

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO.34 OF 2003**

The State of Maharashtra,
Through MIDC Waluj Police Station,
Tq. & Dist-Aurangabad.

...APPELLANT

VERSUS

- 1) Kailas s/o Jagannath Pradhan,
Age-22 years, Occu:Student,
R/o-Wadgaon (Kolhati),
Tq. & Dist-Aurangabad,
- 2) Dattu s/o Jagannath Pradhan,
Age-26 years, Occu:Agril.,
R/o-As Above,
- 3) Sominath s/o Bhanudas Pradhan,
Age-30 years, Occu:Rickshaw Driver,
R/o-As Above,
- 4) Namdeo s/o Kashinath Pradhan,
Age-20 years, Occu:Student,
R/o-As Above,
- 5) Sanjay s/o- Rukhmanbai Chandan,
Age-25 years, Occu:Labour,
R/o-As Above,
[Appeal abated as against
Respondent No.5 as per Court's
order dated 5th December, 2017]
- 6) Sunil s/o Uttamrao Jadhav,
Age-26 years, Occu:Labour,
R/o-As Above,

- 7) Prabhu s/o Rangnath Sale,
Age-40 years, Occu:Agri.,
R/o-As Above,
- 8) Jagannath s/o Janardhan Pradhan,
Age-85 years, Occu:Agril.,
R/o-As Above.

...RESPONDENTS

...
Mr.S.J. Salgare, A.P.P. for Appellant.
Mr.N.S. Ghanekar Advocate for Respondent
Nos. 1 to 4 and 6 to 8.
Appeal abated as against Respondent No.5 as
per Court's order dated 5th December, 2017
...

WITH**CRIMINAL REVISION APPLICATION NO.366 OF 2002**

Nivrutti s/o Laxuman Sale,
Age-23 years, Occu:Agriculture,
R/o-Kolathi Wadgaon,
Tq. & Dist-Aurangabad.

...APPLICANT**VERSUS**

- 1) The State of Maharashtra,
(Through the MIDC Waluj Police Station,
Waluj, Tq. & Dist-Aurangabad.
- 2) Kailas s/o Jagannath Pradhan,
Age-22 years, Occu:Student,
R/o-Wadgaon (Kolhati),
Tq. & Dist-Aurangabad,

- 3) Dattu s/o Jagannath Pradhan,
Age-26 years, Occu:Agril.,
R/o-As Above,
- 4) Sominath s/o Bhanudas Pradhan,
Age-30 years, Occu:Rickshaw Driver,
R/o-As Above,
- 5) Namdeo s/o Kashinath Pradhan,
Age-20 years, Occu:Student,
R/o-As Above,
- 6) Sanjay s/o- Rukhmanbai Chandan,
Age-25 years, Occu:Labour,
R/o-As Above,
[Appeal abated as against
Respondent No.6 as per Court's
order dated 5th December, 2017]
- 7) Sunil s/o Uttamrao Jadhav,
Age-26 years, Occu:Labour,
R/o-As Above,
- 8) Prabhu s/o Rangnath Sale,
Age-40 years, Occu:Agri.,
R/o-As Above,
- 9) Jagannath s/o Janardhan Pradhan,
Age-85 years, Occu:Agril.,
R/o-As Above.

...RESPONDENTS

...

Mr.M.R. Andhale Advocate for Applicant.
Mr.S.J. Salgare, A.P.P. for Respondent No.1.
Mr.N.S. Ghanekar Advocate for Respondent
Nos. 2 to 5 and 7 to 9.
Appeal abated as against Respondent No.6 as
per Court's order dated 5th December, 2017

...

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

DATE OF RESERVING JUDGMENT : 1ST MARCH, 2018.

DATE OF PRONOUNCING JUDGMENT: 15TH MARCH, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Both, Criminal Appeal No.34 of 2003 and Criminal Revision Application No.366 of 2002 are directed against the Judgment and order dated 26th September, 2002, passed by the III Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No.215 of 2001, thereby acquitting all the accused from the offences punishable under Sections 147, 148, 302, 307 read with 149 of the Indian Penal Code (for short "I.P. Code"). Criminal Appeal is filed by the State and Criminal Revision Application is filed by the original complainant challenging the acquittal of the accused, hence the same are heard together and being disposed of by this common Judgment and

order.

2. The prosecution case, in brief, is as under:-

A) On 28th April, 2001, at about 21.00 hours, complainant Nivrutti was standing along with his cousin Eknath Sale, when another cousin Kalyan Sale also came there, and he was passing towards the shop of one Anil Choradiya, when the members of "Rashtravadi Congress", namely, Kailas Jagannath Pradhan, Sominath Pradhan, Namdeo Pradhan, Dattu Pradhan, Arun Jadhav, Sunil Jadhav, Sanjay Chanden, assembled there and started abusing Kalyan. An accused Kailas Pradhan with his knife gave one after another blows to Kalyan, rest of the accused made him to fell down and then gave blows with sticks, fists and kicks. Kalyan started shouting loudly, the complainant and Eknath went at spot immediately, when Dattu Pradhan held Eknath Sale and gave knife blows in the stomach of

Eknath, as well gave kicks and fist blows to the complainant Nivrutti. They shouted for help, when Parmeshwar Sale, Sanjay Vahul, Tripathi and other villagers came running, and seeing them assailants sat on motorcycle and ran away. In the street light and the lights available nearby outside the houses, the incident was witnessed by the complainant. Initially Kalyan and Eknath were taken to Neha Hospital, Pandharpur, and thereafter they were taken to Ghati Hospital, but while under medical treatment, Kalyan died and Eknath was given medical treatment. It is further the case of the prosecution that Kalyan (deceased) in last three successive Grampanchayat Elections was declared elected as a member. He was active member of the "Shiv Sena" party, whereas the accused belong to "Rashtravadi Congress". Out of political rivalry as well as due to earlier quarrels, the accused murdered Kalyan and attempted to murder Eknath. On the basis of said complaint, crime was registered being Crime No.66 of 2001, under

Section 302, 307, 143, 147, 148, 149, 504, 323 of I.P. Code and 135 of the Bombay Police Act.

B) One P.I. Abdulla Quadri, investigated the crime, through PSI Kute. The inquest panchnama of the dead body of Kalyan was drawn in the Ghati Hospital. On 29th April, 2001, investigating officer drew spot panchnama from where he had collected blood stained soil from the spot, and a pair of "Chappal". Some of the accused were arrested on 2nd May, 2001 from near Daulatabad Fort, and accused Namdeo was arrested in the evening on the same day. On 3rd May, 2001, at the instance of accused Kailas, a knife was recovered. On 5th May, 2001, at the instance of accused Datta, one more knife was recovered. On 6th and 7th May, 2001, the investigating officer had attached the clothes of accused - Kailas and Dattu respectively, At the instance of accused - Sanjay a stick was attached, so also one another stick at the instance of accused Sominath was attached.

Accused Sunil was arrested on 9th May, 2001. On 10th May, 2001, the investigating officer had collected blood sample of injured Eknath, and on very day he sent the Muddemal to Chemical Analyser. On 13th May, 2001, accused Prabhu Sale was arrested. At the instance of accused Sunil, cycle-chain was attached. Formal arrest of Accused- Jagannath was shown on 27th May, 2001.

C) After completing the investigation, on 26th July, 2001, charge-sheet was submitted. By order dated 6th September, 2001 learned Judicial Magistrate First Class, Aurangabad committed the case to the Court of Sessions, for trial.

D) A charge was framed against all the accused persons and the same was read over, and explained to them. The accused persons pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. It was submitted by them that they have been implicated in a false

case.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted all the accused persons from the offences with which they were charged, as stated herein above in Para -1 of the Judgment. Hence this Appeal and Revision Application.

4. Learned A.P.P. appearing for the State invites our attention to the oral evidence of three eye witnesses, namely PW-1 Nivrutti, who is complainant, PW-2 Eknath, who is injured eye witness and PW-3 Dnyaneshwar, and submits that if their evidence is read in its entirety, then it unequivocally indicates that all the accused have formed unlawful assembly and committed murder of Kalyan and attempted to commit murder of Eknath. Learned A.P.P. further argued that though there are some contradictions, omissions and improvements in the evidence of prosecution

witnesses, those are in respect of the role attributed to accused Nos.3 to 8 only, but so far as accused Nos.1 and 2 are concerned, all the three eye witnesses have specifically deposed that, accused No.1 Kailas took out knife and gave successive blows on the person of Kalyan, and accused No.2 Dattu gave a knife blow in the stomach of Eknath. He further submits that if there are minor discrepancies in the oral evidence on trivial matters, however not touching to the core of the prosecution case, on that count it would not be appropriate to reject the entire evidence. In support of his submission, learned A.P.P. placed reliance upon the exposition of law in the case of Mritunjoy Biswas vs. Pranab @ Kuti Biswas and another¹. In support of his submissions, learned A.P.P. also placed reliance upon the exposition of law in the case of Mani @ Udattu Man and others vs. State Represented by Inspector of Police² and also Vithal Pundalik Zendge vs. state

1 2013 (12) SCC 796

2 2009(12) SCC 288

of Maharashtra³. He further invites our attention to the evidence of other witnesses and submits that the prosecution has brought on record sufficient evidence to establish that the accused were responsible for the death of Kalyan and causing serious injuries to Eknath. He, therefore submits that the Appeal may be allowed.

5. On the other hand, learned counsel appearing for Respondents-accused, relying upon the findings recorded by the trial Court, submits that plausible view has been taken by the trial Court. He points out various contradictions, omissions and improvements in the oral evidence of the prosecution witnesses, by inviting our attention to chart of which copy is placed on the record in the tabular form, and submits that their evidence is not at all reliable and trustworthy. He further submits that seizure of weapons at the instance of accused was from the places which were

3 2008(17) SCC 239

accessible to all and therefore reliance cannot be placed on seizure panchnamas. He further submits that there was no proper sealing of the Muddemal articles and weapons which were alleged to have been recovered at the instance of accused, when the same were sent to chemical analyzer. He therefore submits that possibility of tampering with those articles cannot be ruled out. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Kailash Raghunath Ambekar and another vs. State of Maharashtra⁴. Learned counsel, in support of his submissions, also placed reliance upon the expositions of law in the case of Tulshiram Bhanudas Kambale and others vs. the State of Maharashtra⁵. Therefore, learned counsel submits that since the plausible view is taken by the trial Court, this Court may not cause interference in the order of acquittal.

4 2004 ALL MR (Cri) 3257

5 1999 ALL MR(Cri) 1593

6. Learned counsel appearing for the Revision Applicant in addition to adopting the arguments advanced by the learned A.P.P., further submitted that the findings recorded by the trial Court are not in consonance with the evidence brought on record. It is submitted that Revision Applicant, who is complainant, himself has witnessed the incident, and he was also beaten by the accused persons by fist and kick blows and the evidence of all the witnesses is not properly appreciated by the trial Court. He further submits that, presence of injured eye witness PW-2 Eknath, at the place of incident is clearly established. He further submits that merely because there are some minor contradictions, the evidence of trustworthy eye witnesses cannot be discarded. In support of his aforesaid submissions, learned counsel placed reliance upon the exposition of law in the case of Sanjay Khanderao Wadane vs. State of Maharashtra⁶. He, therefore, prays that the

6 2017 ALL SCR (Cri) 1644

Revision Application may be allowed.

7. Heard learned A.P.P. appearing for the State, learned counsel appearing for the Respondents- accused and learned counsel appearing for Revision Applicant at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

8. It is pertinent to note that Appeal against accused No.5 - Sanjay Rukhmanbai Chandan is already abated. Thus we have to consider the case, so far as it relates to accused Nos.1 to 4 and 6 to 8. First we will consider the evidence of eye witnesses i.e. PW-1, PW-2 and PW-3. PW-1 Nivrutti s/o Laxman Sale, who is complainant in this case, has deposed that Kalyan Sale was his cousin, so also Eknath Sale is his cousin. Kalyan

was doing agriculture work and was worker of Shiv-Sena. At the relevant time Kalyan was member of Gram Panchayat. He knows all the accused who are workers of "Rashtrawadi Congress". Since Gram Panchayat election, the relations between accused and Kalyan, Eknath were strained. Regarding the incident, PW-1 Nivrutti deposed that on 28th April, 2001 the incident had occurred at Wadgaon Kolhati, near Suyog Plotting Center Board and time was 9.00 p.m. He was standing on the road in front of Suyog Board. Kalyan and Eknath were coming on motorcycle, he called them, they stopped the motorcycle and witness started talking with Eknath. He further deposed that 7 accused - Kailas, Dattu, Namdeo, Sominath, Sanjay Chandan, Arun Jadhav, Sunil Jadhav came there and started abusing Kalyan. Kailas took out a knife available with him and started giving blows on the person of Kalyan, one after another in succession. Kalyan started shouting. He further deposed that rest of the accused made him to fell down on face. He

further deposed that, then Dattu came running and gave knife blow in the stomach of Eknath. Rest of the accused started giving fist and kick blows. Then there was shouting. The villagers came running and the accused left the place on 2-3 motorcycles. He further deposed that injured were carried to the Ghati hospital where doctor told that Kalyan had expired and Eknath was admitted and treated in the hospital for 4-5 days and thereafter he was shifted to Dhoot Hospital.

. During the course of cross-examination, PW-1 Nivrutti was asked about his various relatives and their relations with witness and Kalyan. Thereafter he was asked about the details regarding the houses of Kalyan and Eknath. PW-1 Nivrutti further stated that he had come on foot at the spot of incident. There is only one road to approach the said road from village to Shivaji Chowk. He further stated that one has to come to Suyog Board only through Shivaji Chowk road from

the village. The witness then asked about the minute details regarding the road where incident took place. He further stated that, he was going to his land at the relevant time. His land is to the North of the Board. He again said that, he was not standing but passing through the said place since his land is abutting the land of Kalyan. This witness was further cross-examined regarding the details of the spot of incident. He further stated that, Kalyan and Eknath had come from the South side of Shivaji Chowk. He had not stated precisely in the complaint that while he was standing, Kalyan and Eknath had come on motorcycle. PW-1 was further extensively cross-examined.

9. Thus from the perusal of oral evidence of PW-1 Nivrutti, he has specifically stated that accused Kailas started abusing Kalyan, then he took out a knife which was with him, and started giving successive blows on the person of Kalyan. He

further deposed that, thereafter accused Dattu came on the spot and gave a knife blow in the stomach of Eknath. It is true that about the role attributed to accused Nos.3 to 8, this witness has made general statements and no specific role is attributed to any one of the accused from amongst accused Nos.3 to 8. About accused Nos.3 to 8, PW-1 Nivrutti deposed that, rest of the accused made deceased Kalyan to fell down on the ground. PW-1 Nivrutti further deposed that during the incident rest of the accused started giving him fist and kick blows. Thus except accused No.1 Kailas and accused No.2 Dattu, PW-1 Nivrutti has neither attributed any specific role to the rest of the accused nor stated that they were possessing any weapons. It is pertinent to note that, regarding the role attributed to accused No.1 Kailas and accused No.2 Dattu, the evidence of PW-1 Nivrutti is not at all shattered in the cross-examination.

10. PW-2 Eknath s/o Tukaram Sale is an

injured eye-witness. He deposed that on 28th April, 2001 at about 9.00 p.m. near Suyog Plotting Center Board at Wadgaon Kolhati, the incident had occurred. He himself and Kalyan were going to the field on the motorcycle and came from Shivaji Chowk. Near Suyog Plotting Center Board, initially seven persons came and then two more. Those seven were Kailas, Dattu, Namdeo, Sominath, Sanjay, Arun Jadhav and thereafter Prabhu Sale and Jagannath arrived at the spot of offence. All the above said persons started abusing the witnesses and deceased Kalyan. Immediately accused Kailas took out knife and gave blows after blows to Kalyan. Immediately, accused Dattu also took out a knife and gave blow on his stomach (PW-2 Eknath). Then rest of the accused with fist and kick blows, assaulted them. Nivrutti (PW-1) had come to rescue, and he was given fist and kick blows. Hearing their shouts, persons from the village started coming there, seeing them all the accused ran away. He further deposed that, he was admitted in Ghati

Hospital for five days, and from Ghati Hospital he was shifted to Dhoot Hospital, where he was operated.

. During the course of cross-examination by the Advocate for accused No.1, PW-2 Eknath stated that Kalyan had come to his house at 8.30 p.m. to take him towards the land. They had not stopped anywhere since they started to go to the land till the time of incident. The road from Shivaji Chowk to the land of Kalyan passes North-South. They were going towards North on the said road. His house is near the house of Kalyan. Their houses are to the East of the village near the temple. He further stated that the distance between Shivaji Chowk and Suyog Board is 5 to 6 *Kasara*. One *Kasara* measures 7 to 8 hands. While passing by the said road, Suyog Board falls to the left side. The incident occurred in front of the Board and not to its North and South. He was unable to state whether it was 11.00 p.m. when they reached Ghati

Hospital. Police had recorded his statement when he was in Dhoot Hospital. He was unable to tell, how many days after admitting in Dhoot Hospital, police had recorded his statement. He was unable to give description of the clothes on the persons of the assailants.

. During the course of cross-examination by the Advocate for accused Nos.4 to 7, PW-2 Eknath stated that, they both had got down from the motorcycle, when accused were abusing the prosecution witnesses. He further stated that, he does not know, whether he had stated before the police that after running away of Prabhu and Jagannath, Nivrutti and Vishnu came. He was unable to state why it has come so in the statement recorded by police. He had stated before the police that all the accused had given fist and kick blows to them. He was unable to give the reason why it is missing in the police statement. He had not stated to the doctor that at 7.00 p.m.

he was attacked with knife.

. During the course of cross-examination by the Advocate for accused Nos.2, 3 and 8, he admitted that he had stated before the police that on that day via Shivaji Chowk he himself and Kalyan, on motorcycle were going to land to stay at night there itself. He is unable to give the reason, why it is missing in the statement given by him to the police. He was unable to tell, whether the shop of Anil Chordiya was open or closed. He was further extensively cross-examined, however nothing useful to the accused Nos.1 and 2 was elicited from the said cross-examination.

11. Thus after careful perusal of the evidence of PW-2 Eknath, he has stated that on 28th April, 2001 at 9.00 p.m. near Suyog Plotting Center Board at Wadgaon Kolhati, the incident took place. He specifically stated that, during the incident, accused No.1 Kailas pulled out a knife

and gave blows after blows to Kalyan. He further specifically stated that, immediately accused No.2 Dattu also took out knife and gave one blow on stomach of Eknath.

12. PW-3 Dnyaneshwar s/o Dagdu Sale in his examination-in-chief, deposed that Kalyan was his brother. He knows all the accused. On 28th April, 2001 at 9.00 p.m. the incident had occurred. It was near the Board of Suyog Plotting Center. He was standing in Shivaji Square. He heard chaos from Suyog Board and went there. Kalyan, Eknath, Nivrutti, Dattu Pradhan, Kailas Pradhan, Sominath, Namdeo, Sanjay, Sunil, Arun Jadhav, Prabhu, Jagannath, were there. Eknath and Kalyan were given fist and kick blows by all the accused. Then Kailas pulled out the knife and gave blows to Kalyan. Dattu gave knife blow on the stomach of Eknath. Then accused also gave kick and fist blows to Kalyan though he was lying down.

. During the course of cross-examination of PW-3 Dnyaneshwar he was asked, whether a rape case was filed against him. He was further asked, what happened in the hospital as well as police station after the incident. He was further asked about the details regarding the Gram Panchayat election. He denied the suggestion that, he knows nothing about the incident and in his presence no incident had occurred. He has denied the suggestion that, at the say of Eknath and police, he is deposing falsely. He further stated that, he does not recollect, whether he had stated before police that Nivrutti was there, when he reached on the spot. He was unable to assign any reason, why the same is missing in his police statement. He further stated that, it did not occur when he reached there, beating with sticks, Lathi, chain, fighter was going on. He did not recollect whether he had stated so before the police. He was unable to give reason why police recorded so. For about five minutes Kalyan was in standing position after

he reached on the spot. During this period he tried to rescue Kalyan. He had scuffle with the accused. He made no attempt to snatch anything from the hands of any of the accused. This witness was further extensively cross-examined. We have carefully perused the entire cross-examination of this witness. In respect of attack by accused No.1 Kailas and accused No.2 Dattu by using knives, the evidence of PW-3 Dnyaneshwar is trustworthy, cogent and consistent with the prosecution case , and the same is not at all shattered in the cross-examination.

13. Thus, we have carefully perused oral evidence of all the above three eye witnesses, i.e. PW-1 Nivrutti, injured eye witness PW-2 Eknath and PW-3 Dnyaneshwar. The evidence of all these three eye witnesses unequivocally, unambiguously consistent with the prosecution case that, during the scuffle, accused No.1 Kailas took out a knife and gave successive blows on the

person of Kalyan, and accused No.2 Dattu took out a knife and given a blow in the stomach of PW-2 Eknath. Though the prosecution has brought on record some contradictions and omissions regarding the spot of incident, surrounding area, the nearby roads, the persons residing in the vicinity, the said contradictions and omissions are of a minor nature and do not affect core/substratum of the prosecution case and therefore the same can be ignored. The Supreme Court in the case of Sanjay Khanderao Wadane vs. State of Maharashtra, cited supra, in Para 14 of the Judgment held thus:

"14. In this view of the matter, the evidence of PWs 5, 8 and 12 are found to be trustworthy and fully corroborated with each other on the point of alleged incident with regard to the involvement of the appellants herein. Further, the evidence fully corroborates with the medical evidence given by the Doctor who conducted the post mortem of the deceased. Even the injuries sustained by PW-8 while rescuing the deceased from the clutches of

the accused persons have been examined and proved by Dr. Kundalick (PW-11) who found them to be of grievous nature. We are of the view that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, if any, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. However, the prosecution failed to examine Devidas Magar and Shridhar Salve who said to have rescued the deceased."

Underlines are added.

14. Regarding all other accused persons, these witnesses have made general statement that, rest of the accused gave fist and kick blows, and no specific role is attributed to any one from the rest of the accused. Thus, except accused No.1 Kailas and accused No.2 Dattu, all the three eye witnesses have neither attributed any specific role to accused Nos.3 to 8 nor stated that, they were possessing any weapons.

15. PW-4 Vijaykumar s/o Mannulal Jaiswal is a

panch to the spot panchnama. PW-5 Vithal s/o Jairam Mhaske is the panch to the seizure panchnama of clothes of accused No.1 Kailas. PW-6 Sanjay s/o Laxman Wahule is a panch to the recovery panchnama of knife at the instance of accused No.2. PW-6 Sanjay deposed that accused No.2 Dattu told that from his house he would produce a knife. Accordingly, at the instance of accused No.2 Dattu, along with the police party, PW-6 Vijaykumar went to the house of Dattu and Dattu took out a knife kept over the show-case in the sitting room. PW-7 Gajanan s/o Mahruba Khatkar is the panch to recovery panchnama of a knife at the instance of accused No.1 Kailas. PW-7 Gajanan deposed that at the instance of accused No.1 Kailas a knife was recovered which was kept on the tin-sheets of the house of accused Kailas. PW-8 Vikas s/o Ratanlal Jain is a panch to inquest panchnama of dead body of Kalyan Sale. PW-9 Sanjay s/o Ramnath Rane is also a panch witness to the seizure panchnama of clothes of deceased Kalyan.

PW-9 Sanjay deposed that in his presence the clothes which were on the person of deceased Kalyan were packed in paper vide Panchnama Exhibit 62.

16. PW-10 Vijay Dattarao Borgaonkar is a medical officer. He deposed that he is attached to Seth Nandlal Dhoot Hospital in the capacity of surgeon and medical director. He further deposed that on 3rd May, 2001 at about 7.00 p.m. patient Eknath Tukaram Sale (injured eye witness PW-2) was examined by him and he prepared the case-papers. The patient had given history of stab on stomach on Saturday. The patient had also given history that he was admitted in Government Medical Hospital, Aurangabad and was operated there. The general condition of patient was very poor, the patient was toxic. The patient was sent to Dhoot Hospital as he was needed second operation immediately. He further deposed that after completing the examination the patient was taken

for operation at 10.30 p.m. The patient was operated by the witness himself. Operation details have been provided in the case papers. Operation was re-exploration, peritoreal toilet, mound debridement. There was pus formation in the abdomen and so second operation was immediately needed to be carried out. After treatment the patient was discharged on on 15th May, 2001. During the course of cross-examination, PW-10 Vijay stated that the operation was successful. By next day of operation the patient was in a position to talk, after anesthesia effect was over. The recovery was steady and progressive.

17. PW-11 Dr. Sureshchandra s/o Gambhirrao Chavan deposed that, he was serving as Medical Officer in Government Medical College, Aurangabad. On 28th April, 2001 he was working as Casualty Medical Officer from 8.00 p.m. to 8.00 a.m. He had examined Eknath Tukaram Sale, brought by one Nivrutti. The history was given of assault on 28th

April, 2001 at 8.00 p.m. He further deposed that he found following injuries on the person of patient Eknath:

"Incised wound on right side of abdomen 1.5 c.m., depth unknown, the age was within six hours, caused by hard and cutting object, the nature was grievous."

. PW-11 Dr. Sureshchandra further deposed that the said injury caused to patient Eknath, was sufficient in ordinary course to cause death.

. PW-11 Dr. Sureshchandra further deposed that one Kalyan Dagdu Sale was also examined by him on that day. There was history of assault. The patient was unconscious and serious. The medical officer noticed following injuries on the person of patient Kalyan:

"1. Incised wound, over left side of chest 1.5 cm. to unknown deep,

2. Incised wound over left side of chest below injury No.1, 1 cm. X unknown deep,

3. Incised wound over the right side of abdomen, 2 X 1 cm. X unknown deep."

. PW-11 Dr. Sureshchandra further deposed that the age of injuries was within six hours, caused by hard and cutting object, nature was grievous. The patient i.e. Kalyan, expired in Casualty and sent for postmortem examination. We have also perused the cross-examination of PW-11 Dr. Sureshchandra.

18. Thus on conjoint reading of the evidence of PW-10 Dr. Vijay and PW-11 Dr. Sureshchandra, it is clear that, PW-2 Eknath has received grievous injury to his abdomen. Due to said injury caused to Eknath, two operations were carried out, one in Government Hospital and another in Dhoot Hospital. The injury caused to Eknath, In ordinary course, was sufficient to cause death. Regarding Kalyan

Dagdu Sale, PW-11 Dr. Sureshchandra deposed that, injuries caused to Kalyan were by hard and cutting object. The injuries were of grievous nature and due to the said injuries Kalyan expired in Casualty Ward.

19. PW-12 Dr. Shrikrishnarao s/o Ramchandra Bhalchandra is the medical officer who conducted autopsy on the dead body of Kalyan Dagdu Sale. He deposed that cause of death is, "shock due to multiple stab injuries". Total external injuries were 8 in number and were ante-mortem. The description of the injuries has been given in detail in Postmortem notes. All the injuries were possible by stab with knife, because those were caused by sharp edged weapon. He further deposed that in Column No.20 of the Postmortem notes, the internal injuries have been shown. He further deposed that the injuries shown in Column No.17 are possible by knives except injury No.8, which is possible by hard and blunt object. He further

deposed that injury Nos.1 to 7 in ordinary course, are sufficient to cause death. We have also perused the cross-examination of this witness.

20. Upon careful perusal of the evidence of PW-12 Dr. Shrikrishnarao, he unequivocally stated that cause of death of Kalyan was shock due to multiple stab injuries. He specifically stated that except injury No.8, all the injuries shown in column No.17 of the postmortem notes were possible by knife. He further contended that injury Nos.1 to 7 caused to Kalyan, in ordinary course, were sufficient to cause death.

21. PW-13 Dr. Manish s/o Rameshwar Malani deposed that he was serving as Lecturer in Surgery Department in Government Medical College, Aurangabad. He further deposed that on 28th April, 2001 at 9.45 p.m. Eknath Tukaram Sale was admitted in Surgery Ward. It was found that there was stab injury in right area fossa i.e. in right

side of abdomen. They took decision of operation and patient was shifted to Operation Theater. The patient was operated. It was found during the operation that there was injury to ceacum. He further deposed that the said injury was sufficient in ordinary course of nature to cause death. We have also perused the cross-examination of PW-13 Dr. Manish, however nothing contrary to prosecution case was brought on record. Thus, prosecution has brought on record sufficient medical evidence, which clearly corroborates to the oral evidence of the eye witnesses and other witnesses.

22. PW-14 Syed Abdulla s/o Abdul Rahman Quadri is the investigating officer. He deposed about the manner in which he has carried out the investigation.

23. We have carefully perused the entire evidence brought on record by the prosecution. We

are of the opinion that the evidence regarding unlawful assembly is very weak and not sufficient for holding the accused persons guilty of the offences punishable under Sections 143, 147, 148, 149 of the I.P. Code.

23. As observed earlier, Appeal as against accused No.5 is already abated. After perusal of entire notes of evidence we find that regarding the involvement and role attributed to accused Nos.3, 4 and 6 to 8, the prosecution witnesses have made general allegations against them. As observed earlier, no specific role is attributed to any one from accused Nos.3, 4 and 6 to 8. Thus, except accused No.1 Kailas and accused No.2 Dattu, three eye witnesses have also neither attributed any specific role to accused Nos.3 to 8 nor stated that they were possessing any weapons. There is variance in the oral testimony of the prosecution witnesses, and the prosecution has not proved beyond reasonable doubt about

actual involvement of accused Nos.3 to 8 in the actual incident. We have carefully perused the findings recorded by the trial Court. So far as it relates to acquittal of accused Nos.3 to 8 are concerned, we are in agreement with the findings recorded by the trial Court.

24. After considering the entire notes of evidence, in particular, oral evidence of three eye witnesses including injured eye witness PW-2 Eknath and the medical evidence brought on record by the prosecution, we are of the considered opinion that, prosecution has proved, beyond reasonable doubt, that accused No.1 Kailas committed murder of Kalyan and accused No.2 Dattu attempted to murder PW-2 Eknath. Though accused No.2 Dattu gave only one blow of the knife, the same was on vital part of the body i.e. stomach of PW-2 Ekanth with an intention to commit murder. Hence so far as accused No.1 Kailas and accused No.2 Dattu are concerned, we are not at all in

agreement with the findings recorded by the trial Court. In respect of them only possible view was their conviction and another view was not possible at all, keeping in view the evidence of three eye witnesses and medical evidence.

25. For the reasons recorded, herein above, we pass the following order:

O R D E R

(I) Criminal Appeal No.34 of 2003 is partly allowed.

(II) The impugned Judgment and order dated 26th September, 2002, passed by the III Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No.215 of 2001, so far as acquitting accused No.3 Sominath s/o Bhanudas Pradhan, accused No.4 - Namdeo s/o Kashinath Pradhan, accused No.6 - Sunil s/o Uttamrao Jadhav, accused No.7 Prabhu s/o Rangnath Sale and accused No.8 - Jagannath s/o Janardhan Pradhan,

from the offences punishable under Sections 147, 148, 302, 307 read with 149 of the Indian Penal Code is hereby confirmed. So also, acquittal of Accused No.1 - Kailas s/o Jagannath Pradhan and accused No.2 - Dattu s/o Jagannath Pradhan of the offences punishable under Sections 147, 148 of the Indian Penal Code is confirmed.

(III) The impugned Judgment and order dated 26th September, 2002, passed by the III Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No.215 of 2001, thereby acquitting accused No.1 Kailas s/o Jagannath Pradhan from the offence punishable under Sections 302 of the Indian Penal Code is quashed and set aside. Accused No.1 - Kailas s/o Jagannath Pradhan is convicted for the offence punishable under Section 302 of the Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay fine of Rs.5000/-, and in default to suffer rigorous imprisonment for three months.

(IV) The impugned Judgment and order dated 26th September, 2002, passed by the III Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No.215 of 2001, thereby acquitting accused No.2 - Dattu s/o Jagannath Pradhan from the offence punishable under Sections 307 of the Indian Penal Code is set aside. Accused No.2 - Dattu s/o Jagannath Pradhan is convicted for the offence punishable under Section 307 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.3000/-, and in default to suffer rigorous imprisonment for two months.

(V) Accused No.1 - Kailas s/o Jagannath Pradhan and accused No.2 - Dattu s/o Jagannath Pradhan shall forthwith surrender before the trial Court to undergo the remaining sentence.

(VI) Accused No.1 - Kailas s/o Jagannath Pradhan and accused No.2 -

Dattu s/o Jagannath Pradhan shall be given set-off vide Section 428 of the Criminal Procedure Code.

(VII) In view of order passed in Criminal Appeal, Criminal Revision Application No.366 of 2002 also stands disposed of.

[S.M. GAVHANE, J.]

asb/MAR18

[S.S. SHINDE, J.]