

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

CRIMINAL APPEAL NO. 370 OF 2001

The State of Maharashtra
(through Public Prosecutor,
High Court Bench at
Aurangabad)

....Appellant.

Versus

1. Naresh @ Nana Baliram Sonwane,
Age: 28 years
2. Amit @ Don Shantaram Sonwane,
Age: 20 years
3. Vishal Vasantrao Sonwane,
Age: 20 years
4. Mukesh @ Aba Ramesh Baviskar,
Age: 21 years
5. Nitin Murlidhar Sonwane,
Age: 20 years
6. Sudhakar Chindhu Chaudhari,
Age: 28 years
7. Sunil Murlidhar Sonwane,
Age: 22 years
8. Anil Murlidhar Sonwane,
Age: 22 years
9. Nilesh Murlidhar Sonwane,
Age: 21 years
10. Shamkant Baliram Sonwane,
Age: 32 years
11. Chandrakant Baliram Sonwane,
Age: 37 years
12. Ashwin Shantaram Sonwane,

Age: 25 years

No.1 to 12 all R/o Jaykisan Wadi,
Jalgaon, District Jalgaon.

13. Dilip Yeshwant Koli,
Age: 33 years, R/o Asoda,
Tq. & Dist. Jalgaon.

....Respondents.

Mr. S. J. Salgare, APP for appellant/State.

Mr. R.N. Dhorde, Senior Counsel i/b Mr. B.R. Warma, Advocate for
respondent Nos. 1, 6, 10 and 11.

Mr. V.D. Hon, Senior Counsel i/b Mr. S.B. Kakde, Advocate for
respondent Nos. 5, 7, 8 and 9.

Mr. P. S. Paranjape and Mr. B.R. Warma, Advocate for respondent
Nos. 2, 4 and 12.

WITH
CRIMINAL REVISION APPLICATION NO. 278 OF 2001

Prakash s/o Hari Patil
Age: 25 Ocuu: Labour
R/o Jalgaon, Tq. Dist. Jalgaon.

....Petitioner

Versus

1. The State of Maharashtra
2. Naresh Alis Nana Baliram Sonwane
Age: 28 years
3. Amit Alis Don Shantaram Sonwane
Age: 20 years
4. Vishal Vasantrao Sonwane
Age: 20 years
5. Mukesh Alis Aba Ramesh Baviskar
Age: 21 years
6. Nitin Murlidhar Sonwane
Age: 20 years

7. Sudhakar Chindhu Chawdhary
Age: 28 years

8. Sunil Murlidhar Sonwane
Age: 22 years

9. Anil Murlidhar Sonwane
Age: 28 years

10. Nilesh Murlidhar Sonwane,
Age: 21 years

11. Shamkant Baliram Sonwane
Age: 32 years

12. Chandrakant Baliram Sonwane
Age: 37 years

13. Ashwin Shantaram Sonwane
Age: 25 years

No. 2 to 13 all R/o Jaykisan Wadi,
Jalgaon, District Jalgaon.

14. Dilip Yeshwant Koli,
Age: 33 years, R/o Asoda,
Tq. & Dist. Jalgaon.

....Respondents.

Mr. V.C. Pail h/f Mr. S.M. Godsay, Advocate for petitioner.

Mr. S.J. Salgare, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.**

RESERVED ON : 28/11/2017

PRONOUNCED ON : 21/12/2017

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

1) Both the proceedings are filed against judgment and order of Sessions Case No. 31/1999 which was pending in the court

of learned Additional Sessions Judge, Jalgaon. The Trial Court has acquitted all the respondents of the offences punishable under sections 307, 324 r/w. 149 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and sections 147 and 148 of IPC. They were also charged for the offences punishable under sections 3 r/w. 25 and 4 r/w. 25 of Arms Act and they are acquitted of these offences also. Both the sides are heard.

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

On 21.10.1998 two incidents took place in Jalgaon city. There are two political rival groups in the locality of Shirsale Naka, Jalgaon. Arun Shirsale and Arjun Shirsale are the councillors of the Local Body of the city and they have one group in that locality. There is other group of Sonawane, accused in the said locality. These two groups are interested in establishing the superiority and hold in that area. On 21.10.1998 in the first incident two persons of the group of Arun Shirsale like Sunil Patil and Devendra Baviskar were assaulted. Sunil Patil had sustained injury to head and his condition was serious. He was shifted first to police station and then to Civil Hospital, Jalgaon. Civil Hospital had advised to do C.T. Scan in respect of injury sustained by Sunil Patil on head and so, in one ambulance Sunil Patil was taken to Acharya Hospital situated in front of Golani

Market, Jalgaon. The first incident had taken place at Shirsale Naka at about 10.30 a.m. and the second incident took place at about 12.00 noon in Acharya Hospital.

