

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

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APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 369 OF 2001

The State of Maharashtra
Through Public Prosecutor
High Court Bench at
Aurangabad.

....Appellant.

Versus

1. Anil Murlidhar Sonwane, Age:24,
2. Sunil Murlidhar Sonwane, Age:22,
3. Nilesh Murlidhar Sonwane, Age:21,
4. Nitin Murlidhar Sonwane, Age:20
5. Amit @ Don Shantaram Sonwane, Age:20
6. Mukesh @ Aba Ramesh Sonwane, Age:21,
7. Ashwin Shantaram Sonwane, Age:25,

Age: 60 years, Occu: & r/o as above

All r/o Jaykisan Wadi, Jalgaon,
Tq. & Dist. Jalgaon.

....Respondents.

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

Mr. V.D. Hon, Senior Counsel i/b. Mr. S.B. Kakde, Advocate for
respondent Nos. 1 to 4.

Mr. P.S. Paranjape and Mr. B.R. Warma, Advocate for respondent
Nos.5 to 7.

WITH
CRIMINAL REVISION APPLICATION NO. 279 OF 2001

Devendra Chandrakant Baviskar (Died)
Through his Lrs.
Naresh @ Narendra Chandrakant Bviskar
Age: 39 years, Occu: Business
R/o: Kamalkung, Ganesh Nagar,
Behind Subjail, Zillapeth,
Jalgaon.

....Petitioner.

Versus

1. The State of Maharashtra
2. Anil s/o Murlidhar Sonwane
Age:28 years
3. Sunil s/o Murlidhar Sonwane
Age:22 years
4. Nilesh s/o Murlidhar Sonwane
Age:21 years
5. Nitin s/o Murlidhar Sonwane
Age:20 years
6. Amit @ Don s/o Shantaram Sonwane
Age:20 years
7. Mukesh @ Aba s/o Ramesh Baviskar
Age:21 years
8. Ashwin s/o Shantaram Sonwane
Age:25 years

Age: 60 years, Occu: & r/o as above

All r/o Jaykisan Wadi, Jalgaon,
Tq. & Dist. Jalgaon.

....Respondents.

Mr. V.C. Patil h/f Mr. S.M. Godsoy, Advocate for petitioner

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

WITH
CRIMINAL APPLICATION NO. 4061 OF 2009

Rajendra s/o Vishwanath Patil,
Age: 45 years, Occu; Labour,
R/o 23, Anand Nagar, Mohadi Road,
Jalgaon.

....Applicant.

Versus

1. The State of Maharashtra
2. Anil s/o Murlidhar Sonawane
Age:36
3. Sunil s/o Murlidhar Sonawane
Age:30
4. Nilesh s/o Murlidhar Sonawane
Age:28
5. Nitin s/o Murlidhar Sonawane
Age:27
6. Amit @ Don s/o Shantaram Sonawane
Age:28 years
7. Mukesh @ Aba s/o Ramesh Baviskar
Age:29
8. Ashwin s/o Shantaram Sonwane
Age:33

All r/o Jaykisan Wadi, Jalgaon,
Tq. & Dist. Jalgaon.

....Respondents.

Mr. V.C. Patil h/f. Mr. S.M. Godsoy, Advocate for applicant

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) The appeal is filed against judgment and order of Sessions Case No. 44/1999, which was pending in the Court of learned Additional Sessions Judge, Jalgaon. The Trial Court has convicted accused No. 1 Anil Sonawane for the offence punishable under section 304, Part II of Indian Penal Code (hereinafter referred to as 'IPC' for short), accused No. 2 Sunil Sonawane is convicted for the offence punishable under section 324 of IPC and accused No. 4 Nitin Sonawane is also convicted for the offence punishable under section 324 of IPC. These accused are acquitted of the offence punishable under section 302 r/w. 149 of IPC and the remaining four accused are acquitted of all the offences and no conviction is given to them. The State has filed appeal to challenge the acquittal given for the offences punishable under section 302 r/w. 149 of IPC. The Criminal Revision Application is filed by the original complainant. As the original complainant is dead, the Criminal Application No. 4061/2009 is filed for permission to prosecute that revision. Hearing was given to both sides and the counsels representing the original complainant also.

