

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

CRIMINAL APPEAL NO.361 OF 2001

The State of Maharashtra **APPELLANT**
[Orig. Complainant]

VERSUS

1. Vyankati s/o.Janardhan Dhakne,
Age 35 yrs., Occu. Agri.
R/o.Aswal Amba, Tq. Parli
Vaijinath, Dist. Beed.
2. Bankati Janardhan Dhakne,
Age 30 yrs., Occu. & r/o. as above.
3. Maroti Rama Gutthe,
Age 27 yrs., Occu. & r/o. as above.
4. Janardhan Hariba Dhakne,
Age 60 yrs., Occu. & r/o. as above.
5. Parwatibai @ Nanagabai w/o.
Vyankati Dhakne, age 30 yrs.,
Occu. & r/o. as above.
6. Kausabai w/o. Bankati Dhakne,
Age 25 yrs., Occu.
& r/o. as above.

RESPONDENTS

[Ori. accused]

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Mr.S.J.Salgare, APP for Appellant – State
Mr.S.S.Jadhavar, APP for Respondent Nos.1 to
6 – accused.

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

Reserved on : 06.07.2017
Pronounced on : 19.07.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Appeal is filed by the appellant-State, challenging the judgment and order of acquittal passed by the Additional Sessions Judge, Ambajogai, dated 18th June, 2001 in Sessions Case No.98/1999.

2. The prosecution case in nutshell is as under:

one Gawalanbai Hanumant Dhakne [PW-3], the informant, married with Hanumant Dhakne [deceased]. The deceased Hanumant was residing at village Aswal-Amba. The parents of Gawalanbai [PW-3], the informant, are residing at village Mandekhel. The land of deceased Hanumant is within the revenue boundaries of village Aswal-Amba. The said land is towards the side of village Mandekhel. Hence, the Hanumant [deceased] and the informant Gawalanbai started residing at

village Mandekhel since 1989. The brothers of deceased Hanumant viz. Ramkishan and Vithal [PW-1] are residing in their field at Aswal-Amba. The land of brother of Gawalanbai [PW-3] viz. Angad [PW-7] is within the limits of village Aswal-Amba. The Gat number of the said land is 31. The land of Angad [PW-7] and land of the deceased Hanumant were jointly cultivated by them. The land Gat No. 31 was purchased by Angad [PW-7] from Vishwanath Ranba Wahule of village Mandekhel on 9th June, 1998. The deceased Hanumant has taken part in the said transaction and helped Angad [PW-7] for purchasing the said land.

3. Janardhan Hariba Dhakne i.e. accused no.4 was to purchase the said land bearing Gat No.31. However, as the deceased Hanumant has taken leading part for purchasing the said land by Angad [PW-7], the accused no.4 Janardhan and his sons were giving threat of

killing to the deceased Hanumant. Accused no. 4 Janardhan, accused no.1 Vyankati and accused no.2 Bankati were always asking deceased Hanumant to sell the said land [from Gat No.31] to them, otherwise they threatened to kill him. However, the deceased Hanumant and Angad [PW-7], were not ready to sell the said land to the accused. Hence, the accused were having grudge against the deceased Hanumant.

4. On 23th July, 1999, the informant Gawalanbai [PW-3], her husband Hanumant [deceased] and her brother Angad [PW-7] went to the said land bearing Gat No.31 along with bullocks and agricultural implements. Angad [PW-7] asked Hanumant [deceased] to do the agricultural operation in the field and that he will bring seed from the Parli. At about 10.00 a.m. Angad [PW-7] left the field. The Hanumant [deceased] was doing the

agricultural operation in the field. Gawalanbai [PW-3] was collecting the grass in the field.

