

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

CRIMINAL APPEAL NO. 225 OF 2001

Dhansing s/o. Annasaheb Sonavane,  
Age 40 years, Occu. Agriculture,  
R/o. Khamba, Tq. Shirur, Dist. Beed.

**....Appellant.  
(Ori. Accd.No. 8)**

**Versus**

The State of Maharashtra

**....Respondent.**

Mr. N.S. Ghanekar, Advocate for appellant.

Mr. S.D. Ghayal, APP for respondent/State.

WITH  
CRIMINAL APPEAL NO. 211 OF 2001

Kundalik Jagannath Parjane,  
Age 31 years, Occu. Agriculture,  
R/o. Khalapuri, Tq. Shirur, Dist. Beed.

**....Appellant.  
(Ori. Accd.No.1)**

**Versus**

The State of Maharashtra (Ori. Comp.)  
Through : P.S.O. Police Station Shirur,  
Dist. Beed.

**....Respondent.**

Mr. R.G. Hange, Advocate for appellant.

Mr. S.D. Ghayal, APP for respondent/State.

WITH  
CRIMINAL APPEAL NO. 303 OF 2001

The State of Maharashtra  
Through P.S.O. Police Station,  
Shirur, Dist. Beed.

**....Appellant.**

**Versus**

1. Tanhaji s/o. Dnyanoba Bhosle,  
Age 25 years, Occu. Agril.,  
R/o. Khalapuri, Tq. Shirur, Dist. Beed.
2. Kashinath s/o. Ramkishan Gite,  
Age 42 years, Occu. Agril.,  
R/o. Limba, Dist. Beed.
3. Mahadeo s/o. Jagannath Parjeane,  
Age 28 years, Occu. Agril.,  
R/o. Khalapuri, Tq. Shirur, Dist. Beed.
4. Ashok s/o. Vitthal Bhosle,  
Age 30 years, Occu. & R/o. As above.
5. Arun s/o. Shripati Parjane,  
Age 30 years, Occu. & R/o. As above.
6. Bappa s/o. Shripati Parjane,  
Age    years, Occu. Agril.,  
R/o. Khamba.
7. Ashok @ Babu Umaji Baglane,  
Age 32 years, Occu. Agril.,  
R/o. Kakadhira, Tq. & Dist. Beed.

**....Respondent.  
(Ori. Resp. 2 to 7 & 9)**

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

Mr. R.G. Hange, Advocate for respondent Nos. 1 to 7.

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

RESERVED ON : 12/09/2017  
PRONOUNCED ON : 25/09/2017

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

- 1) All the appeals are filed against the judgment and order

of Sessions Case No. 10/2000, which was pending in the Court of learned Sessions Judge, Beed. In all, nine accused were tried for the offence punishable under section 302 r/w. 149 of Indian Penal Code ('IPC' for short) and for the offences punishable under sections 147 and 148 of IPC. There was charge by using section 34 of IPC also. The Trial Court has convicted accused No. 1 - Kundalik and accused No. 8 - Dhansing for the offence punishable under section 302 r/w. 34 of IPC. Other accused are acquitted of all the offences. Life imprisonment is given to accused Nos. 1 and 8. State has filed Criminal Appeal No. 303/2001 to challenge the decision of acquittal and other two appeals are filed by the accused to whom conviction is given. Both the sides are heard.

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

Deceased - Ashok Parjane was son of first informant Sagarbai. Two years prior to the date of incident, husband of Sagarbai had died. Ashok had married two wives namely Ujjwala and Sangita and both these wives were cohabiting with Ashok in village Khalapuri, District Beed. They had house in their agricultural land and they were staying there. Their field is known as 'Pimpalacha Mala'. In the vicinity of this field, there are lands of persons of Bhavki of Sagarbai and they have also houses in their respective

fields.

3) The incident took place on the night between 9.7.1999 and 10.7.1999 in front of house of Sagarbai. About one year prior to the date of incident, there was quarrel between Muktabai Bhosle, who is sister of Kundalik Parjane of Khalapuri (accused No. 1) with the family of Sagarbai. Kundalik had taken part in the incident from the side of Muktabai and he had assaulted Ashok and other members of his family. Out of this incident, Kundalik had filed report against Ashok and Ashok was arrested in that crime. Babu (accused No. 9), who is cousin of Kundalik on maternal side had given threat of life to deceased 15 days prior to the date of incident.

4) On 9.7.1999, first informant was sleeping near the cattleshed situated by the side of their residential place. Both the wives of Ashok were sleeping inside of the house with children. For some time in the night, Ashok was having talk with Babu Govardhan Parjane. When Babu returned to his house, Ashok went to bed and he was sleeping in front of house, in open space.

5) At about 00.30 hours, Sagarbai heard some noise and she felt that some persons were coming to their place and she woke up. There were bulbs fixed in the courtyard and in the light

of bulbs, she noticed that all the nine accused were standing near the place where Ashok was sleeping. She noticed that accused No. 1 - Kundalik was holding sword and he gave blow of sword on Ashok. He noticed that accused No. 8 - Dhansing was holding axe and he gave blow of axe on the neck of Ashok. She felt that there was sound like groaning from Ashok. She also saw other accused like Kashinath, Mahadeo, Ashok Bhosle, Tanaji Bhosale, Arun Parajane and Bappa Parjane, all resident of Khalapuri and they ran towards river side after finishing Ashok. She went towards the place where Ashok was sleeping and she noticed that Ashok was dead and there were bleeding injuries on his neck, abdomen and other parts of the body. She started shouting for help.

6) After hearing shouting of Sagarbai, persons like Babu Govardhan Parjane, Bhagwan Mohan Parjane rushed to the spot. Sagarbai ran towards the field of Sandipan Tukaram to call him for help and he also reached to the spot. Both the wives of Ashok had rushed outside after hearing shouting of Sagarbai.