3) Seven accused persons from the first case are also shown to be involved in the second incident and in the present matter, in all 13 accused are shown to be involved.

4) In the ambulance in which Sunil Patil was taken to Acharaya Hospital, first informant Prakash Hari Patil, Ramesh Narayan Patil, Anil Bhatkar and Arun Shirsale had gone to the hospital. Other men of Arun Shirsale were following the ambulance van in two vehicles of four wheelers of Arun Shirsale which were Armada and Maruti Van. After reaching Acharaya Hospital, Sunil Patil was put on stretcher. He was taken to first floor of the hospital where C.T. Scan center was there and he was kept in waiting room situated on this floor. By the side of stretcher, first informant Prakash Hari Patil and Ramesh Patil were present and other two persons like Arun Shirsale and Anil Bhatkar entered the cabin of doctor for taking steps for expediting the C.T. Scan. Sunil Patil was unconscious.

5) At about 12.00 noon when first informant and Ramesh Patil were present near the stretcher in waiting room, Chandrakant

Baliram Sonawane and 20-22 persons who were from Sonawane group came to waiting room with weapons like sword, knife etc. Chandrakant was having Ghoda, country made revolver in addition to sword. Immediately after reaching the waiting room, Chandrakant Sonawane, Ashwin Sonawane, Sunil Sonawane and Dilip Patil assaulted the first informant Prakash Patil by using swords. He sustained injuries and so, he tried to rest on the stretcher on which Sunil Patil was kept. He was virtually pulled down from the stretcher by Anil Sonawane, Nilesh Sonawane, Nitin Sonawane, Shamkant Sonawane and two other persons who were in the company of these persons and then they gave blows of sword to Sunil Patil, who was lying in unconscious condition on the stretcher. When Ramesh Patil tried to intervene, he was also assaulted by Vishal Sonawane by using base-bat, Mukesh Baviskar alias Aba by using Khanjir, dagger, Amit Sonawane alias Don and Naresh Sonawane alias Nana by swords. Injuries were caused to Ramesh Patil also.

6) When the assault was going on, the two vehicles which were following ambulance reached Acharaya Hospital and everybody heard the noise of two vehicles entering the campus of hospital. Arun Shirsale and Anil Bhatkar also rushed out of the cabin of doctor to waiting room. Due to fear of further assault, Prakash Patil jumped from gallery of first floor on the ground floor to escape and ran

away. Accused persons then ran out of waiting room and also of the campus of hospital. But while leaving the place, Chandrakant Sonawane fired bullet from his country made revolver at Armada vehicle which hit on the glass of Armada vehicle. Some of the assailants attacked the Maruti van and this van was also damaged by them. The assailants then left the place in different vehicles which were brought by them.

7) After coming out of hospital, Prakash Patil met Sagar Sapke, rickshaw driver and Sagar Sapke shifted him to Civil Hospital, Jalgaon. Ramesh Patil and Sunil Patil were also brought to Civil Hospital by Arun Shirsale and others. Prakash Patil then gave report which was recorded in Civil Hospital, Jalgaon by Zilla Peth police. The crime at C.R. No. 209/1999 came to be registered for offences punishable under sections 307, 326, 149, 427 etc. of IPC and section 3 r/w. 25 and 4 r/w. 25 of Arms Act and other provisions at about 15.00 hours.

8) During the course of investigation, police prepared spot panchanama, the panchanama of waiting room and other places of Acharaya Hospital. Police arrested 13 accused persons against whom chargesheet was filed. Statements of two eye witnesses like first informant and Ramesh Patil and also other witnesses like Arun

Shirsale and his brother came to be recorded. Both the injured were examined in Civil Hospital and the injuries which were found on the person of Sunil Patil were also noted during medical examination. Sunil Patil succumbed to the injuries, but the injury which was caused in the first incident had caused the death and so, police filed separate chargesheets for offence of murder in respect of first incident and the chargesheet came to be filed in respect of second incident in the present matter. The charge was framed. All the accused pleaded not guilty. Prosecution examined in all 16 witnesses. Some circumstantial evidence was also given in the form of evidence on spot panchanama and evidence on the recovery of weapons and also medical evidence. Defence examined one defence witness to give evidence of alibi in respect of accused Ashwin. The Trial Court has not believed the eye witnesses. The Trial Court has held that there is possibility of false implication and concoction due to political rivalry. In the first case, some accused are convicted by the Trial Court, but all the accused are acquitted in the present matter by the Trial Court.

9) Prosecution has examined Prakash Hari Patil (PW 3), the first informant and Ramesh Narayan Patil (PW 2), other injured witness for giving direct evidence. According to prosecution, these are only two witnesses who had opportunity to see the entire

incident of assault. Prosecution examined some staff members of the hospital who could have given evidence atleast on some part of the incident. Some witnesses who were outside of the campus of the hospital and who had an opportunity to see the accused entering in the hospital or leaving the hospital with weapons and causing damage to the vehicles were also examined, but all those witnesses have turned hostile.