5. It is the prosecution case that at about 11.00 a.m., Vyankat Janardhan Dhakne, the accused no.1 and Bankati Janardhan Dhakne, the accused no.2 came to the said field Gat No.31. They asked Hanumant [deceased] that why he is doing the agricultural operations in the said field as they asked him to give the land to them. Accused nos.1 and 2 started giving abuses to Hanumant, the deceased. Then exchange of words was going on between them. The informant Gawalanbai tried to intervene by saying not to give abuses. At that time, Janardhan Hariba Dhakne [accused no.4], Maroti Rama Gutthe [accused no.3], Kausabai Bankati Dhakne [accused no.6] and Parwatibai alias Nanagabai Vyankati Dhakne [accused no.

5] came running there. Janardhan, the accused no.4 was having stick in his hand. Vyankati, the accused no.1 and Bankati, the accused no. 2 were having axe in their hands. Janardhan, the accused no.4 asked other accused to kill Hanumant, the deceased. Then Vyankati, the accused no.1 and Bankati, the accused no.2 beat Hanumant, the deceased by means of sharp edge of axe on his head and right leg. Janardhan, accused no.3 beat by means of a part of agricultural implement viz. 'Rumne'. Though the accused beat Hanumant severely, informant Gawalanbai tried to intervene by saying not to beat and also made hue and cry. Accused no.6 Kausabai and accused no.5 Parwatibai beat informant Gawalanbai and her husband Hanumant by means of kicks and fist blows.

6. Because of beating Hanumant became unconscious. His left leg was fractured. By

that time, Ankush Shripati Palvade, Bibhishan [PW-4] and Rajabhau [PW-5] were coming towards the said field Gat No.31. By seeing them and as Hanumant became unconscious, the assailants ran away.

7. Hanumant was carried to Ambajogai by informant Gawalanbai and her brother and son of her brother at Ambajogai. They went to Ambajogai Police Station. By taking Yadi from the Police, Hanumant was carried to S.R.T.R. Medical College and Hospital, Ambajogai. He was admitted in the Hospital. On 24th July, 1999, at 3.00 a.m., Hanumant died in the Hospital. Gawalanbai the informant went to the Police Station and lodged the First Information Report [in short 'FIR'] against the accused persons. On the basis of the said FIR, crime was registered as Crime No. 203/1999 for the offence punishable under Sections 147, 148, 149, 447 and 302 of the

Indian Penal Code. During investigation, inquest panchnama and spot panchnama were recorded. The statements of witnesses were recorded. The accused persons were arrested. The dead body was sent for postmortem. The postmortem report was collected. The stick and axe were discovered at the instance of the accused. The seized articles and clothes of the deceased were sent to C.A. Viscera and blood sample were sent to C.A. After analysis by the C.A. certificates were collected by his office. After completion of an investigation, charge-sheet was filed against the accused persons for the offences punishable under Section 302, 147, 148, 149, 447 of the IPC in the court of the Judicial Magistrate First Class, Ambajogai.

8. The learned Magistrate committed the case to the Court of Sessions as the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions.

9. In Sessions Case, the trial Court framed the charge against the accused persons for the offence punishable under Section 147, 148, 149 with 302 and 302 r/w. 34 of the IPC. The charge was read over and explained to the accused persons in vernacular. The accused persons pleaded not guilty and claimed to be tried. The defence of the accused persons was of total denial.

10. After full-fledged trial, the trial Court acquitted the appellants – accused for the offence punishable under Sections 147, 148, 149 with 302 of the IPC and 302 r/w. 34 of the IPC. Therefore, this appeal against acquittal.

11. The learned counsel appearing for the appellant–State submits that the findings recorded by the trial Court are not in consonance with the evidence brought on record. There are two eye witnesses to the

alleged incident. The trial Court has not properly considered the evidence of the two eye witnesses as well as the medical evidence. Therefore, he submits that the appeal may be allowed.

