

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 122 OF 2001

The State of Maharashtra
Through Police Station Kandhar,
Tq. Kandhar, Dist. Nanded.

**....Appellant.
(Ori. Complainant)**

Versus

1. Dhondiba @ Mitu s/o. Raghoba Kamble, Age 35 years,
2. Kondiba Raghoba Kamble, Age 40 years,
3. Janardhan s/o. Raghoba Kamble, Age 26 years,
4. Manik s/o. Waman Kamble, Age 45 years,
5. Pandu s/o. Gyanoba Kamble, Age 35 years,
6. Kashiram s/o. Mahadu Kamble, Age 39 years,
7. Ramkishan s/o. Kashiram Kamble, Age 39 years
(Abated as per Court Order dated 21.6.2007)
8. Uttam s/o. Kerba Kamble, Age 22 years
(Deleted as per Court Order dated 5.7.2007)

All R/o. Digras (Bk)., Tq. Kandhar,
Dist. Nanded.

**....Respondents.
(Ori. Accused 1 to 9)**

Mr. V.S. Badakh, APP for appellant.

Mr. S.S. Gangakhedkar, Advocate for respondent Nos. 1 to 5 & 9.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

RESERVED ON : 14/09/2017

PRONOUNCED ON : 11/10/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed by the State against judgment and order of Sessions Case No. 76/1998, which was pending in the Court of learned Additional Sessions Judge, Nanded. The Trial Court has acquitted the respondents/accused of the offences punishable under sections 302, 307, 149 of Indian Penal Code ('IPC' for short) and section 147 of IPC. During the pendency of appeal, respondent No. 7 Ramkishan Kamble died. The case as against respondent No. 8 is disposed of as he was not tried in trial Court. No appeal is filed against original accused No. 9 - Shivaji by the State. Thus, the appeal is as against accused Nos. 1 to 6. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal, can be stated as follows :-

Deceased Pandit was real brother of first informant Venkati Kamble (PW 1). The first informant and the deceased had formed a group of persons playing musical instruments (band) and they were playing the instruments in various functions and they were getting charges for that. Accused persons are from the community of the deceased and the first informant. Both the sides

are residents of Digras (Bk.), Tahsil Kandhar, District Nanded. Accused Nos. 1, 2, 3 and 9 are real brothers *inter-se*. Accused No. 6 is father of accused No. 7.

3) The first incident took place on 18.10.1997 at about 6.00 p.m. in the evening. Accused No. 6 - Kashiram Kamble came to the first informant and the deceased and questioned them as to why they were not giving their band for functions of people from Mangwada. He gave abuses to the first informant and the deceased. Upon that first informant and deceased said to him that the persons of Mangwada were not paying charges of band and they were unnecessarily quarreling and abusing and so, they were not giving their band for functions of persons from Mangwada.

4) On 19.10.1997 at about 7.30 a.m. when first informant, his brother Pandit, his brother-in-law Babu and wife Chandrabhaga were at home, Kashiram came to their house and informed that near the house of Sarpanch, meeting was arranged as they were not giving band to persons of Mangwada and they should come there to attend the meeting. Due to this invitation, the first informant and the deceased Pandit started proceeding towards residential place of Sarpanch. The house of Burhan Musalman is situated on the way. The first informant and the deceased noticed

that persons like Sarpanch Nagnath Shinde and persons of Mangwada like nine accused and one Pandurang had gathered there. Accused No. 6 - Kashiram then started giving abuses to the first informant and the deceased by saying that they had become arrogant. When the first informant requested not to abuse, accused No. 6 said that they were giving band to persons of Kunbi community and they were not giving band to the persons of own community and that conduct was not proper. As the first informant felt that Kashiram had become angry as band was not given for marriage function of his daughter, he said that on that day, he had already accepted advance for other function and so, he could not give band for the function arranged in the family of Kashiram. Kashiram was not satisfied due to this explanation.

5) The quarrel started due to aforesaid dispute. During quarrel, abuses were given to the first informant and the deceased. They also gave abuses to the persons of other side. Then accused No. 1 - Dhondiba, who was having knife, Suri, gave blow of this weapon on abdomen of Pandit. He gave many blows to the deceased. When the first informant Venkati tried to intervene to save Pandit, accused No. 1 - Dhondiba gave blows to first informant also by the weapon. Other accused assaulted by using stones.