10) Prakash Patil (PW 3) has given evidence that in waiting room he and Ramesh Patil (PW 2) were present near the stretcher on which Sunil Patil was kept. He has given evidence that Arun Shirsale (PW 1) and Anil Bhatkar had gone to the doctor to take necessary steps for C.T. Scan.

11) Prakash (PW 3) has given evidence that he heard shouts like 'kill them', 'do not spare them' and then accused Chandrakant Sonawane (accused No. 11) entered the waiting room with country made revolver in one hand and sword in other. He has given evidence that other accused like Naresh @ Nana, Ashwin, Amit, Anil, Nitin, Nilesh and Dilip Koli were in the company of Chandrakant and all of them were armed with swords. He has given evidence that Mukesh, one more accused was having dragger, Sudhakar was having knife and accused Vishal Sonawane was having hockey stick.

He has given evidence that in addition to these known persons, there were 6-7 other unknown persons with Chandrakant Sonawane. He has given evidence that all these persons wanted to assault Sunil Patil, but he went ahead to save Sunil Patil and then he was assaulted.

12) Prakash (PW 3) has given evidence that Chandrakant gave sword blow on his left wrist, Sunil Sonawane gave sword blow over upper part of his left elbow, Dilip Koli gave sword blow on his head, Ashwin Sonawane gave blow of sword on his left palm and Nitin Sonawane gave blow of sword on his little finger. He has given evidence that he fell on Sunil Patil as their intention was to finish Sunil, but he was pushed aside and due to that Sunil Patil, who was unconscious fell on the floor of the waiting room. He has given evidence that Sunil Patil was then assaulted by these persons.

13) Prakash (PW 3) has given evidence that accused Chandrakant, Shamkant, Ashwin, Amit, Nitin, Nilesh and Anil Sonawane and Dilip Koli gave blows of sword on Sunil Patil and accused Mukesh gave blow of dagger to Sunil Patil.

14) Prakash (PW 3) has given evidence that when Ramesh intervened, accused Vishal assaulted Ramesh with hockey stick,

accused Mukesh assaulted Ramesh with dagger and accused Shamkant, Nana, Ashwin, Anil assaulted Ramesh with swords and Sudhakar assaulted Ramesh with knife.

15) Prakash (PW 3) has given evidence that during incident he saw that Arun Shirsale and Anil Bhatkar were coming out of the doctor's cabin and then to save himself he went towards gallery of waiting room and from there jumped towards the first floor and ran away. He has given evidence that while running away he noticed that Chandrakant was firing bullet from his fire arm at Armada vehicle of Shirsale. He has given evidence that when he crossed some distance he found Sagar Sapke with his auto rickshaw and Sagar shifted him to Civil Hospital. He has given evidence that he gave report about the incident which is at Exh. 78. His evidence shows that he knew all 13 accused and he identified them in the Court.

16) In the cross examination, Prakash (PW 3) has admitted that many criminal cases were filed against him, Arun Shirsale, Arjun Shirsale and they were even for the offences punishable under sections 307 etc. of IPC. He admits that he was worker of political party Shivsena and the two brothers viz. Arun Shirsale and Arjun Shirsale were members of Local Body and they had contested election from political party Shivsena. In the cross examination, he

has admitted that accused Chandrakant was also councillor of the local body at the relevant time, but he was worker of Congress I party and he had defeated Narayan, father of Arun Shirsale in election to Municipal Council. He admits that there was political rivalry between the group of Shirsale and the group of Sonawane. Arjun Pawar (PW 12) has admitted in his evidence that Suresh Jain, who was M.L.A. of Jalgaon was from political party Shivsena and he was minister in State Government which was of Shivsena political party. These circumstances need to be kept in mind as the Trial Court has held that due to the influence, there was concoction and there is possibility of false implication of many persons and particularly Chandrakant Sonawane with intention to put an end to his political career.

17) In the cross examination of Prakash (PW 3), it is brought on the record that Prakash (PW 3) had not stated in the F.I.R. that the persons who had entered waiting room were shouting as 'kill them'. In any case, if there was such shouting, Arun Shirsale and Anil Bhatkar would have heard that shouting, who were hardly at the distance of 5-10 feet and they would have rushed to the waiting room, but that did not happen and they came out only when all the accused had left not only the waiting room, but also the building of Acharaya Hospital. The evidence of Prakash (PW 3), Ramesh (PW 2)

shows that they did not join for help even when more than 20 persons had entered waiting room to kill them. In view of the size of waiting room and the size of the passage leading to the waiting room, the Trial Court has held that there was no possibility that more than twenty persons had come there to assault and all of them had assaulted these three persons.