12. On the other hand, the learned counsel appearing for the respondents—accused invites our attention to the findings recorded by the trial Court, and submits that those are in consonance with the evidence brought on record. He also invites our attention to the contradictions, omissions and improvements from the evidence of the prosecution witnesses. It is submitted that PW-4, Bibhshan Palwade, has stated in his deposition that when he reached to the spot of incident, the deceased informed him that he was beaten by the accused persons. However, the informant has stated in the FIR that the deceased had become unconscious

immediately after attack on him. PW-4, Bibhishan, had reached the spot of incident when he was reported about the said incident by PW-6 Dipak, who rushed from the spot of incident to the house of PW-4 Bibhishan, seeking his aid. Considering time which would have been required for PW-6 Dipak to reach the house of PW-4 Bibhishan and the time which would have been required for PW-4 Bibhishan to arrive at the spot of incident, the deposition either of respondent no.3 or of respondent no.4 is absolutely false regarding consciousness of the deceased.

13. It is further submitted that PW-7, Angad, brother of informant, has admitted that the deceased was engaged in many land transactions, which would indicate that the deceased was engaged in money lending business. PW-8 Shankar Gore and PW-9 Dipak Surwase did not support the prosecution case.

Therefore, he submits that the appeal may be dismissed.

14. We have given careful consideration to the submissions of the learned APP appearing for the appellant—State, and the learned counsel appearing for the respondents—accused. With their able assistance, perused the evidence of the prosecution witnesses as well as the medical evidence, and also the findings recorded by the trial Court. The prosecution examined Dr.Satyanarayan Kistayya Goli as PW-11, who was working as Associate Professor in the Forensic Department of Medical College, Ambajogai, so as prove that the death of Hanumant was homicidal. In his deposition, he stated that on 24th July, 1999, he received the dead body of Hanumant Nivrutti Dhakne. On the very same day, since 12.40 p.m. to 1.40 p.m. he performed the postmortem, and

noticed the following injuries on the dead body:

1. Stitched wound over parietal region Rt.side 2½" long with under scalp contusion, reddish-bluish.
2. Abraded contusion over forehead, Rt. side, 2"x ½" reddish-dried.
3. Swelling with abrasion over Rt. hand dorsum extending to Rt. wrist, 3" x ½", reddish dried [fracture 3rd x 5th metacarpals seen].
4. Swelling with abrasion over Lt. hand dorsum, 3"x1", reddish dried.
5. Abrasion over Lt. hand thumb [dorsum] 1" x ½" with C.L.W. over thumb pulp 1½" x 1/8", reddish.
6. C.L.W. over Lt. shin, lower 1/3rd, 1 ½" x 1/8", margins irregular and bloodstained, with fracture tibia fibula, comminuted with haematoma [underneath]
7. C.L.W. over Rt. calf region, lateral aspect lower 1/3, 1" x 1/4", margins

irregular, with fracture fibula, lower 1/3rd, comminuted.

8. Abrasion over Rt. knee joint, anterior aspect, 1" x ½", reddish-dried [fracture lateral condyle with joint effusion].
9. Abrasion over Lt. knee joint, anterior aspect, 2" x ½", reddish dried.
10. Abrasion over back, Lt. side, subscapular region, and scapular region, 2" x 1" and 2" x ¾" respectively, reddish dried.
11. Evidence of drainage fuses over Rt. ICD-6th inter costly space and Ltd. ICD 6th ICS.

All above injures were ante mortem.

15. On internal examination of head, he noticed contusion under the scalp over right parietal region, 3"x2", reddish-bluish. The brain showed contusion over left parietal and temporal region, 3" x ½" x 1/8", reddish with

central necrosis. On internal examination of thorax, he noticed fracture of ribs No.2, 3, 4, 5 left side and no.2 on right side Right lung showed collapse of upper lobe, left lung and left lower lobe showed contusion 1" x $\frac{1}{2}$ " reddish.