7) Information was given to Police Patil of the village about the incident and he contacted Shirur Police Station. One Head Constable of Shirur Police Station came to Khalapuri. After seeing the dead body, he recorded the report given by Sagarbai. The report

was sent to police station and it was registered in police station at about 11.30 a.m. at C.R. No. 36/1999 for aforesaid offences. Sub Divisional Police Officer (S.D.P.O.) - Vasant Pardeshi took over the investigation of the matter on 11.7.1999. Prior to that, the Head Constable, who had reached to the spot, prepared inquest panchanama of the dead body and the spot panchanama was also prepared in the presence of panch witnesses. The dead body was referred for P.M. examination. Some articles from the spot like bed, on which the deceased was sleeping were taken over from the spot of offence.

8) During the course of investigation, all the accused persons came to be arrested. Accused No. 1 came to be arrested on 12.7.1999 and accused No. 8 came to be arrested on 7.9.1999. During the course of investigation, these two accused persons gave statements under section 27 of Evidence Act and on the basis of those statements, weapons like sword and axe came to be recovered. Clothes of accused No. 1 were recovered from his residential place. These articles were having blood stains. All the articles which were taken over during the course of investigation were sent to C.A. Office. Human blood was detected on the articles which were recovered from accused Nos. 1 and 8. Statements of witnesses, who include the two widows of Ashok came to be

recorded. Statements of some other witnesses, who had reached the spot after hearing hue and cry of Sagarbai were also recorded. Chargesheet came to be filed for aforesaid offences.

9) The charge was framed for aforesaid offences against all the nine accused. They pleaded not guilty. The prosecution examined in all 11 witnesses. The defence also examined witnesses to prove the defence of *alibi* of some of the accused persons.

10) The Trial Court has believed Sagarbai and to some extent the evidence of widows of the deceased is considered in support of the evidence of Sagarbai. The aforesaid circumstantial evidence mainly given as against accused Nos. 1 and 8 is considered and accepted by the Trial Court. The benefit of doubt is given to other accused persons in view of nature of evidence given by Sagarbai. The Trial Court has also considered the evidence given to create probability of the absence of some accused on the spot of offence at the relevant time.

11) The defence has not disputed that Ashok died homicidal death. The inquest panchanama at Exh. 27 is admitted by defence which was prepared between 10.45 a.m. and 11.15 a.m. of 10.7.1999 in front of residential place of deceased. During inquest panchanama, the injuries were noticed on face, neck, chest,

abdomen and also on hands of the deceased. The injuries were noticed mainly on the front portion of dead body and all the injuries were bleeding, appearing to be inflicted by using sharp and cutting weapon. The clothes on the dead body had become wet due to blood of the deceased. The defence admitted the panchanama of seizure of clothes of deceased also which is at Exh. 28. It was prepared in Shirur Government Hospital where P.M. was conducted.

12) Dr. Waman (PW 1), the Medical Officer of Rural Hospital Raimoha, Tahsil Shirur conducted the P.M. examination on the dead body of Ashok on 10.7.1999 between 1.00 p.m. and 2.00 p.m. He found following injuries on the dead body.

"(i) Incise wound over right maxilla lateral to right eye, 5 cm x 1 cm x bone deep tapering to both ends.

(ii) Incise wound over front of neck, 10 cm x 4 cm, deep upto vertebra with cutting of trachea, oesophagus hyroid bone and jugular veins.

(iii) Incise wound over strunum right side 2 cm x 1 cm conical in shape, bone deep.

(iv) Incise wound left flank just lateral to iliac crest, 3 cm x 1.5 cm, muscle deep.

(v) Abrasion over right forearm lateral."

13) Dr. Waman (PW 1) has given evidence that on internal examination, he found that oesophagus was cut down and the stomach contents were protruding. He has given evidence that all these injuries were anti-mortem in nature. The P.M. report prepared by him is duly proved as Exh. 36. He has given evidence that the death took place due to cardiorespiratory arrest due to haemorrhagic shock due to cutting of large vessel of neck. According to him, such injuries can be caused by hard and sharp object. According to him, internal injuries mentioned in column No. 21 were corresponding to injury No. 2, which was found on the neck. It appears that the weapon sword, Article No. 8, was shown to the doctor and he has given opinion that aforesaid injuries found on the dead body by him can be caused by such article. He has given evidence that aforesaid injury No. 2 along with corresponding internal injury is sufficient in ordinary course of nature to cause death.

14) It is suggested to Dr. Waman (PW 1) during cross examination that Article No. 8 is not having sharp edge and it cannot cause clean cut incised wound. This suggestion is admitted by him. He has also admitted the suggestion that aforesaid surface wound Nos. 1 to 4 cannot be caused by axe, Article No. 11, shown to be recovered in the present matter by police. His evidence, however, shows that surface wound Nos. 1 to 4 were caused by hard and

sharp object.

15) The defence has also not disputed that the death took place in front of residential place of deceased. On this point, there is evidence of Ujjwala (PW 2), Sangita (PW 3), the two widows of the deceased and Sagarbai (PW 6), the first informant, the mother of the deceased and there is also evidence of spot panchanama. The spot panchanama at Exh. 43 is proved in the evidence of Vishnu Solunke (PW 4). He was witness on inquest panchanama also which is admitted by the defence. His evidence and spot panchanama at Exh. 43 show that articles like quilt and blanket, which were used by the deceased for sleeping there, were taken over. Both the articles were virtually smeared with blood and the blanket was having cut marks showing the use of weapon. Earth sample mixed with blood from the spot was collected. One small plain ring and articles like nut and bolt which were lying in the vicinity were also collected by the police.

