

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 591 OF 1995

The State of Maharashtra

... Appellant
(Orig.Complainant)

Versus

1. Mahadeo Dnyanoba Zurale
2. Hanmant Ramchandra Sontakke
3. Tanaji Jagannath Bandelkar
4. Bhagwan Babu Ghule
5. Pandurang Durga Gaikwad
6. Namdeo Dnyanoba Zurale
7. Tukaram Dnyanoba Zurale
8. Balu Dnyanoba Zurale

All R/o. Vataphali, Tal. Pandharpur
Dist. Solapur

... Respondents
(Orig. Accused)

**WITH
CRIMINAL REVISION APPLICATION NO. 235 OF 1995**

Shivaji Krishna Chavan

Aged about 34 years, Occup:Agriculturist,

R/o. Vatphali, Tal. Malshiras,

Dist. Solapur

... Petitioner
(Original Complainant)

Versus

- 1) Mahadeo Dnyanoba Zurale
Aged about 27 years,
Occup: Agriculturist,
- 2) Hanmant Ramchandra Sontakke
Aged about 25 years, Occup: Agri.,

- 3) Tanaji Jagannath Bandalkar
Aged about 30 years,
Occup: Agriculturist,
- 4) Bhagwan Babu Ghule
Aged about 25 years,
Occup: Agriculturist,
- 5) Pandurang Durga Gaikwad
Aged about 26 years,
Occup: Agriculturist,
- 6) Namdeo Dnyanoba Zurale
Aged about 37 years,
Occup: Agriculturist,
- 7) Tukaram Dnyanoba Zurale
Aged about 40 years,
Occup: Agriculturist,
- 8) Balu Dnyanoba Zurale
Aged about 28 years,
Occup: Agriculturist.

1 to 8 all are Resident of
Village Vatphali, Tal: Malshiras,
Dist: Solapur.

...Respondents
(Original Accused
No. 1 to 8)

- 9) The State of Maharashtra.

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Mr. J.P. Yagnik Asstt. Public Prosecutor for Appellant (in appeal).
Mr. Sushil Inamdar i/b K.B. Sonwalkar for Applicant in (Revn.).
Mr. Rajiv Patil Senior Advocate a/w Ramdas Hake Patil for
Respondent Nos. 2, 3 and 4.
Mr. Sanjeev P. Kadam for Respondent Nos. 5 to 8.
Mr. Vishwajit P. Sawant alongwith Prabhakar Jadhav for
Respondent Nos. 1 to 8 in Revision.

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**CORAM : S. C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

RESERVED ON : 23rd MARCH, 2018

PRONOUNCED ON : 18 APRIL, 2018

JUDGMENT [Per : PRAKASH D. NAIK, J.]:

1. The appellant-State has preferred this appeal under Section 378(1) of the Code of Criminal Procedure, 1973 against the Judgment and order of acquittal passed by the Additional Sessions Judge, Pandharpur, in Sessions Case No. 110 of 1994 on 25/07/1995. The Criminal Revision Application has been preferred by the original complainant who is the brother of the deceased challenging the aforesaid Judgment and order of acquittal.

2. The respondent No.1 - Mahadeo Dnyanoba Zurale has expired during the pendency of this appeal. The copy of the death certificate is produced, which is taken on record vide order dated 06/01/2018. In the said order it is also stated that in view of the death of respondent No.1, the appeal abates as against respondent No.1.

3. The respondents were tried for the offences punishable under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code and Section 37(1) of the Bombay Police Act, 1951 and Section 212 read with Section 34 of the Indian Penal Code.

4. The brief facts of the prosecution case are as under:

(a) The complainant Shivaji Krishna Chavan is a resident of village Vatphali, Tq. Malshiras. He was residing at his vasti (farm house) at village Vatphali. His brothers Hiralal Chavan and Tanaji Chavan (deceased) were also residing in the said village along with their family members.

(b) The complainant sells milk to dairy. The accused Namdeo Zurale (accused No.6) was the Chairman of Dharmavir Milk Dairy. Accused No.6 and others had assaulted the complainant earlier and caused hurt to him since he did not sell milk to Dharmvir Dairy. Since then the relations between the accused and the complainant were strained. The accused were also suspecting that Tanaji Chavan was giving information to the police against them.

(c) On 14/07/1994 the accused had formed an unlawful assembly, they were armed with weapons like swords, axes and stick. Tanaji Chavan was supposed to take his nephew Bapu Hiralal Chavan to Akluj for treatment. Tanaji had asked Bapu to wait at the road and he proceeded to bring his motor-bike which was parked near the poultry farm of Namdeo Wagh.

(d) The accused were armed with deadly weapons and in prosecution of common object of their unlawful assembly assaulted Tanaji by inflicting blows of weapons on him. Tanaji had raised cries to save him. On hearing the same, the complainant reached the spot. The accused threatened him not to come forward. The brother of the complainant Hiralal followed him to the spot. The accused then left the spot along with weapons. Tanaji Chavan died at the spot.

(e) The police conducted investigation and filed charge-sheet against the respondents accused.

5. The accused were tried before the Court of Additional Sessions Judge, Pandharpur. Charge was framed on 08/06/1995 for the offence punishable under Sections 147, 148, 302 read with 149 of the Indian Penal Code and Section 37(1) read with Section 135 of the Bombay Police Act and Section 212 r/w 34 IPC. The prosecution examined 18 witnesses in support of its case. PW No.4, PW No.5 and PW No.6 are the allegedly eye witnesses to the incident. On completing the evidence of witnesses, the defence examined two defence witnesses. The statement of the accused were recorded under Section 313 of the Code of Criminal Procedure. For the reasons stated in the impugned judgment, the accused Nos. 1 to 8 were acquitted of the said offences.

6. The State and the original complainant is aggrieved by the judgment and order of acquittal and therefore, approached this Court by preferring the aforesaid appeal and the revision application.

7. We have to examine whether the impugned judgment of acquittal recorded by the Trial Court suffers from any legal infirmity or is based upon erroneous appreciation of evidence.

Before advertng to the merits of the case in hand, the broad principles which may be taken into consideration by the appellate Court while dealing with the appeal against acquittal can be analysed. In several decisions of the Hon'ble Supreme Court, the law relating to exercise of the powers under Section 378 of the Code of Criminal Procedure has been summarised. The judgment of acquittal has the obvious consequence of granting freedom to the accused. The consistent view of the Court is that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the Court of competent jurisdiction, keeping in view the settled canons of criminal jurisprudence, the appellate Court shall be reluctant to interfere with such judgment of acquittal. It is also held in several decisions that the penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. Wherever there is perversity on facts and/or law appearing in the

judgment, the appellate Court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. There is no absolute restriction in law to review and re-look the entire evidence, on which the order of acquittal is founded. If, upon scrutiny, the appellate Court finds that the decision of lower Court is based on erroneous view and against the settled position of law, than the said order of acquittal should be set aside. We have to examine whether the impugned judgment of acquittal suffers from such infirmity.

8. We may now proceed to discuss the merits of the case in hand. The trial Court after analysing the evidence on record came to the conclusion that the prosecution story is not free from suspicion. The Court appreciated the evidence of eye witnesses and disbelieved the same for the reasons stated therein. The Trial Court felt that the evidence of eye witnesses does not appear to be consistent and reliable. The evidence of witnesses suffers from serious infirmities, their testimonies are suspicious and after thought. The deposition of eye witnesses and the medical evidence

is contradictory. The Trial Court has taken into consideration several factors for disbelieving the prosecution case.

9. The prosecution is primarily relying upon the evidence of four witnesses viz; PW No.4 – Shivaji Krishna Chavan (complainant), PW No.5-Bapu Hiralal Chavan, PW No.6-Hiralal Krishna Chavan and PW No.7-Changdeo Tukaram Gaikwad. PW Nos. 4, 5 and 6 were examined as eye witnesses to the incident. PW No.4 has lodged the First Information Report. He is the brother of the deceased. PW No.5 is the nephew of the deceased and PW No.6 is also the brother of the deceased. PW No.7 is the resident of Malshiras who has purportedly seen the accused with weapons at the relevant time.

10. PW No.4 has deposed that accused Tukaram Zurale is the Chairman of Dharmavir Milk Society. Four years ago, Tukaram Zurale (accused No.7) and one Laxman Zurale had assaulted him since he was not selling milk to Dharmavir Milk Society. He had lodged the complaint, however, the police had not taken cognizance of the same and hence, he had made complaint to various authorities and since then he is not in good terms with the

accused persons. On 14/07/1994 he along with Tanaji (deceased) and Bapu (PW No.5) were going to fetch water from hand pump. Tanaji told him that he is going to Akluj as Bapu has to be injected. Tanaji then went towards Malshiras to Akluj road for going to Akluj. He was accompanied by Bapu. He was at the water hand pump and heard the voice of Tanaji shouting "Aai Melo Melo". He, then rushed towards the road. Accused No.1, accused No.6, accused No.3, accused No.2, accused No.4 and accused No.5 were standing to the South of the road at a distance of 10 to 15 feet. Accused No.1 and accused No.6 were inflicting blows of swords to Tanaji. They had encircled around him. Accused Bhagwan and Pandurang were inflicting axe blows to Tanaji. Accused Tanaji Bandalkar had inflicted stick blows to Tanaji. Tanaji was lying on the ground and was facing upwards. He was at the distance of 50 feet from the spot. Bapu was also at the distance of 50 feet from the spot. The accused threatened him and told not to come forward. Due to threat he did not move. After assaulting the deceased, the accused went towards Zurale vasti. Hiralal (PW No.6) also came to the spot. Tanaji told him that he was assaulted by the accused as he was giving information to the

police against them. Tanaji's left leg was separated and right leg was also cut. There were blows on his right thigh. There were injuries over the left and right wrists of Tanaji. PW No.4 lodged the First Information Report. In the cross examination, he has deposed that the spot is situated on the left side of the road of Akluj to Malshiras. The houses of some of the persons are situated on the right of the said road at a distance of 200 to 300 feet. The house of one Bhivaji Kharat is also situated near the spot. He also referred to the houses of some other persons situated near the place of incident. He also deposed that there are two groups at village Vatphali and one group is led by accused No.6 and other is led by Advocate Ghule. The accused belonging to the group of accused No.6. Advocate Ghule resides at village Vatphali. He also stated that a case is filed against him by his neighbour wherein he was impleaded as accused. One Narayan, Yellappa and Maruti Nandiwale were the complainant. Nandiwale had also filed a complaint against Tanaji (deceased). Nandiwales are dangerous people. He and his nephew were present at the spot where the incident took place and his brother Hira had followed them. They did not call Police Patil or Sarpanch of village Vatphali. He denied

the suggestion that Nandiwales were also threatening to kill his brother and that on the night of 13th July his brother had gone out on his usual night errands.

11. PW No.5 Bapu Chavan is the nephew of deceased. He is the son of PW No.6. He stated that he along with Tanaji started at about 8.00 a.m. on the day of incident after taking meals. Tanaji (deceased) told him to wait as he would bring motorcycle from the poultry farm of Wagh. Accused Nos. 1 to 6 came from the side of poultry farm. Accused Nos. 1, 2, 4, 5 and 6 were armed with axes and accused No.3 was having stick with him. They asked his uncle as to why he is giving information to the police. All of them inflicted blows on the deceased with weapons. The deceased and the witnesses raised cries to save them. PW No.4 then came to the spot who was threatened by the accused and thereafter, PW No.6 also reached the spot. In the meanwhile, one ChANGEDEEO Gaikwad (PW No.7) also came at the spot. He further deposed that the distance between the hand pump and the place where he was standing was 100 feet. In the cross-examination, he deposed that he tend buffaloes. On a date prior to the incident and on the date of incident he did not go to tend buffaloes. He

used to tend buffaloes daily till 5.00 p.m. He was not well on the date of incident. He had stated before the police that he and his uncle have taken meals and then started from their house. However, he could not assign any reason as to why the said version is not appearing in his statement. The deceased was lying in supine condition. The accused persons encircled him and inflicted blows. The persons from the adjoining houses did not come out to watch the incident. He did not go to the persons from adjoining houses to inform them about the incident nor he went to milk dairy for informing the people about the incident. He did not run towards vasti when his uncle was attacked. The persons from adjoining vasti did not assemble at the spot. He stated before police that accused Nos. 1 to 6 came from the side of poultry farm. He informed the police that the deceased had stated that the accused had assaulted him because he was giving information to police and that the accused fell the deceased on the ground but the said facts are not appearing in his statement recorded by the police. He also stated that PW No.7 had come to the spot and that a jeep had come from Malshiras and his father and uncle had gone in that jeep, but the same version is not appearing in his statement

recorded by police. PW No.6 is the brother of deceased. He heard Tanaji's voice and rushed to the spot. He was at a distance of 50 feet from the spot. Tanaji was lying towards the poultry. Accused were inflicting blows of swords and axes to Tanaji. The accused threatened the witnesses not to come forward at the time of assault. They approached Tanaji after the accused left the scene of offence. The injured was taken to the hospital. He further deposed that the families of washerman are residing at their vasti along with their children. The vasti is at the distance of 50 feet from the hand pump. The distance between the poultry farm and the hand pump is about 200 to 250 feet. One of the person from Washerman's family had followed him to the spot. The incident lasted for about 5 minutes. He and his brother did not intervene and separate the accused persons. They did not go to the dairy farm to inform the people as no one was there. He did not go to the Police-Patil or the Sarpanch. PW No.7 is purportedly the witness who had seen the accused around with weapons. He stated that he along with Chandrakant Jagtap were going to Malshiras to meet his advocate. They had reached the dairy at village Vatphali, he noticed that accused Nos. 1 to 6 were going

towards East. They were holding weapons in their hands. He then noticed that Tanaji was assaulted and was in injured condition. He, then proceeded to meet his advocate. He also deposed that his son is a friend of the deceased. On the relevant day, there was no date in the matter which is pending in the Court. He did not take injured to the hospital and did not inform the police about the incident. His statement was recorded on 23/08/1994.

12. PW No.1 Arun Lambture had drawn the map of the spot. PW No.2 Ramdas Waghmode was called by the police to act as a panch witness on 14/07/1994. He acted as a panch to the inquest panchnama. PW No.3 Laxman Pawar was also called to act as a panch. He was called near poultry of Namdeo Wagh. He had seen a pair of chappal and a bicycle at the spot as well as blood lying at the spot. The police seized pair of chappal, bicycle and earth stained with blood. PW No.8 Dr. Swapnil Lale is Medical Officer at Primary Health Centre, Akluj. He conducted the post-mortem examination on 14/07/1994 at 12.30 noon which was over by 1.30 p.m. On external examination of the deceased, he noticed about 25 injuries. All the injuries were contused lacerated wounds. He also noticed internal injuries on the person

of the deceased, such as fracture on the right radius etc. He also deposed that the stomach of the deceased was containing semi digested food of 400 cc. The food was consumed by the deceased three hours prior to his death. He also deposed that the injuries could be caused by the weapons allegedly used in the crime. Injury caused by hard and blunt object would cause contusion. Injury by hard sharp object would cause incised wound. A pointed rough stone can cause contused lacerated wound. The post-mortem report was exhibited in evidence at his instance. PW No.9 Suresh Patil was serving at Akulj Police station at the relevant time. He referred to the recovery of clothes of the deceased. PW No.10 Rajendra Savant was serving at Akulj Police station as Police Constable. He was directed to take muddemal property to Chemical Analyser at Pune. He received the same and deposited in the office of Chemical Analyser on 29/09/1994. PW No.11 Madhukar Bhosale acted as panch for various panchnamas. He did not read the panchnama and could not depose about its contents. He was called for panchnama on 15/07/1994, 16/07/1994, 09/09/1994 and 10/09/1994. He was declared hostile by the prosecution and was cross-examined by learned APP. He acted as

panch for recovery of clothes and the weapons. He stated that on 07/07/1994 the people from complainant's group had taken him to the police station and had asked him to file complaint. He had lodged the complaint as he was pressurised by the complainant's group. PW No.12 Ratan Kambale acted as panch. He stated that police have obtained his signature on a plain paper. He was declared hostile by the prosecution. PW No.13 Dr. Gautam Jagtap was working as a Medical Superintendent at Rural Hospital, Akluj. He had examined the accused persons and collected their blood samples and handed over the same to the concerned constable with a letter addressed to Chemical Analyser. He obtained the report from Chemical Analyser. The blood group of Tanaji Bandalkar (accused No.3) is 'A' and the blood group of other accused could not be determined. He placed on record the Chemical Analyser report vide Exhibit Nos. 54 and 56. PW No.14 Rahimbaksha Shaikh was serving at Akluj Police station. He handed over muddemal articles to A.P.I. Jadhav on 19/07/1994. PW No.15 Shahuraj Dalvi was serving at Akluj Police station on 11/07/1994. He referred to the order of District Magistrate, Solapur, which was promulgated under Section 37(A). PW No.16

Vithal Jadhav was attached to Akluj Police station. He stated that PW No.5 had approached him and informed that six persons had murdered his brother. He, then registered the offence and proceeded to the spot. The First Information Report is signed by the complainant. The offences were registered. He had drawn the inquest panchnama. He had investigated the crime. He arrested the accused. He recorded the statement of the witnesses. The omissions which were brought on record through the cross examination of the witnesses were proved through him. He did not record the statement of any family members. Nothing was found in the search of the house of Mahadeo Zurale. He produced the accused before the Court on 16/07/1994 for obtaining their remand. It is mentioned in the remand papers that Bapu Chavan had gone to Vatphali to bring clothes. The theory that Bapu Chavan was going to Vatphali for bringing clothes finds place in the remand papers dated 16/07/1994, 18/07/1994, 21/07/1994, 23/07/1994 and 29/07/1994. It is nowhere mentioned in the remand papers that Bapu was indisposed and therefore, Bapu and Tanaji were going to Akluj. PW No.17 Dr. Rajesh Gotekar was serving as Medical Officer at Rural Hospital, Akluj. He obtained

the blood sample of the accused No.6 and handed over the same for Chemical Analysis. PW No.18 Gopalkrishna Bhalerao was serving at Akluj Police station. He conducted investigation. He obtained blood sample of the accused. He had recorded the statement of Changdeo Gaikwad (PW No.7). He also recorded the statement of other witnesses.

13. The defence had examined DW No.1 Vilas Patil. He stated that he knows accused No.6 Namdeo Zurale. He also knows Vithoba Pawar. On 13/07/1994 the accused No.6 had visited him. The accused was at his residence on 13/07/1994 and on 14/07/1994. They proceeded to Chikhalgothan on a motorcycle. They reached at the said place at about 9.00 a.m. for attending the marriage. The time of the marriage was 12.35 p.m. They returned to the village in the evening and the said accused was at his place for two days. Thereafter, they returned to Jyotiba. He was cross examined at the instance of the prosecution. The defence also examined Vithoba Pawar as DW No.2. He stated that he knows accused Namdeo Zurale. The marriage of his nephew was to be solemnised on 14/07/1994. Accused Namdeo and DW No.1 Vilas had come to his place for attending the marriage. Both

these witnesses were examined at the instance of accused Namdeo Zurale to establish *alibi*.

14. The prosecution has brought on record the Chemical Analyser report dated 06/02/1995 vide Exhibit-102 and Chemical Analyser report dated 11/11/1994 vide Exhibit-103. The results of Chemical Analysis reflected in Exhibit-102, indicates that the earth Exhibit-1 is mixed with blood. Exhibit Nos. 3, 4 and 6 were soaked with blood. The weapon at Exhibit Nos. 9 and 10 (axes) were stained with blood. The sword at Exhibit Nos. 11, 12 and 26 were stained with blood. The clothes at Exhibit Nos. 14, 17 and 20 have moderate number of blood stains. The other clothes at Exhibit Nos.18, 19, 21, 22, 23, 24 and 25 had blood stains. No blood stains could be detected on earth Exhibit-2 and bamboo stick Exhibit-13. The blood detected on the Exhibits was human and the blood detected on the clothes was 'B' group. The blood group of the blood detected on Exhibit Nos.1, 7, 18, 24 and 25 could not be determined as the results are inconclusive. The blood group of Exhibit-8 (Tanaji Krishna Chavan) cannot be determined as the results are inconclusive. The blood in file labelled as Namdeo Zurale was of blood group 'A'. In the circumstances, there was no

corroborative evidence against the accused in the form of Chemical Analyser report to establish their involvement in the crime.

15. Learned APP Shri. Yagnik submitted that the Trial Court has committed an error in acquitting the accused. The judgment of the Trial Court is perverse, since the evidence on record has not been appreciated by the Court in proper perspective. The learned Judge has given importance to minor discrepancies and overlooked the evidence on record. It is submitted that the prosecution has established its case beyond all reasonable doubt by adducing cogent evidence which was sufficient to convict the accused. The prosecution case is based on the evidence of three eye witnesses to the incident which ought not to have been discarded by the Court. The said witnesses have corroborated the prosecution case and established the involvement of all the accused in the crime. PW Nos. 4, 5 and 6 were consistent in attributing the overt act to the accused. Their evidence is further corroborated by PW No.7 who had seen the accused armed with weapons while proceeding towards the place of incident at the relevant time. He would submit that there is

recovery of deadly weapons having blood stains at the instance of the accused which were used while committing the crime. The motive for committing crime was also established. The accused were armed with deadly weapons and have mercilessly assaulted the deceased by inflicting blows by the weapons. The victim had sustained several serious injuries on his person as a result of the assault by the accused. The Trial Court has ignored the evidence for no reason. The witnesses through their evidence had established the presence of the accused at the scene of offence and participation in crime. The evidence put forth by the witnesses could not be demolished in any manner by the defence in their cross examination. The evidence of the witnesses, more particularly the eye witnesses to the incident inspires confidence and the same ought to have been accepted by the Trial Court. Although, the eye witnesses were related to deceased, their evidence cannot be discarded on the ground that they are partisan witnesses, more particularly, when they have given ocular account of the crime and involvement of the accused in the said crime. All the witnesses have attributed specific overt act to the accused. Their presence at the scene of offence cannot be doubted. It is

submitted that this Court should reappreciate the evidence which establishes the involvement of the accused in the said crime. In the event, this Court finds that the Trial Court has overlooked the cogent evidence on record on flimsy ground, the appellate Court can certainly set aside the judgment of acquittal. The accused were involved in heinous crime and their involvement was proved by the prosecution and hence they ought to have been convicted by the Trial Court. The appellate Court is empowered to review the evidence upon which an order of acquittal is based. If there is mis-carriage of justice, this Court can certainly set aside the order of acquittal. In the present case, according to Shri. Yagnik, the Trial Court has ignored the admissible evidence.

16. Learned Advocate Mr. Inamdar has adopted the submissions advanced by the learned APP. It is submitted by him that the judgment of the Trial Court is contrary to evidence on record. Since the complainant could not prefer an appeal against the impugned judgment of acquittal, he has invoked the revisional jurisdiction of this Court.

17. Learned Senior Advocate Shri Rajiv Patil submitted that the judgment of acquittal is based on cogent reasons which does not warrant interference. The Trial Court appreciated the evidence in proper perspective and has given a finding that the prosecution has failed to establish the charge against the accused. The three eye witnesses to the alleged incident were related to the deceased. The oral evidence and medical evidence is contradictory to each other. The presence of the witnesses at the place of incident is doubtful. Their version is concocted. The alleged motive is weak as the alleged incident of assault had occurred four years prior to the present incident. The theory of assault due to belief that the deceased was giving information to Police is concocted. He further submitted that there is no perversity in the judgment of the Trial Court. Therefore, the appellate Court should not interfere in the order of acquittal. The evidence of eye witnesses is not consistent with each other. Their evidence suffers from serious infirmities like contradictions and omissions. The time of incident as depicted by the eye witnesses is itself under the clouds of suspicion which belies the prosecution case. The evidence of PW Nos. 4, 5 and 6 is not inspiring confidence and

there is no reason to interfere in the order of acquittal. It is further submitted that statement of PW No.7 was recorded belatedly which creates doubt about its genuineness. The prosecution did not examine independent witnesses. There is every possibility that the deceased was done to death by some other persons and that the accused are falsely implicated in the crime. There is absolutely no evidence of whatsoever nature against the accused Nos. 7 and 8.

18. Mr. Savant, appearing for the respondents in the revision application adopted the arguments of Shri Patil.

19. We have gone through the entire evidence. The prosecution is strongly relying upon the evidence of PW Nos. 4, 5 and 6 who were the alleged eye witnesses to the incident. The prosecution is also relying upon the evidence of recovery of weapons and clothes. The incident in question had allegedly occurred in the morning at about 8.00 a.m. PW No.4 and 6 are the brothers of the deceased. PW No.5 is the son of PW No.6. According to them, the accused came at the spot armed with weapons and assaulted deceased Tanaji Chavan. Although there

are houses of villagers near the scene of offence, the prosecution could not putforth any independent witness to corroborate the version of the eye witnesses. Only alleged independent witness who was examined by the prosecution witness PW No.7 who has not seen the actual incident, but had seen according to him the accused armed with weapons proceeding towards the place of incident.

20. It is brought on record through the evidence of the medical officer that semi-digested food is found in the stomach of the deceased and the last meal was consumed three hours before the death of the deceased. The defence had therefore submitted that the incident of assault resulting in death of the deceased could not have occurred at 8.00 a.m. on 14/07/1994 as alleged by the prosecution. The theory of meal being consumed by the deceased on the day of assault at 7.00 a.m. was introduced for the first time by PW No.5. The Chemical Analyser's report does not conclusively establish that the accused had used the alleged weapons in commission of crime. The blood group of the deceased was found to be inconclusive. It is also brought on record through the evidence of the medical officer that the CLW is not possible by

the sharp weapon and the use of sharp weapon would in result incised wounds. The trial Court has taken into consideration several such infirmities and has thereby given benefit of doubt to the accused.

21. We have minutely considered the evidence of witnesses. PW No.4 has referred to incident of assault which had occurred four years ago on account of not selling milk to Dharmvir dairy. The alleged incident is not in proximity with incident of assault dated 14/07/1994. He did not produce any evidence to support the said fact. This motive is thereby weak and cannot be believed. He heard cries of injured from hand pump and then proceeded to that place. In examination in chief he stated that PW No.6 had come to the spot. However, there is no reference to the fact that PW No.6 was present right from beginning while the deceased was being assaulted. He did not refer to presence of PW No.7 Changdeo. In the cross examination he stated that he and PW No.5 were only present at the spot. PW No.5 has deposed that he proceeded with deceased. The sequence of event stated by him is different than the version of PW No.4. He stated that his father (PW No.6) had also come at place of incident. He did not state

whether PW No.6 was present when the incident of assault on deceased was in progress. He referred to presence of PW No.7 after the assault which is contrary to evidence of PW No.4. The deposition that deceased had stated that he was assaulted for giving information to police is not reflected in his statement before police. PW No.6 has not referred to presence of PW No.7. He did not refer to any statement being made by deceased at the time of assault. Thus, the instant motive to assault has not been established by prosecution. He has referred to washermen following him at the spot. The other witnesses has not referred to such person being present at the place of incident. Although he claims to be eye witness. The evidence of PW No.4 and PW No.5 does not establish that he was eye witness to assault. He is the father of PW No.5, but he did not state that PW No.5 was not keeping well and he proceeded with deceased to Akulj. He did not raise cries. He did not intervene and separate accused. He and other witnesses did not go to dairy to inform the people. He did not go to Police Patil or Sarpanch. There are several houses near the spot of incident, but prosecution has not brought any independent eye witness to the alleged incident occurred at

around 8.00 a.m. PW No.7 is got up witness. His presence is not referred by PW No.4 and PW No.6. His statement was recorded belatedly. Thus, there is no consistency in the version of the prosecution witnesses and their evidence raises enough doubt.

22. We are in agreement with the reasons assigned by the trial Court while delivering the judgment of acquittal which can be summarised as follows:

- (a) The evidence of the eye witnesses does not appear to be consistent and reliable.
- (b) It appears from the cross examination of the investigating officer that the remand papers upto 29/07/1994 reveal that PW No.5 Bapu had gone to village Vatphali to bring clothes. The said witness (PW No.16) has stated that on 16/07/1994 he had produced the accused before the judicial magistrate for obtaining their remand and in the remand papers it was mentioned that Bapu Chavan had gone to Vatphali to bring clothes. The theory that PW No.5 was going to Vatphali for bringing clothes finds place in the remand papers dated 16/07/1994, 18/07/1994, 21/07/1994, 23/07/1994 and 29/07/1994. It is nowhere mentioned in the remand papers that PW No.5 was indisposed and that he was suppose to go with Tanaji to Akulj for treatment.

- (c) The FIR does not mention that PW No.5 had accompanied Tanaji to Akluj on the relevant day. On the contrary, the FIR mentions that PW No.5 was with the complainant (PW No.4). Presence of PW No.5 at the place of incident is therefore doubtful. His evidence is suspicious and cannot be accepted.
- (d) PW No.6 has stated that at the relevant time he had gone to the house of washerman, because he was not having any work. He heard cries of Tanaji and rushed to the spot. He has also stated that one person from washerman's family had followed him to the spot. Such person was not examined by the prosecution nor the other witnesses have referred to the presence of any other persons at the scene of offence.
- (e) The evidence of PW No.7 Changdeo also did not inspire confidence. According to this witness, he had reached at the spot, after the incident and prior to that he had seen the accused armed with weapons. PW No.5 has not referred to his presence in his statement before the police. According to him he was accompanied by Chandrakant Jagtap and they were suppose to meet his advocate at Malshiras and were proceeding by motorcycle. PW Nos. 4, 5 and 6 has not referred to the presence of Chandrakant Jagtap at the spot.

- (f) As per the evidence of all the eye witnesses and PW No.7, some of the accused were armed with swords. Accused Hanmant, Pandurang and Bhagwan were armed with axes and accused Tanaji Bandalkar was having stick with him, whereas accused Namdeo and Mahadeo were armed with swords. In short, accused were armed with two swords, three axes and one stick. However, there was recovery of three swords, two axes and one stick. The panchas to the recovery panchnama did not support the prosecution. The recovery of the weapons is not consistent with the oral version of eye witnesses.
- (g) The incident had taken place near a road leading from Akulj to Malshiras. The poultry farm of Mr. Wagh, Milk dairy and several houses situated near the spot, which is evident from the evidence on record. The incident had occurred between 8.00 to 8.30 a.m. This is a time when most of the villagers are present in their houses. But, curiously, none of the persons from the said houses appear to have come to the spot. Although, independent witnesses were available, they were not examined by the prosecution.
- (h) The evidence of the witnesses suggested that there was animosity between the family of the deceased and the accused. The prosecution is relying on the ocular version of interested witnesses. In these circumstances, the possibility of false implication of the accused cannot be ruled out.

- (i) The evidence of eye witnesses reveal that all the accused had inflicted blows with swords, axes and stick over the person of the deceased. Medical evidence reveals that out of nearly 25 injuries, 22 are contused lacerated wounds. Taking into consideration the nature of weapons used in the crime there could have been incised wounds and lacerated wounds. The deceased had sustained injuries on the frontal portion of his body as well as on the backside. However, the witnesses had deposed that the deceased fell down and thereafter he was inflicted with the blows by weapons.
- (j) The statement of witness Changdeo Gaikwad does not appear to be reliable since his statement was recorded by the investigating officer on 23/08/1994 although the alleged incident had occurred on 14/07/1994.
- (k) The evidence of medical officer PW No.8 discloses that the stomach of the deceased contained semi-digested food of 400 cc. As per the opinion of the doctor, the deceased might have taken his last meal three hours before his death. The postmortem examination was conducted on 14/07/1994 at about 12.30 noon. The theory that the deceased had taken meal at around 7.00 a.m. on 14/07/1994 was introduced by PW No.5 for the first time. The said version was not reflected in his statement. According to prosecution the incident had occurred after 8.00 a.m. which is difficult to believe in view of the opinion of doctor. The theory of the

attack occurring at the time alleged is therefore concocted by the witness.

- (l) There is every possibility that the incident did not occur at the spot as alleged by the prosecution. The version of the witnesses is falsified by the evidence of the medical officer who conducted postmortem examination. It is for this reason that there is no other independent eye witness to the incident.
- (m) During the cross examination of PW No.4, it was brought on record that the neighbour of the said witness had filed a case against him and he was accused in that case at Malshiras. Narayan, Yellappa and Maruti Nandiwale were the complainant. Nandiwale had also filed a complaint against Tanaji (deceased). Nandiwaless are dangerous persons. It was also brought on record in cross examination that there are two groups at village Vatphali and one group is led by Namdeo Zurale and the other by Advocate Ghule. The accused belong to Namdeo Zurale group.
- (n) The motive for the crime is weak. The alleged incident of assaulting the complainant had occurred two years prior to the present incident. The witnesses have not produced any evidence to establish the said motive.
- (o) The FIR was forwarded to the court belatedly. Although, the incident had taken place on 14/07/1994. The FIR was

forwarded to the nearest Magistrate on 18/07/1994. The delay in sending the FIR is not explained which creates suspicion about the prosecution case. The prosecution story is not free from suspicion and the evidence of witnesses is not consistent with each other and the same is not corroborated by medical officer. The prosecution has failed in establishing the guilt of the accused beyond reasonable doubt.

- (p) The prosecution has failed to establish that the accused had violated the prohibitory order of District Magistrate Solapur under Section 37(1) of Bombay Police Act.
- (q) Except the evidence of investigating officer, there is no evidence to connect accused Nos. 7 and 8 with the crime. There is no independent witness examined by the prosecution to establish that the accused Nos. 7 and 8 had harboured accused No.1 Namdeo Zurale knowing that he had committed the offence of murder.
- (r) Chemical Analyser report does not support the prosecution case in any manner.
- (s) The blood group of the deceased could not be determined. The blood group of accused No.2 was inconclusive and the blood group of accused No.3 was 'A'. Similarly, the blood group of accused Nos. 1 and 4 was inconclusive.

23. In these circumstances, it cannot be said that the prosecution has been able to establish its case. There is no reason to interfere with the order passed by the Trial Court. In the case of *Sheo Swarup Vs. King Emperor* reported in *AIR 1934 PC 227*, the Court had highlighted the approach of the appellate Court hearing the appeal against acquittal by observing that the appellate Court will always give proper weight and consideration to matters such as; (1) the views of the trial Court on the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

24. In another decision in the case of *Surajpal Singh Vs. State*, *AIR 1952 SC 52*, while dealing with the powers of the High Court in an appeal against acquittal it was observed that the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by

his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witness and hearing their evidence can be reversed only for very substantial and compelling reasons.

25. The court has consistently held that in dealing with the appeals against acquittal the court must bear in mind that there is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed by the trial Court in his favour. Although the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against conviction 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 demeanour of the witnesses. 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. Merely because the appellate Court on reappreciation and reevaluation 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.

26. In the case of *State of Rajasthan Vs. Shera Ram @ Vishnu Dutta* reported in **2012 (1) SCC 602**, the Apex Court has laid down guidelines with regards to the parameters to be considered for dealing with the appeal against acquittal. In the said decision it was observed that it is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system. There is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, such order shall not be interfered. If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The miscarriage of justice which may arise from acquittal is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to reappreciate the evidence.

27. In the light of the aforesaid principles concerning the approach of the appellate Court in dealing with the order of acquittal and applying the same to the facts of the present case, we do not find that there is any perversity in the view taken by the trial Court which is a possible view. In the circumstances, we do not find any merit in the appeal preferred by the State against order of acquittal as well as the revision application preferred by the original complainant against the said judgment of acquittal and both are required to be dismissed. Hence, we pass the following order.

ORDER

Criminal Appeal No. 591 of 1995 and Criminal Revision Application No. 235 of 1995 are dismissed.

(PRAKASH D. NAIK, J.)

(S. C. DHARMADHIKARI, J.)