16. He further stated that the cause of death was head injury in the form of brain contusion, associated with fracture tibia-fibula [Lt.], fracture fibula [Rt.], fracture ribis Lt. fracture fibula [Rt.], fracture ribs [Lt.side], fracture metacarpals [Rt. side], injury to right knee. He stated that Viscera was preserved for chemical analysis, however, the result of chemical analysis is received, and the same is negative. He stated that all the injuries are possible by hard and blunt object. The afore-mentioned injuries are also possible by an axe [article no.9], if hit by blunt end. He further stated

that the injuries are also possible by article no.4 and 8 before the Court.

During his cross examination, he stated that injury no.1 mentioned in column no.17 of P.M. notes [Exh.68] along with corresponding internal injury to brain is the main cause of death. He specifically stated that no injury was found on the dead body caused by sharp edge of the axe. Injury no.1 shown in column no.17 of Exh.68 is possible because of fall from the bullock cart in case of accident. However, he denied suggestion that injury no.1 is possible only by fall. He further stated that injury mentioned in column no.20 of P.M. notes Exh.68 as fracture to ribs is possible by means of violent external cardiac massage. He further stated that there is no external injury over chest corresponding to injury of fracture of ribs, there are injuries on back

and possibility of those injuries as corresponding injuries to fracture of ribs cannot be ruled out. Injury nos.2 to 11 except injury no.6 mentioned in column no.17 of P.M. notes [Exh.68] are possible in a bullock cart accident. However, he voluntarily stated that injury no.11 in column no.17 is surgical injury. He also denied suggestion that injury no.6 mentioned in column no.17 of P.M. notes at Exh.68 is not possible by bullock cart accident. He further stated that the description of each injury is suggestive of age of injury. He further stated that article no.8 is not having smooth surface. He further stated that there was no wheel mark on those injuries.

17. According to the prosecution, Gawalanbai [PW-3] wife of Hanumant [deceased] and Dipak [PW-6] son of the Hanumant [deceased] have witnessed the incident.

Gawalanbai [PW-3] in her evidence stated that Prabhu, Vithal, Ramkishan are the brothers of her husband. Since 10 years prior to the incident, her husband and brothers of her husband were residing separately. The lands at Mandikhel and Aswal-Amba were given to the share of her husband. Her parents are from Mandikhel. At the time of incident, she herself and her husband were residing at Mandikhel. Her brother-in-law Ramkishan and Vithal were residing in the field at the time of incident. Her brother Angad purchased the land namely 'Paisha' from Vishwanath Wahule.

She further stated that the accused Janardhan Dhakne was to purchase the said land. Her husband helped her brother for purchasing the said land by offering more money. The said land was purchased one year prior to the said incident. Her brother and her husband were jointly cultivating the

said land namely Paisha. Janardhan Dhakne, Vyankati Dhakne, Bankati Dhakne and Maruti Dhakne were giving threat to her husband as they could not purchase the said land. The accused persons were giving threat of killing to her husband. The said land namely Paisha is near the land of accused, and from the field of the accused, the said land can be irrigated.

She further stated that on Friday she herself, her husband Hanumant, her brother Angad, and her son Dipak had been to the said field namely Paisha. They reached in the field at about 9.30 a.m. Her husband started agricultural operation, and her brother Angad went to the Parali for bringing seed. At about 11.00 a.m. accused Vyankati and Bankati came in the said field. The accused Vyankati and Bankati asked her husband to give the said land to them, and

asked to that effect even to Angad. Her husband refused to give the said land to them. Then accused Vyankati and Bankati started giving abuses. Her husband also gave abuses to them. Then the accused Janardhan, Maruti Kute, Parwatibai, Kausabai came to the said field and Janardhan asked the other accused to beat Hanumant. Then the accused Bankati gave a blow of an axe on the head of her husband, also on neck. Accused Vyankati gave an axe blow on the right leg of her husband. Accused Maruti beat her husband by means of wooden, instrument 'Rumne' on chest and leg. The accused Janardhan beat her husband by means of stick on the hands when he raised his hands. The accused Kausabai caught hold her hair, and accused Parwatibai beat her by means of feet, and also beat her husband. She asked her son Dipak to go to the house and call her brother. Her son Dipak went to the house. Her brothers Ankush and

Bibhishan came running to the spot. After arrival of her brothers, the accused persons ran away. Her husband sustained bleeding injuries on head, neck and also on leg. She wrapped towel over injuries of her husband.

18. She further stated that son of her brother, namely Rajabhau, brought bullock cart. Then her husband was carried in the said bullock cart up to the road. She herself and her brothers accompanied her husband in the said bullock cart. From the road, they carried her husband in auto rickshaw in Ambajogai Police Station. From the Police Station along with Yadi, her husband was carried to the Government Hospital. Her husband was admitted in the Government Hospital, Ambajogai. At about 3.00 a.m. her husband died in the Hospital. Then, she lodged the complaint / FIR. She put her thumb impression on the said Complaint/FIR. She

further stated that she can identify axe, stick and Rumne used in the commission of offence by the accused, and accordingly, she stated that article nos.4, 8 and 9 are the same by which her husband was beaten. She also identified the accused who were present in the Court.

19. It appears that the suggestion was given to her in the cross examination that her husband i.e. Hanumant, was involved in the money lending business, and the land from Gat No.31, namely Paisa, was purchased by her husband as a money lender; but the said land was purchased in the name of Angad i.e. her brother. The suggestion was also given to her that while executing transaction of the aforesaid land, it was agreed to return the said land after repayment of money. It appears that the suggestion was given that, whether Bankati signed the said sale deed as

witness. Further suggestion was given that Vishwanath was insisting for return of the land on repayment of money to her husband, and the accused Bankati was also asked her husband to return the land of Vishwanath, and on refusal of returning the land, there was quarrel between her husband and Bankati. However, Gawalanbai [PW-3] denied the said suggestions given by the defence counsel.

It further appears that the suggestion was given by the defence that Keshav Bhaurao Kedar of Mandekhel had filed complaint against her, her husband, her brothers Angad, Ankush and others. She stated that it is true that the complaint was filed and in the said case, they were convicted by the Court. The suggestion was given that whether the said Keshav executed two sale deeds in favour of her husband as nominal sale deeds, however, the said suggestion was

denied by her. She also admitted that her husband Hanumant had filed the suit against the said Keshav, his wife and daughter in respect of the land, and the said suit was dismissed. There was also suggestion given that she purchased one land from Shrimant Kerba and that land was again returned to him, however, the said suggestion was denied by her. There was also suggestion given to her that whether her husband deceased Hanumant has purchased two lands from Jema Tukaram and then those lands were returned, however, the said suggestion was also denied by her. It appears that further suggestion was given that her husband has obtained sale deeds from Lahudas and Ankush and then re-conveyed the said lands to them, however, the said suggestion was denied by her. She stated that 2-3 times threats were given by the accused to her husband, however, Hanumant did not lodge any complaint about giving such

threats.

She further stated that while lodging the complaint, she stated before the police that her son Dipak accompanied them to the field on the date of incident, but she cannot assign any reason why the said information is not appearing in the FIR. She stated that nobody was there in the adjoining land at the time of incident. She shouted, but lady accused caught hold her. She further stated that till her brother came in the field, the accused persons were beating them. The lady accused caught hold her hair, and beat her and did not allow her to intervene. She was beaten on her back by means of kick and fist blows. She fell on the ground. As she fell on the ground, there were some abrasions on her back. As her husband sustained serious injuries and died, she did not medically examine herself. She denied

