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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.85 OF 2001

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| 1. Madhukar s/o Sudam Landge
Age – 29 years, Occ – Driver
R/o Mahadula Koradi Power House
Near Macchi Market,
Nagpur | APPELLANTS |
| 2. Laxman s/o Sudam Landge
Age – 19 years, Occ – Driver
R/o Mahadula Koradi Power House,
Near Macchi Market,
Nagpur | |

VERSUS

The State of Maharashtra

RESPONDENT

.....

Mr. P. R. Katneshwarkar, Advocate for the appellants
Mr. S.M. Ganachari, APP for respondent - State

.....

[CORAM : SUNIL P. DESHMUKH &
P. R. BORA, J.J.]

DATE : 15th FEBRUARY, 2018

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. By this appeal, the appellants – accused in Sessions Trial No. 98 of 2000 have challenged their conviction, for the offence punishable under section 302 read with 34 of the Indian Penal Code, and sentence, to suffer rigorous imprisonment for life and to pay a fine of Rs.500/- each or, in default to undergo further

rigorous imprisonment for fifteen days, passed by Sessions Judge, Parbhani vide judgment and order dated 29th December, 2000.

2. It is the case of the prosecution that one Shardabai Sudam Landge, aged about 45 years had lodged a report to Nava Mondha Police Station on 11th April, 2000 that Sudam Landge had been her husband and the couple had begotten three children, two sons, Madhukar aged about 30 years, Laxman about 19 years and daughter Sangita. Husband of Shardabai had died of tuberculosis five years before. Thereafter, she started living with neighbourer Ramdas Ramsing Ahire. Her two sons had been to Nagpur, where elder son Madhukar had been serving as a private driver and younger son Laxman was staying with him. About three years ago, Ramdas had performed marriage of Sangita. On 9th April, 2000, both the sons, Madhukar and Laxman had been to Parbhani from Nagpur. Around that time, she, along with her second husband Ramdas Ahire and daughter Sangita were in the house. The sons had asked as to whose bullock cart was there and she had answered that the same is ours and she and Ramdas drive the same. On 10th April, 2000, Ramdas had gone for labour work in the morning and sons were at home. In the afternoon, Ramdas had come and had meals and

went away with bullock cart. Around 6 O'clock, in the evening, two sons had quarreled with her and daughter Sangita and had beaten them up alleging letting Ramdas Ahire to stay with them in the house. The sons had locked them inside the house and had gone away searching for Ramdas towards Khanapur Phata. She and her daughter did not go out of house due to fear. During night, neither Ramdas nor two sons returned to the house. She was looking for them from the morning.

3. Around noon (about 12 O'clock) on 11th April, 2000, she had been to Khanapur Phata seeing quite a few people having gathered near canal and had also seen police there. The police had taken out corpse of a male person and she could see that it was of Ramdas, having injuries on his person with sharp weapons. It was thus complained that her sons had beaten her and her daughter Sangita with wooden sticks and had locked them inside the house for the reason as to why Ramdas had been allowed to stay in the house and had killed Ramdas at Khanapur Phata in the night and his body was thrown in canal water and she had learnt that quite a few of people had seen the same.

4. Thereupon, offence came to be registered with New

Mondha Police Station, Parbhani bearing Crime No. 63 of 2000 for the offence punishable under section 302 read with 34 of the Indian Penal Code against the appellants – accused. Investigation had been undertaken. Inquest *panchanama* had been drawn, which had been conducted around 14.15 hours. The corpse had been sent to Government Hospital, Parbhani for post mortem. Spot *panchanama* had also been drawn. Statements of witnesses, who claimed to have seen the incident, viz., Suresh Bhokare, Rameshwar Shinde, Haribhau Shinde and others were recorded by the investigating officer. Spot of the incident had been visited along with one of the witnesses and before that house of the informant had been visited, from where pieces of bangles were collected. Accused were picked up from Balkhed and came to be arrested.