6) Due to the blows given with knife, the first informant sustained bleeding injuries and deceased had also sustained serious bleeding injuries. The persons like Sarpanch Nagnath Shinde, brother-in-law of first informant Babu, Bhagirathibai, one cousin sister of first informant, one Rama, mother of first informant and many persons from Mangwada had gathered there and they witnessed the incident, but nobody dared to intervene. Due to the injuries, the first informant and Pandit collapsed on the spot.

7) Babu, brother-in-law of first informant and mother Janabai and others shifted the first informant and the deceased to Khandar Government Hospital in a jeep. In Khandar Government Hospital, Pandit succumbed to the injuries. The report of Venkati came to be registered on 19.10.1997 itself in the hospital and it came to be recorded at about 10.30 a.m. at C.R.No. 144/1997 for aforesaid offences in Kandhar Police Station. During investigation, inquest panchanama on the dead body came to be prepared in the hospital on the same day and the dead body was referred for post mortem ('P.M.' for short) examination. The P.M. was conducted on the same day in the Government Hospital Kandhar. Doctor, who conducted P.M. examination on the dead body, gave opinion that the death took place due to cardio respiratory failure due to haemorrhagic shock with intra-abdominal bleeding due to deep

purporting stab injury in 11th intercostal space right side. The injury had caused perforation of liver lob and there were three incised wounds on the dead body which were anti-mortem in nature. Two incised wounds and one C.L.W. were found on the person of first informant. During investigation, spot panchanama was prepared and the statements of eye witnesses and others came to be recorded. During investigation, the clothes of deceased and injured were taken over. During investigation, on 22.10.1997 accused No. 1 gave statement under section 27 of Evidence Act and then he produced knife, having blood stains from his house. Memorandum of this statement came to be prepared and weapon came to be seized under panchanama in the presence of panch witnesses. The articles recovered were sent to C.A. Office. After completion of investigation, chargesheet came to be filed against the present respondents and others for aforesaid offences.

8) The charge was framed for aforesaid offences. Accused pleaded not guilty. Prosecution examined in all 12 witnesses to prove the offences. In the statements under section 313 of Cr.P.C., the defence of total denial was taken by most of the accused persons. Accused No. 1 Dhondiba took the defence that Venkati had unnecessarily assaulted him by throwing stone at him which hit him on head and due to that, he sustained bleeding injury to his head

and this incident took place in front of Village Panchayat Office of village Digras.

9) Prosecution has given both direct evidence and circumstantial evidence. Venkati (PW 1) is injured eye witness. He has given evidence on the dispute and then he has given evidence on incident. He has deposed that when accused No. 6 gave message that meeting was arranged to make discussion about the dispute, he and deceased started proceeding towards the place of meeting. He has deposed that information was given that meeting was arranged in front of Village Panchayat Office and so, they were proceeding there. He has deposed that when they reached in front of Village Panchayat, they noticed that all accused persons and Sarpanch Nagnath were present there. He has given evidence that accused No. 6 - Kashiram started questioning them as to why they were not giving band for functions of Mangwada persons. He has deposed that then the quarrel started and accused No. 1 Dhondiba started throwing stones at Pandit. He has given evidence that all the accused then caught hold Pandit and he was virtually dragged towards dung-pit and there, accused No. 1 Dhondiba gave blows of knife to Pandit. He has deposed that the blows hit at right ribs and abdomen. He has deposed that due to injuries, intestine of Pandit came out and when he went ahead, accused No. 1 gave blows of

knife on his back. He has deposed that when accused No. 2 attempted to give another blow, the second blow hit his left palm. He has given evidence that other accused persons like accused No. 3, accused No. 9 and accused No. 5 also assaulted him by using stones. He has deposed that the incident was witnessed by Sarpanch Nagnath, Shrirang, Ranba and many other persons. He has deposed that his brother-in-law Babu, his mother Janabai came there and they somehow shifted them in a jeep to rural hospital.

10) Venkati (PW 1) has given evidence that in Kandhar Hospital, he was examined and treatment was given to him and his statement was also recorded by police. The F.I.R. given by him is proved as Exh. 39 in his evidence. He has given evidence that he was indoor patient for 3-4 days due to injuries sustained by him. He has deposed that his clothes were blood stained and so, the clothes were taken over by police.