suggestion that there were houses of Bankati and Rajaram Wahule in the field, and they are residing there along with their families. She further stated that they did not inform the Police Patil about the incident. They went to the Police Station and from Police Station, they went to the Hospital. She further stated that she herself, her brothers Ankush and Bibhishan, and son of Ankush namely Rajabhau accompanied her to the Police Station while carrying her husband and Angad came afterwards. The incident was narrated by her to the Doctor. Her husband was admitted in the Hospital in between 1.00 to 1.30 p.m. She denied suggestion that due to quarrel between her husband and Bankati on the count of return of the field, false case was lodged against the accused. She denied suggestion that her husband had obtained sale deeds from so many persons under money lending transactions and that's why there were so

many enemies to her husband. She also stated details about the names of the adjoining land owners. She stated that at the time of incident, sowing and other operations were going on in the fields. She stated that while lodging the FIR, she stated before the Police that Vyankati and Bankati asked her husband for re-conveyance, and her husband told that Angad will not execute the re-conveyance deed. However, she denied that the aforementioned version was not stated by her in the complaint/FIR. She further stated that her brother was with her since her husband was admitted in the Hospital till cremation. She is not able to remember the Gut number of the land, and the date on which the land was purchased in the name of Angad. The incident had taken place at about 11.00 to 11.30 a.m. Before her husband was carried to the Hospital from the Police, the information about the incident was given by her to the

Police. Again on the next day, she visited the Police Station. She further stated that while lodging the FIR, she stated that Janardhan Dhakne, Vyankati Dhakne, Maruti Gutthe, Bankati Dhakne were giving threats to her husband for not purchasing the land, and that land was purchased by her husband by giving more money. She further narrated before the Police that the said land is near the land of accused. However, she cannot assign any reason why the afore-mentioned version is not appearing in her statement before the police. She further stated that while lodging the FIR, she stated before the Police that Maruti beat by means of 'Rumne' on the chest, and leg. However, she cannot assign any reason why the said version is not appearing in her complaint / FIR. She further stated that she did not state while lodging the complaint that, Janardhan beat her husband by means of stick on his hand when he

raised his hand. She further stated that she wrapped towel on the wound of her husband. and further while lodging the FIR, the son of her brother namely Rajabhau brought bullock cart. However, she cannot assign any reason why the said portion is not appearing in her complaint / FIR. She further stated that she stated in the complaint that she was beaten by Kaushalyabai by holding her hair. She cannot tell any reason why the said statement is not appearing in her complaint/FIR. She cannot remember whether her husband or brother purchased the land of Shriram Dhakne from Gat No.30 and whether her husband or brother were cultivating the said land.

20. The prosecution examined Dipak Hanumant Dhakne as PW-6. In his evidence, he stated that name of his mother is Gawlanbai. He was calling his father as Pappa. On the day of incident, he was in the field. His

father and mother were with him on that day. His father was doing agricultural operation in the field. His mother was also doing work in the field. He was playing in the field. Vyankya, Bankya, Janya and Marutya came to the field and beat his father. They beat his father by means of sticks, axe and Rumne. The assailant did not talk anything. His father was beaten on the chest, head and legs. His father asked him to call maternal uncle with bullock cart. Then he went to their house. He told to Biban and Ankush and Rajabhau. He told that Rajabhau is called with bullock cart. Then Ankush, Bibhishan came to the field and Rajabhau came in the field with bullock cart. Those assailants are present today in the Court.

21. During his cross examination, he stated that his school is up to the 4th standard. There are four rooms in his school.

There is one teacher to them. The name of his teacher is Jogdand. He himself was alone playing in the field. He went to the field along with his parents. When the assailants were beating his father, his mother was near the said spot. Yankya, Bankya used to visit their house and hence he knows them. He has seen them at his house once. Nobody introduced them with him. Janya and Marutya were also visiting his house and hence he knew them. They visited their house for 2-3 times. Except those persons, nobody from Aswal-Amba used to visit their house. He is not acquainted with owners of adjacent fields. His mother had collected 2-3 pots residues of grass. The assailants beat his father and went away and then his father asked him to bring bullock cart. Ankush, Biban and Rajabhau were at their house. He went towards the house and he was crying. Nobody met him when he went towards his