18) In the cross examination, Prakash (PW 3) has avoided to admit that deceased Sunil Patil was also worker of Arun Shirsale. The evidence on record, however, shows that Arun Shirsale and Arjun Shirsale were helping the workers like Prakash (PW 3) and even after filing of the present case, it is Arun Shirsale who had given monetary help. Ramesh (PW 2) also gave all evasive answers in his cross examination. Due to the nature of replies given by Ramesh (PW 2) and Prakash (PW 3), a serious doubt is created about the veracity of these two witnesses.

19) In the F.I.R. at Exh. 78, no specific role was attributed to accused persons. But, in substantive evidence, Prakash (PW 3) has given specific role to four persons including Chandrakant to describe the blows of sword given by them, by describing the portion of body where the blows were given. Due to vagueness in the F.I.R., it cannot be said that F.I.R. has given corroboration to the version of

Prakash (PW 3) given in the Court.

20) Ramesh (PW 2) has deposed that all the accused came there and they were shouting like 'kill him' ('kill Sunil Patil'). He has given evidence that they were saying that he had got saved himself in the previous incident (incident of Shirsale Naka). Ramesh (PW 2) has given evidence that Chandrakant was holding pistol and sword and others were holding swords and other persons like Vishal was holding stick, Mukesh was holding dagger and Sudhakar was holding knife.

21) Ramesh (PW 2) has given evidence that when Prakash (PW 3) went forward after entering of accused persons in waiting room, accused Chandrakant, Ashwin, Dilip, Nitin and Sunil assaulted Prakash with swords. Like Prakash (PW 3) he has not described the specific blow given by each accused on particular portion of body of Prakash (PW 3). He has then given evidence that accused Chandrakant, Nana, Nitin, Dilip, Ashwin, Amit, Sunil and Nilesh assaulted Sunil Patil with swords.

22) Ramesh (PW 2) has given evidence that due to assault made on Sunil Patil, he shouted and then accused Vishal assaulted him with hockey stick, on his head, Mukesh assaulted him with

dagger on his private part, Ashwin assaulted him with sword on his left elbow and Amit assault him with sword on right forearm. He has given evidence that accused Nana assaulted him on his back with sword, accused Shamkant assaulted him with sword above his waist and accused Sudhakar assaulted him with knife on left wrist.

23) Ramesh (PW 2) has given evidence that when the assault was going on Arun Shirsale and Anil Bhatkar came out from doctor's room and after that all the assailants ran away. The evidence of Arun Shirsale (PW 1) shows that when he entered waiting room after learning about the incident only Sunil Patil, Ramesh Patil were present there in injured condition. He has deposed that he had seen some accused, but at that time they were running out and he could see them after coming up to the door of visiting room. It does not look probable that Arun Shirsale had entered waiting room when accused persons were there. It can be said that Arun Shirsale was the leader of rival group and if the assailants had come there, they would not have spared Arun Shirsale and Arun Shirsale also would not have allowed atleast some of them to escape if his persons were assaulted after coming to the hospital by the rival group. This did not happen and so, the version given by the two injured eye witnesses and Arun Shirsale does not appear to be probable in nature.

24) In the cross examination, Ramesh (PW 2) has stated that Chandrakant had fired one bullet from his fire arm in the hospital also. The evidence of spot panchanama does not show there was firing either inside of the hospital or outside of the hospital. This circumstance also falsifies the versions given by Prakash (PW 3) and Ramesh (PW 3) and this circumstance shows that things are exaggerated and there was intention to anyhow implicate Chandrakant who was councillor of rival group.

25) Arun Shirsale (PW 1) has given evidence that at the relevant time, he was having talk with Dr. Ikbali of Dr. Acharaya Hospital. He has given evidence that he heard shouts coming from waiting room and so, he rushed to the spot and then he saw Sunil Patil lying on the floor and Ramesh Patil sitting in injured condition. The spot panchanama shows that the distance between the room of Dr. Ikbali and the spot of offence was not much and immediately after entering of the accused on the first floor anybody from hospital could have realised the intentions and there must have been chaos. Thus, the manner in which incident is described by this witness shows that things are concocted and there is possibility that many persons are falsely implicated in the present matter if some incident had taken place there.

26) The evidence on record shows that on that day, C.T. scan was not done in Acharya Hospital and Sunil Patil was immediately rushed back to the Civil Hospital. There is no record of Acharaya Hospital produced to show that any payment was made in Acharaya Hospital, for C.T. scan.

27) In the cross examination Arun (PW 1) has admitted that in many criminal cases, he, Devendra, Sunil Patil were joined as accused and many cases were filed against him and his brother even for the offences punishable under sections 302, 307, 376 etc. of IPC. These circumstances show that the persons from the group of Arun Shirsale would have certainly taken steps if some persons had come up to the hospital of rival group to make assault on Sunil Patil. If many persons of group of Arun had come in vehicles like ambulance, Armada vehicle and Maruti van, it does not look probable that there was one way assault if the incident had really taken place there.

28) Arun Shirsale (PW 1) has avoided to admit many things. He has avoided to admit that many of the accused persons are active workers of political party Congress I and Dr. Shantaram is Vice President of city unit of Congress I. He has avoided to admit that accused Ashwin and Amit are cousins of Shantaram. However,

he admits that the relations between he and Shantaram were strained as in the past Shantaram was removed from service by Local Body of the city in which Shivsena was having power and after that he had become a member of Congress I party. Suggestions given to him show that all the accused persons are either related to each other or they were workers of political party Congress but they are denied by this witness. However, Arjun Shirsale (PW 13) has given some admissions fairly in that regard.

29) Arjun Shirsale (PW 13) has deposed that he went towards Acharaya Hospital when he learnt that Sunil Patil was shifted to Acharaya Hospital for C.T. scan. He has given evidence that after entering the hospital, he saw that Arun (PW 1) was running towards the main gate of hospital and so, he followed Arun and then he saw that all the accused ran away with weapons like swords and Chandrakant was having pistol. He has described the weapons all the accused were having at that time. He has tried to say that he entered the premises of hospital and the building of the hospital from other gate and not from the main gate and the reason for the same is not given. If the accused persons had entered from other gate and they were going through the main gate, in ordinary course, persons like Arjun would have entered through main gate. His evidence shows that he entered from other gate. It can be said

that Arjun has tried to say that there was no possibility of confrontation.

30) Arjun Shirsale (PW 13) has admitted in his evidence that since 1996 political party Shivsena was in power in Jalgaon Municipal Council and Suresh Jain was their leader. He has admitted that Jain was M.L.A. of Shivsena party from the city and he was also minister in the State Government, which was of Shivsena Party. He has admitted that many cases were filed against him, his brother and even against his father like mentioned above. Thus the persons from complainant's side were history sheeters.

31) Dr. Sayyed (PW 5) is examined to prove the injuries sustained by Sunil Patil on that day. He has given evidence that when he first examined Sunil Patil on that day at 11.40 a.m. he found following injuries :-

"(i) Incised wound of size 1"x1½" x 1/4" on left lower side of cheek, of simple nature, which was caused by hard and sharp object.

(ii) Incised wound 1/2"x1/4" x 1/4" on left ring finger simple in nature, caused by hard and sharp object.

(iii) Abrasion 1 c.m. x 1 c.m. on right side of the forehead of simple nature, caused by hard and blunt object.

(iv) Contusion of size 3"x2" behind the left ear and upper part of neck on left side, of simple nature, caused by hard and blunt object.

(v) Linear abrasion 1 c.m. In length on left mandibular angle, simple in nature, caused by hard and blunt object."

He has given evidence that the aforesaid injuries were caused within six hours, they were fresh and he had advised C.T. scan as there was the head injury to Sunil Patil.

32) Dr. Sayyed (PW 5) has given evidence that Sunil Patil was again brought to the Civil Hospital at 1.00 p.m. and at that time, he had found that Sunil Patil had sustained more injuries. He has given evidence that as many as eight injuries were more and they were as under :-

"(i) Incised wound 2"x3" bone deep on left upper arm of simple nature, caused by hard and sharp object.

(ii) Incised wound 2"1/2"x1/4" left elbow joint of simple nature, caused by hard and sharp object.

(iii) Incised wound 1/2"x1/2"x 1/2" on left side of chest below medial to left nipple, of simple nature, caused by hard and sharp object.

(iv) Incised wound 3/2" x1"x1" on right scapula of simple

nature caused by hard and sharp object.

(v) Incised wound 4"x1" interscapular region of simple nature, caused by hard and sharp object.

(vi) Incised wound 6" x 1" x 1" infrascuplar region of simple nature, caused by hard and sharp object.

(vii) Incised wound 1"x1"x1/4" on right little finger middle phalynx of simple nature caused by hard hand sharp object.

(viii) Abrasions multiple 2"x2" on left elbow joint simple nature, caused by hard and blunt object."

In respect of these new eight injuries also, Dr. Sayyed has given evidence that they were sustained within six hours, they were fresh.

33) The evidence is given by Dr. Sayyed (PW 5) that Sunil Patil was indoor patient in Civil Hospital from 21.10.1998 to 22.10.1998 and he was discharged on request. He has given evidence that in Civil Hospital C.T. scan was done on 22.10.1998. If C.T. scan was available in Civil Hospital, there was no reason to shift Sunil Patil to Acharaya Hospital and there is no explanation in respect of this circumstance. Dr. Sayyed (PW 5) has given evidence that due to injury to head, there was extensive extradural hematoma at left tempero parietal region. He has given evidence that there was fracture at left tempero parietal region and due to this injury, there was diffused cerebral oedema. The certificate at

Exh. 83 was prepared by Dr. Sayyed in respect of injuries which he had noticed at 11.30 a.m. and also at 1.00 p.m. on that day.