16) Vishnu (PW 4) has given evidence that during preparation of spot panchanama, they noticed that there was one pole of wood on which there was electric bulb and this bulb was at the distance of 10 fts. from the spot where the dead body was lying. According to him, there was one more bulb on Neem tree which was

at the distance of 20 ft. from the spot of offence. These circumstances are also noted in the spot panchanama. The challenge to spot of evidence is being discussed at proper place while appreciating the evidence of Sagarbai (PW 6). The other part of the evidence of this witness and also the evidence of Head Constable - Madhukar Puri (PW 7) on the spot panchanama has support of this document. This evidence is more than sufficient to prove that the incident in question took place in front of house of deceased.

17) According to Sagarbai (PW 6), the incident took place at about 00.00 hours to 00.30 hours of the night. She has deposed that she was sleeping in the open space situated in front of the house and that place was near the cattleshed. She has deposed that the deceased was sleeping at some distance from the platform of the house in the same open space. The evidence of Sagarbai shows that both the wives of the deceased were sleeping inside of the house with children of the first wife.

18) Sagarbai (PW 6) has deposed that due to some noise like the noise of foot-steps, she woke up from the sleep and due to that, she could witness the incident. She has deposed that she noticed that all the nine accused were proceeding towards the place where the deceased was sleeping. Her evidence shows that deceased Ashok

did not wake up and then virtually by encircling the deceased, assault was made on him by using weapons like sword and axe. Sagarbai (PW 6) has given evidence that she witnessed the incident in the light of two bulbs which were fixed in the open space.

19) Sagarbai (PW 6) has deposed that during the incident, Kundalik (accused No. 1) inflicted a blow of sword on the stomach (abdomen) of deceased Ashok, Dhansing (accused No. 8) inflicted a blow of axe on the neck of the deceased and then the deceased made sound like groaning. She has given evidence that all the accused were present on the spot and they were surrounding the deceased. Evidence on part played by other accused is vague. She has given evidence that after assaulting Ashok, they went away virtually by running and only after that she went towards Ashok. She has deposed that she noticed that Ashok was dead and then she started shouting. Her evidence shows that only after her shouting both her daughter-in-laws and neighbours rushed to the spot.

20) In the cross examination of Sagarbai (PW 6), defence counsel has suggested that she woke up at about 4.00 a.m. and then first time, she noticed that Ashok was dead and so, she had no opportunity to witness the incident. This suggestion is denied by Sagarbai.

21) Ujjwala (PW 2), the second wife of deceased has given evidence that on that night, only Ashok was sleeping outside. She has indirectly given evidence that Sagarbai and all the other members of the family were sleeping inside of the house. She has deposed that at about 00.00 hours to 1.00 hour of that night, she heard hue and cry of Sagarbai (PW 6) and only after that she and other wife of the deceased namely Sangita (PW 3) came out of the house. She has deposed that when she came out, she noticed that Ashok was dead and blood was still oozing from his neck. She has given evidence that Sagarbai (PW 6) was only crying and she did not utter a word about the incident.

22) Ujjwala (PW 2) is cross examined by A.P.P. as she resiled from the statement given to police under section 161 of Criminal Procedure Code ('Cr.P.C.' for short). She was expected to give evidence that when she came out of the house, she noticed that accused No. 1 - Kundalik armed with sword and Dhansing armed with axe were near Ashok. The relevant portion of her statement before police was confronted to her, but she has denied that portion. The said portion is proved as contradiction in the evidence of Investigating Officer.

23) In the cross examination of Ujjwala (PW 2) made by the defence counsel, it is brought on the record that she learnt about the incident only due to hue and cry raised by Sagarbai. This suggestion is admitted by Ujjwala. Ujjwala (PW 2) further admitted that near the cattleshed of deceased, there is cattleshed of Babu Parjane, though at some distance and there are the houses of Bhagwan Parjane and others. At longer distance, there are cattlesheds of Pawar family, at the distance of 100 ft. These circumstances are mentioned in the spot panchanama, which is being discussed subsequently. The map of scene of offence is, however, not produced on the record though evidence is given by police that for getting it correspondence was made with the revenue authority.

24) Ujjwala (PW 2) turned hostile. But, the aforesaid portion of evidence of Ujjwala showing that Sagarbai reached the spot first and only due to hue and cry of Sagarbai, other members of the family came out, corroborates the evidence of Sagarbai. The other portion of evidence of Ujjwala that Sagarbai started shouting at about 00.00 hour to 1.00 hour also supports the version of Sagarbai.

25) Sangita (PW 3) has also turned hostile and she is cross examined by A.P.P. Her evidence shows that Sagarbai and Ujjwala were living in that house. She has also deposed that Sagarbai was

sleeping inside of the house and only Ashok was present outside of the house. She has deposed that she came out when she heard hue and cry, but she has tried to say that Sagarbai raised hue and cry early in the morning, by indirectly denying that it was at about 00.00 hour to 1.00 hour. On this aspect of the evidence of Sangita (PW 6), other circumstances need to be seen and then only, it can be ascertained as to whether and to what extent, Sangita is telling the truth.

26) The tenor of cross examination of aforesaid three witnesses made by the defence counsels shows that they are not disputing that these ladies were living in the same house with the deceased. The evidence shows that Sagarbai is the person, who first reached the spot. In the background of this circumstance, the evidence given by Sagarbai (PW 6) needs to be appreciated. Whether she was sleeping inside the cattleshed or inside the house or she was sleeping in the open space may not matter much if she had felt that the incident had started and she had come out of the house at the time of incident. Much was argued by defence counsels on a circumstance that in spot panchanama, the cot on which Sagarbai was allegedly sleeping is not shown. In the spot panchanama, only cattlesheds are shown and it can be said that the existence of bulbs, the source of light is shown, but other articles are

not shown. However, the blood was lying there and bed and blanket of the deceased were there and these things are shown. On this bed, the deceased was sleeping. The spot panchanama was prepared after 11.00 a.m. and this circumstance needs to be kept in mind. In view of these circumstances, not much can be made out due to circumstance that in the spot panchanama the cot is not shown. In any case, in view of nature of evidence of these three witnesses the evidence needs to be closely scrutinized. If there is sufficient corroboration to the evidence of Sagarbai (PW 6), she can be believed.