house. Then he returned to the field with Bibhan, Ankush and Rajabhau. He accompanied his father to the Hospital. His statement was recorded by the Police. He has not stated before the Police about any talk between his father and assailants. Portion marked 'A' from his police statement now read over to him is not correct. He has not stated so before the Police. It is true that he attended the Court on every date. He is seeing the accused persons on every date. His mother and maternal uncle also used to visit every date along with him. He denied suggestion that his mother and maternal uncle used to tell him who is Janya, Marutya, witness added that he knows them. He denied suggestion that on every date his mother and maternal uncle used to say him how he should give evidence in the Court. He denied suggestion that he did not go to the field on day of incident and he does not know about

the incident. He denied suggestion that on the say of his mother and maternal uncle he is deposing in the Court. His uncle Vithal has three children. Vithal is residing at Aswalamba. Soni, Parwati and Santosh are the names of children of his uncle. His anotehr uncle Ramkishan is also residing at Aswalamba.

22. PW-6 further stated in his cross examination that it is true that his mother used to teach him how to behave. His mother used to scold him if behaved improperly. He has stated before the Police that Janya and Martya beat his father. He cannot assign reason why that is not appearing in his statement. Nobody told him about Janya and Martya. He knows them. He is afraid of his mother if he has not stated properly here. He denied suggestion that he is deposing on the say of his mother that Janya, Vyankya,

Bankya and Martya beat his father. He denied suggestion that on the say of his mother and his maternal uncle, he is deposing false. He denied suggestion that on that day he did not go in his field and no accused beat his father in his presence. He denied suggestion that his father did not ask him to go and bring bullock cart.

23. We have discussed the evidence of two eye witnesses, namely, PW-3 Gawalanbai and PW-6 Dipak. Upon careful perusal of the evidence of PW-3 Gawalanbai, after incident she took her husband to the Police Station. Her brothers accompanied her and from the Police Station they went to the Hospital. As per the prosecution case the incident had taken place at about 11.00 to 11.30 a.m. on 23rd July, 1999. However, the FIR was registered on 24th July, 1999. The prosecution has not explained the delay in lodging the

FIR, and in the present case, when PW-3 Gawalanbai took her husband Hanumant first to the Police Station and thereafter to the Hospital, there was no reason for not promptly lodging the FIR. PW-3, Gawalanbai, has not mentioned the presence of PW-6 Dipak in the FIR. However, first time, she has stated before the Court during her evidence that PW-6 Dipak was present in the field, and he was asked to rush to the house and to call brothers of the informant. Therefore, aforementioned version is an improvement by way of omission. She has also stated in her complaint/FIR that the deceased became unconscious on the spot after attack by the accused persons, however, PW-4, Bibhishan, who is brother of the informant, who allegedly reached to the spot after incident, has deposed before the Court that the deceased has told him that accused Janardhan, Vyankati and Bankati beaten him. The said

version of PW-4 Bibhishan is contrary to the version of PW-3 Gawalanbai. If the evidence of PW-3 Gawalanbai is perused carefully, she stated that she was also beaten by the accused, however, there is no any injury certificate brought on record by the prosecution to that effect. Though she stated in her evidence that accused Bankati gave a blow of an axe on the head of her husband, and also on neck. However, the PW-11 Dr.Goli, Medical Officer stated that the injuries mentioned in the postmortem report are possible by hard and blunt object. He further stated that the injuries are also possible by an axe if hit by blunt end. He stated that injury no.1 mentioned in column no.17 of the postmortem notes along with corresponding internal injury to brain is the main cause of death. He specifically stated that no injury was found on the dead body caused by the sharp edge of the axe. He further stated that

