

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1030 OF 2008

Ravindra Rangrao Ingale.	]	
Age - 35 years, Occupation - Agriculture,	]	
Residing At : Gadhinglaj,	]	
Taluka - Gadhinglaj, District - Kolhapur.	]	
(Presently lodged at Central Jail).	]	... Appellant

Versus

The State of Maharashtra	]	... Respondent
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ALONG WITH

CRIMINAL APPEAL NO.805 OF 2008

The State of Maharashtra.	]	... Appellant
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Versus

1. Satish Narayan Lohar,	]	
Age - 45 years,	]	
2. Samir alias Shamshuddin Abdul Hamid	]	
Jamadar,	]	
Age - 23 years,	]	
3. Riyaz Kutbuddin Kazi,	]	
Age - 23 years.	]	... Respondents

Dr. Yug Mohit Choudhry a/w Payushi Roy for Appellant in Cri. Appeal No.1030 of 2008.

Mr. H. J. Dedhia, APP for State / Appellant in Cri. Appeal No.805 of 2008 and for State / Respondent in Cri. Appeal No.1030 of 2008.

Ms. Swapna Kode for Respondents in Cri. Appeal No.805 of 2008.

CORAM :- A. A. SAYED &
SARANG V. KOTWAL, JJ.
RESERVED ON :- 01 SEPTEMBER, 2017
PRONOUNCED ON :- 14 SEPTEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. Both these Appeals arise out of the Judgment and Order dated 06/03/2008 passed by the Additional Sessions Judge, Gadhinglaj, in Sessions Case No.6 of 2007 on his file. Hence, both these Appeals are disposed off by this common Judgment and Order.

2. Criminal Appeal No.805 of 2008 is filed by the State of Maharashtra against the original accused nos.2, 3 and 4 who were acquitted by the said impugned Judgment from the charges under Section 302 read with 34 of the IPC. Criminal Appeal No.1030 of 2008 is preferred by the original accused no.1 challenging his conviction and sentence under Section 302 of the IPC. The accused no.1 was sentenced to suffer R.I. for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to suffer further R.I. for three months.

3. For the sake of convenience, the Appellant in Criminal Appeal No.1030 of 2008 and the Respondents in Criminal Appeal No.805 of 2008 are referred to as the accused at their serial numbers in the Sessions Case. The accused no.1 - the convicted accused is Ravindra Rangrao Ingale, accused no.2 is Satish Narayan Lohar,

accused no.3 is Samir alias Shamshuddin Abdul Hamid Jamadar and accused no.4 is Riyaz Kutbuddin Kazi.

4. All these accused faced the charge under Section 302 read with 34 of the IPC. According to the prosecution case, all these accused, in furtherance of their common intention, committed murder of one Kalinga Bala Lohar, aged 94 years, on 25/03/2006 at about 8.45 a.m. on the premises of Shri Ram Mandir at Village - Gadhinglaj, District - Kolhapur.

5. The prosecution case, in brief, is as follows :

Deceased Kalinga Lohar fought a long drawn legal battle up to the Supreme Court from the year 1963 in respect of the land bearing R.S.No.96 situated at Gadhinglaj against 22 persons. Finally, he got possession of the said land on 03/02/2006 through Court. The land was occupied by different persons. They had constructed houses and shops in the said land and had kept their articles. On 24/03/2006, deceased Kalinga sought police protection to demolish the premises on the said land with a JCB machine. At that time, the occupants requested for some time to vacate the premises and remove the articles. The said Kalinga gave them a day's time to remove the articles. According to the prosecution case, on the next day i.e. on 25/03/2006 at about 8.45 a.m., Kalinga was murdered in the Shri Ram Temple where he used to perform *Pooja*. According to the prosecution case, the accused nos.2, 3 and 4 held him and the accused no.1 cut his throat with a sickle. The incident