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

The F.I.R. was given by Devendra Chandrakant Baviskar, resident of Jalgaon. The deceased Sunil Patil was friend of Devendra.

Both Devendra and Sunil Patil were workers of Arun Shirsale, who was councillor of Municipal Council, Jalgaon at the relevant time. There were two groups in the locality due to political rivalry. One group was headed by Arun Shirsale and his brother Arjun Shirsale and other group was of Sonawane, the accused persons. These groups were quarreling with each other to prove their superiority and hold in that region.

3) The incident in question took place on 21.10.1998 near Shirsale Naka, Jalgaon at about 10.30 a.m. On that day the first informant Devendra and Sunil Patil had visited the place of Arun Shirsale as it was day of Diwali Padwa. Arun had asked them to do some purchases for him and so, they had gone to market in vehicle of the family of Arun Shirsale. At the time of incident, they were returning to the place of Arun Shirsale.

4) At the place of incident, accused No. 1 Anil Sonawane intercepted the vehicle, four wheeler which was with the first informant and Sunil Patil. He started quarreling with them. When Devendra and Sunil Patil alighted from the vehicle, the associates of Anil Sonawane, accused Nos. 2 to 7 emerged from behind the auto rickshaw and they started assaulting both Sunil Patil and first informant Devendra. Anil Sonawane was holding wooden log, Sunil

Sonawane was holding knife, Nitin Sonawane was holding sword. Out of the remaining four accused, one accused was holding sword and others were holding Asari, iron rods. It is the case of prosecution that to finish Sunil Patil, Anil Sonawane gave blow of weapon, wooden log on the head of Sunil Patil and then Nitin Sonawane made assault by using sword and Sunil Sonawane made assault by using knife. When Devendra tried to intervene to save Sunil Patil, he was also assaulted by Sunil Sonawane by using knife and other accused assaulted Devendra by using Asaris.

5) Somebody informed to Arun Shirsale that the incident was going on and so from his place Arun Shirsale and his men rushed towards the spot. When the accused persons saw that Arun Shirsale was coming with his men, they ran away and escaped by using Maruti Car. It is the case of prosecution that due to the political rivalry and as Sunil Patil and Devendra were working as men of Arun Shirsale, attack was made on them and intention was to finish them.

6) From the aforesaid spot, Devendra and Sunil Patil were shifted first to Zilla Peth Police Station, Jalgaon. Sunil Patil had become unconscious. Police gave reference letter and so, Sunil Patil and Devendra were taken to Civil Hospital, Jalgaon. Treatment was

started on Sunil Patil and then as per the instructions of police, Devendra returned back to the police station and he gave report. On the basis of his report, the crime came to be registered at C.R. No. 208/1998 for the offences punishable under sections 307, 324 r/w. 149, 323, 504 etc. of IPC and section 4 r/w. 25 of Arms Act. Sunil Patil succumbed to the injuries, but after few days and he died due to the head injury which was allegedly caused by accused no. 1 Anil Sonawane.

7) The statements of eye witnesses came to be recorded. The spot panchanama was prepared and after the death of Sunil Patil, inquest was prepared and P.M. was conducted on the dead body. The weapon was recovered and the articles were sent to C.A. office. After completion of investigation, chargesheet came to be filed against seven accused for aforesaid offences. Charge was framed for aforesaid offences. All the accused pleaded not guilty. Prosecution examined in all 12 witnesses to prove the offences. The defence of total denial was taken by all the accused. Prosecution relied on direct and circumstantial evidence. The Trial Court has believed the injured witness and in view of the role attributed to accused No. 1, 2 and 4 and as their names were mentioned in the F.I.R., they are convicted and the benefit of doubt is given to the remaining accused persons. The Trial Court has held that there was

no intention to finish Sunil Patil.

8) Devendra (PW 3), first informant has given evidence that on that day, he and Sunil Patil had visited the place of Arun Shirsale as it was the day of Diwali Padwa. He has deposed that Arun had asked them to make some purchases for him and so, they had left the place in Armada jeep of Arun Shirsale and at the relevant time, they were returning from market in the said vehicle of Arun Shirsale. He has deposed that at the place of incident, their vehicle was intercepted by accused No. 1 Anil Sonawane and at that time, he was holding wooden log.