34) Dr. Sayyed has given evidence that on 21.10.1998 he examined Prakash Patil (PW 3) at 1.05 p.m. and he found following injuries on the person of Prakash.

"(i) Incised wound 1½" x 1/2" x 1/4" below styloid process of ulna on left side, of simple nature, caused by hard and sharp object.

(ii) Incised wound 1" x 1/2" x 1/4" on left wrist joint of simple nature, caused by hard and sharp object.

(iii) Incised wound 1/2" x 1/4" x 1/4" on left middle finger, of simple nature, caused by hard & sharp object.

(iv) Contused lacerated wound 1/2" x 1/2" 1/4" on left parietal region, of simple nature, caused by hard and blunt object."

Dr. Sayyed has given evidence that these injuries were sustained within six hours, they were fresh and Prakash was treated as indoor patient from 21.10.1998 to 26.10.1998. The certificate in respect of Prakash is proved as Exh. 84. The aforesaid injuries do not show that any injury was grievous and there was any reason for keeping Prakash as indoor patient, but such record was created. This circumstance creates doubt about the fairness of investigating

agency and also the doctor.

35) Dr. Sayyed (PW 5) has given evidence that on 21.10.1998 he examined Ramesh Pawar (PW 2) at about 1.00 p.m. and he found following injuries on his person.

"(i) Contused lacerated wound 3" x 1/2" x 1/4" on left parietal region, of simple nature, caused by hard and blunt object.

(ii) Incised wound 1" x 1/2" x 1/4" on right forearm of simple nature, caused by hard and sharp object.

(iii) Incised wound 1" x 1/2" x 1/4" on left elbow joint, of simple nature, caused by hard and sharp object.

(iv) Incised wound 1" x 1/2" x 1/4" on left wrist joint ventrally, of simple nature, caused by hard and sharp object.

(v) Incised wound 1" x 1/2" x 1/4" on right eliac crest, of simple nature, caused by hard and sharp object.

(vi) Incised wound 1/2" x 1/4" x 1/4" base of penis on left side, simple in nature, caused by hard and sharp object.

(vii) Incised wound 1/2" x 1/2" x 1/4" over left clavicle, of simple nature, caused by hard and sharp object. "

Dr. Sayyed (PW 5) has given evidence that the injuries were sustained within six hours. He has given evidence that Ramesh was

also indoor patient from 21.10.1998 to 26.10.1998. The certificate is proved as Exh. 85. In this case also, it can be said that it was not necessary to admit Ramesh in the hospital, but the record was created of admission.

36) Dr. Sayyed (PW 5) has given evidence that the aforesaid injuries were simple in nature and caused by hard and sharp object and such injuries can be caused by weapons like sword, dagger, knife. He has given evidence that injury No. 4 found on the person of Prakash which was C.L.W. and injury No. 1 found on the person of Ramesh can be caused by weapons like stick, hard and blunt object.

37) Dr. Sayyed (PW 5) has given evidence that he conducted P.M. examination on the dead body of Sunil Patil on 26.10.1998. He found following 15 injuries on the dead body.

"(i) Sutured wound 1" in length below left lower side of cheek and abrasion.

(ii) Sutured wound 1" in length on left ring finger.

(iii) Abrasion with scab formation right side of forehead 1 cm x 1 c.m.

(vi) Contusion 5" x 4" behind left ear, extending below the neck.

(v) Linear abrasion and scab formation on left

mandibular angle.

- (vi) Sutured wound 12" in length left upper arm anteriorly
- (vii) Sutured wound 2" in length on left elbow joint.
- (viii) Sutured wound 1½" in length on left side of chest below and medial to left nipple.
- (ix) Sutured wound 3½" in length on right scapula.
- (x) Sutured wound 4" in length interscapular region.
- (xi) Sutured wound 6" in length interscapular region.
- (xii) Sutured wound 1" in length middle phalanx of right little finger.
- (xiii) Sutured wound 1½" in length on left leg above medial malleolus.
- (xiv) Multiple abrasions with scab formation left elbow.
- (xv) Sutured wound 14" in length left parietal."

Dr. Sayyed (PW 5) has given evidence that all the aforesaid injuries were antemortem in nature.

38) The evidence of Dr. Sayyed (PW 5) shows that he found internal injuries like :-

"In head region - Injuries under scalp, hematoma of size 5" x 3" in both frontal region.

Skull vault and base :- -Linear fracture of left parietal bone left parietal craniotomy done with 14" incision.

- Brain appearance
- Meninges congested.
 - Extradural hamatoma of size 2" x 2" in left tempero parietal region.
 - Subdural collection of blood over both cerebral hemisphere in high pareital region.
 - Brain matter was highly congested and oedematous.
 - Cerebellum congested.
 - Clotted blood is seen over both temporal region."

