicted more blows of sticks on the body of the deceased. Even Medical Officer categorically deposed that the head injury was sufficient to cause death. There was no premeditation to kill the deceased as prosecution case itself is that on spur of moment when deceased intervened, that time accused persons assaulted him. Therefore, certainly this case will not fall within purview of Section 300 of the Indian Penal Code. However, it cannot be ignored that, though accused had no intention to kill the deceased while inflicting fatal blow on the head of the deceased by weapon like iron bar, they had certainly knowledge that their act was likely to cause death of the deceased. Therefore, the case of the accused certainly falls

under Section 304 Part II of the Indian Penal Code as held by the learned trial Court.

39. However, considering the overall circumstances of the case, specially the age of the deceased, and the aggressive conduct of the accused persons, in view of law laid down by Apex Court in "Jamil V/s State of Uttar Pradesh" (cited supra), the punishment of three years rigorous imprisonment imposed by trial Court for the offence punishable under Section 304 Part II read with Section 149 of the Indian Penal Code is certainly inadequate. On the other hand, as 60 years old unarmed person was killed in the hands accused persons, who was only trying to rescue his cousin, the punishment imposed by trial Court needs to be enhanced. We hold that, rigorous imprisonment of five years each and fine of Rs.5000/- (Rupees five thousand) each will suffice to meet the ends of justice.

40. While imposing punishment to the accused persons under Section 323 read with Section 149 and under Section 324 read with Section 149 of the Indian Penal Code, the learned trial Court has considered exactly to which person simple hurt was caused by the accused in furtherance of common object of the unlawful assembly of the accused. Therefore, conviction of the accused persons under Section 323 read with Section 149;

Section 324 read with Section 149 of the Indian Penal Code is just, proper and needs no interference.

41. As observed above, it is also established by the prosecution that, at the time of occurrence, in furtherance of common object of the unlawful assembly, accused persons voluntarily caused grievous hurt i.e. fracture of the bone of witness Kedari Udhav Khande by using deadly weapons like sticks and iron rod. Therefore, conviction of accused persons for the offence punishable under Section 326 read with Section 149 of the Indian Penal Code is proper and needs no interference.

42. State has also filed appeal against acquittal of original accused No.3 to 8, 10 to 14, 17, 19, 21, 23 to 29, 31 to 33, 37 and 41. After considering the evidence of Witness No.3 to 9 and 15, learned trial Court held that the presence of these particular accused persons on the spot is not established by the prosecution beyond reasonable doubt. The trial Court has discussed evidence elaborately and assigned proper reasons for such conclusion. We have also gone through the evidence of prosecution witnesses and we have come to the conclusion that the view taken by learned trial Court while acquitting these accused is not impossible view. Therefore, the acquittal of accused No.3 to 8, 10 to 14, 17, 19, 21, 23 to 29, 31 to 33, 37 and 41 need not be

disturbed. It follows that, even even Criminal Appeal No.15/2001 preferred against acquittal of these accused deserves to be dismissed.

43. Accordingly, our conclusion is that, Criminal Appeal No.400/2000 filed by convicted accused persons against the judgment and order passed by trial Court, and Criminal Appeal No.15/2001 preferred by State against the acquittal of above referred accused persons deserve to be dismissed. However, Criminal Appeal No.16/2001 filed by the State for enhancement of sentence of convicted accused deserves to be allowed in the following terms. Accused No.2 Namdeo s/o Baliram Raut died during pendency of Appeal and his appeal is already abated. :

44. Accordingly, we pass following order :

ORDER

- (i) Criminal Appeal No.400/2000 and Criminal Appeal No.15/2001 are dismissed.
- (ii) Criminal Appeal No.16/2001 is allowed.
- (iii) Conviction of accused No. 1, 9, 15, 16, 18, 20, 22, 30, 34, 35 and 36 for the offence punishable under Section 304 Part II read with Section 149 of the Indian Penal

Code is confirmed, but sentence is modified as under :

“Accused No.1 Shriram s/o Narayan Raut, accused No.9 Radhakishan s/o Ramrao Raut, accused No.15 Mahadeo s/o Kisan Raut, accused No.16 Gopinath s/o Ramrao Raut, accused No.18 Jairam s/o Narayan Raut, accused No.20 Mahadeo s/o Baliram Raut, accused No.22 Prabhu s/o Bhaurao Raut, accused No.30 Ramnarayan s/o Madhav Raut, accused No.34 Maroti s/o Madhav Raut, accused No.35 Navnath s/o Sundarrao Khande and accused No.36 Pralhad s/o Bhagwanrao Khande are sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.5000/- (Rupees five thousand) each, in default to suffer rigorous imprisonment for six months each.”

- (iv) Accused No.1 Shriram s/o Narayan Raut, accused No.9 Radhakishan s/o Ramrao Raut, accused No.15 Mahadeo s/o Kisan Raut, accused No.16 Gopinath s/o Ramrao Raut, accused No.18 Jairam s/o Narayan Raut, accused No.20 Mahadeo s/o Baliram Raut, accused No.22 Prabhu s/o Bhaurao Raut, accused No.30 Ramnarayan s/o Madhav Raut, accused No.34 Maroti s/o Madhav Raut, accused No.35 Navnath s/o Sundarrao Khande and accused No.36 Pralhad s/o Bhagwanrao Khande shall

surrender to their bail bonds before the trial Court immediately to undergo the sentence of imprisonment.

- (v) Accused No.3 Haribhau s/o Bhairuji Khande, accused No.4 Dadarao s/o Ramnarayan Raut, accused No.5 Maruti s/o Haribhau Khande, accused No.6 Shivaji s/o Haribhau Khande, accused No.7 Rameshwar s/o Narayan Raut, accused No.8 Giyandeo s/o Ramrao Raut, accused No.10 Jalindhar s/o Bajirao Raut, accused No.11 Rama s/o Bhaurao Raut, accused No.12 Dharmraj s/o Namdeo Raut, accused No.13 Babasaheb s/o Kishanrao Raut, accused No.14 Bhujang s/o Deorao Raut, accused No.17 Ashruba s/o Madhav Raut, accused No.19 Hariram s/o Sitaram Raut, accused No.21 Navnath s/o Sheshrao Raut, accused No.23 Gangadhar s/o Baliram Raut, accused No.24 Yadavrao s/o Madhavrao Raut, accused No.25 Keru s/o Maroti Raut, accused No.26 Sitaram s/o Dashrath Raut, accused No.27 Atmaram s/o Sitaram Raut, accused No.28 Sakharam s/o Ramnarayan Raut, accused No.29 Ashok s/o Bhujangrao Raut, accused No.31 Damodhar s/o Baliram Raut, accused No.32 Raykoba s/o Limbaji Raut, accused No.33 Santram s/o Ramnarayan Raut, accused No.37 Rajaram s/o Shivnarayan Raut and accused No.41 Satish s/o Raosaheb Raut shall execute before the trial

Court bail bonds with sureties for the amount of Rs.10,000/- (Rupees ten thousand) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment vide Section 437-A of the Code of Criminal Procedure and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/