9) Devendra (PW 3) has given evidence that after the interception of vehicle, he and Sunil Patil got down from the vehicle and they questioned accused No. 1 as to why Anil was giving abuses to them. He has given evidence that immediately, other accused came forward and they started assaulting both Sunil Patil and Devendra. He has given evidence that in the incident accused No. 1 Anil Sonawane gave blow of wooden log on the head of Sunil Patil, accused No. 4 Nitin gave blow of sword which Sunil Patil took on his hands and accused No. 2 Sunil Sonawane gave blow of knife which hit the neck of Sunil Patil. He has given evidence that other accused like accused Nos. 3, 5, 6 and 7 assaulted both him and Sunil Patil by

using Asaris. He has given specific evidence against accused No. 2 that he had given blow of knife to him and that blow had hit his waist.

10) Devendra (PW 3) has given evidence that when the incident was going on, Arun Shirsale rushed towards the spot with his two men. He has given evidence that two more persons like Ramesh Patil and Anil Bhatkar had also rushed to the spot and after seeing all these persons, all the accused ran away by using their Maruti car.

11) Devendra (PW 3) has given evidence that Arun Shirsale then took him and Sunil Patil first to police station and then they were taken to Civil Hospital, Jalgaon. He has given evidence that he then gave report to police, which is at Exh. 80. Devendra (PW 3) identified all the accused in the Court during evidence. His evidence shows that he knew all the accused on the day of incident as they were persons of rival group, but he had taken the names of accused Nos. 1, 2 and 4 only in the F.I.R. and this omission is proved.

12) In the cross examination of Devendra (PW 8), he has admitted that he has been friend of Arun Shirsale from his childhood and he used to visit the house of Arun Shirsale almost every day. His

evidence and other evidence shows that at the relevant time, Arun Shirsale was councillor and his brother Arjun was also councillor. The evidence of Devendra shows that he used to do any work assigned to him by Arun Shirsale. He has admitted that deceased Sunil Patil was civil contractor and he used to take work of Jalgaon Municipality. He has admitted that those civil works were obtained by Arun Shirsale, but he was taking the work in the name of Sunil Patil and Sunil Patil was working as his man. He has admitted that against him, Sunil Patil and Arun Shirsale, criminal cases were filed like 1/94, RCC No. 59/94 and there were some F.I.Rs. filed against them in the past. Thus, his evidence shows that he and deceased Sunil Patil were active workers in the politics and also in the personal life of Arun Shirsale. These circumstances need to be kept in mind as there was severe political rivalry between two groups and the witnesses examined by the prosecution are only interested witnesses.

13) Devendra (PW 3) is cross examined to bring on record the distance between the place of market and the place of Arun Shirsale. Unfortunately, the investigating agency did not prepare the map of scene of offence and the investigating agency did not show the distance between the spot of offence and the place of Arun Shirsale even when prosecution wanted to prove that Arun Shirsale

rushed to the spot after learning about the quarrel. It can be said that if quarrel was over within five minutes, it was not possible for Arun Shirsale to witness the actual incident of assault.

14) In the cross examination of Devendra (PW 3), it is brought on the record that after the incident, Sunil Patil was kept in vehicle and he and Sunil Patil were taken to police station. His evidence shows that he did not give the details of incident and it was only informed that Sunil Patil was unconscious and then they were referred to Civil Hospital Jalgaon. His evidence shows that he did not give F.I.R. immediately after reaching the police station and he came back from Civil Hospital only when police officer directed him to go to police station from Civil Hospital for giving report. His evidence shows that Sunil Patil was not in a position to speak. This circumstance is not seriously disputed.

15) Cross examination of Devendra (PW 3) shows that the incident was over within 5-7 minutes. He has tried to say that not many persons had gathered on the spot when Arun Shirsale arrived to the spot. His evidence shows that Sunil was already lying on the ground when Arun Shirsale reached the spot. Here again it needs to be mentioned that the map of scene of offence would have shown as to whether the persons in the vicinity would have immediately

gathered on the spot after starting of the incident. One person who is examined as eye witness has deposed that he was present with his Tanga on he spot. The other person has deposed that he was present on the spot with his auto-rickshaw as there was stop for auto-rickhaw. These things could have been mentioned in the map of scene of offence.