5. On 17th April, 2000, there had been disclosure by accused Laxman about commission of offence by him and his brother Madhukar by using knife and the knife having been concealed at a place near Dutta Dham on Parbhani – Basmat road. On the spot Laxman had also shown two shirts, one sky blue colour and the other white with black stripes, which had been kept beneath a stone. There were blood stains on the shirts and knife. These articles were seized and sent to chemical analyzer. So was the

case in respect of seized clothes of the deceased viz., his *baniyan*, *pyjama* and inner-ware so also earth mixed with blood was sent for chemical analysis. All these seized articles of the deceased as well as the ones under the disclosure by the accused, were sent to chemical analyzer with the earth mixed with blood and in respect of the same, report had come back indicating that there were blood stains on the same having blood group "B". The informant and her daughter Sangita were also sent for medical examination and their injury certificates were given.

6. Post mortem report shows that the cause of death had been cardio respiratory failure due to subdural haematoma with hemorrhagic shock. Viscera was preserved.

7. After completion of investigation, charge sheet was submitted and thereafter, the case was committed to the court of sessions at Parbhani and numbered as Sessions Trial No. 98 of 2000. The accused pleaded not guilty and claimed to be tried. Prosecution, in order to bring home guilt of the accused, examined in all ten witnesses.

8. Shardabai Sudam Landge, who had been examined as PW-1 at Exhibit-12 was declared to have turned hostile and had been

cross-examined by the prosecution. She has disowned statements in the first information report dated 11th April, 2000, as appearing under portions marked "A" to "G", stating that the police had taken her thumb impression on the papers forcibly. She had not given any complaint to the police. It appears that her cross-examination by the prosecution had not been able to have anything out of it worth incriminating the accused persons.

9. Dr. Shripad Vithalrao Dhanorkar examined as PW-2 at Exhibit-13 who had examined PW-1 Shardabai and Sangita and had opined that the injuries appearing on their persons were within twenty four hours and were simple in nature and could have been caused by hard and blunt objects.

10. Rameshwar Sudamrao Shinde, examined as PW-3 at Exhibit-16 states in his deposition that the incident had occurred around 11.00 p.m. while he was about to close down his betel-nut shop. He knew deceased Ramdas and accused Madhukar and Laxman for about two years. He had seen Madhukar catching neck of Ramdas and Laxman assaulting Ramdas with knife on leg and stomach and had seen both the accused dragging Ramdas to the canal and throwing him in the flowing canal near the spot. At that time, Ramdas had been crying and both the accused were

throwing stones at him. He further states that he went to his house thereafter. He also refers to Haribhau and Dadarao had also witnessed the incident.

11. In his cross-examination, it has been elicited that there were around twelve betel-nut shops (*panpatties*) and about four hotels near Khanapur Phata. Government Guest house had been close-by at a distance of twenty five paces from the spot of the incident. He further has deposed that quarrels occur at Khanapur Phata quite often. It has further been elicited that he had not seen accused persons prior to the day of the incident. Nor was he acquainted with Shardabai, PW-1 the informant any time before, but had been knowing her by face only.

In the cross-examination, he has stated that he had tried to intervene the quarrel, however, the accused persons had frightened him. It had further been elicited that canal had been flowing with depth of water around two to two and half feet. It has further been elicited that after the incident him and all other persons who were present there went to their homes. It has further been referred to by him that Sub Divisional Police Officer had warned them to close their shops around 10.45 p.m. every day and accordingly, they had been closing their shops. It has

further been elicited that police had been after them to move and shift their shops from Khanapur Phata. He further states that he was not aware whether accused Laxman had been helping police to remove encroachment.

12. Dr. Chandrakant Madhavrao Dabadwar had been examined as PW-4 at Exhibit-17. He had conducted post mortem on dead body of Ramdas and had opined that the cause of death had been cardio respiratory failure due to subdural haematoma with hemorrhagic shock

13. Haribhau Vaijanath Shinde had been examined as PW-5 at Exhibit-19. He appears to be a hotelier. In his deposition, he refers to that his hotel had been situated at about hundred feet from the spot of the incident and claims to have seen quarrel between deceased Ramdas and "his sons" taking place and he had tried to intervene, however, he had been prevented from causing intervention by "the sons". Thereafter, he had returned to his hotel and had seen accused dragging Ramdas and throwing him in canal.

14. He also states to the effect that lot of persons were present, including PW-3 Rameshwar Shinde and had found him holding one instrument used for cutting vegetables. In his cross-

examination it has been elicited that he had neither seen accused persons prior to the incident nor did he know Shardabai till the date of giving deposition. He did not know names of the accused persons at the time of incident. He had been sitting in the hotel and had heard hue and cry from the spot of incident and had been there. His cross-examination shows him to have stated that about forty persons had gathered at the time of the incident and that he alone had attempted to intervene.

15. Suresh Baburao Bhokre had been examined as PW-6 at Exhibit-20. He had been working as a waiter in the hotel of Dadarao Shinde. He states that after closing down business him and hotel owner had been taking meals and they had heard hue and cry from the spot of the incident. Both of them had rushed towards the spot and had seen two boys had caught neck of deceased Ramdas. One of the accused had caught Ramdas by neck and another was holding weapon, but had not seen the weapon and the boy holding weapon had assaulted Ramdas. Upon seeing blood from the body of Ramdas he fainted and Dadarao had taken him to hotel and after sometime he regained consciousness and had seen two boys dragging Ramdas to canal and throwing him in the same.

In his cross-examination, he states that he had heard cries for help and had seen the incident from a distance of about thirty feet and being unable to state as to which of the accused had been holding weapon.

16. Prakash Digambarrao Mohite had been examined as PW-7 at Exhibit-23. He claims to be a *pancha* witness. He states that on 17th April, 2000, he had been called by police and accused Laxman having told the police that he had concealed clothes at a place known to him. They were taken to Dutta Dham by a jeep. They were taken by Laxman to place behind Dutta Dham at a distance of about two hundred and fifty feet and Laxman had produced two shirts and knife from beneath one stone. He had seen both the shirts and knife were stained with blood and the articles were attached.

In his cross-examination, it had been elicited that place from where accused purportedly produced articles was an open space and the stone from under which the articles were recovered was weighing about four to five kilograms. It has further emerged from his cross-examination that during the relevant period construction work of Dutta Dham temple had been in progress. He states to have been councillor.

17. Sundarlal Hiralal Kumawat had been examined as PW-8 at Exhibit-26. He had been working as constable at Mondha Police station, Parbhani. He was assigned duty of reaching *muddemal* to chemical analyzer.

18. Subhash Laxman Anmulwar, Police Sub Inspector, Mondha Police station and investigating officer had been examined as PW-9 at Exhibit-30. He refers to that he received telephone call of councillor Mohite telling that dead body of a person had been lying in a canal near Khanapur Phata. He accordingly had taken its entry in station diary. He thereafter, went to the spot along with staff and had noticed dead body of one male person floating in water and he, with the help of police and members of the crowd had taken the body out of the canal. He states that informant Shardabai had been present there and identified the dead body of Ramdas. He had taken Shardabai to police station and had reduced her statement into writing and had registered offence as Crime No. 63 of 2000 and had taken over investigation of the case. Accordingly, as referred to above, had drawn inquest and spot *panchanamas* and also recorded statements of eye witnesses like Suresh Bhokare and Harubhau Shinde. Haribhau Shinde had shown spot of offence and then he

had taken him to canal and road on bridge. He further states that prior to going to the spot, he had visited house of Shardabai and had found pieces of bangles there. In his deposition, he states that he himself, *panchas* and accused Laxman and other staff had been to the spot from where weapon had been recovered. He refers to that *muddemal* had been sent to chemical analyzer on 8th May, 2000. He had sent knife to the medical officer to seek opinion in respect of the injuries.

In his cross-examination, he states that house of Shardabai – informant is at a distance of about sixty feet from Khanapur Phata and that at a distance of about twenty to thirty feet from there is a building of Samaj Mandir. Hutment dwellings known as Priyadarshini Nagar are at a distance of twenty feet from the road. House of Shardabai is facing west towards canal. He specifically denies to have been informed about the murder of Ramdas on 10th April, 2000. He further reveals that statement of PW-7 Prakash had been recorded as eye witness to the murder. His cross-examination further reveals that blood samples were not collected either of the accused or of the deceased.

Cross-examination of PW-9 further reveals that sending of

seized / attached articles had been deferred because the investigating officer wanted to collect viscera and send the same to chemical analyzer along with other seized articles.

19. It emerges that viscera though was preserved had never been sent to chemical analyzer. Report of the chemical analyzer had been received back after about four months, finding seized articles containing blood stains of group "B".

20. Dnyanoba Morotrao Mohite, had been examined as PW-10 at Exhibit-37. He had been a *pancha* witness of the *panchanamas* of the scene of offence and of house of Shardabai. In his cross-examination, he declined to have been considered as an eyewitness. He states that one requires half an hour to cross distance between house of Sharda and Khanapur Phata.

21. Sessions court has held the appellants – accused guilty for the offence punishable under section 302 read with 34 of the Indian Penal Code and convicted them accordingly and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.500/- each. As such, the appellants are before this court in this criminal appeal challenging their conviction and sentence.

22. Learned advocate Mr. P. R. Katneshwarkar for the appellants submits that from the kind of evidence as aforesaid, it does appear that the accused have been falsely implicated in order to show that investigation with regard to occurrence of the incident had been carried out and completed. They had been staying away from Khanapur Phata. He submits that the so called first information report, with reference to which law is purportedly set in motion, itself shows that father of the appellants died five years prior to the incident and Ramdas, going by the version as appearing in the first information report, had performed marriage of their sister three years ago and had been staying with their mother. In such a scenario, it is highly improbable unless there had been grave and sudden provocation to get enraged and kill Ramdas.

23. Learned advocate for the appellants further goes on to submit that there is no credible evidence at all worth consideration to bring home guilt conclusively to the accused. He submits that the evidence especially oral one, is a figment of imagination calculatedly engineered to arraign and incriminate the appellants.

24. In the first place, he submits that the alleged incident

according to so called eye witnesses had occurred around midnight. It has nowhere come in the evidence that the spot of the incident had been lit or had been having any light facility. The incident, going by the versions of the eye-witnesses, according to him, had taken place at least at a distance of about sixty feet from their shops / hotel / *panpattis*. He submits, evidence shows that there were about forty persons around and had been witnessing the incident and yet during occurrence of the incident none of them had shown courage to prevent such gory offence. It is not the case of any of the alleged eye-witnesses that the accused had thereafter fled. Two accused had dared mob of forty persons and in their presence Ramdas had been stabbed, dragged for about sixty feet and was thrown in canal and yet none of the person from crowd had ever bothered to inform about the incident either to police or even to the informant Shardabai, who, as it emerges, had been staying close by and quite a few persons including alleged eye-witnesses were knowing her. He submits that it would not generally happen that all of the persons gathered there, were so inhuman that they did not even inform the incident to anyone. It has come on record that everyone from the crowd thereafter had been quiet and had gone to homes and had not informed about the incident

till about 11.00 a.m. on next day. It was the councillor Mohite who is stated to have spotted dead body floating in canal water and had informed about the same to police. He submits that even there are two versions by the police about visit to the spot, as would emerge from the evidence of the investigating officer. It is not absolutely reliable. The whole story is concocted in order to shirk responsibility of proper investigation and to avoid blame for apathy, inaction and not being able to find out real culprits. He submits that mother of the accused was not really privy to the first information report. Her thumb impression had been obtained or rather forcibly taken as it would emerge from the evidence. In such a case, while Sangita, sister of the appellants, with whom investigation had been made, ought to have been examined but has not been examined at all. He particularly refers also to that while sending of articles for chemical analysis had been delayed for viscera collection, however, the viscera had never been sent, is one more circumstance which deserves to be taken into account and given its due. He further purports to bring forth discrepancy appearing in respect of time of occurrence of the incident. Whereas, Mohite, the councillor who had reportedly informed about the dead body floating in canal water, states in his police statement that occurrence of incident

had been in the night of 11th April, 2000 while he went to sleep on the terrace of the house close to the spot of incident. He had heard shouts and had been there and seen accused assaulting Ramdas. The investigating officer, however, particularly refers to that Prakash Mohite, who had been councillor, had informed about finding of dead body floating in canal water around 10.45 a.m. on 11th April, 2000. He submits that the discrepancy is writ large and is incompatible. He refers to in further police statement, which according to him, shows that he had learnt from others that Ramdas had been assaulted by accused persons and thrown his body in canal after assaulted him and had pelted stones on him.

25. Learned advocate for the appellants submits that had the body been really floating as stated by alleged eye-witnesses, during the alleged twelve hours the body would not have been found on the spot and it would have been flown away, since canal had been flowing.

26. He submits that under the circumstances, appreciation of the learned Sessions Judge, would far too overreaching. The evidence does not support view as has been taken by the learned Sessions Judge. Evidence is not conclusive. There is no

evidence or the so called evidence is dithering and not reliable.

27. He, therefore, submits that in such a situation, conviction given is unsustainable and deserves to be set aside and accused are entitled to be acquitted.

28. Learned APP supports that decision and reasons underlying the same. He submits, on appreciation of evidence, a plausible and possible view is taken and the same is not liable to be flawed on submissions advanced on behalf of the appellants.

29. The trial court has recorded some inconsistencies in the evidence of three eye-witnesses and about them not being confident while describing incident of assault. The court had also even noted that evidence of medical officer is not consistent with the evidence of PW-3 – Rameshwar Shinde. The spot *panchanama* did not show that the blood was found near the hotel of Narhari Mohite and there were marks of dragging towards canal, but there were no blood marks found on the dragged passage. Blood was found on wall and pillars of bridge. The bridge had been situated at a distance of sixty feet from the hotel of Narhari Mohite. Medical evidence shows that there had been excessive bleeding and there is absence of blood on the spot near the hotel. The reliability of version of the witnesses

about Ramdas being assaulted with weapon was suspected / considered to be doubtful. It had been also noted that there had been absence of sketch map. It has been held, it cannot be believed that the witnesses had seen actual assault by the accused persons on Ramdas by using weapon. The court has also noted that evidence shows that investigating officer has recorded statement of Prakash Mohite PW-7 as an eyewitness to the alleged incident. It was further observed that if the incident had really taken place around 11.00 p.m. on 10th April, 2000 and PW-3 Rameshwar Shinde, PW-5 Haribhau Vaijnath Shinde and PW-6 Suresh Bhokare have witnessed the incident of assault, then there was no reason for these witnesses for not informing the incident to police. It was considered, at least PW-7 cannot say that he was afraid of accused person. It was observed that evidence of these witnesses cannot be accepted as evidence of eyewitnesses, but it was considered that their evidence cannot be discarded altogether.

30. It was considered that Prakash is municipal councillor and he has no reason to give false evidence against the accused persons. The court has also considered that there is no evidence showing that Police Sub Inspector taking care to detect blood group of the deceased. It has been considered blood group "B" is

detected on the clothes of deceased and that on the recovered material. Blood of either deceased or of accused had not been collected. Occurrence of blood group "B" on shirts and weapon and that of clothes of deceased is incriminating circumstance. The court had further considered that injuries were found on the persons of Shardabai and Sangita. The court considered that Shardabai had been keeping back truth and had turned hostile.

31. It would have to be noted that the incident is alleged to have taken place around midnight. There were quite a few persons present who are stated to have seen occurrence of the incident. One or two persons also have deposed to the effect that they had tried to intervene, however, were deterred by the two accused persons. Their evidence does show that it is dithering over about accused persons being known to them at any time before. They, in their examination in chief, purport to tell that they were aware of the accused persons being sons of Shardabai, yet in cross-examination it has been elicited that there had neither been any acquaintance nor had they seen the accused persons before the incident had occurred. With such ambivalent versions over identity of accused persons, it does not appear in the absence of evidence of proper identification, it would be safe to rely on dithering evidence. It is rather difficult

to believe that none of the persons who were stated to be around 40 had ever made an attempt to inform about the incident to law enforcement agency or for that matter even going by evidence of persons, who have witnessed and stated to know Shardabai had tried to tell her the same.

32. Shardabai's alleged version as appearing in the purported FIR also loses on reliability, for in the same it has been referred to that she and Sangita had been locked inside the house by the two accused persons. No explanation has come forth as to how on the next day they have come out of the house and who had opened the door. There is no evidence on record to the effect that the door was broken open. What had been found during investigation in *panchanama* are broken pieces of bangles and simple injuries on their persons. Nobody has witnessed the accused persons beating said two ladies, nor Shardabai has been cross-examined over the same by the prosecution. Injuries on the person of the two ladies were simple in nature and are possible by fall on hard and blunt object, as it would emerge from the evidence of medical officer.

33. Indeed, the chemical analysis report gives indication of blood samples from the seized clothes of the deceased and that

of the recovered shirts alleged to be of accused and knife, are of blood group "B" and as such, are matching. Yet, it also will have to be taken into account that the seized clothings had been sent for chemical analysis after almost one month on the ground that viscera was to be sent for chemical analysis. Intriguingly, the viscera beforehand had been sent to medical officer for opinion and thereafter the same does not appear to have been sent to chemical analyst at all. Such important aspect will have to receive its due. It has come on record that blood samples of the deceased had not been taken and much less sent to chemical analysis. In the circumstances, the important link, connecting the accused to the commission of offence appears to have been lost, missed or may be possibly had been kept back, after expression of opinion by the medical officer. Blood group of deceased being "B" cannot be conclusively determined and doubt creeps in.

34. Even the version of investigating officer about knowledge of finding of dead body floating in canal from Prakash Mohite, the councillor is not reliable for, Prakash Mohite, in his statement to the police refers to that around midnight he had heard hue and cry and had seen the accused persons assaulting Ramdas and dragging him to canal, yet as a councillor, he did not feel it

necessary to immediately inform about the incident to police. Nor does it appear that it is any-body's case that the surrounding hoteliers and businessmen had ever insisted him to do something about the incident.

35. Prakash Mohite has deposed as a *pancha* witness and does not refer at all to him having informed about having seen the dead body floating over canal water. As a matter of fact, in his deposition he completely disregards version of the investigating officer that around 10.45 a. m. on 11th April, 2000 he had received telephone call from councillor Mohite from Khanapur Phata about dead body of male person lying in the canal.

36. Evidence of the investigating officer shows that he had been to canal upon being informed by Prakash Mohite around 11.00 a.m. on 11th April, 2000 and had taken out dead body from the canal with the help of police and from the crowd Shardabai – the informant had identified the dead body as that of Ramdas. None of the other persons appear to have identified the body as that of Ramdas.

37. It is being referred to that upon identification of dead body by Shardabai, she was taken to police station and her thumb impressions were taken on statement, which according to the

investigating officer, had been recorded according to the version given by Shardabai.

38. The investigating officer does not refer to that upon taking out dead body, inquest *panchanama* had immediately taken place. The investigating officer on the other hand, states Shardabai was taken to police station and her report had been reduced into writing and crime had been registered and investigation thereafter proceeded with. He further refers to that upon investigation, inquest *panchanama* was concluded around 14.15 hours and dead body was thereafter sent for post mortem.

39. Aforesaid would show that there are not only glaring inconsistencies, but there are quite a few stark omissions and contradictions. Eventually, the discrepancy occurring in respect of weight of stone from under which the purported recoveries of shirts and knife have been made would gain significance. While Prakash Mohite, the *pancha* witness refers to weight of the stone to be five to six kilograms, the investigating officer refers to that the stone had been about fifteen to twenty kilograms, giving rise to question about reliability of even of procurement of seized material.

40. Further it may have also to refer to that while the *pancha*

witness Prakash Mohite in his evidence refers to that the accused had signed *panchanama*, however he dithers over the same in the cross-examination and states that he does not remember whether the accused had signed or not on the recovery *panchanama*.

41. One may have to note that while investigation with Prakash Mohite had been carried as an eyewitness, he had not been produced before the court as such and instead had been examined only as a *pancha* witness.

42. It has been referred to that police had been after businessmen for shifting to other place and accused were assisting the police. The witnesses have further in their cross examinations stated that they had not seen the two accused persons any time before the date of occurrence of the incident. In such a case, reliability of version of the witnesses that they had seen Ramdas being quarreling with his sons and sons assaulting him gets lowered.

43. Most importantly, the incident admittedly had occurred in the night time around 11.00 p.m. and it has not come on record that at the place of the occurrence of the incident there had been any arrangement of light or the incident could be clearly

seen at such time of night. The *panchanama* does not show any arrangement of lights around the spot of the incident. That apart, while the evidence also suggests that there were around 40 persons witnessing the incident, yet none of them had ever attempted to inform the same to the police or for that matter to Shardabai. Evidence of the eyewitnesses shows that everybody went quietly back to homes. Such a version can hardly be relied upon.

44. Apart from that Shardabai had turned hostile. Shardabai has specifically disowned portions "A" to "G" from the first information report. Yet, while investigation had also been made with Sangita, who was other injured person, she had not been examined. It is quite discernible that Sangita had been kept back from being examined before the court, while she would have been a material witness and omission to examine her, in the circumstances, would goad the court to draw adverse inference against the case being put up by the prosecution.

45. There are quite a few missing links and unexplained areas in the present matter, particularly, as referred to above. One may have to give regard to the time of occurrence of incident is around midnight. There is no evidence with regard to spot of

incident having been properly lit. The evidence with regard to acquaintance / knowledge about accused persons by the eyewitnesses is dithering and not convincing. None of the eyewitnesses can be said to have really seen the accused persons actually assaulting the deceased with weapon. The evidence shows that body had been bleeding and yet while body had been dragged for about sixty feet, there were no blood marks on the passage of dragging. The blood marks on the wall of the bridge do not appear to have been taken for chemical analysis. Husband of Shardabai had died five years before. It is being said that after death of husband of Shardabai, Ramdas had been staying with her and Ramdas in fact is stated to have performed marriage of Sangita three years before. The accused had not objected to the same then. There is no evidence with regard to Ramdas being living as husband with Shardabai. There is no case of previous enmity between the accused and Ramdas. As such, it appears that the information even if it is to be taken as it is, it does not go beyond point of being a suspicion. Apart from that blood groups of Ramdas and the accused had not been examined nor the viscera had been sent to chemical analysis. Medical opinion about viscera had been obtained but it had not been sent for chemical analysis. Medical opinion is not on record.

There is no explanation as to how while Shardabai and Sangita had been locked inside had come out while about forty people, who appear to have witnessed the incident had not bothered at all to inform about the incident immediately to the police or to Shardabai. Why Shardabai and Sangita had chosen to remain inside the house without protest all through evening till next day. There is nothing on record to show as to when door of the house had been opened or broken open and Shardabai had come in the crowd. Sangita has been kept back from being examined. Prakash has not been examined as eye witness despite statement to police. Viscera had not been sent to chemical analysis. All these aspects involved in the matter create doubt about the accused having committed murder or having assaulted Ramdas. The evidence does not appear to be sufficient to bring guilt to the accused persons pointedly. Dithering evidence or rather inconclusive evidence and evidence with omissions and contradictions would not be safe to convict the accused persons. The evidence as it would emerge, would not conclusively lead to a definitive and exact decision upon guilt against the accused persons. Thus, the accused having regard to criminal jurisprudence, in absence of conclusive evidence to bring guilt to them, deserve to be given benefit of doubt.

46. In the circumstances, the appeal is allowed. The impugned judgment and order of conviction is set aside. The appellants are acquitted of all the charges with which they were charged and convicted. Fine, if paid, be refunded to the appellants. Bail bonds of the appellants stand cancelled.

[P. R. BORA, J.]

[SUNIL P. DESHMUKH, J.]