27) In the cross examination of Sangita (PW 3), the A.P.P. has brought on record that she was still living in the same village and she was cultivating the land of the deceased. It is suggested to her that she has settled the dispute with accused persons to avoid trouble to herself and to her children and that is why, she is not telling the truth. She has denied this suggestion. On the other hand, Ujjwala (PW 2) has admitted that after the death of Ashok, she shifted to her parents' house. She was young lady and the second wife of the deceased. Similar suggestion is given to her and she has denied the suggestion. The nature of other evidence of prosecution and the circumstance that even a panch witness turned hostile show that there is a probability as suggested by A.P.P. in the evidence of

these two witnesses.

28) Sagarbai (PW 6) identified all the accused persons by pointing them and by taking the names of each accused in the Court. It is also not disputed that from prior to the date of incident, she knew all the accused persons and she had seen them. In the cross examination of Sagarbai (PW 6), she has admitted that prior to incident in question, a criminal case was filed against her brothers and her family at the instance of accused No. 1 - Kundalik. In the cross examination, it is suggested to her that she had requested accused No. 8 - Dhansing to act as a mediator and settle the dispute which was going on between her family and accused No. 1 - Kundalik. These suggestions were made to show that the relations were strained. In respect of Dhansing, she has not admitted the suggestion. But, these suggestions show that defence is not disputing that the relations between accused Nos. 1 and 8 on one side and the family of first informant including deceased Ashok on other were strained and even cases were filed. It is brought on the record that Kausalyabai, sister of deceased though she was born from other wife of father of deceased, had filed civil suit to get share in the property held by Ashok. The evidence as a whole shows that accused No. 1 was taking the side of Kausalyabai. Husband of Kausalyabai is dead. Some other evidence is brought on the record

to the effect that the lands of the accused are situated adjacent to the land of first informant and due to that, there was dispute. These suggestions can be used both ways. The defence suggested these circumstances to create a probability that due to enmity, the accused are falsely implicated. But, these circumstances also create motive for the offence. The relationship of other accused with accused No. 1 is also brought on the record by the defence. Due to these circumstances also, it can be said that it was not difficult for Sagarbai (PW 6) to identify atleast accused Nos. 1 and 8 on that night if they had come there and they had assaulted the deceased.

29) In F.I.R., Sagarbai (PW 6) had not mentioned that in the light of two bulbs fixed in open space, she could see the incident. Much was argued by the learned counsels of the accused in the appeals on circumstance like possibility of addition of few lines in the spot panchanama after writing the matter to show the existence of two bulbs in the open space. The panch witness Vishnu (PW 4) has given evidence on spot panchanama and he has specifically given evidence in respect of these two bulbs by giving their distance from the spot where the dead body was lying. There is such mention in the spot panchanama at Exh. 43 and this witness has denied that the relevant portion was subsequently added. From simple perusal of Exh. 43, it can be said that in some space which was available after

writing the entire panchanama, the two lines are written, having small size alphabets. Thus, there is the circumstance. But, the panch witness has stuck to his version that this portion was there when he signed on the spot panchanama. Police Head Constable Puri (PW 7) has also given evidence on spot panchanama.

30) Vishnu (PW 4) has admitted that Sagarbai (PW 6) is sister of his father. Thus, Vishnu is close relative of Sagarbai and he is interested witness. However, the circumstances of this case show that from that village no other person including Police Patil cooperated the family of the deceased which was not having male person in it. Accused No. 1 is from Bhavki of the deceased and the houses of Parjane families are situated in the vicinity of the field and house of the deceased. Ujjwala and Sangita, the two widows of deceased turned hostile and other panch witness who was supposed to give evidence on the statements given by accused under section 27 of the Evidence Act also turned hostile. These circumstances show that the witnesses are reluctant to give evidence against accused persons. The circumstance that no male member was left in the family of Sagarbai, as the deceased was only son to her also cannot be ignored. The other circumstances like sending Police Head Constable by the police station when there was the information of murder also shows that police were not taking the things seriously.

The circumstances of the present matter show that there was no option to police officers than to use the witnesses available.

31) The circumstances that the accused were known to Sagarbai (PW 6) and she could identify all the accused by taking their names in the Court show that even in the night time in the month of July, it was not difficult for Sagarbai to identify the assailants even if there was no light of bulbs. The probable distance between the place where Sagarbai was sleeping and Ashok was sleeping, was not more than 20 fts. as per the circumstances shown in the panchanama. The cattle were tethered inside of the cattleshed and the incident took place in front of the house and in front of the cattleshed of the deceased. These circumstances cannot be ignored and not much importance can be given to the aforesaid circumstances like the possibility of adding two bulbs as a source of light in the spot panchanama subsequently. Thus, the evidence of Sagarbai (PW 6) cannot be discarded only due to these circumstances.

32) The evidence of Head Constable - Madhukar Puri (PW 7) of Shirur Police Station shows that he was required to go to village as P.S.O. had given such direction. On that day he had reached the Police Station at about 7.00 a.m. and he had noticed that Police Patil

of Village Khalapuri was already present in the police station. His evidence shows that no written report of Police Patil was shown to him and only orally direction was given to him to go to village Khalapuri. According to him, one can reach the village Khalapuri within 15 minuts after starting from the police station. He has deposed that he started at 8.15 a.m. and he reached the spot at about 8.55 a.m. on 10.7.1999.

33) In the cross examination of Puri (PW 7), it is brought on the record that prior to leaving police station, he had seen the F.I.R. register to note the last number of F.I.R. He has given evidence that the number to the present F.I.R. was accordingly given by him for mentioning it in the documents like inquest panchanama, Exh. 27 and spot panchanama, Exh. 47. Thus, in the cross examination the explanation to the mention of C.R. number in these documents is brought on the record by the defence.

34) Inquest panchanama at Exh. 27 was drawn between 10.45 a.m. and 11.15 a.m. and it is admitted document. The spot panchanama, Exh. 43 was drawn after 11.15 a.m. on the same day. In both these documents C.R. number is mentioned as 36/1999. There is some cross examination on C.R. number given in F.I.R. register, but that is not that important as apparently the time of

drawing of panchanamas is mentioned correctly and no attempt was made either to pre-pone the time or post-pone the time. The evidence of Puri (PW 7) shows that he made arrangement to send the F.I.R. to police station for its registration after recording it on the spot. Thus, the F.I.R. was registered in the register subsequently and probably after drawing of the aforesaid panchanamas in the village. In any case, even if it is presumed that the F.I.R. was recorded by him on the spot at about 8.55 a.m., it can be said that there was some delay in giving of F.I.R. as the incident had taken place at about 00.00 hour to 1.00 hour of the night and the persons from the village could have reached to police station within 15 minutes.

35) Much was argued on the circumstances of delay caused in giving the F.I.R. and also the delay caused in giving the report under section 157 of Cr.P.C. about F.I.R. to the concerned J.M.F.C. The time of registration of the F.I.R. is shown as 11.30 a.m. of 10.7.1999 and that can be seen from Exh. 60. Argument was advanced by the learned counsels for accused that there is evidence on record to show that dog squad was used for tracing the accused and this circumstance also creates probability that assailants were not known to anybody. The record like remand report shows that accused - Kundalik and accused - Tanaji came to be arrested on

12.7.1999 and they were produced before Magistrate on 13.7.1999. It appears that copy of F.I.R. was sent to Magistrate on 12.7.1999. The copies of remand reports and case diary show that some accused came to be arrested late on 19.7.1999 and accused No. 8 came to be arrested in September 1999.

36) This Court has seen the English calender for the month of July 1999. It shows that on 10th, it was 2nd Saturday and on 11th, it was Sunday. The F.I.R. was recorded on 10th and in this State, the Court remains closed on 2nd Saturday and 4th Saturday and also on all Sundays. In view of these circumstances, the circumstance that copy of F.I.R. was sent to the Court of J.M.F.C. on 12th, late by one day and not immediately after registration of the crime cannot make much difference. On this point, the learned counsel for accused placed reliance on the case reported as **1976 CRI.L.J. 1883 [Ishwar Sing Vs. State of U.P.]**. In that case, the extraordinary delay in sending the F.I.R. and compliance of provision of section 157 of Cr.P.C. was considered as a circumstance which provided legitimate basis for suspecting that the F.I.R. was recorded much later and that gave sufficient time to prosecution to introduce improvements and embellishment and set up a distorted version of occurrence. On this point, the learned APP placed reliance on the case reported as **AIR 1993 (SC) 1554 [Paresh Kalyandas**

**Bhavsar Vs. Sadiq Yakubbbhai Jamadar and Ors.].** In that case, the F.I.R. was found to be concrete and the circumstances were not creating a doubt as to the veracity. The facts and circumstances of each and every case are always different. In the present matter, in view of the aforesaid circumstances, it cannot be said that copy of F.I.R. was not sent immediately as required under section 157 of Cr.P.C. and the non compliance of this provision gave opportunity to concoct the case against the accused persons. This Court has quoted the circumstances that there were no male persons in the family of the first informant and the family was virtually helpless. One Police Head Constable was given for making investigation even when it was a case of murder and the record shows that the S.D.P.O., superior officer came in picture on the next day. Due to these circumstances, this Court holds that not much can be made out due to the circumstance that F.I.R. was not sent immediately, after it's registration to the Court of J.M.F.C. Similarly, the delay caused in giving of the F.I.R. can be considered only to ascertain as to whether there is a possibility of concoction.

37) In the cross examination of Sagarbai (PW 6), it is suggested to her that she did not give report immediately and she waited for arrival of her brothers and only after deliberation with brothers, she gave report. This suggestion is denied. It is already

observed that in the past, a case was filed due to the report given by accused No. 1 against this family. The case was mainly against the accused. It can be said that the dispute was between the deceased and his step sister and accused No. 1 was taking the side of said step sister of the deceased. Both the widows of the deceased have given similar evidence on this point and it can be said that the mother of deceased was virtually shocked due to the incident and she kept crying. There is no record to show that the Police Patil had given written report after learning about the incident or his oral report was recorded. The evidence of Police Officer Puri (PW 7) shows that the statement of Police Patil came to be recorded subsequently, after registration of the crime. Due to these circumstances, this Court holds that the delay caused in giving the F.I.R. also has not created a doubt about the version of Sagarbai (PW 6). Similarly, there is no hurdle in considering the F.I.R. of Sagarbai (PW 6) for corroboration purpose.

38) The law laid down shows that if there is delay in giving the F.I.R. or delay is caused in complying the provision of section 157 of Cr.P.C., sending copy of F.I.R. to the concerned J.M.F.C., those circumstances themselves cannot vitiate the trial. The Court is expected to ascertain as to whether due to these circumstances any prejudice is caused to the accused. When there is cogent and

reasonable explanation available, not much can be made out from such circumstances in favour of the accused persons. [Reliance placed on the case of **Anil Rail Vs. State of Bihar (2001) 7 SCC 318**].

39) Argument was advanced by the learned counsels of the accused on one more point. It was submitted that if the names of accused persons are not mentioned in document like inquest report, that creates a probability that the names of accused persons were not known to police and it also creates a probability that the F.I.R. itself was not given. In the case reported as **AIR 2010 SC 3300 [Shambhu Das alias Bijoy Das and Anr. Vs. State of Assam]**, it is made clear by the Apex Court that there is no requirement of provision of section 174 of Cr.P.C., of preparing the inquest report that the sum and substance of F.I.R. is mentioned in such report. The purpose of creating inquest report is only to show that the death was not natural, it was unnatural. In view of this position of law, not much can be made out in the present matter on the basis of such circumstance.

40) So far as the delay caused in giving of the report is concerned, in brief, this Court has already mentioned the surrounding circumstances. While considering the explanation

available for the delay caused, which can also be made out on the basis of circumstances, if the Court finds that the reaction of the witness to the incident was not improbable and human being facing such situation would not have acted in any other manner, the Court can safely accept the evidence of such witness even though the delay is caused in giving of the F.I.R.

41) This Court has mentioned the evidence given by Puri (PW 7), the Police Head Constable, who recorded the F.I.R. given by Sagarbai (PW 6). In view of wording of section 154 of Cr.P.C., the F.I.R. includes oral information regarding cognizable offence and if it is given to police, it needs to be treated as F.I.R. The registration of such report by police needs to be treated as step taken for the investigation. On this point, reliance is placed on the case of **Sambhu Das** cited *supra*. Thus, even if it is presumed that in the present matter, the F.I.R. was registered after preparing inquest report and preparing spot panchanama, it has not lost the authenticity and this document can be used for the purpose of corroboration to the version of first informant.

42) To ascertain the reliability of the evidence of Sagarbai (PW 6), the evidence needs to be compared with medical evidence. It is already observed that the other circumstances like she is a

natural witness and it is not disputed that the incident in question took place at the distance of hardly 20 ft. from the residential place of this witness, support her version. The medical evidence shows that four incised wounds were found on the dead body. Sagarbai (PW 6) has given account of only two injuries by deposing that one blow of axe was given by accused No. 8 on the neck of the deceased and one blow of sword was given by accused No. 1 on the abdomen of the deceased.

43) Dr. Waman (PW 1), Medical Officer, who conducted the P.M. examination has deposed that sword can cause both these injuries. In the evidence of Dr. Waman, the learned APP had shown him sword, Article No. 8 and Dr. Waman has admitted that such injuries can be caused by sword. Unfortunately, the learned APP did not show the axe to this witness to obtain the opinion regarding the use of this weapon in respect of any of the aforesaid four injuries.

44) Dr. Waman (PW 1), in the cross examination has admitted that Article No. 8, sword, is not having sharp edge. The defence wants to show that this sword could not have caused the incised wounds. It needs to be kept in mind that the incident took place on 10.7.1999 and the evidence of the Dr. Waman is recorded on 26.7.2000, after more than one year. As per the practice, the

weapons were first lying in Muddemal room of police station and then in the Court in almost open condition and the rusting must have taken place. Even if there was sharp edge to the weapon in the past, after such long time nobody may not be able to see sharp edge to the weapon. This circumstance is considered by the Trial Court. Further, the sword has always some edge and has sharp point at front head and that portion can be used to inflict even stab wound.

45) The description of injury No. 1 already quoted found on the face shows that it was bone deep and it was tapering to both ends. This injury was very close to neck. In view of such description of injury No. 1, a prudent A.P.P. ought to have taken the opinion on this injury by showing axe. Unfortunately, it was not done. In any case, the opinion of doctor under section 45 of the Evidence Act is not binding on the Court and it is up to the Court to decide as to whether the opinion evidence needs to be accepted or not. Further, it is up to the Court to decide as to whether the direct evidence needs to be accepted or the opinion evidence needs to be accepted. The Trial Court felt it is desirable to accept the evidence of Sagarbai (PW 6). This Court sees no reason to interfere in this decision of the Trial Court.

46) Sagarbai (PW 6) has not given specific and positive

evidence on the overt acts of the remaining accused persons in inflicting injuries. Account of only two injuries is given by Sagarbai and there were two more incised wounds found on the dead body. This circumstance has not created a reasonable doubt about the role played by accused Nos. 1 and 8, though this circumstance can give benefit to the remaining accused persons. This Court holds that circumstance that Sagarbai attributed role only to accused Nos. 1 and 8 shows that she had no intention to implicate others and so, there is no possibility of concoction atleast as against accused Nos. 1 and 8. The circumstances of the present matter show that the investigating agency did not favour Sagarbai. Accused No. 8 was a political figure at that time and he was holding some post. That can be seen from the tenor of the cross examination made by his counsel of even Investigating Officer. On the other hand, it needs to be presumed that Sagarbai lost her only issue and she would not have spared the real culprits. This circumstance also needs to be used by drawing inference in a case like present one. Thus, Sagarbai (PW 6) needs to be believed and benefit of doubt, due to aforesaid circumstances and absence of other circumstantial evidence needs to be given to other accused.

47) Amarsing (PW 9), the P.S.O. is examined only to show that the F.I.R. was sent to the police station by Puri (PW 7) and on

that basis, the crime was registered. His evidence shows that after registering the crime, he had sent back the F.I.R. to Puri. In view of the discussion already made, there is no need to discuss the evidence of Amarsing (PW 9) more.

48) Vasant Pardeshi (PW 10), S.D.P.O., who took over the investigation as per the record on 11.7.1999 has given evidence on almost all the investigation of the present matter. It can be said that he took the help of one P.S.I. Kulkarni (PW 8), who was attached to the police station.