16) In the cross examination, Devendra (PW 3) has reiterated that the blow of wooden log was given by accused No. 1 Anil Sonawane , accused No. 2 Sunil used knife and accused No. 4 Nitin used sword. In the cross examination, Devendra has tried to say that many blows of iron rods were given to him and deceased, but the number of injuries found on the persons of first informant and the deceased do not corroborate this evidence.

17) Some omissions and some inconsistencies in relation to F.I.R. given by Devendra (PW 3) are brought on the record. In F.I.R., he had not mentioned that accused Nilesh had taken part in the assault. Even the names of remaining accused were not mentioned in the F.I.R. and this circumstance shows that they had kept open the possibility of involvement of some persons of rival group and that is why it was mentioned that in all seven persons had attacked them even when the names of all the accused were known to first

informant and also to other witnesses. There are some other minor inconsistencies with regard to as to who gave first blow but that need not be considered. Devendra (PW 3) is an injured witness and his evidence is convincing and due to corroboration of other circumstances and contents of F.I.R. there is no need to discuss the other minor inconsistencies in relation to F.I.R. Thus, the F.I.R. at Exh. 80 is consistent on material points so far as the evidence given as against accused Nos. 1, 2 and 4 is concerned.

18) In the cross examination of Devendra (PW 3), evidence on motive, political rivalry is brought on the record and the witness has admitted that there was previous enmity between these two groups. Due to these circumstances, there is no need to discuss the history of political dispute between the two parties in detail. The F.I.R. at Exh. 80 was given almost immediately after the incident and the crime was registered at 11.30 a.m. and so, necessary weight needs to be given so far as evidence given as against accused Nos. 1, 2 and 4 is concerned. It gives corroboration under section 157 of the Evidence to that extent to the version of Devendra (PW 3).

19) Javed Shaikh (PW 4) is owner of Tanga and he has given evidence that by chance, he was present at the place of incident at

the relevant time. He has given similar evidence as against accused Nos. 1, 2 and 4 and their active participation in the incident. He has given evidence as against other accused also. His name was not mentioned in the F.I.R. He has tried to exaggerate the things by saying that accused Ashwin had used the sword when it is not the case of even injured witness Devendra (PW 3).

20) In the cross examination, Javed Shaikh (PW 4) has admitted that prior to giving evidence, he was kept by Arun Shirsale in his house for few days. He admits that he was in touch with men of Arun Shirsale. He is interested witness and there is no circumstantial check to his evidence.

21) Gulab Borse (PW 5) is rickshaw driver. He has given evidence that by chance, he was present in the vicinity of the spot of incident. His evidence is vague and he has tried to say that all the accused had given beating to Sunil Patil and the first informant. He has described the weapons and he has also exaggerated the things by saying that even accused Ashwin was holding sword. The evidence of Gulab (PW 5) shows that he is also interested witness. His name was not given in the F.I.R. He has tried to say that many persons had gathered on the spot at the time of incident, which is not the case of Devendra (PW 3). There is no circumstantial check to

the evidence of Gulab (PW 5). Due to these circumstances, not much weight can be given to the evidence of Javed Shaikh (PW 4) and Gulab (PW 5).

22) Arun Shirsale (PW 6), the leader of the group of first informant has given evidence that he had sent the first informant and the deceased in his vehicle for making some purchases. He has given evidence that at about 10.15 a.m. one Sanjay Shinde and Dublya Karosia came to him and informed that quarrel had started at the aforesaid place. He has given evidence that after learning about the quarrel, he rushed to the spot with his two men. Arun Shirsale (PW 6) has given evidence that when he was running towards the spot, he noticed that accused No. 1 Anil Sonawane was giving blow of wooden log on the head of Sunil Patil, accused No. 4 Nitin Sonawane was giving blow of sword and accused No. 2 Sunil Sonawane was giving blow of knife. He has given evidence that he also saw that when Devendra tried to intervene, he was also attacked. He has given evidence that when the assailants saw that he was rushing towards the spot, they ran away. He has given evidence that he then shifted the first informant and Sunil Patil first to the police station and from there to Civil Hospital. He has admitted that both Sunil Patil and first informant were his workers in politics at the relevant time, though he has denied that he was

taking civil works of Local Body in the name of Sunil Patil.

23) In the police statement, Arun Shirsale (PW 6) has not stated that he could see the incident when he was running towards the spot. It is already mentioned that the incident was over within 5-7 minutes. Due to the circumstances already mentioned, absence of map of scene of offence and time which must have been taken by the persons for going to the place of Arun (PW 6) for informing about the incident and then the time taken by Arun (PW 6) for reaching the spot of offence, it does not look probable that he could have witnessed the actual incident of assault. His evidence shows that he had entered the police station when he took the first informant and the deceased to police station. If he had really witnessed the incident, he would have himself given the F.I.R., but that did not happen. Due to these circumstances, this Court holds that not much weight can be given to the evidence of Arun Shirsale (PW 6). Many omissions including the omissions in respect of actual part played by Ashwin and others are brought on the record in the evidence of Arun (PW 6) in relation to his previous statement. In his evidence, defence has brought on the record that from his forefathers, they are in politics and there is political rivalry between his group and the group of accused.

24) Ramesh Patil (PW 7) has given evidence that on that day, he had also gone to a place to do the work assigned by Arun Shirsale and he and Anil Bhatkar were returning to the place of Arun Shirsale and at that time, they saw the crowd and they stopped there and they witnessed the incident. It can be said that if Ramesh Patil (PW 7) and Bhatkar had reached the spot of incident, they would have certainly intervened in the incident as the two persons who were being assaulted were men of their group. This did not happen. There is no circumstantial check to the evidence of Ramesh Patil (PW 7) and so, not much weight can be given to the evidence of Ramesh Patil.

25) Dr. Sayyed (PW 8) is the medical officer from Civil Hospital, Jalgaon. He examined Sunil Patil at 11.40 a.m. He has given evidence that the condition of Sunil Patil was very poor. His evidence shows that history of assault was given and he found following injuries on the person of Sunil Patil.

"(i) Incised wound of size 1"x1/2"x1/4" on left lower side of cheek, of simple nature, which was caused by hard and sharp object.

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

(iii) Abrasion 1cm x 1cm on right side of the forehead

simple in 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."

26) The evidence of Dr. Sayyed (PW 8) shows that the aforesaid injuries were sustained within six hours, they were fresh. The injuries described show that incised wounds were not that serious due to the place and size of injuries. The evidence of this witness shows that due to the head injury, injury No. 4, he advised C.T. Scan of Sunil Patil. It is not disputed that Sunil Patil was unconscious at that time.

27) Dr. Sayyed (PW 8) has given evidence that at 12.30 p.m. Sunil Patil was again brought to Civil Hospital (after the second incident). He has given evidence that he noticed that there were more injuries and there was history of second assault on Sunil Patil. He has given evidence that he found following eight more injuries on the person of Sunil Patil.

"(i) Incised wound 12" x 3"x bone deep on left upper arm of simple nature, caused by hard and sharp object.

- (ii) Incised wound 2x1/2"x 1/4" left elbow JT 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 umedial to left nipple, of simple nature, caused by hard and sharp object.
- (iv) Incised wound 3½" x 1" x 1" on right scapula of simple nature caused by hard and sharp object.
- (v) Incised wound 4"x 1" x 1" 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" x ½" x 1/4" on right little finger middle phalynx of simple nature caused by hard hand sharp object.
- (viii) Abrasions multiple 2" x 2" on left elbow joint simple nature, caused by hard and blunt object."

28) The evidence of Dr. Sayyed (PW 8) shows that the new injuries were also fresh, caused within six hours. He has given evidence that C.T. scan was done on 22.10.1998 and Sunil Patil was kept in Civil Hospital from 21.10.1998 to 22.10.1998. He has given evidence that after C.T. scan, it was noticed that there was fracture of left temporal bone and there was extensive extradural hamatoma

due to injury No. 4 notice on first occasion. Evidence of Dr. Sayyed (PW 8) shows that he prepared single certificate, Exh. 89, in respect of injuries noticed by him on the person of Sunil Patil on two occasions on 21.10.1998.