was witnessed by Kalinga's grandson PW 1 Sushil Lohar and another near relative PW 3 Shankar Sutar. The police were informed by PW 3. Kalinga was removed to the hospital where he was declared dead. PW 1 Sushil Lohar's statement was recorded in the hospital and was treated as FIR. The FIR was lodged vide C.R.No.28 of 2006 on 25/03/2006 at Gadhinglaj Police Station at 9.45 a.m. against all these four accused. The accused were arrested within a few days. Statements of various witnesses were recorded, various panchanamas were carried out. During the post-mortem examination conducted by Dr. Shailesh Deshpande, who was examined as PW 6; he noticed that there was a cut throat injury having dimensions 15 cm X 6 cm on the anterior side of neck below thyroid cartilage extending from right side of neck to left side. There were 3 more incised wounds on the left palm including a traumatic fracture of the left ring finger. The cause of death was mentioned as shock and haemorrhage due to cut throat injury (unnatural). Based on this investigation, charge-sheet was filed and the case was committed to the Court of Sessions for trial and was tried as Sessions Case No.6 of 2007 before the learned Additional Sessions Judge, Gadhinglaj, Kolhapur.

6. During trial, the prosecution examined 13 witnesses. PW 1 - Sushil Ghansham Lohar and PW 3 - Shankar Janaba Sutar were the eye witnesses. PW 2 - Laxman Annappa Bamblade was the panch for the inquest panchanama. PW 4 - Shobha Ghansham Lohar was the daughter-in-law of the deceased and mother of PW 1. PW 5 - Rajaram Annappa Jadhav was the panch who was present during the arrest

panchanama in respect of accused no.1 - Ravindra Ingale and accused no.4 - Riyaz Kazi, on 26/03/2006. He was also a panch for the arrest panchanama of the accused no.3 - Sameer Jamadar on 31/03/2006. PW 6 - Dr. Shailesh Suresh Deshpande had conducted post-mortem examination on the dead body of the deceased, as mentioned earlier. PW 7 - Amit Prakash Balnaik was a panch for the spot panchanama but he did not support the prosecution case. PW 8 - Kallappa Srikant Kamble was the other panch who was present when the spot panchanama was carried out. In his cross-examination, this witness has given some answers which have important bearing on this case whereby he has stated that PW 1 was with him at the relevant time in his house when the offence was supposed to have been committed. PW 9 - Jotiba Ganpati Mohite was the panch in whose presence a sickle was recovered at the instance of the accused no.1 from a well in the land of one Rajendra Mandarekar. PW 10 - Sahebali Babasaheb Wantmure was examined to prove seizure of the clothes worn by the accused nos.1 and 4 on 28/03/2006 but he has not supported the prosecution case. PW 11 - Pundlik Sattu Jadhav was examined as a panch for recovery of clothes at the instance of accused no.2 from his house but even this witness did not support the prosecution case. PW 12 - PI Prakash Khandu Gharge was the Investigating Officer. PW 13 - Dattatraya Janardan Rajbhoj had conducted some part of the initial investigation including carrying out inquest panchanama and spot panchanama. Besides this, the prosecution produced CA reports in respect of the seized articles and according to the prosecution case, the blood found on the clothes of the deceased was of 'A' group which

was also found on the shirt seized from the accused no.1 and the sickle recovered at his instance. The CA report also indicates that the shirt seized from the accused no.2 shows presence of human blood but the blood group was inconclusive.

7. The defence of the accused was that of total denial. After recording and appreciating the evidence and considering the arguments of both sides, the learned trial Judge was pleased to convict the accused no.1 under Section 302 of the IPC and was pleased to acquit the other accused as mentioned earlier.

8. We have heard Dr. Yug Mohit Choudhry, learned Advocate for the Appellant in Criminal Appeal No.1030 of 2008, Ms. Swapna Kode for Respondents in Criminal Appeal No.805 of 2008 and Mr. H. J. Dedhia, learned APP, on behalf of the State of Maharashtra in both these Appeals. With their assistance, we have read the entire evidence and we have gone through the record and proceedings.

9. The prosecution evidence heavily relies on the evidence of the two eye witnesses i.e. PW 1 - Sushil Lohar and PW 3 - Shankar Sutar. PW 1 - Sushil Lohar, in his deposition, has stated that his grandfather Kalinga Lohar had fought a long legal battle against the 22 persons since the year 1963 and ultimately succeeded in the Supreme Court. Kalinga Lohar got possession of the land on 03/02/2006 and on 24/03/2006, he was about to demolish the existing premises on the land but did not go ahead on the request of

the occupants and gave them a day's time to vacate the land. This witness has deposed that on 25/03/2006 at about 7.30 a.m., he had gone to Shri Ram Temple with his grandfather Kalinga for performing *Pooja*. At about 8.30 to 8.45 a.m., he went back to his house which was situated about 250 ft. away from the temple, to keep the articles of *Pooja* in the house. He returned within five minutes to the temple and saw that all the accused had surrounded his grandfather. Accused nos.2, 3 and 4 were holding his grandfather and the accused no.1 cut his throat with the sickle and on seeing PW 1, all the accused ran away. PW 1 was scared. He returned to his house. He shouted for help, informed the incident to his mother and uncle and thereafter again rushed to the spot. He was followed by his mother and uncle. When he reached the spot again, he saw PW 3 Shankar Sutar was present there and the dead body of his grandfather was lying there. PW 3 Shankar Sutar informed the police. Police came on the spot. The dead body of his grandfather was removed to Government Hospital and this witness had accompanied the dead body. His report was recorded in writing and which was treated as FIR and is exhibited at Exh.36 before the trial Court. The FIR was promptly recorded at 9.45 a.m.

10. PW 3 - Shankar Sutar, in his deposition, has stated that there was a dispute between Kalinga and the other persons which was decided in Kalinga's favour. This witness was a near relative and was son-in-law of the son of the deceased. He has further deposed that on 25/03/2006, he had gone to the house of deceased Kalinga at about

8.30 a.m. but he was not found there and therefore he went towards Shri Ram Temple and when he reached near the gate of the temple, he saw the accused assaulting the deceased. Though he has given a specific role to the accused no.1 that he had given blow of sickle on the neck of the deceased, this part of his evidence is in the nature of omission. However, the fact remains that except for this specific allegation, his evidence was consistent in respect of the assault on the deceased, at least in respect of the presence of the accused at the spot when they had assaulted the deceased. Thereafter, he deposed that he had informed the police. In the cross-examination, he has stated that after the assault, he went near the deceased and at that time, the deceased was uttering words to the effect that he was murdered. His statement was recorded on the next day though he was with PW 1 throughout the day. Dr. Choudhry submitted that this witness is not a truthful witness as he has stated that the deceased had uttered some words after his throat was cut, which is an impossibility. In this regard, the Medical Officer was not asked as to whether the deceased could have uttered a few words. In any case, this part of his deposition does not destroy his narration of the main incident which we find to be sufficiently reliable.

11. Besides these two eye witnesses, there are two significant witnesses examined by the prosecution who are relevant to appreciate the evidence of PW 1 and PW 3 and those witnesses are PW 4 - Shobha Lohar who is the mother of PW 1 and PW 8 - Kallappa Kamble who, though was a spot panch, has also stated about his presence at

8.30 a.m. in the house of PW 1 in his company. PW 4 - Shobha Lohar was the daughter-in-law of the deceased and she has deposed that after the PW 1 kept the articles of *Pooja* in the house and went back to the temple, some school boys came to their house and informed that her father-in-law was murdered and then PW 1 also came to her house and then they rushed to the spot of incident to find that the deceased was lying at the corner of the temple.

12. PW 8 - Kallappa Kamble's evidence is curious in the context of the other evidence. This witness was one of the panchas for the spot panchanama and was examined as such by the prosecution. While in the examination-in-chief he has mentioned about conducting the spot panchanama, in the cross-examination, he has stated that he had gone to the house of the PW 1 at about 8.00 to 8.3 a.m. and met PW 1 there. He has stated that he had breakfast and tea with PW 1 and they were sitting in the front hall of the house and at that time, PW 4 came shouting in the house and was saying that Kalinga was killed and thereafter all of them rushed towards the temple. Thus, his cross-examination indicates that the PW 1 might not have been at the spot when the incident had taken place. The evidence of this witness needs to be appreciated very carefully.

13. Dr. Choudhry, learned Advocate for Appellant in Criminal Appeal No.1030 of 2008, has attacked the evidence of the eye witnesses on various grounds. He has submitted that both these witnesses do not speak about each other's presence near the spot of

incident when the actual assault took place. Dr. Choudhry has submitted that the medical evidence shows that there were 3 injuries on the left palm of the deceased and none of these witnesses has explained these injuries. Dr. Choudhry has submitted that the conduct of the PW 1 did not appear to be natural as there was no reason for him to return to his house for a short while and then again to go back to the temple at about 8.45 a.m. It was also argued that the evidence of PW 3 is mostly in the nature of omission and his statement was recorded on the next day and the delay in recording of his statement has remained unexplained. He has submitted that though both of them claimed to have seen the incident, the information given to the police at first in point of time by the PW 3, which was reduced into writing in the station diary, did not reveal the names of the assailants. Dr. Choudhry has further pointed out that the PW 1 has stated that his statement was recorded after the post-mortem examination. According to Dr. Choudhry, the post-mortem examination was concluded at 1.00 p.m. and therefore, his statement must have been taken after 1.00 p.m. and the timing of 9.45 a.m. mentioned in the proforma of the FIR is manipulated. Dr. Choudhry has further submitted that the evidence of PW 4 and PW 8 run contrary to the version of PW 1 and, in fact, the deposition of PW 8 in the cross-examination destroys the evidence of PW 1 and shows that the PW 1 was not present at the spot at the time of the incident at all.

14. After reading the deposition of these witnesses, we find that PW 1 and PW 3 are natural witnesses. Their evidence is reliable.

PW 1 has given reasonable details of the incident. Though PW 3's evidence shows that he had not attributed a specific role to the accused in his statement before the police, but his evidence on the assault on the deceased is consistent. Dr. Choudhry tried to submit that since both these witnesses had started from the house of PW 1 to go towards the temple and then had seen the incident, they should have been at the same spot to see the incident but since there is no reference of their presence in each other's deposition, it should be inferred that neither of them was present at the spot. The evidence shows that there was a footpath between the house and the temple and there was also a road passing from the house to the temple. Therefore, it cannot be presumed that both of them travelled on the same road. Moreover, the PW 3 was on his motorcycle and the footpath connecting the house to the temple was narrow. Therefore, obviously, both of them had travelled through different routes and therefore, it is not unnatural for them not to have seen each other when the incident had taken place. The fact remains that both of them have deposed that when they reached near the dead body, that time they had seen each other and only thereafter the PW 3 had informed the police. That information was received by the police at 9.00 a.m. Thereafter immediately the police reached the spot and sent the dead body to the hospital. PW 1 had accompanied the dead body and his statement was recorded in the hospital and thereafter the FIR was immediately lodged. The FIR was lodged at 9.45 a.m. and therefore there was no scope to infer that there was deliberation and consultation amongst the prosecution witnesses to involve the

accused falsely in the case. Moreover, the inquest panchanama was conducted between 10.00 a.m. to 11.0 a.m. on 25/03/2006 which also mentions the C.R.No.28 of 2006 at Gadhinglaj Police Station. Which means that, at 9.45 a.m. itself, the offence was registered and there was no manipulation. The names of the accused were disclosed by PW 1 immediately within a short span of time. In his cross-examination, the PW 1 has stated that his statement was recorded after the post-mortem. This, in the context of the sequence narrated by him, can only mean that it was some other statement and not the statement which was treated as FIR. Because in the examination-in-chief, he has stated as “my report was recorded in the hospital itself. My report now shown to me is the same....” It is marked as Exh.36. In the cross-examination, it was not specifically asked if the statement which was recorded after the post-mortem was Exh.36 itself. Therefore, we do not find force in the submission that the first statement of PW 1 was recorded after the post-mortem was over at 1.00 p.m.

15. The arguments that PW 4 does not support the version of the PW 1 is not correct because she has deposed about how PW 1 had come back from the temple after *Pooja* and then again gone to the temple. She has further deposed that PW 1 again came back to the house and all of them went to the spot of incident. Dr. Choudhry submitted that it was not the PW 1 who informed her about the incident but there were some school boys who had informed her about the incident. He has also submitted that there was discrepancy as to

at what point of time, the PW 1 has informed her about the incident. This discrepancy hardly goes to the root of the matter. The fact remains that PW 1 and PW 4 - Shobha herself rushed to the spot together after the PW 1 had come home to inform her about the incident. Thereafter, the police came on the spot and what PW 1 told the police soon thereafter assumes greater importance and there the names of the assailants are immediately disclosed.

16. Dr. Choudhry heavily relied on the deposition of PW 8, particularly about his statement that this witness PW 8 was with PW 1 at around 8.30 a.m. in his house and at that time, PW 4 came shouting and informing about the incident which means that the PW 1 had not seen the incident and was with PW 8 in his house. According to Dr. Choudhry, this deposition completely shatters the prosecution case. While it is true that PW 8, in his cross-examination, has given answers favouring the accused, we do not find that evidence of this witness is of such high standard that it can be relied on without corroboration. First of all, this witness was a panch for the spot panchanama. He claims to be in service of the PW 1 at the relevant time. He was examined to prove the spot panchanama. Suddenly in the cross-examination, he has given a twist to the entire story. This witness obviously was knowing the concerned parties and mainly the PW 1. PW 1 had shown the spot when the spot panchanama was carried out. This witness was aware that the PW 1 had lodged the FIR as the spot panchanama mentions C.R.No.28 of 2006. In that view of the matter, he could have informed the police that the PW 1 was with

him throughout and had not seen the incident. Till his deposition in the Court on 06/02/2008 i.e. nearly for two years, he has remained silent. At least there is nothing on record to show that any efforts were made by him to approach the authorities to point out that the PW 1 could not have seen the incident and had implicated the accused falsely. Dr.Choudhry submitted that it cannot be inferred that this witness did not approach the police or any authority to put forth his case and moreover, the evidence of this witness has thrown reasonable doubt on the prosecution case. Looking at the manner in which these statements are brought on record in the cross-examination, we do not feel it safe to rely on his evidence without any corroboration. We do not find any piece of evidence which corroborates the version given by the PW 8. There is not a single suggestion given to any of the witnesses that the PW 8 was present in the house with the PW 1 when the incident had taken place and that PW 1 could not have seen the incident. Dr. Choudhry submitted that by the time PW 8 was examined, the other material witnesses were already examined and therefore there was no occasion to give such suggestion to any of the witnesses. However, even after the evidence of this witness was recorded, no questions were put to the I.O. by the defence in that behalf. Therefore, we are not inclined to rely on the evidence of PW 8 to hold that PW 1 could not have witnessed the incident of assault.

17. Apart from these eye witnesses, there are other circumstances in the nature of recovery. PW 9 - Jotiba Mohite was

examined as a panch in whose presence the accused no.1 made a statement leading to recovery of the murder weapon i.e. sickle, from inside a well. According to him, on 30/03/2006, he was called to the police station and before him the accused no.1 made a statement that he was willing to show a well where he had thrown the sickle. Thereafter the accused no.1 led the police and panchas to the said well belonging to one Rajendra Mandarekar at Gadhinglaj. One swimmer namely Dattatrya Patil was called to take out the sickle from the well and in two to three attempts he took out the sickle from inside the water. The said sickle, on chemical analysis, showed presence of human blood of 'A' group. Dr. Choudhry submitted that the sickle was taken out from the water after 5 days of the incident and it was highly impossible that it would have retained the traces of blood which could be ultimately analyzed. More importantly, he has pointed out that this witness PW 9 has admitted in his cross-examination that PI Ghatge had told the panchas that the accused no.1 was going to take out sickle from the well of Mandarekar and accordingly panchanama was to be drawn. In this view of the matter, it is quite clear that the police were aware of the place from where the sickle was to be taken out. Therefore, the statement allegedly made by the accused no.1 could not have led to the discovery of the sickle. Therefore, it does not satisfy the requirement of Section 27 of the Indian Evidence Act and, therefore, such recovery cannot be relied on.

