

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

CRIMINAL APPEAL NO.547 OF 2001

1. Bhagwan s/o Maroti Chautmal,
Age : 38 years,
Occu.: Agriculture,
R/o. Koli, Taluka Hadgaon,
District Nanded
2. Shivaji s/o Bhiku Gaikwad,
Age : 28 years,
Occu.: Agril.Labourer,
R/o.: As above,
3. Rama s/o Kerba Gaikwad,
Age : 38 years,
Occu. and R/o. As above,
- ④. Devidas @ Dasa s/o Shankar (Abated)
Paikrao, Age : 48 years,
Occu. and r/o. As above,
5. Kailas s/o Maroti Chautmal,
Age : 33 years,
Occu.: Agriculture,
R/o. As above,
6. Dadarao s/o Ramji Chautmal,
Age : 43 years, Occu. and
R/o. As above,
7. Bandu s/o Bhimrao Chautmal,
Age : 28 years, Occu. and
R/o. As above,
- ⑧. Punjaji s/o Bhagwan Chautmal, (Abated)
Age : 33 years, Occu. and
R/o. As above,

9. Prakash s/o Bhagwanrao Chautmal,
Age : 38 years, Occu. and
R/o. As above

..APPELLANTS
(Orig.Accused Nos.1,6,7,
10,13,17,18,21 and 23
respectively)

VERSUS

State of Maharashtra,
Through Public Prosecutor

..RESPONDENT

Mr. V.R. Dhorde, Advocate for the appellants
Ms. R.P. Gaur, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 28th JULY, 2017
PRONOUNCED ON: 14th AUGUST, 2017

JUDGMENT :

Being aggrieved by the judgment and order of conviction and sentence passed by the learned 2nd Additional Sessions Judge, Nanded, on 27th November, 2001 in Sessions Case No.163 of 1998, the appellants have preferred this appeal. For the sake of convenience, the appellants are hereinafter referred to as the accused and by the same numbers by which they were referred to before the Trial Court.

2. The prosecution was launched against 24 accused persons for the offences punishable under Sections 302,

341, 324, read with Section 149 and under Section 147 and 148 of the Indian Penal Code ("I.P.C.", for short) and further under Section 135 of Bombay Police Act.

3. Accused Nos.2 to 5, 8, 9, 11, 12, 14, 15, 16, 19, 20, 22 and 24 came to be acquitted by the Trial Court of all the offences with which they were charged. The prosecution has not filed any appeal against the said acquittal and, as such, the judgment and order acquitting them has attained finality.

4. The appellants have been convicted of the following offences and have been sentenced as shown below:-

Accused No.	Appellant No.	Conviction U/s. of IPC	Sentence
1	1	304-II/149	RI 10 years, Fine Rs.5000/-
1	1	326/149	RI 5 years, Fine Rs.5000/-
7	3		
10	4		
17	6		
18	7		
21	8		
23	9		
13	5	341	SI 1 month, Fine Rs.500/-
6	2	324	RI 1 year, Fine Rs.1000/-
7	3		

5. Accused Nos. 10 and 21 namely Devidas and Punjaji respectively expired during the pendency of the appeal, hence the appeal stood abated against them.

6. The accused, who are the appellants herein have not been convicted by the Trial Court for the offences with which they were charged excepting for the offences which have been referred to above in the chart. The prosecution has not filed any appeal for not convicting and sentencing the said accused persons for those offences. As such, the impugned judgment and order holding them not guilty of those other offences have become final. Consequently, the vires of the impugned judgment and order to the extent of convicting the accused/appellants for the above-mentioned offences only would be considered in this appeal.

7. The case of the prosecution, in brief, is that there had been a quarrel between one Mithu Tukaram Gaikwad and the accused on one hand and the deceased – Maroti Jalba Jogdand on the other on 27th June, 1998. All of them are the residents of village Koli, Taluka

Hadgaon, District Nanded. The deceased Maroti had taken an agricultural land of one Tukaram Paradhi for cultivation on Batai basis in the year 1998. On 8th July, 1998, he had gone to plough that land in the morning. Sheshrao, (who is the son of the deceased Maroti), his wife i.e. the informant Shobhabai, and one Kavita aged about 10 years, who is the niece of Sheshrao, also went to that land after some time. All of them started coming back to the village at about 6.00 p.m. When they reached near the agricultural land of accused No.13 – Kailash, he untied the bullocks from the yoke of the plough and restrained the deceased Maroti from proceeding further. Accused No.1 came from behind the deceased Maroti and gave blow of axe on his head and hands. Thereafter, the other 20 accused persons and others came to that spot armed with sticks and axes and assaulted the deceased Maroti. Accused Nos.1 and 3 had caught hold of the deceased Maroti. The deceased Maroti sustained serious bleeding injuries. He fell down on the ground. The accused persons jumped on the abdomen of the deceased Maroti with a view to confirm that he expired. Thereafter, accused No.18 rushed towards the informant Shobhabai armed with a stick, asking her as to what she

was watching. The informant and Kavita got frightened and started running towards the village. The accused persons also rushed towards Sheshrao, armed with sticks and axes and beat him with sticks. Sheshrao did not come home in the night.

8. The informant went home alongwith Kavita and informed about the incident to her mother-in-law and sister-in-law- Anjanabai. They wanted to go to the spot of the incident to see Maroti. However, the assailants of the deceased Maroti were standing armed with sticks and axes on the road in front of the house of the deceased Maroti. Due to their fear, the informant and her mother-in-law and sister-in-law did not go to the police station as well.

9. The police visited the house of the deceased Maroti at night. At that time, the informant visited the spot of the incident with the police and after seeing the dead body of the deceased Maroti, she went to the police station Hadgaon and lodged report against the accused persons.

10. On the basis of the report lodged by the informant, Crime No. 123 of 1998 came to be registered against 24 accused persons for the above-mentioned offences. The investigation followed. The inquest panchanama of the deceased Maroti was prepared. The dead body of the deceased Maroti was referred to the Medical Officer, Rural Hospital, Hadgaon, where the postmortem was conducted on 9th July, 1998 between 4.00 p.m. to 5.30 p.m. The Medical Officer noticed eleven injuries on the body of the deceased Maroti. He opined that injury Nos.1 and 2 on the head, which possibly were caused by axe blows, caused death of the deceased Maroti. Blood stained clothes, which were on the dead body of the deceased came to be seized under a panchanama. The spot panchanama was prepared. The accused persons were arrested. Axes were seized at the instance of accused Nos.1 and 10, while sticks were seized in pursuance of the statements made by accused Nos.13 and 17. The statements of the witnesses were recorded. After completion of the investigation, 24 accused came to be chargesheeted for the above-mentioned offences.

11. The learned Trial Judge framed charges (Exh.29) against all the accused for the above-mentioned offences. The accused pleaded not guilty and claimed to be tried. Their defence was that of total denial and false implication due to previous rivalry. The prosecution examined 12 witnesses to prove the guilt of the accused persons for the above-mentioned offences. On the other hand, the accused examined two witnesses to show that Kavita was in the school and not with the informant and Sheshrao in the agricultural land on the day of the incident. After evaluating the evidence on record, the learned trial Judge convicted and sentenced the appellants/accused as stated above, and acquitted other accused persons of the all the offences and the appellants of the remaining offences.

12. The learned Counsel for the accused submits that the evidence of the prosecution is not sufficient, cogent and consistent to establish the guilt of the appellants of the offences mentioned above. The prosecution has relied on the ocular evidence of the informant - Shobhabai (P.W.1), her niece - Kavita (P.W.6) and her husband - Sheshrao (P.W.12). He then

submits that the evidence of the informant is very vague, general and scanty. The learned Trial Judge has discarded the evidence of Kavita (P.W.6) on the ground that on the day of the incident, she was in her school as has been stated by the in-charge Headmaster – Sonbarao Kadam (D.W.1) and school teacher – Yashwant Sawate (D.W.2). The evidence of Sheshrao (P.W.12) is full of omissions. The evidence of the informant and Sheshrao (P.W.12) is not consistent on certain vital facts, which strongly creates doubt about their veracity. The medical evidence does not support the evidence of the informant and Sheshrao (P.W.12). Though the independent witnesses could have been produced by the prosecution, no independent witness has been examined without assigning any reason. The informant and Sheshrao (P.W.12) are the interested witnesses. There has been delay in lodging the F.I.R. which has not been explained. The informant does not know the full names of any of the accused. However, the F.I.R. contains full names of the accused persons, which indicates that the informant is not the author thereof. The informant and Sheshrao (P.W.12) state that they had narrated the incident to the police much prior to filing

of the F.I.R. (Exh. 75). However, their first narration about the incident has not been produced before the Court. F.I.R. (Exh. 75) cannot be said to be the first information about the incident. The learned Counsel submits that the learned Trial Judge did not appreciate the facts and evidence on record correctly and properly and has wrongly convicted the accused/appellants. On these grounds he submits that the impugned judgment may be quashed and set aside and the accused/appellants may be acquitted.