Dr. Sayyed (PW 5) has deposed that death of Sunil Patil took place due to injury to head which was noticed by him in the first examiation which was done at 11.30 a.m. Thus, Sunil Patil did not die due to the injuries allegedly inflicted on him in second incident which allegedly took place in Acharaya Hospital.

39) Dr. Sanjeev Huzurbazar (PW 6) has given evidence that he had given treatment to Sunil Patil from 22.10.1998 to 26.10.1998 in his private hospital as Neurosurgeon. He found following five injuries on the person of Sunil Patil :-

- "(i) Multiple CLW left arm,
- (ii) Left chin,
- (iii) Sutured CLW on back,
- (iv) Sutured CLW on left ring and right little finger.

(v) Left parietal scalp."

Dr. Sanjeev (PW 6) has given evidence that injury No. 5 was fatal injury. The record of the hospital is proved in his evidence as Exh. 97.

40) If the evidence of Dr. Sanjeev (PW 6) and Dr. Sayyed (PW 5) is compared with each other and the record prepared by them is compared, it can be said that many more injuries are mentioned by Dr. Sayyed (PW 5) in the record. Dr. Sanjeev (PW 6) had examined Sunil Patil after the second incident and so, this circumstance cannot be ignored. These circumstances create serious doubt about the fairness of investigation and fairness of Government office like Civil Hospital. Due to that the circumstance that the political party of the complainant's side was in power in the State needs to be considered seriously. The possibility of concoction is created due to these circumstances also.

41) Vijay Bhoi (PW 4) is examined by the prosecution to prove the spot panchanama, Exh. 80. The spot panchanama was prepared between 17.15 hours and 18.15 hours of 21.10.1998. Evidence of Vijay Bhoi shows that Arun Shirsale had shown the spot. Exh. 80 shows that the places which were not only the waiting room, but other places were shown and blood was found at other places

also.

42) Exh. 80 shows that blood was found at following places :-

(i) Outside of C.T. scan center on the wall near door of C.T. scan and at the height of 4 ft. Adjacent to this C.T. scan center there is cabin of Dr. Ikbal where Arun (PW 1) was allegedly sitting. According to him, he came out when incident was over.

(ii) In front of room of Dr. Ikbal on floor at the distance of 1 ft. there was blood in the space of 6 x 6 inch. Thus, right in front of cabin of Dr. Ikbal, blood was lying, but PW 1 is saying that he came out only after incident was over.

(iii) The stretcher was found at other place and not in the waiting room where the spot panchanama was prepared and there were blood stains on the stretcher.

(iv) The blood was present in the waiting room also and it was present at the distance of 1 ft. from the cabin of Dr. Prabhakar in the space of 2 x 1 ft.

(v) In waiting room, there was blood near two benches which were kept near counter near the door towards northern side of waiting room portion of Rampuri knife having blood stains was lying.

(vi) Near parfait wall of gallery which is adjacent to the waiting room, one wooden handle of, gupti or dagger was lying and it was having blood stain. One metal strip which is used to join blade with the handle was also lying there and it was having blood stains.

(vii) Below the gallery portion of first floor, there were broken pieces of glass and the broken pieces of glass were also found outside the campus of hospital on the road. Some windows were found in broken condition. In respect of many of these circumstances mentioned in spot panchanama, there is no explanation in the evidence of PW 2 and PW 3.

43) The defence has suggested to the witnesses that there was no assault either on PW 2 or PW 3 or Sunil Patil, but some workers of political party Shivsena had become angry as proper attention was not paid for C.T. scan of Sunil patil and they had created chaos and there was rioting.

44) The prosecution has given evidence on recovery of some weapons on the basis of statements made by some of the accused. Nana (PW 9) has given evidence on statement given by accused Nilesh of which memorandum was prepared which is at Exh. 96. He

has given evidence that Nilesh took police and panchas towards Asoda Bhadali road, Asoda and from one place of village Sujde he produced five swords, one dagger and one hockey stick which was found to be kept in heap of grass. He has given evidence that these weapons were seized under panchanama at Exh. 96-A. This recovery was shown to be made on 29.8.1998.

45) Digamber (PW 10) is examined as panch witness. There is no substantive evidence that accused Shamkant has given statement, but evidence is given that one sword was produced by Shamkant from his field from village Asoda. The documents are proved as Exhs. 94A and 94B.

46) One Arjun Pawar (PW 12) is examined as panch witness to prove the recovery of fire arm and cartridges on 4.3.1999. He has given evidence that Chandrakant gave statement of which memorandum was prepared and Exh. 100 is the memorandum. He has given evidence that Chandrakant took police and panchas to his residential place and from there, he produced country made revolver and six live cartridges. Seizure panchanama is proved as Exh.100A. This recovery was very late and when they wanted to implicate Chandrakant, residential place of Chandrakant was known, they had not searched the place of Chandrakant. No evidence of explosive

expert is given on the revolver and six live cartridges. Thus, when evidence is given by one eye witness that atleast two bullets were fired from this revolver, no steps were taken to get expert report in respect of revolver and the live cartridges. It is already observed that empty cartridges were not recovered when spot panchanama was prepared.

47) The aforesaid discussion shows that there is direct evidence only of the interested witnesses. There was severe political rivalry between two groups and the group of complainant's side was in power both in Local Body and in the State. Nobody from the hospital has come forward even when such incident took place in the hospital. Even persons from outside of the hospital have not given evidence on the incident. There is no panchanama of the vehicles which were allegedly damaged in the incident. These circumstances and aforesaid lacuna have created serious doubt about the entire case of prosecution. Further, the witnesses have improved their previous versions given before the police to material extent to give specific role to accused in the Court. The circumstance that even when Arun and Arjun Shirsale were present, they did not participate and no assault was made on them also creates serious doubt about the case of prosecution. Due to these circumstances, the Trial Court has held that there is possibility of concoction and implication of

many persons in the present matter to remove them from politics. The Trial Court has also observed that the injuries sustained by PW 2 and PW 3 were simple and minor injuries and they can be self inflicted. Such possibility cannot be ruled out as every attempt is made to see that accused Chandrakant suffers in the present matter. Discrepancies in the evidence of Dr. Sayyed (PW 5) and Dr. Sanjeev (PW 6) has also created a probability that nothing was fairly done. Some omissions in relation to F.I.R. are proved in the evidence of Bhikan Jagtap (PW 18) Investigating Officer and there are material omissions and they also can be used to hold that there is possibility of concoction.

48) The learned counsel for accused viz. Mr. Warma placed reliance on many cases as follows :-

"1. 2016 AIR (SC) 5554 (Ramesh and others v. State of Haryana)

2. 2016 AIR (SC) 5231 (Mahavir Singh v. State of Madhya Pradesh)

3. 2013 AIR (SCW) 5501 (Prem Singh v. State of Haryana)

4. 2009 AIR (SC) 2298 (Mahtab Singh & Anr. v. State up U.P.)

5. 2002 (5) JT 302 (Sukliya v. State of Madhya Pradesh)

6. 2001 AIR (SC) 2408 (State of Madhya Pradesh v. Surpa)

- 7. 2012 AIR (SC) 1 (State of Rajasthan v. Shera Ram @ Vishnu Dutta)**
- 8. 2009 AIR (SC) 2913 (Nepal Singh v. State of Haryana)**
- 9. 2012 AIR (SC) 1292 (Govindaraju @ Govinda v. State by Sriramapuram P.S. & Anr.)**
- 10. 1959 AIR (SC) 1012 (Tahsildar Singh and another v. State of U.P.)**
- 11. 1999 ALL MR (Cri) 93 (S.C.) (Jaspal Singh v. State of Punjab)**
- 12. 1976 Mh.L.J. 485 (Guljarsing Santoshsing and others v. State of Maharashtra)**
- 13. 2004 DGLS (SC) 81 (Gopal v. Subhash)**
- 14. 2002 DGLS (SC) 40 (State of Haryana: Rai Sahab v. Ram Singh: State of Haryana)**
- 15. 2015 DGLS (SC) 1099 (Mangu Singh v. Dharmendra and another)**
- 16. 2017 DGLS (SC) (347 Krishnegowda and Others v. State of karnataka by Arkalgud Police)**
- 17. 1992 DGLS (SC) 724 (Dharam Singh v. State of Punjab)"**

The cases are on appreciation of evidence and also the procedure which needs to be adopted by the Appellate Court. The cases are also on the point, when there is discrepancy in oral evidence and medical evidence. In some cases, it is laid down that the Appellate Court should be very slow in disturbing the finding which is on the basis of oral evidence. The observations are made with regard to the effect of non examination of material witnesses and absence of

support of independent witnesses. There cannot be dispute over the propositions made in all the reported cases. The facts and circumstances of each and every case are always different. In the present matter, it is not possible to believe the direct evidence due to various discrepancies and circumstances which are already noted. The defence has examined one witness to prove the alibi in respect of accused Ashwin. But, there is no need to discuss that part of evidence. Further, that evidence is also not full proof and it has not created possibility that it was not possible to Ashwin to remain present on the spot at the relevant time. This Court holds that it is not possible to interfere in the decision of the Trial Court by which benefit of doubt is given to all the accused. In the result, both the proceedings stand dismissed. The bail bonds of the accused stand cancelled.

[ARUN M. DHAVALÉ, J.]

[T.V. NALAWADE, J.]

ssc/