49) The record shows that dog squad was used by Pardeshi (PW 10). Much was argued due to this circumstance for the accused persons. It was submitted that probably the names of assailants were not known and the F.I.R. was also not given against them. The dog squad is generally used only for the purpose of having some lead in the investigation. It can be said that on 10.7.1999 not a single accused was available for taking in custody. Some accused came to be arrested on 12.7.1999. The dog squad took police up to the house of accused No. 8 - Dhansing, but Dhansing could not be arrested till September. The evidence of dog squad could not have been used by prosecution.

50) Pardeshi (PW 10) has given evidence against accused No. 1 that while in police custody, he gave statement under section 27 of the Evidence Act in presence of panch witnesses that he was ready to produce the weapon, sword. The panch witness on the memorandum of statement has turned hostile and the memorandum is proved in the evidence of Pardeshi (PW 10) as Exh. 65. The panch witness has admitted his signature appearing on this document and also the panchanama of seizure of the sword. Pardeshi (PW 10) has deposed that accused No. 1 then took the police and panchas to his residential place and then he produced sword having blood stains which was kept by him behind cornbin (in concealed condition). The seizure panchanama of sword is at Exh. 66. The evidence of Pardeshi (PW 10) shows that accused No. 1 produced his clothes, Article Nos. 9 and 10 from his house and they were also seized as there were blood stains on these articles. The panchanama of seizure of clothes is proved as Exh. 67.

51) Kulkarni (PW 8) was attached to the aforesaid police station as P.S.I. He was not available on 10.7.1999. Subsequently, he made some investigation. He has given evidence that accused No. 8 - Dhansing gave statement to him in the presence of panch witnesses under section 27 of the Evidence Act that he was ready to produce weapon, axe. The memorandum of panchanama is proved

as Exh. 53 in the evidence of Kulkarni. The same set of panch witnesses was used by Pardeshi and Kulkarni in respect of evidence collected as against accused Nos. 1 and 8, but the panch witness examined has turned hostile. Kulkarni (PW 8) has then given evidence that accused No. 8 took police and panchas to his residential place and he produced axe which was kept behind earthen pots (in a concealed condition). The seizure panchanama of axe is proved in the evidence of Kulkarni as Exh. 54.

52) The weapon axe came to be recovered from accused No. 8 on 7.9.1999 and the weapon sword came to be recovered from accused No. 1 on 16.7.1999. The clothes of accused No. 1 were also recovered on 16.7.1999. Unfortunately, no positive evidence is given by aforesaid both the police officers by stating that accused No. 8 was absconding though evidence is there of aforesaid nature.

53) Kulkarni (PW 8) has given evidence that with covering letter at Exh. 55, he sent all the articles seized in the present matter to C.A. Office on 21.9.1999. It needs to be kept in mind that the article like axe recovered on 7.9.1999 was sent within 15 days , though other articles were sent late. The C.A. report in respect of these articles at Exh. 68 shows that blood of group 'B' was detected on both axe and sword. On the clothes of the deceased, quilt which

was under him and the blanket which was covering him, blood of group 'B' was detected. Human blood was detected on the clothes of accused No. 1. These circumstances are not at all explained by accused Nos. 1 and 8 in their statements under section 313 of Cr.P.C.

54) Vijay Nagarkar (PW 11), the Circle Inspector of Police made investigation of the case on 10.7.1999, but to some extent like recording statements of material witnesses like Ujjwala (PW 2) and Sangita (PW 3). The statements of some other neighbours were also recorded. His evidence and the record show that there were only three other adult members in the family of deceased like Sagarbai, Ujjwala and Sangita and it is the case of prosecution that only three ladies had an opportunity to witness the actual incident. These all three material witnesses are examined by the prosecution in the present case and two close relatives of the deceased like two widows have turned hostile. In the evidence of Vijay (PW 11), the relevant portions of previous statements of Ujjwala (PW 2) and Sangita (PW 3) are proved as contradictions. These contradictions and other circumstances of the matter have created a clear probability that they have avoided to tell the truth when they had actually witnessed atleast some part of the incident as they had come out after shouting of Sagarbai.

55) For the defence/accused persons, reliance was placed on the case of Apex Court reported as **1994 CRI.L.J.3848 [Mani Ram and Ors. Vs. State of U.P.]**. It was submitted that independent witnesses are not examined in the present matter by prosecution and so, adverse inference needs to be drawn. The aforesaid circumstances show that all the three material witnesses are examined by the prosecution. The remaining witnesses like Babu Parjane and others, who were living in the neighbourhood and who had rushed to the spot only after shouting of Sagarbai would have given evidence on the circumstance that they reached the spot due to shouting of Sagarbai. They would have given evidence on disclosure if the incident was disclosed to them by Sagarbai and that circumstances would have been relevant circumstances. In this regard, the other relevant evidence is already discussed and it shows that Sagarbai was in a shock and first time, she disclosed the incident when the police reached the spot. The submissions made by the learned counsels of the accused that brothers of Sagarbai had tutored her and due to that, she has falsely implicated the accused, is not acceptable for the reasons already given. In the incident of past, the deceased had used knife against accused No. 1 and not the brothers of Sagarbai. She is an illiterate lady and the defence has taken care not to produce the record of that case. There is evidence

of police to some extent.

56) The learned counsels for the accused placed reliance on another case reported as **1975 CRI.L.J. 1734 [Balaka Singh and Ors. Vs. The State of Punjab]**. In view of the facts of that case, the Apex Court held that the evidence on which the conviction was given to few accused was not separable from the evidence which was given against other accused persons who were acquitted in the case and so, all the accused were entitled to get benefit of doubt and acquittal. The facts of this reported case were totally different. In the present matter, the material which can be considered as evidence under section 3 of the Evidence Act and the available relevant circumstances are considered by this Court and they are quoted above. The discussion made above shows that the evidence as against accused Nos. 1 and 8 is easily separable as that evidence gives inference that they caused the death of deceased Ashok.

57) The learned APP placed reliance on the case reported as **AIR 1973 (SC) 2622 [Shivaji Sahebrao Bobade Vs. State of Maharashtra]**. The Apex Court has made some observations with regard to appreciation of evidence of sole eye witness. There are observations with regard to the duties and powers of the Appellate Court while considering the criminal appeal. The Apex Court has laid

down that :-

"Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given on sterling testimony of a competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

The Apex Court has also laid down as under :-

"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."

58) The discussion of law and the facts of the present matter discussed already shows that there is convincing and reliable evidence only as against accused Nos. 1 and 8, who are convicted by the Trial Court. The direct evidence against them has sufficient corroboration of the circumstances like :-

- (i) Sagarbai (PW 6) is natural witness and the defence is not disputing that the murder took place at the distance of around 20 ft. in open space situated in front of the residential place of deceased where witness was living.
- (ii) The medical evidence on the use of sharp and cutting weapon by accused Nos. 1 and 8.
- (iii) The motive for the crime for both the accused persons.
- (iv) Corroboration of the contents of the F.I.R. showing that Sagarbai disclosed the incident to police officer immediately when police officer reached the spot and
- (v) The evidence of recovery of weapons from the accused persons on the basis of statements given under section 27 of the Evidence Act and the recovery of clothes of accused No. 1 and presence of blood stains on these articles and non explanation of these circumstances by the accused.

However, there is no convincing evidence to prove the offence beyond reasonable doubt against the remaining accused persons, who are acquitted by the Trial Court.

59) Accused No. 4 - Mahadev and accused No. 5 - Ashok have taken the defence of *alibi* and they have examined in all three witnesses to prove this defence. They have, however, not examined themselves on oath to substantiate this contention.

60) In the evidence of Shankar Gaikwad (DW 1), who was working as Traffic Controller in M.S.R.T.C., has deposed that two passes were issued to these persons by M.S.R.T.C. under scheme "आवडेल तेथे प्रवास" (Travel wherever you like). On the passes as per the procedure, photographs of the passengers are affixed and they were for the period from 7.7.1999 and 13.7.1999. Balkrishna (DW 2), who is working as Conductor in M.S.R.T.C. has deposed that on 9.7.1999 he was attached to Satara to Kalyan - Vithalwadi bus. He has deposed that the bus started at 9.00 a.m. on 9.7.1999 and two passengers who were having the passes Nos. 14722 and 14723 boarded his bus at 9.00 a.m. He has deposed that the period of eight and half hours is required for covering the distance from Satara to Kalyan and bus reached Kalyan at 5.30 p.m. He has

deposed that he mentioned the bus number on the two passes and there is such endorsement on the two passes. The passes are given Exhs. 96 and 97. Bhaskar Talpade (PW 3) is examined, who is another conductor and he has deposed that on 10.7.1999 he was attached to Kalyan - Dombiwali - Shirdi bus and the bus reached at Kalyan at 6.30 a.m. and there, the persons holding the passes, having Exhs. 96 and 97, boarded his bus. Mukund (DW 4), Traffic Controller of M.S.R.T.C. is examined in support of the version given by aforesaid two witnesses in respect of the bus route of the aforesaid two buses. He has deposed that on 10.7.1999 he was discharging the duty of filling T. & A. register and on that date, Bhaskar Talpade (Conductor) was given the duty on Dombiwali - Shirdi bus. He has deposed that Dombiwali - Shirdi bus reached Kalyan at 5.30 a.m. and on that day, the bus left at about 6.30 a.m. He has given evidence that there was mechanical problem in the bus and so, the bus did not proceed ahead of Nashik. Entry in that regard is proved as Exh. 107.

61) The incident in question took place on the night between 9.7.1999 and 10.7.1999. This Court has no hesitation to hold that this evidence could not have made out the case of alibi in favour of aforesaid accused persons and benefit of these circumstances could not have been given to these accused as the other circumstances

are not brought on the record. Ordinarily, corresponding record is required to be created in the office about use of such passes by passengers, but no such record was produced. It can be said that these accused who are resident of Shirur, District Beed ought to have given evidence on oath to tell as to why they were at Satara and as to why they first went to Kalyan if they wanted to go to Shirdi or Beed. For going to Shirdi or Beed one is not required to go to Kalyan as there are many routes/roads from Satara to Beed or even Shirdi and by those routes the distance to be travelled would be less than 50% of the distance for going via Kalyan.

62) It is true that the initial burden to prove the offence was on prosecution in view of the provisions of sections 101 and 102 of Evidence Act. Only after discharging that burden the onus would have shifted to accused persons and in that case, they were expected to create reasonable probability of alibi. In view of the provisions of section 11 of the Evidence Act, such circumstances are relevant, but the onus is always on the accused persons as provided in section 103 of Evidence Act. This Court has come to the conclusion that the initial burden was not discharged by the prosecution and so, there is no need to consider and appreciate the aforesaid evidence on *alibi* in detail. To make out such defence a reasonable probability is required to be created by the accused as

provided in case reported as **AIR 1978 SC 191 [State of U.P. Vs. Sughar Singh and Ors.]** Through the Trial Court has considered the probability in favour of the accused persons due to the aforesaid circumstances, this Court holds that this would not have helped the accused persons. This Court, however, sees no reason to interfere in the decision given by the Trial Court. In the result, following order is made :-

**ORDER**

- (I) All the three appeals are dismissed.
- (II) Accused No. 1 - Kundalik s/o. Jagannath Parjane and accused No. 8 - Dhansing s/o. Annasaheb Sonavane are to surrender to their bail bonds for undergoing sentence.
- (III) The bail bonds of remaining accused persons, who are acquitted and against whom the State has filed the appeal are to continue for the period of three months from today.

**[S.M. GAVHANE, J.]**

**[T.V. NALAWADE, J.]**

ssc/