11) To explain the injury which was found on the person of accused No. 1 Dhondiba, he has deposed that accused No. 3 attempted to give blow of stone to Pandit, but Pandit avoided that blow and that blow struck to the head of accused No. 1.

12) Venkati (PW 1) has identified his clothes which were

produced in the Court and he has identified the weapon which was used by accused No. 1. He has deposed that the distance between Kandhar and his village Digras is around 22 k.m. He has identified the accused persons and it is not disputed that this witness knew all the accused persons from prior to the date of incident.

13) Govind (PW 3) is another eye witness examined by the prosecution. He has deposed that in the incident, accused No. 1 Dhondiba, accused No. 2 Kondiba, accused No. 8 Uttam had rushed at deceased. He has deposed that during incident, accused No. 2 had held Pandit, accused No. 3 had given beating to Pandit by using stone and when Pandit fell down, accused No. 1 gave blows of knife on abdomen of Pandit. He has given evidence that when Venkati came forward (to save Pandit), he tried to hold hand of accused No. 1 having knife, Venkati sustained bleeding injuries to his hand. He has deposed that accused No. 1 Dhondiba then gave blow of knife on the back of Venkati and due to that, Venkati sustained bleeding injuries. He has given evidence on presence of Sarpanch on the spot at the relevant time. This witness belongs to Lingayat community and not from the community of complainant or Kunbi community. Thus, he is independent witness and nothing could be brought on record to create the probability that he is interested witness. Surprisingly, a suggestion was given to him that he has illicit

relations with second wife of uncle of Venkati (PW 1). This suggestion is denied. But, it is difficult to believe that due to such relationship, he is supporting the complainant's side. In the cross examination of this witness, it is brought on the record that his house is situated at the distance of 200 to 300 ft. from the spot of offence. During extensive cross examination, he gave particulars of the dispute and also of the incident. His evidence remained unshattered in the cross examination. During cross examination, it is suggested to this witness that Venkati had rushed at Dhondiba and Venkati was holding knife. It is suggested to him that Venkati wanted to assault Dhondiba, but by mistake knife hit to deceased. The suggestion is denied. It is already observed that three incised wounds were found on the dead body. Due to this suggestion, it can be said that defence is not disputing that Govind (PW 3) was present on the spot at the relevant time. His statement was recorded on the next day, immediately and due weight needs to be given to his evidence. His evidence gives general corroboration to the evidence of Venkati (PW 1), injured eye witness.

14) Datta (PW 4) has given evidence which is similar to the evidence of aforesaid two eye witnesses. However, he has given more particulars of the incident by saying that there was stone pelting. He wanted to explain the injuries sustained by accused No. 1

Dhondiba and for that, he has deposed that the stone pelted by accused No. 3 hit to accused No. 1. However, Datta (PW 4) has given specific evidence as against accused Nos. 1 by deposing that he not only assaulted the deceased, but also the first informant with knife. His evidence also gives general corroboration to the evidence of first informant. In the cross examination of Datta (PW4), suggestions similar to the suggestions given to PW 3 are given showing that defence is not disputing that PW 4 was present on the spot at the time of incident. Omission in respect of explanation given about injuries sustained by accused No. 1 is pointed out to this witness and the omission is proved. This circumstance cannot make much difference and due to this omission, the remaining part of the evidence given by PW 4 cannot be discarded.

15) Indirabai (PW 5) is the widow of deceased Pandit. She has given evidence similar to the evidence of Ventaki (PW 1). She has deposed that accused No. 1 assaulted both the deceased and the first informant by using knife and caused injuries. Her cross examination shows that her presence on the spot is also not disputed by the defence.

16) Nagnath (PW 6), Sarpanch of the village has not whole heartedly supported the case of prosecution. He has given evidence

that both the sides had pelted stones at each other and after the incident, he saw that deceased and first informant were lying in injured condition on the spot of incident. His evidence does not explain the incised wounds sustained by first informant and deceased. Though the learned prosecutor representing the State did not cross examine this witness by declaring hostile, that circumstance does not mean that entire evidence given by this witness needs to be believed. The falsehood from the evidence of Nagnath (PW 6) is easily separable. It can be said that he tried to save the accused persons.

17) If the evidence given by Venkati (PW 1) is compared with the contents of F.I.R., it can be said that in F.I.R. names of all the accused persons were mentioned. It was also mentioned that accused No. 1 had used knife as weapon and he had assaulted the deceased and the first informant. In F.I.R., he had mentioned the assault separately made by accused No. 1 and he had not mentioned that other accused or any of other accused had held either the deceased or him during the incident to enable accused No. 1 to make use of weapon against them. Thus, there is omission in respect of substantive evidence given by PW 1 as against other accused persons that they had caught hold him and deceased and then the assault was made on the deceased. However, there is

corroboration of the contents of F.I.R. under section 156 of Evidence Act to the evidence given as against accused No. 1. But, there is omission of aforesaid nature in respect of evidence given as against remaining accused by PW 1. There was no question of disputing his presence on the spot and to him, specific suggestion was given that he was using the weapon and by mistake, the blow given by him had hit Pandit. It is already observed that three incised wounds were found on the dead body and so, it does not look probable that Venkati had used the weapon and his weapon caused injuries to the deceased as suggested by the defence.

18) During the cross examination of Venkati (PW 1), it is suggested to him that on the basis of report given by accused No. 1, the crime was registered against him, deceased and one more person in respect of the same incident. This suggestion is admitted. This circumstance again corroborates the version of PW 1 and it shows that atleast accused No. 1 is not disputing that he was present on the spot at the relevant time. There is general corroboration of evidence of other eye witnesses to the evidence of PW 1 and there is corroboration of circumstantial evidence also.

19) Dr. Chavan (PW 2) had examined PW 1 on the day of incident i.e. on 19.10.1997 and the evidence of the doctor shows

that PW 1 was indoor patient till 22.10.1997. He found following injuries on the person of first informant :-

"(i) Incised stab-wound, ight scapula posteriorly, 1½" x 1" x deep, verticle fresh blood. It was caused within six hours and by sharp object and was simple in nature.

(ii) Incised wound left hand palmer aspect distantly placed obliquely, fresh blood, size 6" x 1/2" x 1/2", extending from redial aspect of left index finger to little finger and it was caused within six hours by sharp object and was simple in nature.

(iii) Contused lacerated wound on right parital amenals of head, size 2" x 1" x bone deep, fresh blood, irregular. It was caused within 6 hours by blunt object and was simple in nature."

M.L.C. prepared by doctor is duly proved as Exh. 38. The first two injuries are said to be caused by hard and sharp weapon like knife and the third injury is said to be caused by stone. This evidence supports the version of PW 1 and it shows that he was present on the spot when the assault was made on the deceased with knife and knife was used against them.

20) Dr. Chavan (PW 2) conducted P.M. examination on the

dead body of Pandit between 1.00 p.m. and 2.30 p.m. on 19.10.1997. He found following injuries on the dead body.

"1. Incised deep purporating stab-wound on right side chest in 11th intercoastal aspect in middle exillary line, size 2" x 1½" x deep penetrating upto abdominal cavity, bleeding present.

2. Incised would on 10th intercoastal space, right side one inch above the injury No. 1 of the size of 1" x ½" x ¼" transverse, clotted blood present.

3. Incised wound on left upper arm, size 2" x ½" x ¼" transverse clotted blood plus."

Doctor has given evidence that aforesaid injuries were anti-mortem in nature. He has given evidence that internal injuries were also found which are mentioned in column No. 21 of P.M. report. Due to such injuries caused on chest and abdomen, peritoneum and abdominal wall had perforation. The cavity contained 1000 M.L. of liquid. Due to the injuries, the lower lobe of liver had cut in piece of size 3 cm x 2 cm. and it was triangular in shape. The liver had become pale. He has given evidence that the death took place due to cardio respiratroy failure due to haemorrhagic shock caused by aforesaid injuries and intra-abdominal bleeding. He has given evidence that the injuries found on the dead body can be caused by knife like Article No. 21 and they were all anti-mortem in nature. He

has given evidence that these injuries are sufficient to cause death in ordinary course of nature. In the cross examination of Dr. Chavan (PW 2), some hypothetical questions were put to ascertain the directions in which the blows were given. That cross examination need not be discussed as it was hypothetical in nature. The P.M. report at Exh. 37 is proved in his evidence and it is consistent with the substantive evidence.

21) The inquest panchanama at Exh. 47 is proved in the evidence of panch witness Bhagwan (PW 8). The tenor of the cross examination shows that this evidence is not seriously disputed. This evidence is consistent with the aforesaid medical evidence. This Court has no hesitation to hold that this evidence is more than sufficient to hold that it is homicide. The evidence also proves that the first informant sustained simple injuries in the incident and they were caused by using knife as weapon. This evidence is consistent with the evidence given by Venkati (PW 1) against accused No. 1.

22) Padmakar (PW 7), panch witness is examined to prove the seizure of clothes of first informant. As it is not disputed that the first informant had sustained bleeding injuries, the evidence of this witness and panchanama, Exh. 46 need not be discussed in detail. Dadarao (PW 10) is a panch witness on the seizure of clothes of the

deceased and the panchanama is at Exh. 54. This evidence also need not be discussed in detail. There was blood on the clothes of the first informant and the deceased.

23) In the evidence of Shivaji (PW 9), the spot panchanama is proved as Exh. 49. This evidence shows that Mariba, uncle of first informant showed the spot to police. There was blood on the spot and there was blood on two stones, having weight of 200 and 5000 grams. Police collected the stones and earth sample mixed with blood from the spot. It appears that much was argued in the Trial Court on the scene of offence and it was submitted that the evidence of PW 1 is not consistent as he had mentioned other spot like the space in front of house of Burhan Musalman. The evidence of Investigating Officer and other evidence shows that there is not much distance between the spot mentioned in the F.I.R. and the spot shown in the spot panchanama and the house is situated at the distance of 100 to 150 ft. from the Village Panchayat Office. The incident started on the road and there was pelting of the stones. The incident took place in a broad day light and the other side is admitting that some incident did take place. Due to these circumstances not much weight can be given to the aforesaid so called inconsistency which is not that material. Thus, the evidence of spot panchanama gives necessary corroboration to the version of PW

1.

24) In the evidence of panch witness Baburao (PW 12), the prosecution has proved the statement given by accused No. 1 under section 27 of Evidence Act to police on 22.10.1997. Accused gave statement that he had concealed the weapon in his house. Evidence is given that accused took the police and panchas to his house and from their, he produced the knife, Article No. 21. Memorandum of statement is proved as Exh. 60 and panchanama is proved as Exh. 61-A. There is evidence on this statement and seizure from Mogal (PW 11), Investigating Officer. The evidence of Baburao does not show that he has any interest either in favour of the complainant's side or against the accused persons. He is resident of Bahadderpura, Tahsil Kandhar. His evidence and seizure panchanama show that there was blood on the knife, Article No. 21. This evidence is also consistent with the evidence of PW 1 and it can be used as against accused No. 1 as one incriminating circumstance.

25) On the weapon shown to be recovered from accused No. 1 human blood was detected and it can be seen in C.A. report at Exh. 66. Mogal (PW 11), the Investigating Officer has given evidence that the property was sent by him to C.A. Office with covering letter dated 18.11.1997. There is no explanation given by accused No. 1

on this circumstance.

26) The presence of first informant on the spot of offence at the relevant time is not disputed. Presence of all other eye witnesses is also not disputed, though it was argued that their names were not mentioned in F.I.R. by Venkati (PW 1). Sarpanch Nagnath did not support the prosecution, but falsehood can be separated from his evidence and remaining part of evidence shows that incident did take place on the spot shown in the spot panchanama. There is also evidence on motive and it can be said that it was serious motive for the accused persons as the deceased was not supplying band for the functions to the persons of Mangwada, persons of their own community as they were not getting money from them. Complainant side was giving band to the persons of other community for making money. Accused are relatives also of complainant side.

27) The evidence given as against remaining accused is vague. Allegations are made that they used stones as weapon. The evidence discussed shows that only PW 1 sustained one injury, which can be caused by stone, but he is not specific as to who caused that injury. There is improvement made by PW 1 in his version, if his version is compared with F.I.R. and that is already discussed. That improvement amounts to contradiction and so, that part of evidence

given as against remaining accused cannot be used. He had mentioned the names of accused persons in the F.I.R., but he had not attributed specific role of holding of deceased by them in the F.I.R. To that extent, there was the omission.

28) In the evidence of other eye witnesses, there are some inconsistencies as some eye witnesses have given different number of blows of knife given by accused No.1, but that inconsistency is not that material. The evidence of other eye witnesses, who had gathered there can be used for the purpose of general corroboration and that evidence gives corroboration so far as the evidence as against accused No. 1 which is given by PW 1 is concerned. They have stated that it is the accused No.1, who only used weapon like knife in the incident and he assaulted both the deceased and the first informant.

29) The benefit of the aforesaid circumstances like omission in previous version, vagueness and inconsistencies can be given to accused Nos. 2 to 6. But, such benefit cannot be given to accused No. 1. When others were allegedly pelting stone, it is accused No. 1, who used the weapon and blows were given on chest and abdomen of the deceased of knife by accused No. 1. On the basis of evidence available on record, this Court holds that prosecution has proved

beyond reasonable doubt that the injuries found on the person of first informant and the dead body which are described as incised wounds along with internal injuries caused by surface wounds to the deceased were caused by accused No. 1. Considering the site of the body, where the injuries were caused and the number of blows given, this Court holds that injuries were inflicted either with the intention to finish the deceased or there was intention to inflict such injuries which would be sufficient in ordinary course of nature to cause the death. Such inference is available. Thus, it was intentional act of the accused No. 1 and so, his act is punishable under section 302 of IPC.

30) Accused No. 1 caused simple injuries though by knife to the first informant. The evidence on the record shows that first informant had intervened to save the deceased. Due to that, he sustained injuries to one hand and to his back. The evidence on the record does not show that there was intention to finish the first informant. So, this Court holds that there was intention to cause hurt by using weapon like knife and by causing injuries, the accused No. 1 has committed the offence punishable under section 324 of IPC. It is lessor offence of the offence punishable under section 307 of IPC for which charge was framed against accused No. 1. The aforesaid evidence shows that both the sides were there, but the

unlawful assembly was not formed to commit the murder of Pandit or use weapon like knife for assault and such object was not developed on the spot. Only one person, accused No. 1, was having knife and he used it. Thus, the other accused cannot be involved by using provision of section 149 of IPC and it is accused No. 1, who only can be convicted and punished for his acts, which amount to offences punishable under sections 302 and 324 of IPC.

31) The Trial Court has given acquittal by giving some reason which cannot sustain in law. Hereinafter, this Court is quoting the reasons given by the Trial Court along with the reasons of this Court to show that the Trial Court has committed error in giving decision of acquittal in favour of accused No. 1.

(i) The Trial Court has observed that the witnesses named in the F.I.R. are not examined and witnesses who were not specifically named in the F.I.R. are examined and due to that inference needs to be drawn against the prosecution.

This observation is not correct. Sarpanch named in the F.I.R. is examined. In the F.I.R., it was also mentioned that many persons had gathered at the spot of incident. Considering the distance between the residential places of the witnesses and the spot of offence, it cannot

be said that they had no opportunity to witness the incident. The incident took place in the early hours of the morning. Further, the defence, in the cross examination did not dispute seriously that these witnesses were present on the spot at the time of incident. On the contrary, some suggestions were given to them to create a possibility in favour of the accused persons. The statements of these witnesses were recorded immediately by police and there was no room for concoction. Further, in case like present one, when number of witnesses are available, the prosecution cannot be expected to examine all the witnesses and it can examine only few witnesses. In the present case, the main witness, the first informant is examined and there is sufficient corroboration to the direct evidence given by this witness.

(ii) The Trial Court has observed that the injury sustained by accused No. 1 Dhondiba is not explained by prosecution.

This observation is also not correct. Dhondiba himself has contended in the statement given under section 313 of Cr.P.C. that he sustained injury due to stone which was hit by Venkati (PW 1). No record of injury like M.L.C. is produced and so, it can be said that it was simple injury.

The circumstances like presence of two stones having blood stains mentioned in the spot panchanama is already quoted and relevant evidence of the witnesses is also mentioned. Due to these circumstances, it cannot be said that the prosecution has not explained the circumstances of sustaining injury by accused No. 1 in the incident. The circumstance that Dhondiba is admitting that he sustained injury in the incident shows that he is admitting his presence on the spot at the time of incident.

(iii) The Trial Court has given over much importance to the improvement made by first informant and some eye witnesses in the substantive evidence. They have given evidence as against other accused that they had held deceased when accused No. 1 assaulted the deceased by knife.

If there is such improvement or there was omission in the previous statement, the Trial Court could have easily separated that part of evidence from other evidence. Further, there was no other circumstantial check to the evidence given as against other accused and so, the falsehood or exaggeration is easily separable. The Trial Court did not make such attempt. This Court holds that the Trial Court has committed error in using this circumstance

against the prosecution. At the most, benefit of this circumstance can be given to accused No. 2 to 6, but the benefit cannot be given to accused No. 1.

(iv) The Trial Court has given much importance to the evidence of Nagnath, Sarpanch (PW 6) as he has not whole heartedly supported the prosecution. The Trial Court has observed that this witness is not declared hostile and so, necessary weight needs to be given to his evidence.

Such observation cannot sustain in law. It is the job of every court and more particularly of Trial Court to appreciate the oral evidence on the background of other evidence. The evidence needs to be analysed by Court to ascertain as to whether evidence given on a particular fact is true or false. Necessary observations are already made by this Court in respect of the evidence of Sarpach. This Court has held that Sarpach did not come out with complete truth. His evidence does not explain sustaining of incised wounds. Thus, it was not possible to believe Sarpanch (PW 6) in respect of his evidence that there was only pelting of stones. The incident took place in a broad day light and it can be said that he tried to save the accused persons.

(v) The Trial Court has given some importance to

the discrepancies in contents of F.I.R. in relation to the spot shown in the spot panchanama.

On this point also the Trial Court has committed error. Both the sides admit that the incident did take place at the place shown in the spot panchanama. The spot is situated near Village Panchayat Office. The house of Burhan Musalman is shown at the distance of around 100 ft. from the Village Panchayat Office. Evidence is given that first informant and deceased were passing by the side of house of Burhan Musalman. In view of these circumstances, the Trial Court ought to have held that this discrepancy has not created reasonable doubt about the versions given by PW 1 and other eye witnesses.

(vi) The Trial Court given much importance to the circumstance that the blood group of deceased and injured was not determined by C.A. office.

This circumstance also has not created reasonable doubt about the versions given by PW 1 or other witnesses. It is already observed that defence has not disputed that the first informant sustained injuries in the incident and the deceased also sustained injuries in the same incident. In view of these circumstances, it was not necessary to prove that the first informant and the

deceased were having blood of particular group.

(vii) The Trial Court has considered the circumstance like recovery of weapon on 22.10.1997 when accused No. 1 was arrested on 19.10.1997 against the prosecution. Due to this circumstance, the Trial Court has observed that suspicion is created about the recovery of weapon on the basis of statement given under section 27 of Evidence Act. One more circumstance like absence of signature of accused No. 1 on this statement is held against prosecution.

There is no law requiring that signature of the accused should be obtained on the statement and further under section 162 of Cr.P.C. such signature is not to be obtained. The statement is admissible under section 27 of the Evidence Act. On the recovery of weapon, there is independent evidence of panch witness as already discussed. Thus, there was no hurdle in using the evidence given on the recovery of weapon on the basis of statement given by accused No. 1 and this circumstance can be definitely used as corroborative piece of evidence. The Trial Court has committed error in discarding this piece of evidence also. Even if this piece of evidence is excluded, the fate of the matter cannot change as there is direct

evidence, which is of convincing nature. Whenever there is direct evidence which is convincing in nature, absence of recovery of weapon cannot go to the root of the matter.

(viii) The Trial Court has discarded the evidence on motive given by the prosecution witnesses. The Trial Court has considered the circumstance that marriage in the family of accused No. 6 had already taken place and he could not have grievance about it.

When there is evidence to show that it was grievance of many persons living in Mangwada, of the community of the first informant that the first informant and the deceased were not giving the band of music for their functions, it can be said that the persons of the community of the first informant had the grievance and that was the motive for the persons who picked up the quarrel on that day. Their grievance was serious in nature as deceased and first informant were giving band to the persons of other community like Kunbi for making money. They were not getting money from the persons of their own community and so, they were not giving band to the persons of their own community. On every fact, even on motive, the evidence as a whole needs to be considered. Thus, the Trial Court has committed error in observing that

there is no convincing evidence on motive. In any case, when there is direct evidence, motive does not play that important role and this position of law is ignored by the Trial Court.

(ix) The Trial Court has committed serious mistake in observing that no blood was found on the knife.

The evidence on the record shows that Article No. 21, knife was recovered on the basis of statement given by accused No. 1. The statement is proved as Exh. 60 and seizure panchanama is proved as Exh. 60-A. In panchanama there is clear mention that blood was present on knife. C.A. report is also consistent. Thus, it can be said that the Trial Court did not go through record and apply the mind in appreciating the evidence. The evidence was not properly analysed.

32) The learned counsel for respondents/accused placed reliance on the observations made by this Court and Apex Court in some cases which are as under :-

(i) **2015 (3) Bom.C.R. (Cri.) 797 [State of Maharashtra and anr. Vs. Surekha Umakant Kasale]** - Facts of this case were totally different.

(ii) **AIR 1995 SUPREME COURT 2345 [Jackaran**

Singh Vs. State of Punjab] - In that case, the panch witness was not examined and so, the observations were made.

(iii) **AIR 2007 SUPREME COURT 28 [Samghaji Hariba Patil Vs. State of Karnataka]** - The facts of this matter were altogether different and accused was friend of the deceased and the Court found that the story given was not probable in nature.

(iv) **AIR 2010 SUPREME COURT 762 [Musheer Khan @ Badshah Khan and Anr. Vs. State of M.P.]** - The facts of this case were also different and there was no injured eye witness with prosecution. There was question of identity of the accused persons as the witnesses did not know the accused persons prior to the date of incident.

(v) **AIR 2009 SUPREME COURT 1542 [State of Punjab Vs. Sukhchain Singh and Anr.]** - In this case, the Apex Court has discussed the power of the Appellate Court and it is observed that when there is acquittal in favour of the accused, presumption of innocence is reinforced. There cannot be dispute over this proposition and other propositions made in the cases cited for the learned counsel for accused.

33) In the case reported as **AIR 1973 (SC) 2622 [Shivaji Sahebrao Bobade Vs. State of Maharashtra]**, the Apex Court has made following observations :-

"In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on compelling and substantial reasons and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal (vide Suraj Pal Singh v. The State, (1952) SCR 193 = (AIR 1952 SC 52) Ajmer Singh v. State of Punjab, (1953) SCR 418 = (AIR 1953 SC 76) Puran v. State of Punjab, AIR 1953 SC 4590. The use of the words compelling reasons embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words compelling reasons. In later years the Court has often avoided emphasis on compelling reasons but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which compelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable (Vide Chinta v. The State of Madhya

Pradesh, Criminal Appeal No. 178/1959 decided on 18.11.1960 (SC), Ashrafkha Haibatkha Pathan v. The State of Bombay, Criminal Appeal No. 38 of 1960 decided on 14.12.1960 (SC).)

".....On close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a courts duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

34) In view of the evidence of the present matter, this Court has no hesitation to hold that offence as against accused No. 1 is proved beyond all reasonable doubt. The Trial Court has committed serious error in not analysing the evidence and has given excuses which are not tenable in law for discarding the material evidence. In

view of the observations made in the case of **Shivaji** cited supra, this Court holds that interference is warranted in the decision of the Trial Court so far as appeal as against accused No. 1 Dhondiba is concerned. In the result, following order :-

ORDER

(I) The appeal filed as against accused No. 1 Dhondiba @ Mitu s/o. Raghoba Kamble is allowed. The judgment and order of acquittal given by the Trial Court in favour of accused No. 1 is hereby set aside.

(II) Accused No. 1 Dhondiba @ Mitu s/o. Raghoba Kamble stands convicted for offence punishable under section 302 of IPC for murder of Pandit. He is sentenced to suffer life imprisonment and to pay fine amount of Rs.500/- (Rupees five hundred). In default of payment of fine, he is to further undergo rigorous imprisonment for one month.

(III) Accused No. 1 Dhondiba @ Mitu s/o. Raghoba Kamble stands convicted for offence punishable under section 324 of IPC for causing hurt to first informant Venkati by using knife and for that offence, he is sentenced to suffer rigorous imprisonment for one year and to pay fine amount of Rs.250/- (Rupees two hundred fifty). In default of payment of fine, he is to further undergo rigorous imprisonment for fifteen days.

(IV) The substantive sentences given to accused No. 1 to run concurrently.

(V) Accused No. 1 is entitled to set off in respect of the period for which he was behind bars in this crime. This period is to be mentioned by the office in the conviction warrant which is to be sent to the Jail authority.

(VI) Accused No. 1 to surrender his bail bonds for undergoing the sentence.

(VII) The appeal as against remaining respondents/ accused stands dismissed.

(VIII) Record and the property is to be preserved as one accused is not yet tried.

(IX) Copy of this judgment is to be given to accused No. 1 free of cost.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]