29) Dr. Sayyed (PW 8) conducted P.M. examination on the dead body of Sunil Patil on 26.10.1998. The evidence of prosecution shows that on 22.10.1998 Sunil Patil was shifted to private hospital for treatment. Operation was performed on him on head injury. But, he died on 26.10.1998. Dr. Sayyed (PW 8) found following 15 injuries when he conducted the P.M. examination.

- "(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.
- (iv) Contusion 5"x4" 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.

These all injuries were ante mortem."

30) Dr. Sayyed (PW 8) found internal injuries like hematoma at both frontal regions, fracture of left temporal parietal base and he also noticed operation performed on the head injury. There were blood clots on the temporal region and he has given evidence that the death took place due to intracranial haemorrhage due to fracture of skull. His evidence as a whole shows that the death took place due to injury No. 4 which was noticed by him when he had first examined Sunil Patil on 21.10.1998. The P.M. report was prepared by him which is at Exh. 90 and it is consistent with the oral evidence of Dr. Sayyed. The final opinion regarding cause of death, which is at Exh. 91, was given that the death due to intracranial haemorrhage

due to fracture of skull.

31) In the evidence of Dr. Sayyed (PW 8), it is brought on the record that injury No. 4 can be caused by wooden log, Article No. 3, which is shown to be recovered during investigation by police. He has given evidence that incised wounds can be caused by sharp weapon like sword and knife. He has given specific evidence that the injury caused by wooden log proved to be fatal in the present matter.

32) Some suggestions were given to Dr. Sayyed (PW 8) like the size of the injuries does not correspond to the weapon used. What was necessary for the prosecution is to prove that the fatal injury was caused by hard and blunt object. How much portion of the weapon had touched the body cannot be said by the doctor and such questions are always hypothetical in nature. It is suggested by the defence to the witnesses that Sunil Patil was assaulted by others and not by the accused. Further, the evidence of Dr. Sayyed (PW 8) shows that there was history of assault which was given immediately and the injuries could have been caused only in assault. So, there is no need to discuss the evidence of Dr. Sayyed more.

33) Dr. Sanjeev Huzurbazar (PW 9) is the neurosurgeon and

he owns a private hospital by name Neuro Surgery Center. He has given evidence that Sunil Patil was admitted in hospital on 22.10.1998 and he had operated on Sunil Patil as there was the aforesaid head injury. His evidence shows that Sunil Patil died in his hospital on 26.10.1998. The certificate prepared by this doctor is proved as Exh. 96 and it also includes the record of treatment. The C.T. scan record and other record and case papers is at Exh. 97. This doctor is extensively cross examined and even the Trial Court has discussed his evidence even given on operation. That is unnecessary in the present matter as the death took place due to head injury and even after operation, there was haemorrhage in the skull, in the brain.

34) The evidence of Dr. Sanjeev (PW 9) needs to be considered on one aspect like the injuries noticed by him on the person of Sunil Patil. He noticed injuries like multiple sutured C.L.W. on ear and chin, two C.L.Ws. on back, injuries over left ring finger and right little finger and injury over left side of parital region. In Exh. 97 prepared by Dr. Sanjeev (PW 9) only aforesaid injuries were mentioned by him. This circumstance is important as this record and evidence of Dr. Sanjeev is not consistent with the evidence of Dr. Sayed (PW 8). However, this inconsistency need not be considered in the present matter as only three persons are convicted and there is

sufficient evidence against them for proving the offences for which they are convicted by the Trial Court.

35) Dr. Udaysingh Patil (PW 11) is examined by the prosecution to prove the injuries sustained by Devendra (PW 3). The evidence of Dr. Patil (PW 11) shows that Devendra was examined on 21.10.1998 at 5.15 p.m. and Devendra had given the history of assault. Dr. Patil found following injuries on the person of Devendra.

"(i) Contusion of left thigh of size 2" x 1" laterally.

(ii) Abrasion on left buttock of size 1/4" x 1/4"."

36) The evidence of Dr. Patil (PW 11) shows that aforesaid injuries were caused by hard and blunt object and they were simple injuries. Though there is circumstance that Devendra (PW 3) was examined at 5.15 p.m. when he had approached police immediately after the incident and the crime was registered at 11.30 a.m., this circumstance cannot make much difference and due to this circumstance the evidence of Devendra or Dr. Patil cannot be discarded. The cross examination of Dr. Patil (PW 11) shows that it is only suggested to him that the names of assailants were not given. The names of assailants are never required to be given when history in respect of injury is given to doctor. Dr. Patil (PW 11) has admitted that such minor injuries can be caused during the routine incidents

and due to simple fall considering the size of injuries like on buttock and on left thigh. This Court holds that the medical evidence supports the version of Devendra (PW 3). This circumstance is important as it shows that Devendra was also present on the spot and he sustained some injuries on the spot. It is already observed that only one injury inflicted on the head of deceased proved to be fatal and other injuries inflicted on the person of deceased were not that serious.

37) Balu Ahire (PW 1) is panch witness on spot panchanama and the panchanama is proved in his evidence as Exh. 74. Nothing was found on the spot. Much was argued by the learned counsel for accused on this circumstance. In view of nature of evidence, it can be inferred that due to presence of Devendra (PW 3) on the spot, the deceased was shifted immediately to police station and further, the injuries which were found on the person of deceased were not having profused bleeding. Thus, the evidence on spot panchanama has not created reasonable doubt about the version of Devendra (PW 3). On the contrary, this circumstance shows that no attempt was made of concoction so far as the present matter is concerned. The evidence of Balu Ahire (PW 1) shows that on the same day, the clothes of Devendra were taken over under panchanama at Exh. 75. The panchanama shows that at the waist, there was one cut to the

pant and there were blood stains on both shirt and pant. The clothes were taken over on 21.10.1998 itself, but there is no record to show that the clothes were sent to C.A. Office. In any case, when there is medical evidence, this circumstance can be ignored. The circumstance like preparation of spot panchanama on 21.10.1998 between 12.15 p.m. and 1.00 p.m. again shows that the investigating agency had taken immediate steps for collecting the material.

38) Rajendra (PW 2) is panch witness on the memorandum of statement given by accused No. 1 Anil Sonawane. The statement was given by accused No 1 Anil that he had concealed the weapon at Shirsale Naka and he was ready to produce the same and it was reduced to writing and the document is at Exh. 77. The evidence is given by Rajendra (PW 2) that accused No. 1 took police and panchas to the spot situated near Shirsale Naka and there is one brook. He has given evidence that from the shrubs, accused No. 1 took out wooden log having reddish blood like stains and also one Asari and they were seized under panchanama at Exh. 78. The oral evidence of Rajendra (PW 2) is consistent with the contents of this document. As the articles were not sent to C.A. Office, not much can be made out from this piece of circumstantial evidence.

39) Mohan Mohadikar (PW 12), the Police Inspector, made investigation of the case. In his evidence, following omissions from previous statement of the eye witnesses are proved. Devendra (PW 3) had not stated before police that accused Nilesh had assaulted by using Asari and he had not even taken the name of accused No. 4 Nitin as already mentioned in the F.I.R. He had not stated before police that deceased Sunil Patil had taken the blow of sword on his hand. Some omissions and inconsistencies in the evidence of other witnesses were also pointed out. This Court has already observed that there is no circumstantial check to the other direct evidence and so, those omissions and inconsistencies need not be considered in detail.

40) The defence has examined one witness Chandrakant Pachpande (DW 1) to prove the defence of alibi of accused No. 7 Ashwin. The evidence of this witness is not full proof and he has no personal knowledge about the presence of Ashwin at the place mentioned by him. His evidence is mainly on the basis of record. This Court has come to the conclusion that the evidence given as against Ashwin is not that convincing and due to the absence of his name in the F.I.R. and due to the other circumstances like number of injuries found on the dead body, due to first incident, the conviction to Ashwin is not possible. So, there is no need to discuss the

evidence on alibi in detail.

41) The Trial Court has held accused Nos. 1, 2 and 4 guilty, but due to nature of injury inflicted by accused No. 1 Anil Sonawane, he is held guilty for the offence of culpable homicide not amounting to murder punishable under section 304 Part II of IPC. It can be said that it was not preplanned incident and the incident took place all of a sudden. Whatever articles were available must have been used. As there is political rivalry, the possibility of keeping such articles in the vehicle by the accused persons cannot be ruled out. Unfortunately, Sunil Patil died due to injury which was sustained on the head and the evidence on record cannot lead to inference that the injury on the head was inflicted with intention of murder. Only one blow was given on the head and not many injuries were inflicted to the deceased in the incident which took place at Shirsale Naka. Due to these circumstances, this Court holds that the conviction given to accused No. 1 Anil Sonawane for aforesaid offence is correct and interference is not warranted in the said conviction. The other two accused inflicted simple injuries though by using dangerous weapons like sharp and cutting weapons, sword and knife and they are convicted for the offence punishable under section 324 of IPC. Due to nature of injuries inflicted by them, this Court holds that intention of murder cannot be inferred. There is clear possibility that they

wanted to teach a lesson to Sunil Patil and only with that view, beating was given. So, the conviction given to accused Nos. 2 and 4 for the offence punishable under section 324 of IPC is also proper. Thus, the view taken by the Trial Court is possible view and interference is not possible in the decision of the Trial Court.

42) The learned APP placed reliance on observations made by the Apex Court in the cases reported as **(2016) 10 SC 663 [Saddik alias Lalo Gulam Hussein Shaikh and Ors. Vs. State of Gujarat]** and **(2013) 12 SCC 796 [Mritunjoy Biswas Vs. Pranab alias Kuti Biswas and Anr.]**. These cases are mainly on appreciation of evidence. The Apex Court has laid down that hyper technical approach should be avoided and minor discrepancies in the evidence should not be given undue importance as they do not affect core of the prosecution case. There cannot be dispute over this proposition. The Apex Court has further observed that omission can be called as 'material omission' only if it creates serious doubt about the truthfulness of prosecution evidence and prosecution case. This proposition also cannot be disputed. In the present matter, non mention of names of all the remaining accused in the F.I.R. was not minor omission as apparently these accused were also on enmical terms with the side of complainant and they were known to Devendra (PW 3). When the F.I.R. is given by injured witness and

there are such circumstances, it is not possible to believe the substantive evidence given against such accused persons. The learned APP argued that when there is unlawful assembly which had common object, it is not necessary to prove that all persons committed some overt acts. There is no dispute over this proposition. There are other circumstances in the present matter and due to that it is not possible to convict the other accused persons.

43) The learned counsel for respondents, accused placed reliance on the case reported as **2017 ALL MR (Cri) 1215 [Manisha w/o Ravindra Humbe and Anr. Vs. The State of Maharashtra]**. In this case, this Court has discussed the difference between murder and culpable homicide not amounting to murder. It depends upon various factors. The facts and circumstances of each and every case are always different. In case reported as **AIR 2001 SC 2328 [Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Ors]** also there are observations on this point.

44) In the case reported as **2017 ALL SCR (Cri) 421 [Vijay Pandurang Thakre & Ors. Vs. State of Maharashtra]**, the Apex Court has laid down that when the provision of section 149 of IPC is used, it needs to be established by the prosecution that

every accused was member of unlawful assembly. It is also laid down that the object of unlawful assembly like murder also needs to be established by the prosecution. There cannot be dispute over this proposition. Similar observations are made in the case reported as **2014 ALL SCR 852 [Badal Murmu & Ors. Vs. State of West Bengal]** and **2014 ALL SCR 3199 [Kusha Laxman Waghmare Vs. State of Maharashtra]**.

45) In view of the discussion made above, this Court holds that both the appeal and the revision need to be dismissed and they are accordingly dismissed. Criminal Application is allowed as opportunity was given by this Court to the counsel of the applicant to argue the matter. The bail bonds of the respondents stand cancelled.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

ssc/