18. PW 5 – Rajaram Jadhav was examined as a panch who was present when the accused nos.1 and 4 were arrested on

26/03/2006. He was also a panch when the accused no.3 was arrested on 31/03/2006. When the accused no.3 was arrested, his clothes were seized in the presence of this witness PW 5. The other panch in this respect was PW 11 – Pundlik Jadhav in whose presence the clothes of the accused no.2 were seized from his house at his instance. The other panch PW 10 was examined to prove the seizure of clothes of the accused nos.1 and 4 on 28/03/2006. In this connection, it is important to know that the accused no.1 was arrested on 26/03/2006 but his clothes were seized on 28/03/2006. That, by itself, raises suspicion about this seizure. The CA report shows that the shirt of the accused no.1 was showing presence of blood of 'A' group. The T-shirt of the accused no.2 showed the presence of human blood but its grouping was inconclusive. Therefore, the seizure of the clothes and their CA report is not a circumstance in favour of the prosecution. Therefore, we are inclined to ignore the circumstance of seizure of clothes of the accused and recovery of sickle at the instance of the accused no.1.

19. In spite of the above infirmities in the evidence, we are inclined to believe the eye witnesses PW 1 – Sushil Lohar and PW 3 – Shankar Sutar. We are satisfied that their evidence is trustworthy and reliable.

20. The next question arises as to whether the acquittal of accused nos.2, 3 and 4 can be sustained. It is well settled that the finding of acquittal recorded by the trial Court in favour of the

accused cannot be lightly set aside. The presumption of innocence in favour of the accused is reaffirmed by acquittal by the trial Court. However, if such finding is perverse, then the appellate Court can reverse such finding of acquittal. It is also well-settled that merely because two views were possible, finding of acquittal should not be set aside. The Hon'ble Supreme Court has reiterated this principle in the case of **Govindraju alias Govinda Vs. State (By Srirampuram Police Station) and Another**¹. The Hon'ble Supreme Court, in paragraph nos.10 to 13, has held thus :-

- “10. *The law is well-settled that an appeal against an order of acquittal is also an appeal under the Code of Criminal Procedure, 1973 (for short 'CrPC') and an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole. It is no doubt true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial Court. But that is the end of the matter. It is for the Appellate Court to keep in view the relevant principles of law to re-appreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence, in consonance with the principles of criminal jurisprudence. (Ref. Girja Prasad v. State of M.P.²)*
11. *Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is presumed to be innocent till proven guilty*

1 (2012) 4 Supreme Court Cases 722

2 (2007) 7 SCC 625 : (2007) 3 SCC (Cri) 475

and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence.

12. *The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 CrPC has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under Sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.*
13. *Under the scheme of the CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law.”*

Based on these principles, we have to examine whether the findings of acquittal recorded by the learned trial Judge in favour of the accused nos.2, 3 and 4 can be sustained or if those findings are perverse and therefore can be reversed. The learned trial Judge, in para 16 of the impugned Judgment, has given his reasoning as to why he was acquitting these accused nos.2, 3 and 4. He has observed that according to the prosecution case, all these three accused were holding the deceased Kalinga and the accused no.1 Ravindra Ingale inflicted the fatal blow on the throat of the deceased with a sickle. The learned trial Judge has further observed that the Medical Officer's evidence shows that the deceased had sustained injuries on middle phalynx palmer aspect of left ring finger, incised wound over middle phalynx palmer aspect of left middle finger and oblique incised wound deep over proximal phalynx palmer aspect. The learned Judge has further observed that these injuries might have been caused to the injured in the scuffle while the deceased was defending himself and therefore, the story put forth by the direct witnesses that accused Satish Lohar, Samir Jamadar and Riyaz Kazi were holding the deceased, could not be believed. However in the next paragraph no.17 of the Judgment, the learned trial Judge went on to discuss the involvement of the accused no.1 based on the evidence given by the eye witnesses and in his case, the learned trial Judge has completely believed the evidence of these eye witnesses. We find this approach of the learned trial Judge to be incorrect and his finding on acquittal in respect of accused nos.2, 3 and 4 is perverse. As per the evidence of these two eye witnesses, they had not seen the incident from the

beginning. In particular, when PW 1 had reached the spot, the accused nos.2, 3 and 4 were already holding the deceased and the accused no.1 cut his throat. The other eye witness PW 3 corroborates this evidence by deposing about the presence of all the accused at the spot and their assault on the deceased. Therefore, the injuries on the palm of the deceased were caused before both these eye witnesses had reached the spot but the evidence from the point from when they had reached the spot, is absolutely trustworthy and reliable. Therefore, the role played by the accused nos.2, 3 and 4 cannot be separated from that of the accused no.1. The approach of the learned trial Judge putting reliance on these two eye witnesses only in respect of the accused no.1 and discarding their evidence in respect of the accused nos.2, 3 and 4 is certainly erroneous and perverse and therefore we are inclined to reverse this finding of acquittal. Now, coming back to the role played by these accused nos.2, 3 and 4, the PW 1 has clearly stated that these three accused were holding the deceased and the accused no.1 inflicted the fatal blow. Hence, the act of the accused nos.2, 3 and 4 clearly falls within the meaning of Section 34 of the IPC as the act done in furtherance of common intention and therefore, each of them is liable for that act in the same manner as if it were done by each of the accused alone. Therefore, we hold that all the accused nos.1, 2 3 and 4 shared a common intention of commission of murder of Kalinga Lohar and they acted together to commit his murder. Therefore, all of them are guilty of commission of offence punishable under Section 302 read with 34 of the IPC.

21. In view of the discussion above, we pass the following order :

ORDER

- (i) The conviction of the Appellant (original accused no.1 - Ravindra Rangrao Ingale) in Criminal Appeal No.1030 of 2008 recorded by the learned Additional Sessions Judge, Gadhinglaj, in Sessions Case No.6 of 2007; is altered from section 302 of the IPC to that under Section 302 read with 34 of the IPC. The sentence awarded to him by the trial Court to suffer R.I. for life and to pay a fine of Rs.5,000/- and in default to suffer further R.I. for three months, is maintained. The Appellant no.1 – accused no.1 shall be given benefit of set off under Section 428 of the Cr.P.C. for the period already undergone by him during the investigation and till the conclusion of the trial.
- (ii) Criminal Appeal No.805 of 2008 is allowed. The Judgment and Order dated 06/03/2008 passed by the learned Additional Sessions Judge, Gadhinglaj, in Sessions Case no.6 of 2007 acquitting the Respondent No.1 (original accused no.2 - Satish Narayan Lohar), Respondent No.2 (original accused no.3 - Samir alias Shamshuddin Abdul Hamid Jamadar) and Respondent No.3 – (original accused no.4 - Riyaz Kutbuddin Kazi) are set aside and each of them is convicted for commission of offence punishable under Section 302 read with 34 of the IPC and each of these Respondents is sentenced to suffer R.I. for life and to pay a

fine of Rs.5,000/- each; and in default of payment of fine, to suffer further R.I. for three months. All these Respondents shall be given benefit of set off under Section 428 of the Cr.P.C. for the period already undergone by them during the investigation and till the conclusion of the trial.

- (iii) The Respondent Nos.1, 2 and 3 in Criminal Appeal No.805 of 2008 shall surrender before the trial Court within a period of six weeks and in case of their failure to surrender before the trial Court, the trial Court shall take appropriate action in that behalf.
- (iv) Both these Appeals are disposed off in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)