13. As against this, the learned A.P.P. submits that only because the informant and Sheshrao (P.W.12) are the relatives of the deceased – Maruti, their evidence cannot be discarded on the say that they are interested witnesses. She submits that the evidence of both of these witnesses is quite natural and probable. No third person was available to witness the incident, therefore, non-examination of any independent witness would not be fatal to the prosecution. She submits that the medical evidence strongly supports the versions of the informant and Sheshrao (P.W.12). The evidence of these witnesses shows that after the incident, the

assailants of the deceased – Maruti threatened them and because of that they could not approach the police station immediately, resulting into delay in filing the F.I.R. According to her there are no material omissions or inconsistencies in the evidence of the ocular witnesses. The evidence on record is quite natural, probable and acceptable. She submits that the learned Trial Judge has rightly scrutinised the evidence and has rightly convicted the accused/appellants of the above mentioned offences.

14. The prosecution is relying on the medical evidence, ocular evidence and circumstantial evidence to establish guilt of the accused.

MEDICAL EVIDENCE

15. Dr. Lomte (P.W.8) (Exh. 90) deposes that he conducted postmortem of the body of the deceased – Maruti on 09th July, 1998 and found the following external injuries:-

- 1) Sharp edged injury on the right forehead, 1cm above right eye-brow,

horizontally placed measuring 4cm x 1cm x bone deep.

2) Sharp edged injury on right parietial region of scalp 1cm away and parallel to central line of scalp 6cm x 1cm x bone deep

3) Sharp edged injury on left thigh at lower 1/3 on lateral aspect, 1.5cm x 0.5cm

4) Contused lacerated wound on right leg anteriorly at lower 1/3, 2cm x 0.5cm

5) Contused lacerated wound on right leg at middle 1/3 on lateral aspect 2cm x 0.5cm.

6) Contused lacerated wound on right leg at upper 1/3 anterior 7cm x 3cm x bone deep, through which fracture of right tibia and fibula seen.

7) Sharp edged injury on left wrist joint posteriorly 3cm x 1cm.

8) Contusion on left forearm 6cm x 3cm reddish in colour with simple fracture of radius and ulna.

9) Contused lacerated wound on right forearm at middle 1/3 anteriorly 6cm x 4cm x

bone deep, through which fracture of radius and ulna was seen.

10) Contusion on left scapular region of balk horizontally placed 6cm x 2cm.

11) Contusion on right infra scapular region of balk, horizontally placed 5cm x 2 cm.

16. Upon internal examination, he noticed haematoma under right fronto parietal region, fracture of right parietal bone and subdural haematoma on right parietal lobe. He deposes that all the injuries were antemortem. He opined that Maruti died of the shock due to head injury. He prepared memorandum (Exh. 91) of the postmortem. He opined that injury Nos. 1, 2, 3 and 7 referred to above were possible by Axes Article Nos. 1, 6 and 7 which were shown to him.

17. Dr. Lomte (P.W.8) was cross-examined on behalf of the accused. Nothing has been elicited therein to indicate that the injuries sustained by Maruti were either accidental or suicidal. Considering this medical evidence, it would be clear that the death of Maruti was homicidal.

OCULAR EVIDENCE

18. Before advertizing to discuss the ocular evidence it would be necessary to point out that the Investigation Officer has not been examined by the prosecution since he was absconding and as such was not available. The learned A.P.P. invented a novel procedure for proving the omissions. He filed a pursis (Exh.118) and accepted all the omissions and contradictions in the evidence of the ocular witnesses. Albeit, the fact remains that the said omissions, even in the absence of the evidence of the Investigation Officer, would enure to the benefit of the accused.

19. The informant and Kavita (P.W.6) do not state that accused no.1 gave axe blow on any particular part of the body of the deceased – Maruti. Sheshrao (P.W.12) deposes that accused no.1 gave axe blow on the back portion of the neck of the deceased – Maruti. The evidence of Dr. Lomte (P.W.8) does not disclose any injury on the back side of the neck of the deceased – Maruti. Injury nos.1 and 2, which were possibly caused by the axe blow, were on the right forehead and right

parietal region of the scalp respectively of the deceased – Maruti. In the absence of any sharp edged injury on the back side of the neck of the deceased – Maruti, the evidence of Sheshrao (P.W.12) that accused no.1 caused any injury on the person of the deceased – Maruti by means of an axe cannot be accepted. The medical evidence, thus, does not support the ocular evidence in respect of the injuries alleged to have caused by the accused no.1.

20. The informant – Shobha (P.W.1) deposes at Exhibit 74 that on the day of the incident at about 05.30 p.m. to 06.00 p.m., after having done the agricultural work, the deceased – Maruti, Kavita (P.W.6), Sheshrao (P.W.12) and herself were going back to their village from agricultural land of one Tukaram Paradhi which were taken by the deceased Maruti for cultivation on batai basis. The deceased – Maruti was driving the bullocks attached to the yoke of the plough. They reached nearer the field of accused No.13 – Kailash Maroti Chautmal (Manusmare). Accused No.13 obstructed the plough of the deceased Maruti and untied the bullocks from the yoke. Thereafter accused No.1 came

there and gave axe blow to the deceased – Maruti. Accused No.23 instigated the other accused persons to assault the deceased – Maruti. The hands and legs of the deceased – Maruti were fractured. The accused persons made the deceased – Maruti to roll down on the ground. Accused No.7 then started chasing Kavita and herself. Both of them rushed to their house. This is what is the account of the incident narrated by the informant.

21. The evidence of the informant, indeed, is very vague and general. She does not state specifically as to on what part of the body of the deceased – Maruti, axe blow was given by accused No.1. She did not attribute any specific overt act against accused nos. 2 to 12, 14 to 22 and 24. She admits that the fact that accused No.23 instigated the other accused persons to assault the deceased – Maruti is not mentioned in the F.I.R. (Exh. 75). This is a material omission so far as the role attributed against accused no.23.

22. Though Kavita (P.W.6) (Exh. 88) claims that she was with the deceased Maruti at the time of the

incident, it is stated by her school teacher Yashwant Sawate (D.W.2) (Exh. 113) that on 08th July, 1998 i.e. the day of the incident, she had attended the school. He states that the school hours were from 10.00 a.m. to 05.00 p.m. In view of this, the learned Trial Judge did not accept the presence of Kavita (P.W. 6) at the time of the incident and discarded her evidence. Even otherwise her evidence also is very vague, general and scanty. She states that when the deceased – Maruti was carrying the plough from near the field of one Manusmare, accused No.13 obstructed him from carrying the plough. Then accused No.1 gave a blow of axe to the deceased – Maruti. The deceased – Maruti fell down. At that time the Sarpanch asked the other persons to assault the deceased – Maruti. Therefore all the persons started beating the deceased – Maruti with sticks and axes. She states that there were about 50 persons who assaulted the deceased – Maruti. Thereafter those persons started chasing her and the informant. Prior to that those persons danced on the body of the deceased – Maruti, which fact has not been stated either by the informant or Sheshrao (P.W.12). She tried to point out to accused Nos. 3, 4 and 5 as the assailants

of the deceased – Maruti. However, they have been acquitted by the Trial Court.

23. In the cross-examination, Kavita (P.W.6) expressed inability to state as to how long the incident was going on and how long she was standing on the spot of the incident. She admits that the fact that Bhagwan (accused No.1) gave an axe blow to the deceased Maruti does not find place in her statement before the police. She did not assign any reason for this material omission. In paragraph No.7 of her deposition she deposes that she did state before the police that the Sarpanch asked other persons to assault the deceased – Maruti, that the deceased – Maruti was assaulted by the said persons with sticks and axes, that 50 persons were present at the time of the incident and accused Nos. 3, 4 and 5 assaulted the deceased – Maruti. She admits that the said facts do not find place in her statement made before the police. She did not assign any reason for these material omissions.

24. Sheshrao (P.W.12) deposes that when the informant, Kavita (P.W.6), the deceased – Maruti and

himself were going back to their house from the agricultural land of one Tukaram Paradhi and when they reached near the land of Manusmare, accused nos. 1, 4, 6, 10, 11, 13, 14, 15, 20, 21 and 23 came out of a hut that was in that land. Accused no.13 obstructed the plough and untied the bullocks from the plough. Accused no.23 asked other accused persons to assault the deceased - Maruti. Then accused no.1 gave an axe blow on the back portion of the neck of the deceased - Maruti. The deceased - Maruti fell down. Thereafter, accused nos. 10 and 21 gave axe blows to the deceased - Maruti. Accused nos. 6, 7, 17, 18 and 22 gave stick blows on the person of the deceased - Maruti. He was shouting for help but accused nos. 6 and 7 inflicted two stick blows on his person and therefore, he ran away from the spot of the incident.

25. In para 9 of the deposition of Sheshrao (P.W.12) material omissions have been brought on record. It would be worthwhile to reproduce the material part of that paragraph, which reads as under:

"I did state the police while recording statement that Prakash asked other accused

persons to assault my father. I cannot assign any reason for the said omission. It was stated to police that the accused Bhagwan gave an axe blow to my father on the back portion of the neck of my father. I cannot assign any reason for omitting the said fact, from my statement. While recording statement, I had stated that the accused Rama, Shamrao, Bandu, Dadarao and Shivaji gave my father stick-blows. I cannot assign any reason for omitting the said fact from my statement. It was stated to police that I was shouting for help at the time of the incident. I cannot assign any reason for omitting the said fact from my statement. I had stated the police that accused Rama assaulted me with sticks. I cannot assign any reason for omitting the said fact from my statement."

26. These omissions are very material. If they are discarded from the evidence of Sheshrao (P.W.12) as has been given by him in his examination-in-chief, nothing would remain there to connect the above mentioned accused persons with the incident of assaulting the deceased — Maruti.

27. The informant deposes in paragraph no.10 of her evidence that the incident lasted for about one hour and that she stayed on the spot of the incident for about 1½ hour. Kavita (P.W.6) states that after assaulting the deceased – Maruti, the accused persons started chasing the informant and herself. She admits that since she apprehended that the accused persons would assault the informant and herself, they got frightened and started running away from the spot. Sheshrao (P.W.12) states that after he was assaulted by accused nos.6 and 7 with sticks, he ran away from the spot. From the evidences of Kavita (P.W.6) and Sheshrao (P.W.12) it is clear that they did not stay at the spot of the incident for a long period as has been stated by the informant. Thus, Kavita (P.W.6) and Sheshrao (P.W.12) do not corroborate the evidence of the informant on the point of duration of the incident as well as the stay on the spot of the incident after the incident. The evidence of the informant that the incident lasted for one hour and she stayed on the spot of the incident for 1½ hour is not at all natural, probable and believable. It creates doubt about her presence at the time of the incident.

28. Sheshrao (P.W.12) states that there was nobody in the field and nobody was passing through the road, except the accused persons, at the time of the incident. On the other hand, the informant states in para 9 of her deposition that there was traffic on that road at the time of occurrence of the incident. She then specifically states in para 10 that the other persons were passing through that road when the incident was going on. However, nobody has been examined by the prosecution from amongst those persons, who were passing along the road at the time of the incident. Thus, though independent evidence was available, the prosecution suppressed that evidence.

29. As stated above, the evidence of the informant, Kavita (P.W.6) and Sheshrao (P.W.12) is not consistent with each other on material points referred to above. The evidence of the informant is very vague, general and scanty. Her presence at the time of the incident itself appears to be doubtful. The presence of Kavita (P.W.6) has been rightly rejected by the learned Trial Judge in view of the evidence of her school teacher. Even otherwise, her evidence also is not specific and

clenching to establish overt acts of the accused. The evidence of Sheshrao (P.W.12) is full of material omissions. Thus, the ocular evidence produced by the prosecution is not sufficient, cogent and dependable to establish their guilt for the offences of which they are charged.

DELAY IN LODGING F.I.R.

30. The incident took place on 8th July, 1998 at about 5.30 p.m. in the agricultural land of one Manusmare, situated within the local limits of village Koli. Sheshrao (P.W.12) states that there is a police outpost at village Nivgha and that village Koli comes within the local limits of the said police outpost. P.H.C. Chavan (P.W.7) (Exh.89) states that on 8th July, 1998 he was on duty at police outpost, Nivgha. On that day one Ram Kale and one woman from Paradhi community met him and informed that Maruti was assaulted with sticks and axes. Then he went to village Koli and visited the house of the deceased – Maruti. After disclosing his identity, the informant opened the door of the house of the deceased – Maruti. She told him

that Maruti was assaulted by the villagers and was murdered by sticks and axes near the field of Manusmare. In para 2 of her deposition the informant states that after she opened the door of the house, the police took her to the Police Station Hadgaon where she narrated the incident before the police and the police recorded the F.I.R. (Exh.75). This version has been contradicted by herself in para 4 of her cross-examination, where she admits that after the police visited her house in the night and asked her about the incident, she narrated about the incident before the police and the police recorded it. She further admits that after recording her report, Anjanabai, other family members and herself were taken by the police to the spot of the incident where the dead body of Maruti was lying. The endorsement of F.I.R. (Exh.75) shows that it was scribed as narrated by the informant in the police station Hadgaon itself on 9th July, 1998 at 7.30 a.m. The prosecution has not produced the F.I.R. that was recorded by PHC Chavan (P.W.7) in the night of the incident when he visited the house of the deceased – Maruti and got the information about the incident from the informant.

31. The informant admits that she does not know the fathers' names and surnames of the persons of her village. She could not tell even the full names of the accused persons before the Court. However, the F.I.R. (Exh.75) contains full names of all the accused persons. This fact itself indicates that somebody else had given the names of the accused persons for being recorded in the F.I.R. The informant, therefore, cannot be called as the author of the said F.I.R. Moreover, the F.I.R. (Exh.75) cannot be recognised as the first information in respect of the incident, because prior to that, PHC Chavan (P.W.7) had recorded the F.I.R. of the informant at the house of the deceased Maruti at village Koli. The said F.I.R. has been suppressed by the prosecution. In the circumstances, the F.I.R. cannot be used to lend corroboration to the evidence of the informant.

32. Sheshrao (P.W.12) states that after the incident he went to village Marlegaon. There were two policemen. He narrated them about the incident. He stayed with them during the entire night. In the morning he went to Nanded and met the District

Superintendent of Police ("D.S.P.", for short). He informed about the incident to the D.S.P. at about 05.00 p.m. He states that he did not go to Police Station Hadgaon until he was directed by the D.S.P. to go to the Police Station Hadgaon from Nanded.

33. When Sheshrao (P.W.12) states that he met two policemen at Marlegaon and narrated them the incident, the prosecution has totally suppressed as to who were those policemen and what was the information given to them by Sheshrao (P.W.12) in respect of the incident. It is not explained as to what those policemen did after receiving information from Sheshrao (P.W.12).

34. The informant states that she was present in the Police Station Hadgaon for about two hours. She specifically states that Sheshrao (P.W.12) had gone to Hadgaon during the night after the incident, instead of going home and that when she went to Hadgaon with police, she met there Sheshrao (P.W.12). If this evidence is considered, it will be clear that the version of Sheshrao (P.W.12) that in the night, after the incident, he did not visit Police Station Hadgaon

and that he visited Police Station Hadgaon only after he came back from Nanded, after meeting the D.S.P. at 05.00 p.m. on 9th July, 1998, cannot be believed. There is nothing on record to show that Sheshrao (P.W.12) actually met the D.S.P. and gave any information in respect of the incident. Sheshrao (P.W.12) has not assigned any satisfactory reason for not lodging the report in respect of the incident either in Police Outpost, Nivgha or Police Station Hadgaon immediately after the incident when there was no impediment for him in lodging such report.

35. The learned Counsel for the accused cited a judgment in the case of **Thulia Kali Vs. The State of Tamil Nadu AIR 1973 SC 501** wherein it has been observed that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the

circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

36. In the present case, delay in lodging the F.I.R. has not at all been explained by the prosecution. The manner in which the names of the accused persons have been given in detail in the F.I.R. (Exh.75) when the informant was not knowing the names of the said persons, makes it clear that the F.I.R. (Exh.75) came to be lodged after due deliberation and discussion with some third persons who provided the full names of the persons to be shown as accused in the F.I.R. This

unexplained delay in lodging the F.I.R. would create strong doubt about the case of the prosecution.

CIRCUMSTANTIAL EVIDENCE

37. The prosecution has examined Devrao Bhalerao (Exh.81), panch to seizure panchanama (Exh.82) in respect of the cloths of the deceased – Maruti. Even if his evidence is accepted as it is, it would not implicate any of the accused directly.

38. Ankush Kadam (Exh.83) happened to be the panch to the memorandum of the statements Exh.84 and 85) of the accused 1 and 10 respectively in pursuance of which one axe each is alleged to have been seized on 30th July, 1998. He did not support the prosecution in his examination-in-chief. In the cross-examination taken by the learned A.P.P., he went on admitting everything that was suggested to him. However, in his cross-examination taken on behalf of the accused, he again took somersault and went on admitting everything that was suggested to him by the learned Counsel for the accused. Thus, his evidence is of no use to the prosecution. Moreover, the axes allegedly seized at the instance of accused nos. 1

and 10 do not have any specific identification marks. They are of general description. It is common knowledge that such type of axes are available in the houses of almost all the agriculturists. The seized axes were not sent to the chemical analyst for analysis and report. No blood stains were stated to have been noticed on those axes. In the circumstances, seizure of the said axes would be of no use to the prosecution.

39. The prosecution examined Madhavrao (Exh.87), Shravan (Exh.92), Sk. Kaleem (Exh.95) and Ahmed Khan (Exh.96), who happened to be the panchas to the memorandums of statements of accused nos. 17, 13, 7, 1 and 6 in pursuance of which sticks are alleged to have been seized from accused nos.6, 7 and 13 and an axe is stated to have been seized from accused no.1. All these witnesses do not support the prosecution. They have denied that these accused persons made any disclosure statements before them and produced any stick or axe in their presence.

40. There is no seizure of the cloths of any of the accused persons. There is no C.A. report in respect of

the seized articles. The prosecution totally failed to prove that incriminating articles were seized at the instance of any of the accused. Thus, the circumstantial evidence produced by the prosecution is absolutely of no assistance to connect any of the accused with the incident in question.

41. The prosecution has failed to produce sufficient, cogent, consistent and dependable evidence on record to prove the guilt of the appellants beyond reasonable doubt. The learned Trial Judge did not appreciate the facts of the case as well as the evidence on record correctly and properly and wrongly held the present appellants/accused guilty of the above mentioned offences on the basis of the same evidence on which he acquitted the remaining fifteen accused persons. It is strange to note that the learned Trial Judge convicted appellant no.1 only for the offence punishable under Section 304 Part II read with Section 149 of the Indian Penal Code. If it is accepted that accused no.1 was a member of an unlawful assembly while committing the said offence, the learned Trial Judge could not and should not have convicted appellant/accused no.1 alone for the

said offence with the aid of Section 149 of the Indian Penal Code. As stated above, the prosecution has failed to establish that the injury caused on the head of the deceased – Maruti was caused by accused no.1. As such, the learned Trial Judge committed a serious error in convicting accused no.1 for the said offence and that too, with the aid of Section 149 of the Indian Penal Code. The learned Trial Judge ignored the material omissions which were brought on record in the cross-examination of the informant and Sheshrao (P.W.12). The conviction recorded by the learned Trial Judge against the accused/appellants is not supported by legal and acceptable evidence. The impugned judgment and order are liable to be quashed and set aside. In the result, I pass the following order:-

O R D E R

- i) The Criminal Appeal is allowed.

- ii) The impugned judgment and order convicting and sentencing the appellants are quashed and set aside.

iii) The appellants are acquitted of the offences punishable under Sections 304 Part II, 326, 324, 341, 147 and 148 of the Indian Penal Code.

(iv) The bail bonds of the appellants are cancelled. They are set at liberty.

(v) The appeal stood abated as against appellant nos. 4 and 8.

(vi) Fine amount deposited by the appellants be refunded to them.

(vii) The appeal stands disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE