

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

CRIMINAL APPEAL NO.618 OF 2002

The State of Maharashtra

APPELLANT

[Ori. complainant]

VERSUS

1. Narayan s/o.Kisan Mote,
Age 55 years, Occupation Agriculture
R/o. Chincholi Mali, Tq. Kaij,
District Beed.
**[Appeal abated as per Court's
Order dtd.05.12.2017]**
2. Suresh s/o. Narayan Mote,
Age 27 years, Occupation and
R/o. as above.
3. Ramesh @ Rameshwar s/o. Narayan
Mote, Age 35 years, Occupation
and r/o. as above.
**[Appeal abated as per Court's
Order dtd.23.04.2007]**
4. Nana s/o. Baburao Ingle,
age 24 years, Occu. Education
R/o. Salegaon, Tq. Kaij,
Dist. Beed.
5. Sheikh Taher Pasha s/o. Sheikh
Mahetab, Age 36 years, Occu.
and r/o. as above.

6. Goroba Krishna Thorat,
Age 70 years, Occu. Agri.
R/o. Massa Khandeshwari,
Tq.Kalamb, Dist. Osmanabad.
**[Appeal abated as per Court's
Order dtd.23.04.2007]**

7. Ganpati s/o. Krishna Thorat,
Age 50 years, Occu. and
r/o. as above.

8. Gayabai w/o. Narayan Mote,
Age 50 years, Occu. Agri.
& household,
R/o. Chincholi Mali, Tq.Kaij,
District Beed.

RESPONDENTS
[Orig.Accused]

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Mrs.Vaishali S.Chaudhari, APP for the
Appellant-State
Mrs.Charuta S.Deshmukh, Advocate for
respondent nos.2, 4, 5, 7 and 8 / Accused.
Appeal abated as against appellant nos.1, 3
and 6.

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

**Reserved on : 16.03.2018
Pronounced on : 02.04.2018**

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

1] This Appeal is filed by the
appellant-State, challenging the judgment and

order passed by the Additional Sessions Judge, Ambajogai, on 21.06.2002 in Sessions Case No.4 of 1996, thereby acquitting the respondents-accused for the offences punishable under Sections 147, 148, 326 r.w. Section 149, 326 r.w. Section 34, 302 r.w. Section 149 and 302 r.w. Section 34 of the Indian Penal Code and Section 37 r.w. Section 135 of the Bombay Police Act.

2] The prosecution case in nutshell is as under:

The informant, namely, Shrikant Haridas Mote, is resident of Chincholi Mali. In the year 1994, the informant was residing along with his parents, brother and sister in their field, known as 'Motyache-Shet', situated at Chincholi Mali. The land of Narayan Mote i.e. accused no.1 is adjacent to the land of the informant. By the side of the common bandh but within the limits of the

land of the informant, there were Babul trees. Accused no.1 and his sons i.e. accused nos.2 and 3 tried to cut those trees. However, they were not allowed to cut those trees by the informant and his father Haridas. There were quarrels between the informant, and his father on one side, and accused nos.1 to 3 on the other side. Accused also threatened to kill the informant and his father.

3] On 07.11.1994 at about 8.30 a.m., the informant and his father Haridas [deceased], started carrying a plough from their cattle shed so as to return it to Rambhau Ghodke. On their way at about 9.00 to 9.30 a.m., when they were in the field of Vithal Ghodke, they saw that Narayan Mote [accused no.1], Suresh Mote [accused no.2], Ramesh Mote [accused no.3] and their relatives from Salegaon and Massa were present with the accused. In all 10 to 12

persons were there holding sticks, axes and knife in their hands. Accused no.1 abused the informant and his father and asked them, why they are not allowing him to cut Babul trees. Then accused no.1 asked other accused to beat Haridas and the informant. Then all those persons rushed towards the informant and his father, and beat them by means of sticks, axes and knife on head, leg, back and caused injuries. As a result of sustaining serious injuries, the father of the informant fell down in the field. One stone thrown by accused no.3, caused injury on the back side of the head of father of the informant. The informant ran away towards the cattle shed of Arun Kale [PW-5]. On the way, one boy from Harijan community met the informant. The informant told the said boy that Narayan, Ramesh, Suresh and their relatives from Salegaon and Massa, beat him and his father by means of sticks, axes and knife.

4] The said boy went to the cattle shed of the informant and informed the said incident to the mother, brother and sister of the informant as told by the informant to him.

 It is further the case of the prosecution that the accused persons went/proceeded to the cattle shed of the informant and assaulted the mother of informant, namely, Hirabai [PW-7], brother of informant, namely, Ravikant [PW-11] and sister of the informant, namely, Shivganga [PW-4]. As they shouted for help, the accused persons ran away.

5] The informant went to the cattle shed of Arun Kale [PW-5]. The informant was carried in the bullock-cart to the Government Hospital, Chincholi Mali by Arun Kale [PW-5]. The informant told to Arun Kale about the said incident. While returning Arun Kale

asked the Jeep Driver Keshav [PW-8] to take his jeep to the field. Arun Kale [PW-5] went to the cattle shed of the informant in his bullock cart. He carried mother, sister and brother of the informant to the spot where the father of the informant was lying. The jeep was brought to the said place by Keshav [PW-8]. Then all the injured were kept in the said jeep, and were carried to the Government Hospital, Chincholi Mali. The informant was kept in the said jeep from the said Hospital, and then they were carried to the Police Station Kaij. The Police sent those injured for treatment to the Government Hospital at Kaij by giving Yadi. The Medical Officer at Kaij Government Hospital after seeing the injured, sent them to S.R.T.R. Medical College Hospital, Ambajogai. Those injured were admitted in Medical College Hospital at Ambajogai. The Head Constable Narayankar [PW-10] from Kaij Police Station followed the

said jeep up to Ambajogai. He recorded the statement of the informant in Ambajogai Hospital. The Doctor informed about the death of father of the informant. After recording the said complaint / FIR of the informant, the Head Constable Narayankar returned to the Police Station Kaij.

6] On the basis of said FIR, crime No. 151/1994 was registered for the offence punishable under Sections 147, 148, 149, 324, 326, 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. During investigation, the statements of the witnesses were recorded. The spot panchnama was prepared. The inquest was already recorded by Ambajogai police. The post-mortem was conducted. The accused persons were arrested. The sticks were seized at the instance of accused Narayan, and an axe was seized at the instance of the accused Suresh. The injured were examined by the Medical

Officer. Their certificates were collected. P.M.report was collected. The seized articles were sent to C.A., and thereafter, the C.A. reports were collected. After completion of investigation of the said crime, the charge sheet came to be filed against the accused persons for the offence punishable under Sections 147, 148, 149, 302, 326, 324 of the Indian Penal Code and Section 135 of the Bombay Police Act in the Court of Judicial Magistrate First Class, Kaij.

7] The Judicial Magistrate First Class committed the case to the Court of Sessions, as the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions.

8] The charge was framed against the accused by the learned Additional Sessions Judge, Ambejogai for the offences punishable under Sections 326, 302 read with 149 of the

IPC, alternatively under Sections 326 and 302 read with 34 of the IPC, under Sections 147,148 of the IPC and under Section 37 read with 135 of the Bombay Police Act to which accused pleaded not guilty and claimed to be tried. Their defence is total denial and that they have been falsely implicated at the instance of Arun Kale [PW-5]. In defence, accused have examined Dr. Chavan at Exh.124 and relied upon injury certificates [Exhs.129 and 130] respectively, informant [PW-6] and his father the deceased.

9] To prove the charge against the accused the prosecution has examined in all fourteen witnesses and relied upon the circumstantial evidence in the form of panchanama of seizure of clothes of the deceased, accused No.1 Narayan and seizure of axe and sticks at the instance of accused No.1 Narayan and accused No.2 Suresh and the medical evidence. Considering the evidence

adduced by the prosecution and the defence the trial Court held that the prosecution has failed to prove the offences against the accused with which they were charged and accordingly acquitted the respondents/accused of the said offences by the impugned judgment and order dated 21.06.2002. Therefore, this appeal against the acquittal on several grounds mentioned in the memorandum of appeal.

10] Learned APP appearing for the appellant-State submits that Shrikant Mote [PW-6] himself is injured witness, and his evidence gets corroboration from the medical evidence and other evidence brought on record by the prosecution. It is submitted that so far as first part of the incident is concerned, the accused formed the unlawful assembly and to achieve common object to kill / assault Haridas, accused proceeded further and assaulted Haridas [deceased] by sticks,

knife and axe and caused as many as 23 injuries on his person. It is submitted that since the evidence of injured i.e. Shrikant Mote [PW-6] is 100% trustworthy; the conviction can be based on his evidence alone. Learned APP further submits that the said assembly of the accused proceeded further and in second incident in succession assaulted Hirabai [PW-7], Shrikant @ Ravikant [PW-11] and Shivganga Mote [PW-4]. It is submitted that if the evidence of all the prosecution witnesses is read in its entirety, coupled with other evidence, it leads to definite conclusion that, all the accused in furtherance of their common object to kill Haridas and assault other witnesses committed the alleged offences and accordingly they deserve to be convicted for the offences as alleged against them. Learned APP in support of her contention that merely because Shrikant [PW-6] is a son of deceased

Haridas and other witnesses are related; their evidence cannot be discarded, placed reliance upon the judgment of the Supreme Court in the case of *Bishwanath Singh Vs. State of Bihar*¹, in the case of *Thoti Manohar Vs. State of Andhra Pradesh in Criminal Appeal No.1739 of 2007*, decided on May 15, 2012 and in the case of *Piara Singh Vs. State of Punjab in Criminal Appeal No.221 of 1972*, decided on October 04, 1977.

11] On the other hand, learned counsel appearing for the respondents-accused submits that the plausible view has been taken by the trial Court. It is submitted that the evidence of the prosecution witnesses suffers from the serious infirmities, and also do not get corroboration from the medical evidence. It is submitted that the medical evidence is not consistent *inasmuch* as in the injury certificate it is mentioned about the

1 1995 DGLS [SC] 101

injuries that those are caused within 12 hours. However, while deposing the Medical Officer has stated before the Court that, the injuries are caused within 6 hours. It is submitted that defence examined Dr.Chavan [DW-1] as Medical Officer, and in his evidence, he categorically stated that Shrikant Mote [PW-6], and other prosecution witnesses were brought to him on the date of alleged incident in the morning, and he treated them at 7.00 a.m. It is submitted that the prosecution witnesses have stated that the incident had taken place in between 9.00 to 9.30 a.m., however, the medical evidence shows that the injuries are within 6 hours. It means the injuries sustained to the prosecution witnesses were during night time or early in the morning. It is submitted that the prosecution has tried to suppress the genesis of the incident. The evidence of the prosecution witnesses suffers from

contradictions, omissions and improvements. It is submitted that, Hirabai Mote [PW-7], in her deposition stated that, when they proceeded from village Chincholi Mali to Kaij, they stayed about 1 hour in the police station at Kaij. It is submitted that the registration of the First Information Report was at 2.00 p.m. When Hirabai [PW-7] stated that, they stayed in the Police Station at Kaij for about 1 hour, no reasons / explanation has been put-forth on record, for delay in lodging the FIR. It is further submitted that one Dnyanoba Gaikwad had shown the spot where the accused alleged to have killed Haridas. But the prosecution story does not disclose his presence on the spot. The prosecution story is that the first incident i.e. murder of Haridas, took place in the field of one Vithal Ghodke, however, the spot panchanama does not refer to it. On the contrary, it has been stated in the spot

panchanama that the incident occurred on road. As regard to second incident it appears that in the deposition of Shivganga [PW-4] that she was washing clothes and bucket, and rope were with her. It also appears in the deposition of Hirabai [PW-7] that when she was beaten by accused, they had disturbed arrangement of utensils and other articles. The spot panchnama does not record the said position in the cattle shed. It is submitted that Arun Kale [PW-5] had produced the clothes of deceased in the Police Station. Arun Kale [PW-5] is not family member or not present at the time of incident with deceased Haridas. The suspicion of involvement of Arun Kale [PW-5] in the incident is strengthened.

12] It is submitted that an axe is alleged to be recovered at the instance of accused. But none of the prosecution witnesses and medical evidence speak about

injury by axe. In the FIR, there is reference of accused coming with axe, knife and sticks, however, Shrikant Mote [PW-6] in his deposition stated being by sticks only. Even for second incident, none of the witnesses namely Shivganan [PW-4], Hirabai Mote [PW-7] and Ravikant [PW-11] referred to axe and knife in their respective depositions. It is submitted that there are material inconsistencies about injuries on the dead body stated in P.M. report and recital in panchanama. Regarding second incident, in injury certificates of all the injured persons, age of injuries are shown to be within 12 hours. Had the incident been occurred at 9.00 to 9.30 a.m. as alleged by prosecution, age of injuries should have been within six hours since injury certificates were issued between 11.55 a.m. to 12.10 p.m. Further in order to support the prosecution story, Dr.Bhalerao [PW-13] in his deposition

stated injuries caused within 12 hours, which is against the certificates issued by him. As such, the evidence of Dr.Bhalerao [PW-13] is not at all trustworthy.

13] In support of contention that if two views are possible, the view which would favour accused, needs to be confirmed. Learned counsel appearing for the respondent-accused placed reliance upon the judgment in the cases of *Bir Singh and others Vs. The State of U.P.*², *State of Haryana Vs. Inderaj and another*³, *State of Goa Vs. Sanjay Thakran and another*⁴ and *A. Shankar Vs. State of Karnataka*⁵.

14] We have given careful consideration to the submissions of the learned APP appearing for the appellant-State, and the learned counsel appearing for the

2 AIR 1978 SC 59

3 AIR 1994 SC 115

4 [2007] 3 SCC 755

5 [2011] 6 SCC 279

respondents. As per the prosecution case, the accused formed unlawful assembly and killed Haridas, and thereafter in another incident in succession assaulted Hirabai [PW-7], Shrikant @ Ravikant [PW-11] and Shivganga Mote [PW-4]. As per the prosecution case, Shrikant [PW-6] accompanied deceased Haridas during morning hours on the date of incident. So far as the incident of killing Haridas is concerned, the prosecution has relied upon the evidence of Shrikant Mote [PW-6], Arun Kale [PW-5] and medical evidence. Other witnesses have not witnessed the said incident. Therefore, the evidence of Shrikant Mote [PW-6], Arun Kale [PW-5] and medical evidence, and other evidence brought on record by the prosecution needs to be re-appreciated.

Shrikant Mote [PW-6] in his evidence stated about his relation with the other prosecution witnesses. He stated name of his

mother Hirabai, name of his sister Shivganga, and name of brother Ravikant, and stated that, all of them are residing jointly in same house. At the time of incident of death of his father Haridas, they were residing in a field, namely, *Motyache Shet*. Narayan-accused no.1 is his cousin uncle. Accused no. 2 Suresh and accused no.3 Ramesh are sons of Narayan [accused no.1]. Gayabai @ Prayagbai [accused no.8] is the wife of Narayan [accused no.1]. Ganpati [acused no.7] and Goroba [accused no.6] are brothers of Gayabai [accused no.8]. Sister of Nana Ingale [accused no.4] is given in marriage to Ramesh [accused no.3]. Shaikh Taher [accused no.5] is the friend of Nana [accused no.4].

15] He further deposed that the land of Narayan Mote is adjacent to their land. At the time of incident, there were Babul trees in their field. There is bandh between their land and land of accused no.1 Narayan.

Accused no.1 always used to come to their field to cut those Babul trees, and Shrikant [PW-6] himself and his father were not allowing accused-Narayan to cut those trees. On that count, there were quarrels between them and accused Narayan. The population of their village namely Chincholi Mali is 12000 to 13000. On the day of incident, in the morning, he [Shrikant Mote-PW-6] and his father were going to return the plough of Rama Ghodke. Near the field of Vithal Ghodke, accused no.1 Narayan restrained them. Narayan gave abuses on the count of Babul trees and asked other accused persons to beat them. All the accused persons came running towards them having sticks in their hand. As they saw accused, they kept the plough on the ground and started running. At a distance of 100 to 150 feet, all the accused persons again restrained them and started beating them. The accused persons

beat his father. He himself and his father started shouting and asked them why they are beating. All the accused persons started beating to his father by means of sticks. Because of the said beating, his father fell on the ground and Ramesh hit a stone on the back side of head of his father. His father became unconscious. He was also beaten by means of sticks by Suresh, Ramesh and Narayan. As nobody came to rescue them even after shouting, he started running. At a distance of about 100 feet Suresh, Ramesh and Narayan restrained him [PW-6], and again started beating him. Suresh gave a blow of an axe of its blunt side on the back side of his head. He was also beaten on his hand, skin and knee. He was also beaten on the back side of waist. He again ran away from that place. He started running towards the cattle shed of Arun Kale, as that was nearest cattle shed. On the way, one boy from Mahar community met

him, and he told that he himself and his father were beaten by Narayan, Suresh, Ramesh and their relatives and inform to his mother, sister and brother, and then he ran towards cattle shed of Arun Kale. He [PW-6] informed to Arun Kale and his father about the incident. Arun Kale carried him in a bullock cart to the Hospital of Chincholi. The Doctor treated him there. After about half an hour, jeep of Keshav Raut came to the Hospital and his father, mother, sister and brother were in the jeep. He was kept in the said jeep. Arun Kale, Sada Kale, Ravindra Galande were also in the said jeep. Then they were carried in the said jeep to Kaij Police Station. Jeep was stopped in front of Police Station. The Police came near the jeep and after seeing them asked to first carry them to the Hospital. Then they went to the Hospital at Kaij and jeep was stopped in front of the Hospital. The Doctor came near the jeep and

after seeing his father, he told that his father is more serious and carry him to Ambajogai Hospital. Then they all came to the Ambajogai Government Hospital. He himself, his father, mother, brother and sister were kept in casualty Department. The Doctor started giving treatment. The Police from the Police Station at Kaij came to the Hospital. The Police started recording his statement. When the work of recording of his statement was going on, his father expired. After recording his statement, it was read over to him, and then he signed on the said statement i.e. FIR Exh.91. Then he was shifted to a separate ward, and his mother and sister were shifted to another ward. He was in the said ward for five days. Because of beating, he sustained fracture injury on his right wrist. On the same day, his supplementary statement was recorded by Kaij Police in the evening. The discharge card in

respect of Shrikant [PW-6] and his mother are filed in the Court. The discharge card shown to him are the same. Those are marked at Exhibits 92 and 93 respectively. His sister and mother were indoor patient for seven days. His brother Bapu was not admitted in the Hospital but after treatment, he was allowed to go to the house. The persons, who beat them, are today present in the Court.

16] During his cross examination, he stated that, he is not aware whether the police had given any letter to refer them to the Hospital. He is not able to remember whether any letter was given by the Doctor at Kaij for going to Ambajogai Hospital. Police enquired with him whether he is in a position to give statement. He denied suggestion that he did not go to the Hospital at Kaij. He stated that the iron plough was held by Shrikant [PW-6] himself and his father. The place where they were beaten; from the said

place at a distance of 10 feet, there is cattle shed of Babbar Mote. However, nobody resides there. On the eastern side of spot of occurrence, there is cattle shed of Chatrabhuj. On the western side of spot of occurrence, at a distance of 500 feet, there is cattle shed of Sohani. He denied suggestion that those persons are residing in the said cattle sheds. One boy of Harijan community met him on Dhor Rasta, and nobody was near the said place when the said boy met him. At a distance of two furlong from the said spot, there was cattle shed of Arun Kale. He denied suggestion that there are other cattle sheds on the way of cattle shed of Arun Kale. On the western side of their cattle shed, at a distance of 200 to 400 feet, there is cattle shed of Vithal. He denied suggestion that he is deposing false that there is path way/road for going to the cattle shed of Arun Kale. He further stated

that Shalan, Sushabai and Bainabai are sisters of his father. Shalan is residing at their house in village, and not in the cattle shed. At the time of incident, Shalan was in the village. He is not able to remember whether the complaint was filed in the Police Station by his father in relation to quarrel between his father and Narayan on account of dispute over Babul trees. Presently, those Babul trees are not standing in their field, as they have cut those trees. When they cut those trees, the accused Narayan did not come to restrain them. Accused, namely, Suresh and Rameshwar are residing for some period at Pune, and for some period at their village. He denied suggestion that on the day of incident, Narayan and Gayabai were not present on the spot. He denied suggestion that Narayan did not restrain and beat him. He further deposed that the Doctor at Rural Hospital Chincholi did not give the treatment

to his father when he went to the said Hospital in Jeep. He denied suggestion that they were treated at 6.00 a.m. in the Rural Hospital at Chincholi. After the alleged incident, they are residing in the house of the Arun Kale on rent. He denied suggestion that Arun Kale asked him to give false complaint. He denied suggestion that there was no quarrel between his father and Narayan on the count of Babul trees.