injury no.1 is possible because of fall from the bullock cart in case of accident. Therefore, the medical evidence does not correspond with the version of the PW-3 Gawalanbai that accused Bankati gave a blow of an axe on the head from sharp side of the axe. They carried Hanumant [deceased] by bullock cart first to the Police. PW-3, Gawalanbai, stated in her evidence that when Hanumant [deceased] sustained injuries to his head, she wrapped towel on his head. However, the said towel was not sent to the C.A. On perusal of her cross examination, it appears that, suggestion was given by the defence that Hanumant [deceased] was indulged in money lending business, and he purchased the land of various persons out of such money lending business, and therefore, many persons had enmity with him. It appears that, the said suggestion was denied. However, she admitted that one Keshav Bhaurao Kedar,

resident of village Mandekhel had filed complaint / FIR against her, her husband, her brothers Angad and Ankush and in the said case, they were convicted by the Court. She also admitted that her husband Hanumant had filed the suit against said Keshav, his wife and daughter in respect of the land dispute, however, the said suit was dismissed.

Upon careful perusal of her deposition, it clearly emerges that she made considerable improvements in her evidence before the Court by way of omissions. She deposed that the land, about which dispute arose between the accused and her husband, is near to the land of the accused. However, she cannot assigned any reason why the aforementioned version is not appearing in her statement before the Police. Though she stated before the Police that Maruti beat by means of Rumne on the chest, and leg. She

cannot assign any reason why the said version is not appearing in her complaint / FIR. She further stated that she did not state while lodging the complaint that, Janardhan beat her husband by means of stick on his hand when he raised his hand. She further stated that she wrapped towel on the wound of her husband. and further while lodging the FIR, the son of her brother namely Rajabhau brought bullock cart. However, she cannot assign any reason why the said portion is not appearing in her complaint / FIR. She further stated that she stated in the complaint that she was beaten by Kaushalyabai by holding her hair. She cannot tell any reason why the said statement is not appearing in her complaint/FIR. However, upon careful perusal of the evidence of PW-10, Investigating Officer, he stated that the contents of the FIR were written down as it is, as narrated by the PW-3 Gawalanbai.

24. Upon careful perusal of the evidence of PW-6 Dipak, it appears that during recording of the evidence, he referred all the accused by first name. However, he stated that, nobody told him their names. As a matter of fact his age was 4½ years when the alleged incident had taken place. As already observed, PW-3, Gawalanbai, did not mention in the FIR that PW-6 Dipak was present at the time of incident. Upon careful perusal of the evidence of PW-3 Gawalanbai and PW-6 Dipak, same creates serious doubt about their physical presence at the time of alleged incident.

25. Upon considering the evidence of all the prosecution witnesses in its entirety, an involvement of the accused persons in the alleged incident appears to be doubtful. We have carefully perused the findings recorded

by the trial Court, and we are of the considered view that those are in consonance with the evidence brought on record. Therefore, the view taken by the trial Court was possible. The Supreme Court in the case of **Muralidhar alias Gidda and another Vs. State of Karnataka**¹ in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar,

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[1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of

Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the

trial Court had an advantage of
seeing the demeanor of the
witnesses. If the trial court
takes a reasonable view of the
facts of the case, interference
by the appellate Court with the
judgment of acquittal is not
justified. Unless, the
conclusions reached by the trial
court are palpably wrong or
based on erroneous view of the
law or if such conclusions are
allowed to stand, they are
likely to result in grave
injustice, the reluctance on the
part of the appellate Court in
interfering with such
conclusions is fully justified;
and (iv) Merely because the
appellate Court on re-
appreciation and re-evaluation
of the evidence is inclined to
take a different view,
interference with the judgment
of acquittal is not justified if
the view taken by the trial
Court is a possible view. The
evenly balanced views of the

evidence must not result in the
interference by the appellate
Court in the judgment of the
trial Court.

[Underlines supplied]

26. In the light of above, we do not find any reason to interfere in the impugned judgment and order of acquittal, hence appeal stands dismissed.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC