

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 342 OF 2013

1. Gajendra s/o. Kishan Dhage,
Age 40 years, Occu. Labour,
R/o. Ridhora, Tq. Basmath,
Dist. Parbhani.
2. Hari @ Nana Kishan Dhage,
Age 55 years, Occu. Labour,
R/o. Ridhora, Tq. Basmath,
Dist. Parbhani.

(Presently they are in jail)

....Appellants.

Versus

The State of Maharashtra

....Respondent.

Mr. S.P. Brahme, Advocate for appellants (Appointed).

Mr. V.S. Badakh, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

Reserved on : 15/12/2017

Pronounced on : 11/01/2018

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of Sessions Trial No. 113/2010, which was pending in the Court of learned Additional Sessions Judge, Parbhani. The appellants are convicted for the offences punishable under sections 302, 324 r/w. 149 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and also for the offence punishable under section 148 of IPC. The sentence of imprisonment for life is given and fine is also imposed on the

appellants. Heard both the sides.

2) In short, the facts leading to the institution of present proceeding, can be stated as follows :-

The incident took place at Dhangar Takali, Tahsil Purna, District Parbhani. Deceased Gyanoji was real brother of Uttam Dhage, who gave report about the incident. Other deceased Sanjay was son of Ganesh and Ganesh is also real brother of Uttam.

3) The first informant and his brothers have ancestral agricultural land at village Ridhora, admeasuring 11 Acres. Adjacent to this land, there is land of Kishan Dhage and others who are uncles of first informant. Kishan Dhage and his sons were using the land of first informant as a way and due to that, there was dispute between the two sides. There were quarrels and the dispute was going on for about 10 years. Both the sides had given reports against each others due to the dispute and the litigation was also pending in respect of that dispute.

4) Due to harassment, which the first informant and his brothers were suffering from Kishan and his sons, they left Ridhora and they shifted to Dhangar Takali situated at the distance of 15 k.m. from Ridhora. At Dhangar Takali also, there were relatives of Kishan

Dhage like Kerba, Limbaji and they started quarreling with first informant and his brothers, who had started living at Dhangar Takali. Due to the dispute, accused Kerba, Uttam, Limbaji who were living at Dhangar Takali, started saying that they would not allow the first informant and his brothers to stay at Dhangar Takali also.

5) The incident in question took place on the night between 9.7.2002 and 10.7.2002. The first informant was sleeping in front of his hut from Dhangar Takali with his family. Deceased Gyanoji was sleeping in front of his hut. Sanjay and Sidharth, sons of Ganesh were also sleeping in front of hut of Gyanoji as they were living with Gyanoji. At some distance from the hut of Gyanoji, there is hut of Latabai, daughter of Gyanoji and she was also sleeping outside of the hut. It was summer and most of the persons were sleeping in front of their respective huts.

6) At about 2.00 a.m. of 10.7.2002 the first informant woke up as he felt that he was being assaulted. He noticed that in all nine persons including the present appellants had come to them with sticks, iron pipes and knife and they had started assaulting all the persons from the side of first informant, who were sleeping in front of their respective huts. Present appellant Gajendra assaulted the first informant by using iron pipe. Gajendra assaulted Latabai also. Then

they turned towards Sanjay and they assaulted Sanjay with sticks and iron pipes and also by using knife and ultimately they threw a stone on Sanjay. They assaulted Gyanoji also and when they confirmed that both Gyanoji and Sanjay were dead, they left the place. Appellant No. 2 Hari alias Nana was present in aforesaid nine persons and he also used iron pipe for assaulting the injured witnesses and the two deceased persons. Both the appellants are sons of Kishan with whom the first informant and his brothers had the dispute.

7) Dhangar Takali is situated at some distance from the village. On that night, the first informant and other injured could not take any steps. On the next day, Uttam Dhage approached Purna police and gave report. The crime at C.R. No. 65/2002 came to be registered at 10.15 a.m. of 10.7.2002 against the nine persons for aforesaid offences and also for offence punishable under section 120-B of IPC.

8) Police prepared spot panchanama by visiting the place of offence and the inquest was prepared on both the dead bodies. The injured witnesses were referred to Government Hospital for medical examination and they were medically examined. The P.M. was conducted on the dead bodies of Gyanoji and Sanjay. They died due to head injuries which had caused intracranial haemorrhage. Initially

some of the accused were arrested and chargesheet was filed against them. Present appellants and some other accused were shown as absconding accused and chargesheet was filed against them under section 299 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short). Present appellants came to be arrested in the year 2010 and 2011 and supplementary chargesheets were filed against them.

9) The case against five accused persons against whom chargesheet was filed in the past was given number as Sessions Trial No. 154/2002 and the present case is given different number viz. Sessions Trial No. 113/2010. Charge was framed against both the accused for aforesaid offences. Both the accused pleaded not guilty. The evidence was already recorded under section 299 of Cr.P.C. and this evidence recorded in previous case was adopted by the accused persons. However, all the witnesses were recalled for giving an opportunity to the accused persons to cross examine them. In all eight witnesses are examined in the present matter. The Trial Court has believed the direct evidence. There is corroboration of circumstantial evidence to the direct evidence and so, conviction is given for murdering both Gyanoji and Sanjay.

10) The direct evidence is given by first informant Uttam

Dhage (PW 3), Sidharth (PW 4) and Latabai (PW 5). Sidharth is real brother of deceased Sanjay. The tenor of cross examination of all the three witnesses shows that the accused did not dispute their presence on the spot at the relevant time. Further, there is circumstantial check to their versions which is being discussed at later stage.

11) The aforesaid relationship is not disputed by the defence. Even the motive behind the crime is not disputed and that can be seen from the tenor of cross examination made by the defence. The defence itself has brought on record the particulars of dispute including the names of persons who were involved in the dispute. It is not disputed that first informant Uttam (PW 3) and his brothers were having 11 Acres of agricultural land at Ridhora and due to the dispute with Kishan, the father of present appellants, they had left Ridhora and they had shifted to Dhangar Takali. It is also not disputed that atleast three accused persons out of nine were living at Dhangar Takali with their families and in the vicinity of the houses of Gyanoji, first informant and also of Latabai. In the cross examination, it is brought on the record that the dispute was going on for about 10 years. Evidence is given by all the three eye witnesses that even at Dhangar Takali, the side of the accused was giving threats to them as they wanted to see that persons of complainant's side leave Dhangar Takali.

12) Evidence is given by Uttam (PW 3) that house of Gyanoji was adjacent to his house at Dhangar Takali. In the cross examination, it is brought on the record that the distance between two houses was hardly 40 ft. Similarly, there was the house of Latabai at some distance from the house of Gyanoji. Uttam (PW 3) has given evidence that on that night he was sleeping with his family in front of his hut and deceased Sanjay and witness Sidharth (PW 4) were sleeping in front of house of Gyanoji as they were living with Gyanoji. He has given evidence that Latabai (PW 5), daughter of Gyanoji was sleeping in front of her house. Evidence of Latabai (PW 5) shows that her husband was not at station and so, she was sleeping in front of her hut as there was the company of her father.

13) Uttam (PW 3) has given evidence that on that night he woke up due to bleating of she goats of Gyanoji. It is brought on the record that Dhangar Takali is situated at some distance from village and village persons cannot hear anything if any incident takes place at Dhangar Takali. Evidence is given by all the three eye witnesses that there were hardly 10 huts which included the three huts of witnesses and huts were constructed on public property, Gayran. Uttam (PW 3) has given evidence that when he woke up, he noticed that all the nine accused were there. He has given evidence that all the accused started giving beating to him and other persons who were sleeping in

front of their respective huts. Uttam (PW 3) has given evidence that present appellants, Gajendra and Nana were holding iron pipes and they were using the iron pipes as weapons.

14) Uttam (PW 3) has given evidence that Gajendra gave blow of iron pipe on his head and then Gajendra, Nana and some other accused moved towards Sanjay and they assaulted Sanjay. He has given evidence that other accused like Limbaji, Shivaji, Kerba, Pralhad were holding sticks and they assaulted Sanjay by using sticks. He has given evidence that when Sanjay tried to run away to escape, he was held in front of house of Limbaji, one of the accused, and there, he was given severe beating with aforesaid weapons. He has given evidence that when Sanjay collapsed in front of house of Limbaji, the accused turned back towards the house of Gyanoji and there, they gave severe beating to Gyanoji. He has given evidence that Gajendra had assaulted Latabai also. He has given evidence that ultimately, accused Nana threw a stone on Gyanoji and when they saw that Gyanoji and Sanjay were lying in injured condition, they left the place. His evidence shows that dead body of Gyanoji was lying in front of hut of Gyanoji and dead body of Sanjay was lying in front of house of Limbaji. Evidence of Uttam (PW 3) shows that incident took place at about 2.00 a.m. Uttam (PW 3) has given evidence that on that night he and other injured could not take any steps and both Gyanoji and

Sanjay died before them. He has given evidence that there was no vehicle available and after 6.00 a.m. they took steps and they went to police station. He has given evidence that they reached the police station at about 7.00 to 7.30 a.m. and after that police came to the spot of offence. The report given by him to police is proved as Exh. 42.

15) The tenor of the cross examination of Uttam (PW 3) shows that defence tried to create a probability that it was dark and it was not possible for Uttam to see the accused and identify them. A weak attempt was made to create a probability that some dacoits had assaulted them. They were living in the huts and there were only few goats of Gyanoji in front of hut of Gyanoji. Nothing was stolen. Though one witness had stated before police that chilly powder was thrown at them, but the name of one of accused viz. Rajendra was taken as a person who had thrown the chilly powder at them during incident. Thus, no probability is created by the defence that dacoits had attacked them. It is not disputed that there was long standing enmity, the enmity was there for more than 10 years and all the witnesses knew accused for many years. Some accused were living at Dhangar Takali itself and the accused are relatives of injured witnesses. In view of these circumstances, even if it is presumed that it was no moon day and there was no light of electricity, it was not difficult for the injured witnesses to see and identify the assailants. Much of the cross

examination of Uttam (PW 3) and other eye witnesses is on this point and omissions in that regard in their previous statements are brought on record. These witnesses have given evidence that at that time, there was the light and in the evidence of Latabai (PW 5), it is brought on the record by the defence itself that there was facility of light at all the three points like the house of first informant, the house of Gyanoji and the house of Limbaji. Thus, no probability is created that there was no opportunity to the injured witnesses to see the faces of assailants and to identify them and it was the assault of some dacoits and the accused persons were not involved in the assault.

16) Uttam (PW 3) is cross examined at length to point out the omissions in F.I.R. in respect of some evidence given by him in the Court and the omissions pointed out to him are as under :-

- (i) He had not mentioned in the F.I.R. specifically that in the light of electricity he had seen the incident.
- (ii) He had not stated specifically in the F.I.R. the blows were given to deceased Sanjay by some accused like accused Shivaji, Kerba, Uttam and Limbaji. In the present matter, other accused are involved and not these accused who had faced the trial in the past.
- (iii) He had not stated in the F.I.R. that Sanjay tried to escape by running away, but he was caught in front of house

of Limbaji. Considering the distance between the house of Limbaji and house of Gyanoji, it can be said that this omission is not that material as the persons who were at receiving end must have tried to run away when they noticed that nine persons were assaulting them.

(iv) He had not stated in the F.I.R. that after giving beating to Sanjay in front of house of Limbaji, all the accused persons had returned to the house of Gyanoji and in front of house of Gyanoji, assault was made on Gyanoji.

(v) He had not stated in the F.I.R. that accused Limbaji had given stick blow to Latabai.

(vi) He had not stated in the F.I.R. that accused Nana, present appellant had assaulted Baban.

17) In the cross examination of Uttam (PW 3), it is brought on the record that one requires hardly half an hour to cover the distance between the place of incident and police station if there is conveyance like auto-rickshaw or other vehicle. Uttam (PW 3) has admitted that he did not approach Police Patil of village and he directly went to Purna Police Station on the next morning. He has admitted in his evidence that he gave report to police at about 10.00 a.m.

18) Though there are aforesaid omissions in the F.I.R., it can

be said that the omissions are not that material as only the particulars of assault are given in evidence which were not there. When there is charge for the offence of murder read with section 149 of IPC, the prosecution is expected to prove the formation of unlawful assembly and that, the accused was member of such unlawful assembly. If the object of unlawful assembly was known and that was achieved, then absence of such particulars cannot help the accused and accused cannot get benefit of that circumstance. Due to this position of law, this Court holds that aforesaid omissions have not affected the credibility of Uttam (PW 3) and his evidence cannot be discarded. Further, there is circumstantial check to the evidence of Uttam (PW 3). What is said in respect of evidence of Uttam can also be said in respect of evidence given by other two injured witnesses like Sidharth (PW 4) and Latabai (PW 5). Similar omissions in their previous statements are brought on record by the defence.

19) Sidharth (PW 4), real brother of deceased Sanjay has given evidence which is similar to the evidence of Uttam (PW 3). He has given evidence that on that night he and Sanjay were sleeping in front of hut of Gyanoji along with Gyanoji. He has given evidence that the complainant was sleeping in front of his house with his family.

20) Sidharth (PW 4) has given evidence that in the night time

when accused persons came to the place where they were sleeping, accused Gajendra was armed with iron rod (iron pipe) and accused Nana was armed with iron pipe. He has given evidence that accused Gajendra, Nana and other accused assaulted Sanjay. He has given evidence that Gajendra assaulted complainant and Latabai also. He has given evidence that after that accused Nana and other accused like Pralhad and Raju assaulted Gyanoji. He has given evidence that Nana then threw big stone on the person of Gyanoji. His evidence shows that the two injured died in their presence within half an hour of the incident. He has given evidence that he sustained injuries in the incident as he was assaulted and he was examined in the Government Hospital.

21) In the evidence of Sidharth (PW 4), first time it was suggested during cross examination that he and Latabai were not present on the spot on that night. Though the evidence of Sidharth shows that no house was allotted to him in that area by the Government, he stuck to his version that he was living there and on that night he was present on the spot of offence.

22) In the evidence of Uttam (PW 3) and Sidharth (PW 4), it is brought on the record that eye sight of Gyanoji was weak and he was virtually blind. Both the witnesses have given evidence that first

beating was given to Sanjay and then accused assaulted Gyanoji. It is brought on the record in the evidence of Sidharth (PW 4) that his statement was recorded by police between 11.00 a.m. and 12.00 noon of the next morning and immediately after recording the statement of first informant Uttam (PW 3). If he was not present there, his police statement would not have been recorded immediately after registration of crime. Further, his name was mentioned in the F.I.R. In the previous case when he was cross examined, it was suggested to him that he started running away after starting of the incident and he sustained injury due to fall. This suggestion was denied.

23) In the evidence of Sidharth (PW 4), the defence has also brought on the record that due to the dispute at Ridhora, they had left Ridhora and they had shifted to Dhangar Takali. In his evidence, it is brought on the record that the complainant's side had dispute with father of appellants, Kishan and one Bhujang. Bhujang is also close relative of accused persons.

24) In the cross examination of Sidharth (PW 4), the omissions in police statement are pointed out to him and they are as under :-

- (i) He had not stated before police that on that night he and Sanjay were sleeping together in front of hut of Gyanoji and the complainant was sleeping in front of his own hut with

his family.

(ii) He had not stated before police that when accused were giving beating to Sanjay, he had requested accused not to assault Sanjay.

(iii) He had not stated before police that accused Gajendra had assaulted Latabai with pipe.

(iv) He had not stated before police that accused Nana had assaulted Baban with pipe.

25) In the cross examination of Sidharth (PW 4) made in the present matter, it is brought on the record that Uttam (PW 3) was living at Rahul Nagar, Parbhani. This admission does not mean that on that night Uttam was not present on the spot of incident. The evidence of Uttam (PW 3) shows that he had hut there and on that night he was present there. It is Uttam, who gave report to police immediately after the incident and to Uttam, it is not suggested that he was not present on the spot at the relevant time. On the contrary, it is suggested to him that he could not see and identify the accused persons due to darkness.

26) Latabai (PW 5) has given evidence which is similar to the evidence of aforesaid two eye witnesses. Her evidence shows that her hut is situated at the distance of 20-25 ft. away from the hut of

Gyanoji. She has given evidence that at the relevant time, she was living there and she was sleeping in front of hut as others were sleeping there and her husband was not at home.

27) Latabai (PW 5) has given evidence that during the incident accused Gajendra and Nana used iron rods. She has given evidence that the accused first gave beating to Sanjay and after that they gave beating to Gyanoji. She has given evidence that when she tried to intervene, Gajendra gave beating to her by using iron rod. She has given evidence against Nana also. She has given evidence that accused Nana threw a stone on the person of Gyanoji.

28) In the cross examination of Latabai (PW 5), following portions from her police statement were confronted to her and she has denied those portions.

(i) She had stated to police that accused Rajendra had thrown chilly powder at them during incident.

(ii) She had stated before police that when witnesses raised hue and cry, the accused ran away.

29) Some omissions in the police statement of Latabai were brought to her notice and they are as under :-

(i) She had not specifically stated before police the

weapons which each accused was holding.

(ii) She had not stated before police that when she had tried to save Gyanoji, accused Nana had pulled her aside and then accused Gajendra had given blow of iron rod to her.

30) The observations are already made by this Court with regard to the use of provision of section 149 of IPC. The aforesaid omissions cannot be called as material omissions and disowning some portion from police statement by Latabai cannot affect her veracity. She has taken the names of all the accused and on that point, the evidence is not hit by omission.

31) If the evidence of aforesaid three eye witnesses is considered as a whole, it can be said that their evidence is consistent with each other. They have given evidence on incident and also on motive. They have described the weapons used by the accused persons. In that background, the medical evidence can be considered. The aforesaid discussion shows that the defence did not dispute that Gyanoji and Sanjay were murdered.

32) Dr. Dwarkadas (PW 1) is examined to give evidence on P.M. examination. He conducted P.M. examination on the dead body of Gyanoji on 10.7.2002 between 2.20 p.m. and 3.10 p.m. He found

rigor mortis over upper limbs and lower limbs, though on left lower limb he could not notice rigor mortis as there was fracture to that limb. He found injuries over legs, parietal region, occipital region. In column No. 17 of Exh. 69, the injuries described are as under :-

- (i) Right leg below knee was fractured at three places; one fracture was at upper 1/3rd tibia and two at middle 1/3rd.
- (ii) Lacerated injuries below right knee three in numbers :
 - (1) 1/2" x 1/2" x 1/4" deep,
 - (2) 1/2" x 1/2" x 1"
 - (3) 3/4" x 1/4" x 1/2"
- (iii) Fracture of right radio ulna bone about its middle 1/3.
- (iv) Lacerated injuries over posterior surface of right forearm two in numbers :
 - (1) 3/4" x 1/2" x 1/2" deep
 - (2) 1/2" x 1/2" x 1/2" deep
- (v) Lacerated injury on occipital area measuring about 1-1/2" x 1/2" x 3/4" deep.

33) Dr. Dwarkdas (PW 1) has given evidence that aforesaid injuries were antimortem in nature. The evidence of the doctor shows that there was depressed fracture of skull at occipital region and due to that, there was sub-dural haematoma and intracranial bleeding. The death took place due to haemorrhagic shock due to intracranial

bleeding and it was caused due to head injury mentioned in column No. 17.

34) Dr. Dwarkdas (PW 1) conducted P.M. examination on the dead body of Sanjay Dhage on 10.7.2002 between 12.00 p.m. and 2.15 p.m. The P.M. report is at Exh. 70. The evidence shows that rigor mortis was present in upper and lower limbs. In column No. 17, he has described the injuries and they are as under :-

- (i) Lacerated injury on left temporal region measuring about 1-1/2 x 3/4 inches, there was corresponding fracture of under lining bone.
- (ii) Contusion on back right loin region oblique in direction measuring about 2-1/2" x 1/2"
- (iii) Contusion on right gluteal region transverse in direction 3 x 1/2 inch,
- (iv) Contusion on right gluteal region oblique in direction 2 x 1/2 inch.
- (v) Lacerated injury on posterior surface of it. Elbow vertical in direction measuring about 3/4" x 1/2", there was fracture of under line bone.
- (vi) Lacerated injury on anteromedial surface of arm 1/2 x 1/2".
- (vii) There was fracture of upper 1/3rd of tibia left.

(vii-A) Lacerated injuries on anterior side of left leg, three in number measuring about $1/2 \times 1/2 \times 1-1/2$ ", $2-1/2 \times 1/4 \times 1$ inch deep, $3-1/4 \times 1/4 \times 1$ " deep, there was fracture of under line bone.

(viii) Fracture of left tibia fibula.

(ix) Lacerated injury on anterior surface of right leg $1/2 \times 1/2 \times 3/4$ " deep.

(x) Lacerated injuries below left knee two in number, $1/2 \times 1/2 \times 1$ " deep and $3/4 \times 1/2 \times 1$ ".

(xi) Lacerated injury on left knee $1 \times 3/4 \times 1/2$ " deep.

35) The evidence of Dr. Dwarkadas (PW 1) and Exh. 70 show that there were injuries at temporal region, on back, at right gluteal region, left elbow, right arm, left leg and right leg. All these injuries were antimortem in nature. The evidence shows that due to the injuries to the head, temporal region, there was depressed fracture of skull at temporal bone and due to that there was sub-dural and intracranial haemorrhage. Sanjay also died due to haemorrhagic shock due to intracranial bleeding. It was caused due to aforesaid head injury. In view of injuries described in Exhs. 69 and 70, it can be said that the medical evidence is consistent with the oral evidence of aforesaid three eye witnesses and it gives corroboration to the versions of all the three eye witnesses.

36) Spot panchanama at Exh. 100 is not disputed and it is also proved in the evidence of Baliram (PW 8), Investigating Officer. This document is consistent with the aforesaid oral evidence. Blood was lying in front of house of of Limbaji where the dead body of Sanjay was found. This spot was shown by the first informant. The distance between the two dead bodies was mentioned as 100 ft. in the spot panchanama. It is already observed that the distance between the house of Gyanoji and first informant was around 40 ft. and on the other side of house, there was the house of Latabai and after that there was the house of accused Limbaji. The spot panchanama gives general corroboration to the evidence of eye witnesses as the blood was found at the place where the incident had taken place as per the versions of three eye witnesses. There were even pieces of bangles showing that Latabai was involved in the incident. Hand sketch map of spot is there on Exh. 100.

37) Dr. Vithal (PW 2) is examined by prosecution to prove the injury certificates issued in respect of witnesses Sidharth and Latabai. The certificates are at Exhs. 74 and 73. This witness was attached to Kantheshwar Primary Health Center. His evidence shows that he was called to Purna Rural Hospital as one medical officer from Purna Rural Hospital was on leave. One medical Officer Dr. Dwarkadas (PW 1), who

conducted P.M. examinations was available there. Much was argued before the Trial Court and before this Court on this circumstance, but nothing is brought on the record to create a probability that Dr. Vithal was interested in the complainant's side. His evidence shows that two injuries were found on the person of Latabai and she was referred to Nanded Civil Hospital for further examination as there was suspected fracture. He found three injuries on the person of Sidharth. The injuries were caused by hard and blunt object and age of the injuries was within 24 hours. Thus, there is medical evidence to show that both these witnesses were present on the spot and they were also assaulted.

38) Prosecution has examined two Investigating Officers like Surendra (PW 7) and Baliram (PW 8). Both of them have given evidence that present appellants were absconding and they came to be arrested in the year 2010 and 2011. The appellants have only denied that they were absconding and they have indirectly taken the defence of alibi, but no material is produced in that regard. Accused No.1 Pralhad, who was arrested is real brother of appellants and it cannot be said that they had no knowledge that police were searching for them and they were named in the F.I.R. In view of the provision of section 8 of the Evidence Act, this conduct of absconding of appellants is relevant and this circumstance can be used against the appellants.

It is already observed that there was motive for the crime and the complainant's side had dispute mainly with cousin, father of appellants. As they came to be arrested many years after the date of incident, there was no possibility of collecting other circumstantial evidence like clothes having blood stains from them.

39) The learned counsel for appellants placed reliance on the observations made by the Apex Court in the case reported as **AIR 2000 (SC) 1416 [Nirmal Singh Vs. State of Haryana]**. The Apex Court has discussed the provision of section 299 of Cr.P.C. and the purpose behind it. Present matter is on better footing and all the witnesses, whose evidence was recorded under section 299 of Cr.P.C. were available. These witnesses are cross examined by the learned counsel appointed by the present appellants. The Apex Court has laid down that in view of the provision of section 299 of Cr.P.C. and section 33 of the Evidence Act, conviction can be based on the evidence recorded in absence of the accused. Further, the previously recorded evidence is accepted by the accused in the present matter.

40) Reliance was placed by the learned counsel for appellants on other case reported as **AIR 2009 (SCW) 3898 [Jayendra Vishnu Thakur Vs. State of Maharashtra]**. The facts of the reported case were different. In the present matter, the witnesses

were available and the evidence already recorded against other accused is accepted by the present appellants.

41) The learned counsel for the appellants placed reliance on some observations made by the Apex Court in the case reported as **AIR 2014 (SC)(Supp) 1564 [Vijay Ranglal Chourasia Vs. State of Gujarat]**. The case is on section 299 of Cr.P.C. and also on evidence of test identification parade. In that case the High Court had not addressed the point as to whether the evidence recorded in previous case could have been transferred to the case against the appellant and whether in absence of that evidence, there was any other evidence against the appellant. The facts of the present matter are totally different.

42) The discussion made above shows that there is more than sufficient evidence against the present appellants to show that on that night they were members of unlawful assembly and the object of unlawful assembly was to assault the persons of complainant's side and finish the persons of rival group. This object was achieved by unlawful assembly and two murders were committed. The Trial Court has held the appellants guilty of the offence punishable under section 302 r/w. 149 of IPC for committing two murders and also for the offence punishable under section 324 r/w. 149 of IPC for causing

injuries to aforesaid witnesses. They are also held guilty for the offence punishable under section 148 of IPC as they were armed with deadly weapons. This Court sees no reason to interfere in that finding. Life imprisonment is given and as two murders were committed by the unlawful assembly. This Court holds that all the relevant circumstances are considered by the Court and proper punishment is given. Thus, there is nothing for interference in the appeal. The appeal stands dismissed. The fees of the counsel appointed by this Court to represent the appellants is quantified as Rs.7,000/- (Rupees seven thousand).

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/