17] Shrikant Mote [PW-6] was cross examined by the Advocate of accused nos.4 to 8. During his cross examination, he stated that, Massa Khandeshwar is at a distance of 20 to 25 kilo meters from Chincholi. Salegaon is at a distance of 4 to 5 kilo meters from Chincholi. He did not lodge any complaint against the accused persons about the quarrel prior to the said incident. He is not aware whether his father earlier filed complaint against the accused. The boy of Harijan met

him at a distance of 200 to 300 feet from the place of incident/beating. He did not inform to anybody except the said boy about the incident, till he reached at cattle shed of Arun Kale. While giving the statement before the Police, he stated that accused Sk. Taher is friend of accused no.4 Nana. However, he cannot assign any reason why the same is not appearing in his police statement. He further stated before the Police that when all the accused came running towards them with sticks in their hand, they kept the plough on the ground and started running. However, he cannot assign any reason why the same is not appearing in his police statement. He further stated that he did not state before the Police that after keeping the plough on the ground, when they started running at a distance of 100 feet the accused again restrained them. He did not state before the police that he started shouting for help, and

accused persons were beating him by means of sticks. He did not state before the police that he shouted for help, but nobody came to rescue him. He stated before the Police that Suresh beat him by means of axe from blunt edge. However, he cannot assign any reason why the same is not appearing in his statement before the police. He stated before the police that for second time, he again started running. However, he cannot assign any reason why the same is not appearing in his police statement. He did not state before the police that as the cattle shed of Arun Kale was nearest, he ran towards the said cattle shed. He did not state before the Police that he disclosed the incident even to the father of Arun Kale. He did not state before the Police that the Doctor gave injection to him. He denied suggestion that accused nos.4 to 8 did not beat him or any member of his family.

18] It appears that learned APP sought permission to ask some question in re-examination in respect of the *muddemal* property. Accordingly, Shrikant [PW-6] was re-examined and stated that he can identify the sticks and axe by which they were beaten. Article nos.7 to 11 before the Court are axe and sticks. It further appears that he was cross examined by Advocate for accused nos.1 to 3. During his cross examination, he stated that when the police seized those sticks, he was in the Hospital. He did not show those sticks to Arun Kale.

19] We have in detail made reference to the evidence of Shrikant Mote [PW-6] as appearing in the examination in chief and cross examination. Since to prove the prosecution case he is Star Witness, and therefore, it was necessary to refer his evidence in detail, and accordingly, we have made said endeavour herein above. In case we

accept the evidence of Shrikant Mote [PW-6], in that case only the prosecution may have chance of successfully proving its case. However, upon considering the evidence of Shrikant Mote [PW-6] in its entirety, and in particular cross examination, his evidence suffers from substantial omissions, contradictions and becomes untrustworthy.

So far as other witnesses are concerned, while discussing and giving reasons, the reference will be made to the evidence of those witnesses.

20] From the facts of the case and the circumstances brought on record two incidents have taken place at two different spots. First incident regarding assaulting the deceased and his son the informant Shrikant Mote [PW-6] has taken place near the field of Vitthal Ghodke and the second incident of assaulting Shivganga [PW-4],

Hirabai [PW-7] and Ravikant [PW-11] has taken place in the cattle shed of the deceased which is at some distance from the first spot of incident.

21] To prove the first incident the prosecution has relied upon the evidence of the informant Shrikant Mote [PW-6] and Arun Kale [PW-5]. The evidence of Shrikant Mote [PW-6] - informant eye witness as regards the incident is as referred earlier in detail.

22] It has come in the cross-examination of Shrikant Mote [PW-6] that while giving statement/FIR before Police he stated that accused Sk. Taher is friend of accused No.4 Nana, that when all the accused came running towards them with sticks in their hands, they kept the plough on the ground and started running, that accused Suresh beat him by means of axe by blunt edge and that for second time he again started

running. But, he could not assign reason of absence of above facts in his statement/FIR before the Police. So also, he stated that he stated before Police that after keeping plough on the ground when they started running at a distance of 100 feet the accused again restrained them, that he started shouting for help and accused persons were beating him by means of sticks, that he shouted for help but nobody came to rescue him, that as cattle shed of Arun was nearest he ran towards that cattle shed and he disclosed the incident even to the father of Arun Kale [PW-5]. Thus, evidence of Shrikant Mote [PW-6] in respect of above all the facts amounts to omission in his statement/FIR and improvement while deposing before the Court. Out of the said omissions, the omissions that Sk.Taher is friend of accused No.4, that accused Suresh beat him by means of axe from blunt edge and that when all accused came

running towards them with sticks in their hands they kept plough on the ground and started running, are material omissions. Therefore, it is doubtful whether all accused came running towards this witness and his father with sticks in their hands and that accused Suresh beat this witness by means of axe from blunt edge. So also, due to omission that accused No.5 Sk. Taher is friend of accused No.4 the presence of the said accused No.5 at the spot of incident is doubtful.

23] As noted above Shrikant Mote [PW-6] stated that Exh.91 statement was recorded by the Police in the Hospital. Treating the said statement as FIR the investigation was started. As per this FIR case of the prosecution is that accused Narayan, Ramesh and Suresh and their other relatives total 10 to 11 had come to the field having sticks, axes and knives in their hands and accused Narayan asked Shrikant Mote [PW-6] and his

father the deceased as to why they are obstructing them to cut Babul trees in their field and on saying so assaulted him [PW-6] and his father with sticks, axes and knives on their heads, legs, hands back and stomach. As referred earlier the evidence of Shrikant Mote [PW-6] shows that all the accused came running with sticks in their hands and assaulted him [PW-6] and his father. His evidence that accused Suresh beat him by means of axe from blunt edge is omission in the FIR as observed above. While deposing on oath he does not claim that any of the accused assaulted him or his father the deceased either by axe or knife. Thus, Shrikant Mote [PW-6] has not narrated the incident as alleged in the FIR regarding assaulting him and his father the deceased by accused by means of axes and knives. Therefore, his evidence is not consistent with the contents of FIR in respect of manner

of assaulting him and his father by accused by axes and knives. Had it been the case that he and his father would have been assaulted by the accused by the axes and knives as alleged as per the case of the prosecution in the FIR, he would have certainly deposed in accordance with said allegations in the FIR. When he does not state in accordance with said allegations it is doubtful whether the incident of assaulting him and his father with the axes, knives and sticks as alleged in the FIR or with sticks as deposed by him has really taken place.

24] As per the FIR lodged by Shrikant Mote [PW-6] incidents in the case have taken place at about 09.00 to 09.30 am and after the 1st incident Arun Kale [PW-5] had brought Shrikant Mote [PW-6] by his bullock cart at village Chincholi (Mali) and thereafter he fell unconscious. The evidence of defence witness No.1 Medical Officer Chavan [Exh.124]

shows that on 07.11.1994 i.e. on the day of incident he was serving as Medical Officer, Primary Health Centre, Chincholi (Mali), Tq. Kaij, Dist. Beed and on that day Shrikant Mote [PW-6] had come for treatment in the Primary Health Centre. So also, on the same day Haridas Mote (deceased) had come to the Primary Health Centre for treatment. The patients were referred to Ambejogai Hospital for further treatment. He stated that entry about the patients was taken in the Medico Legal Register. He has proved Exhs.129 and 130, copies of Medico Legal Certificates. The Medico Legal Certificate [Exh.129] shows that the Medical Officer Dr. Chavan examined Shrikant Mote (PW-6) on 07.11.1994 at 07.00 am and Exh.130 shows that he had examined Haridas Mote (deceased) on 07.11.1994 at 07.05 am in Primary Health Centre, Chincholi (Mali), Tq. Kaij, Dist. Beed and both the patients were referred to Ambejogai. In the

remarks column of both the Medico Legal Certificates the history of assault is mentioned and as per said history assault by some persons. The said history given in the certificates does not show that the deceased and PW-6 were assaulted by the accused. The above evidence shows that the Medical Officer Dr. Chavan examined PW-6 and his father on the day of incident i.e. on 07.11.1994 at 07.00 am and 07.05 am respectively. When they were examined at 07.00 am and 07.05 am on the day of incident the case of the prosecution that alleged incident of assaulting PW-6 and his father the deceased has taken place at 09.00 am to 09.30 am, is not acceptable, because if the incident of assaulting PW-6 and his father would have taken place at 09.00 am to 09.30 am there was no occasion for Medical Officer Dr. Chavan to examine them at 07.00 am and 07.05 am. Therefore, the evidence of PW-6 does not inspire confidence

that incident of assaulting him and his father had taken place at the time as alleged in the FIR.

25] The motive behind assaulting Shrikant Mote [PW-6], his father, brother, sister and mother as per the prosecution case is that they were obstructing accused to cut the disputed Babul trees and therefore, on that count there was quarrel between accused and family of the above prosecution witnesses. The evidence of Shrikant Mote [PW-6] is that at the time of incident there were Babul trees in their field adjacent to Bandh of their land and land of accused No.1 Narayan. Accused No.1 always used to come to their field to cut those Babul trees and he (PW-6) and his father were not allowing him (accused No.1) to cut those trees. He stated that he did not lodge any complaint against accused persons about quarrel prior to the incident. So also, he stated that he does not

remember whether the complaint was filed in the Police on the count of quarrel between his father and accused Narayan on the count of Babul trees. He stated that those Babul trees are not standing in their field as they have cut those trees. When they have cut those trees accused Narayan did not come to restrain them. The above evidence shows that there was no motive to the accused to assault PW-6 and his father or their family members stated earlier as alleged by the prosecution otherwise Shrikant Mote [PW-6] or his father the deceased would have definitely filed complaint against the accused in respect of quarrel allegedly on account of Babul trees.

26] The evidence of Arun Kale [PW-5] to whom Shrikant Mote [PW-6] has disclosed that he was beaten by accused Narayan, Ramesh, Suresh and Gayabai and guest from Massa and Salegaon, is of hearsay in nature and hence is not admissible.

27] The evidence of Dr. Godbole [PW-12] who conducted the autopsy on the dead body of Haridas Mote shows that he found in all 26 external injuries and same were antemortem injuries. Besides he noticed 4 internal injuries and according to him age of said injuries was within 12 hours. He stated that the injuries found on the dead body can be possible by means of sticks (Article Nos.8 to 11). He stated that cause of death is head injury in the form of subdural and subarchnoid hemorrhage, injury to left lung and multiple fracture. In the cross-examination he stated that he did not see any injury on the dead body caused by knife or axe. This evidence falsifies case of the prosecution that the accused assaulted Shrikant Mote [PW-6], the deceased and their relatives viz. Shivganga [PW-4], Hirabai [PW-7] and Ravikant [PW-11] by axes and knives. However, on the basis of above

medical evidence it can be said that death of deceased was homicidal.

28] As regards the second incident that the accused assaulted Shivganga [PW-4], Hirabai [PW-7] and Ravikant [PW-11] which has allegedly taken place at the cattle shed of the deceased is concerned, to prove the same the prosecution has relied upon the evidence of these witnesses and evidence of Dr. Bhalerao [PW-13]. Now coming to the evidence of injured Shivganga [PW-4] is concerned, she stated that on the day of incident at about 08.00 a.m. her father the deceased and brother Shrikant Mote [PW-6] were going to return plough of Vitthal Ghodke, and she was at cattle shed. She was washing clothes, her mother was cooking and brother Ravikant [PW-11] was sitting. One boy from Harijan community came from cattle shed. The said boy informed that his father (father of witness) and brother were beaten by accused

Narayan, Suresh, Ramesh, Gayabai, Goroba, Ganpati, Nana, Taher and within few moment, those persons came running to them. All those persons started beating her, her mother, namely Hirabai [PW-7] and her brother and asked them whether we were not allowed to cut tree on bandh. They started shouting and by that time Chatrabhuj Shinde and Dnyanoba Gaikwad came to the spot and they rescued them. She stated that accused Ramesh and Narayan beat her on her hand by means of sticks. Because of that, there was fracture to her hand. Prayagbai beat her by means of slap. Narayan, Suresh also beat her on her hand and on leg. She stated that her left hand was fractured because of beating. She stated that she was beaten on her left leg. The assailants ran away. She stated that then jeep of Keshavrao came to the spot where her father was lying. Then they three and her father were carried to Chincholi in the

Hospital in the said jeep. In the cross-examination she stated that except accused Suresh, Ramesh and Narayan and Gayabai nobody beat her. She denied that accused did not beat her, her mother and brother. She has not stated that, she, her mother, namely Hirabai [PW-7] and her brother namely Ravikant [PW-11] were assaulted by the accused by the axe and the knives as alleged in the FIR. Therefore, before accepting or rejecting her evidence that accused Nos. 1 to 3 assaulted her by means of sticks and therefore, she sustained fracture to right hand, medical evidence is to be considered.

29] The evidence of Hirabai [PW-7] another injured who is wife of the deceased is that accused Narayan, Suresh, Ramesh, Nana, Prayagbai @ Gayabai, Taher came to their cattle shed and entered in the shed and started beating her. They dragged her out of the cattle shed. She was beaten on her left

shin, thigh and on the back, by means of sticks. Her daughter was beaten on the left hand, back, shin and left thigh by means of stick. Chatrabhuj and Dnyanoba came to their cattle shed when they were being beaten. She stated that they were shouting. Those persons asked accused not to beat and then accused ran away. She has not stated about injuries suffered by her. So also, she has not stated that, she was assaulted by axe or the knife.

Similarly, the evidence of Ravikant [PW-11] is that eight persons came when he was sitting on the back side of the cattle shed. Accused Ramesh, Suresh, Narayan, Prayagbai, Nana, Taher, Gulba and Ganpat were those persons. Ramesh, Suresh, Narayan and Prayagbai entered in their cattle shed. They brought his mother out of the cattle shed. He stated that his sister was also beaten. Accused Ramesh and Suresh beat him by means of sticks on his leg. They all started

shouting. Chatrabhuj Mali and Dnyanoba Teli came to their cattle shed and rescued them. He has not stated about the injuries suffered by him. So also, he has not stated that he was assaulted by the accused by knife or axe. Thus, the evidence of Shivganga [PW-4], Hirabai [PW-7] and Ravikant [PW-11] is not consistent with the case of the prosecution that these witnesses were assaulted by the accused by axe and knife. Hirabai [PW-7] and Ravikant [PW-11] have also not stated that they suffered grievous hurt by dangerous weapon or means. Chatrabhuj [PW-9], who rescued the above witnesses from the accused, has not supported the prosecution case.

30] The evidence of Dr. Bhalerao [PW-13] who examined Shrikant [PW-6], Shivganga [PW-4], Hirabai [PW-7] and Ravikant [PW-11] on 07.11.1994 and issued injury certificates respectively Exhs.111,112,113 and 114 has stated that he found 7 contusions (Injury

Nos. 1 to 7) and contused lacerated wound (Injury No.8) on the person of Shrikant [PW-6] as mentioned in the certificate Exh. 111, he found two contusions (Injury Nos.1 and 2) and abrasion (Injury No.3) on the person of Shivganga [PW-4] as mentioned in certificate exh.112, he found 3 contusions (Injury Nos.1 to 3) and contused abrasion (injury No.4) as mentioned in certificate Exh.113 on the person of Hirabai [PW-7], and he found 2 abrasions (Injury Nos. 1 and 2) on the person of Ravikant [PW-11] as mentioned in Exh.114. According to him injuries on the person of above all the injured were caused within six hours. Ravikant [PW-11] was examined at 12.00 pm. Thus it appears that Shivganga [PW-4], Shrikant Mote [PW-6] and Hirabai [PW-7] were examined prior to Ravikant [PW-11] on 07.11.1994. In the cross-examination he stated that he did not notice any injury caused by sharp weapons. This

evidence also falsifies case of the prosecution of assaulting deceased and above said prosecution witnesses by the accused by axes and knives. The injury certificate Exh. 111,112,113 and 114 show the age of injuries within twelve hours which is contrary to the evidence of Dr.Bhalerao that injuries noticed on the above witnesses were caused within six hours.

31] Another aspect to be noted is that in the above injury certificates the history of injuries is not mentioned which is generally mentioned by Medical Officer in the Medico Legal cases. Therefore, above medical evidence creates doubt whether above said prosecution witnesses sustained injuries within six hours or within twelve hours of their examination by Dr. Bhalerao [PW-13] so as to conclusively state that the incident alleged by the prosecution had taken place at 09.00 am to 09.30 am on 07.11.1994.

32] For the above reasons the evidence of Shrikant Mote [PW-6] eye witness, Shivganga [PW-4], Hirabai [PW-7] and Ravikant [PW-11] and medical evidence referred to above is not trustworthy and sufficient to state beyond doubt that the accused caused death of deceased and caused grievous hurts to Shivganga [PW-4], Shrikant Mote [PW-6] Hirabai [PW-7] and Ravikant [PW-11] and committed offences with which they were charged as alleged by the prosecution.

33] In the light of discussion in the foregoing paragraphs, in our opinion the trial Court has taken plausible view. The Supreme Court in the case of *State of Haryana Vs. Inderaj and another [supra]* held that if the witnesses are highly interested and there are improvements regarding nature of weapon used by eye witnesses and their evidence not corroborated by medical or circumstantial evidence, it is not safe to convict accused

on the basis of such evidence in appeal against acquittal.

Yet in another authoritative pronouncement in the case of *State of Goa Vs. Sanjay Thakran and another [cited supra]* the Supreme Court held that Appellate Court can review the evidence and interfere with the order of acquittal only if the approach of lower Court is vitiated by some manifest illegality or the decision is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. Mere possibility of two views would not be a ground for Appellate Court to take the view which would upset the decision of the court below.

Yet in another reported judgment in the case of *A. Shankar Vs. State of Karnataka [cited supra]* in para 26 the Supreme Court held thus:

26. It is settled legal proposition that in exceptional circumstances the appellate court under compelling circumstances should reverse the judgment of acquittal of the court below if the findings so recorded by the court below are found to be perverse i.e. the conclusions of the court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case. While dealing so, the appellate court must bear in mind the presumption of innocence of the accused and further that acquittal by the court below bolsters the presumption of his innocence. (Vide *Abrar v. State of U.P.*⁶ and

6 [2011] 2 SCC 750

*Rukia Begum v. State of Karnataka*⁷.)

34] Yet in another authoritative pronouncement in the case of ***Muralidhar alias Gidda and another Vs. State of Karnataka***⁸ the Supreme Court in para 12, held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*, AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*, AIR 1954 SC 637, *Atley Vs. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*, [1970] 2 SCC 450, *Shivaji*

7 [2011] 4 SCC 779

8. 2014 [4] Mh.L.J.[Cri.] 353

Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It.

is not necessary to deal with these cases individually.

Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such

presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of

reasonable doubt when it deals with the merit of the appeal

against acquittal, (iii) Though,

the powers of the appellate Court in considering the appeals

against acquittal are as

extensive as its powers in

appeals against convictions but

the appellate Court is generally

loath in disturbing the finding

of fact recorded by the trial

court. It is so because the

trial Court had an advantage of

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

interference by the appellate Court in the judgment of the trial Court.

[Underlines supplied]

35] In the light of discussion in the foregoing paragraphs, we are of the considered view that, the findings recorded by the trial Court are in consonance with the evidence on record, and there is no perversity as such. The trial Court has taken a plausible view, and therefore, there is no reason for causing interference in the impugned judgment and order, hence the appeal stands dismissed. The bail bonds of the respondents-accused shall stand cancelled.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE