

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

CRIMINAL APPEAL NO.1138 OF 2011

1] Nitin Tukaram Chavan
2] Sharad Nana Chavan **...APPELLANTS**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPLICATION NO.249 OF 2018
IN
CRIMINAL APPEAL NO. 1138 OF 2011**

Nitin Tukaram Chavan **...APPLICANT**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPEAL NO.181 OF 2012**

1] Deepak Sakharam Shinde
2] Bandu Mohan Chavan
3] Dhananjaya Mohan Chavan
4] Dnyaneshwar @ Charlie @ Zipra
Ramchanda Sathe
5] Sagar Hiranman Chavan **...APPELLANTS**

VERSUS

The State of Maharashtra **...RESPONDENT**

WITH

**CRIMINAL APPLICATION NO.248 OF 2018
IN
CRIMINAL APPEAL NO. 181 OF 2012**

Dhananjay Mohan Chavan **...APPLICANT**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPEAL NO.1295 OF 2011**

Sagar Prakash Mokar **...APPELLANT**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPEAL NO.1126 OF 2011**

1] Navnath Madhu Pawar
2] Mahendra @ Waghya Arun Waghmare
3] Rahul Laxman Padwal **...APPELLANTS**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPEAL NO.1223 OF 2011**

Vijay Bhanudas Chavan **...APPELLANT**

VERSUS

The State of Maharashtra **...RESPONDENT**

**WITH
CRIMINAL APPEAL NO.447 OF 2014**

Dnyaneshwar @ Chadi @ Zipra
Ramchandra Sathe
[Filed Separate Appeal as per
order dated 22.04.2014 granting
separation of appeal]

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Shirish Gupte, Senior Advocate i/b. Mr.Kedar J.Patil Advocate for the Appellants – original accused Nos.1, 3, 4, 5 and 12

Mr.Niteen Pradhan, Advocate a/w Ms. Shubhada D.Khot a/w. Mr.Aditya Lasaria for Appellant in Criminal Appeal No.1223/2011, Criminal Appeal No.1295/2011 and Criminal Appeal No.447/2014.

Mr.Ganesh Bhujbal, Advocate for the Appellant in Criminal Appeal No.1126/2011.

Ms.Debajyoti Talukdar, Advocate for the Appellant in Criminal Appeal No.181/2012.

Mr. D.G. Khamkar, Advocate for the Appellants in Criminal Appeal No.1126/2011 and for Appellant No.4 in Appeal No. 181/2012.

Mr.H.J.Dedhia, APP for the Respondent – State.

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**CORAM: S.S. SHINDE AND
MRS.MRIDULA BHATKAR, JJ.**

DATE OF RESERVING JUDGMENT : 25TH SEPTEMBER, 2018.

DATE OF PRONOUNCING JUDGMENT: 1ST OCTOBER, 2018.

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

1. These Appeals are directed against the Judgment and order dated 6th August, 2011, passed by the Additional Sessions Judge-11, Pune in Sessions Case No.656 of 2009, thereby convicting the Appellants/Original Accused Nos.1 to 12 for the offences punishable under Section 143 read with 149 of the Indian Penal Code [for short 'IPC'] and sentencing them to suffer rigorous imprisonment for six months with fine of Rs.100/- each, in default to suffer further rigorous imprisonment [for short 'R.I.'] for 15 days each. The trial Court also convicted Appellants / Original Accused Nos.1 to 12 for the offence punishable under Sections 147 read with 149 of the IPC and sentenced them to suffer R.I. for two Years with fine of Rs.200/- each, in default to

suffer further R.I. for 30 days each. The trial Court also convicted Appellants / Original Accused Nos.1 to 12 for the offence punishable under Sections 148 read with 149 of the IPC and sentenced them to suffer R.I. for three Years with fine of Rs.200/- each, in default to suffer further R.I. for 1 month each. The trial Court also convicted Appellants / Original Accused Nos.1 to 12 for the offence punishable under Sections 449 read with 149 of the IPC and sentenced them to suffer R.I. for 10 Years with fine of Rs.500/- each, in default to suffer further R.I. for 2 months each. The trial Court also convicted Appellants / Original Accused Nos.1 to 12 for the offence punishable under Sections 302 read with 149 of the IPC and sentenced them to suffer R.I. for life and to pay fine of Rs.1000/- each, in default to suffer further R.I. for 3 months each. The trial Court also convicted Appellants / Original Accused Nos.1 to 12 for the offence

punishable under Sections 427 read with 149 of the IPC and sentenced them to suffer R.I. for two Years with fine of Rs.300/- each, in default to suffer further R.I. for 1 month each. All the above sentences were directed to be run concurrently. Hence these Appeals are filed by the Appellants challenging the conviction and sentence.

2. As all these Criminal Appeals are arising out of one and the same Judgment and Order passed by the trial Court, all these Appeals are being decided by this common Judgment. In the Sessions Case before the trial Court, there were in all 12 accused, who were tried together. The trial Court has convicted and sentenced all the twelve accused in the manner as already mentioned herein above in paragraph 1. Those twelve accused have filed these different six Criminal Appeals which are being decided by this common Judgment.

3. The prosecution case, in brief, is as under:

A] An informant (PW-16) Sau. Narsu Raju Jegali is married sister of Yellappa Pujari (PW-1), Yuvraj Pujari(PW-3) and deceased Hira Pujari. In the year 2008, when the incident occurred, the informant had been at the house of her parents, wherein she herself, her mother, PW-1, PW-3 and deceased Hira Pujari were residing jointly in the house situate at Gosavi Vasti, Karve Road, Pune. Their house consists of two partitioned rooms.

B] The deceased Hira Pujari was jobless. Hence on 11th October, 2008, he was at his house in between 11.00 a.m. to 12.30 noon. Likewise, informant Narsu was present in the house. The other family members have been out of the house for attending their job. Thus, at the time of

incident informant (PW-16) and her brother Hira Pujari only were present in the house.

C] It is alleged that on the said date at about 12.00 to 12.30 noon, accused Nos.1 to 12 along with the deceased accused Balaji Chavan, armed with deadly weapons viz. swords, scythes and axe rushed towards the house of informant, caused damage to the glass window panel of the house and house of neighbour Chand Shaikh. Therefore, the informant had made an attempt to close the door, but she was not allowed to do so by pushing the door by the said accused. Some of the accused had entered into the house and some waited in the door and by means of the above said weapons, had assaulted to Hira Pujari. Hence, the informant - Narsu urged them not to assault her brother, but the accused did not pay any heed. Hence she raised shouts. Listening to the shouts, her brother Yellappa Pujari [PW-1], Yuvraj Pujari

[PW-3] and their mother Nagamma Pujari rushed in front of their house. However, the accused did not allow them to enter in the house. Yogesh Nimbare [PW-2], the friend of deceased, Anita Nimbare [PW-5], Manda Khawale [PW-6] also rushed on the spot. Meanwhile, PW-1 and PW-3 and their mother made an attempt to enter into the house but the some of the accused, who were in the door of the said house, did not allow them to enter in the house so as to rescue Hira Pujari from the assault. On the contrary, the said witnesses were threatened with dire consequences on the point of swords and scythe.

D] It is the prosecution case that in the said vicinity, there are two Ganesh Mandals, one of the group of PW-1 to PW-4 and the deceased and, the other of the group of accused. Thus, they were having animosity on the ground of said rival Ganesh Mandals and collecting contribution

thereto. Therefore, some cases were pending against the deceased Hira Pujari. Likewise members of group of Hira had filed cases against the accused.

E] Further it is alleged that on 10th October, 2008 and 11th October, 2008 at about 10.45 a.m. to 11.00 a.m. quarrels took place between Santosh, the brother of accused No.6, his father Prakash and PW-2 Yogesh Nimbare. Therefore, Santosh lodged report with Police. On the basis of said report, Crime No.442 of 2008 under Sections 323, 504 of the IPC was registered against PW-2. Likewise PW-2 had lodged the report on 12th October, 2008 against accused No.6, his brother Santosh and father on the basis of which Crime No.444 of 2008 under Sections 323 and 504 of the IPC was registered with the Police Station. Likewise, about the incident occurred on 10th October, 2008 at about 10.45 p.m., N.C. (Exhibit-

169) was lodged by Santosh against PW-2 about he being abused and assaulted. Thus, there being animosity between accused and PW-1 to PW-6, on the said ground the incident of committing murder of Hira Pujari by using deadly weapons viz. swords, scythe, sticks and axe alleged to have been committed by the accused by forming an unlawful assembly by committing the offence of rioting and murder of Hira Pujari by causing damage to the motor bike of Shankar Sakhare and others in prosecution of their common object of unlawful assembly of the accused.

F] Thus, on the basis of report lodged by PW-16 vide Exhibit-177, Crime No.443 of 2008 under the above said Sections was registered with Kothrud Police Station.

G] After the report Exhibit-177, the investigation of the said crime started. The

Investigating Officer, Rajeshirke [PW-23] had been to the spot on the basis of information of the incident received from the PSO - Thane Ammaldar. Prior to that, the spot panchanama was prepared by PSI Tejaswani Yadav [PW-19] in presence of two panchas by seizing one blood stained steel handle and wood handles of swords, along with blood mixed earth and plain earth. She deposited the said property with Muddemal Clerk of the Police Station.

H] There was law and order situation. Therefore, till 4.00 p.m. dead body was not allowed to be removed by the relatives of the deceased to Sasoon Hospital until the culprits are apprehended. Somehow the dead body was removed to the Sasoon Hospital for autopsy.

I] Dr.Vishal Survase [PW-17] has conducted the autopsy on the dead body and issued P.M. notes

(Exhibit-155) and issued death certificate (Exhibit-156). P.I. Rajeshirke [PW-23] had recorded statements of star witnesses on 12th October, 2008, and later on of other witnesses as per their say. All the accused evaded their arrest. Therefore, PW-23 had deputed special squad for the said purpose. Hence, accused Nos.1 to 6 were arrested on 13th October, 2008. Thereafter, accused Nos.7 and 8 were arrested on 16th October, 2008, accused No.10 was arrested on 13th April, 2009, accused No.12 was arrested on 7th January, 2009, likewise accused No.9 was also arrested.

J] Further it is the case of the prosecution that on 14th October, 2008, the clothes of the accused Nos.1 to 6, which were on their person on the date of incident, were seized under panchanama Exhibit-178. Likewise, the clothes of accused Nos.7 and 8 were seized under panchanama Exhibit-190, clothes of accused No.11 with sword were

seized in consonance with memorandum statement Exhibit-212 and discovery panchanama Exhibit-213, drawn by P.I. Narnavar [PW-22] on 24th August, 2009.

K] Further it is the case of the prosecution that on 16th October, 2008, accused no.6 gave memorandum statement at Exhibit-179, in presence of panch witness Subhash Sharma and other panchas and pursuant to said statement sword was discovered from the standing grass situate by the side of Rajaram Bridge, Pune and it was seized under panchanama Exhibit-180.

L] On 16th October, 2008 when accused No.3 was in police custody, he made statement in presence of panch witness Prabhakar Kasab [PW-10] and other panch witness Sanjay Dalvi in discovering tempo No.MH-12-QA-7075, along with sword concealed in the tarpaulin/there under.

Hence in pursuance to the above memorandum, accused No.3 has discovered the above said tempo and two blood stained swords under panchanama Exhibit-181.

M] On 16th October, 2008, at the instance of accused No.1 Deepak Sakharam, two swords, one without handle were discovered from the place those were concealed, under panchanama Exhibit-184. On 16th October, 2008, itself when accused no.2 was in police custody, he made statement in presence of panch witness Ganesh Bhagat [PW-12] and other panch witness Shankar Kamble and discovered tempo No.MH-12-AQ-6908 and one axe, from the grass situate at Tukai Nagar, Sinhagad Road, Pune and those were seized under panchanama Exhibit-186.

N] On 17th October, 2008, when accused No.7 Dnyaneshwar was in police custody, made statement

Exhibit-187 in presence of panch witness Subhash Sharma and Aniket Mokar in discovering scythe from the place where it was concealed and in pursuance thereto led the police party near the compound wall of Kirloskar Company and from the grass had discovered blood stained scythe. The same was seized under panchanama Exhibit-188.

O] On 17th October, 2008, accused No.8 Vijay Chavan made statement Exhibit-189 to discover scythe from the place where it was concealed and accordingly at his instance blood stained scythe was discovered from the ditch, backside of Pruthvi Hotel, under panchnama Exhibit-190. At the instance of accused No.9, bamboo stick stained with blood was seized under panchnama. On 14th April, 2009 at the instance of accused No.10 Rahul Padwal, at per seizure panchnama Exhibit-210, one blood stained stick was seized.

P] In connection with the said crime, motorcycle NO.MH-12-EL-331 and scooter No.MH-12-KA-3336 were produced by the father of accused No.6 viz. Prakash Mokar and father of accused No.3 Mohan Chavan. Hence the same were seized under Panchnama Exhibit-116. Likewise, on 18th October, 2008 father of accused No.5 Tukaram Chavan and brother of accused No.8 Gokul Chavan had produced motorcycle Nos. MH-12-EX-9033 and MH-12-C-157, which were seized under panchnama Exhibit 117.

Q] All the properties seized from the spot by PW-19, all the clothes of the accused and deceased, the muddemal articles discovered by the accused in consonance to Section 27 of the Evidence Act, were sent to the Chemical Analyzer by PW-23 Rajeshirke on 24th October, 2008 with special messenger and had collected in all 11 C.A. reports as per Exhibit-193 to 203. PW-24 P.I. Vilas Narnawar had sent the clothes of the accused

No.11 along with sword to the C.A. and collected the report of C.A. vide Exhibit-217. Supplementary charge-sheet was instituted against accused Nos.10, 11 and 12 respectively. After completion of the investigation, the investigating officer filed charge sheet against the accused persons in the Court.

R] As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Pune committed the case to the Court of Sessions. The charge vide Exhibit-59 came to be framed against the accused persons. Its contents were read over and explained to the accused in vernacular to which they pleaded not guilty and claimed to be tried. The defence of the accused is of total denial. Inter-alia the accused came with the specific defence that they have been falsely implicated in the case due to ill advise of PW-2

Yogesh Nimbare, who was having animosity with the accused on the ground of previous quarrel.

4. Heard learned counsel appearing for the respective Appellants and learned APP appearing for the Respondent – State, 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.

5. First, we will examine the evidence of Medical Officer, who has conducted postmortem on the body of Hira. PW-17 Dr.Vishal Rajgopal Survase is the Medical Officer, who conducted postmortem on the dead body of Hira. He deposed that following antemortem injuries were found on the body of Hira:-

1) Vertically oblique chopped wound of 5 cm above middle end of right eyebrow extending upwards for 13 x 1.5 cm. With clear cut fracture of underline bone. Angles and margins were clean cut.

2) Vertical chopped wound, 1.5 cm. Right lateral to injury no.1, starting from 5 cm above right mid eyebrow, 11.5 cm bone deep. Angles and margins were clean cut.

3) Oblique chopped wound, 5 cm above right ear extending posteriorly downwards 15 x 1.5 cm. Underline bone shows clean cut fracture. Angles and margins clean cut.

4) Vertical chopped wound, 4 cm below occipital protuberance, 8 x 1 cm. Angles and margins clean cut. Underline wound shows clean cut fracture.

5) Horizontal and tangential incised wound. Incised wound 6 x 4 cm. Muscle deep with skin flap hanging partly separately. Angles and Margins clean cut. Under line matacarple shows clean cut fractures on right side.

6) Horizontal chopped wound, middle aspect of right wrist, 3 x 1.5 cm underline ulna shows clean cut fracture. Angles and margins clean cut.

7) Incised wound posterior aspect of right shoulder 3 x 1 cm muscle deep. Angles and margins clean cut.

. PW-17 further deposed that all the above said injuries were fresh.

6. PW-17 Dr. Vishal further deposed that on internal examination following injuries were found:-

1) Scalp-haematoma all over. Skull Clean cut fracture of right side of frontal and parietal measuring 10 cm long, corresponding to external injury no.1.

2) Clean cut fracture, right parietal and occipital bone, measuring 11 cm lone, corresponding to external injury no.3.

3) Clean cut fracture occipital bone 6 cm long, only outer table involved, corresponding to external injury no.4.

7. PW-17 Dr. Vishal further deposed that on the brain of Hira he noticed subdural and

subarchnoid haemorrhage all over of brain surface and on the brain he also noticed the following injuries:-

- 1) Chopped wound right frontal 3 x 5 x 1 cm.
- 2) Chopped wound right parietal lobe 4 x 5 x 1 cm.
- 3) Right parietal lobe 6 x 5 x 5.
- 4) Right occipital lobe 3 x 5 x 1.5 cm.

8. PW-17 (Dr. Vishal) further deposed that in his opinion the death has been caused due to "traumatic and hemorrhagic shock as a result of chopped injuries". Accordingly, autopsy report [Ex.155] was issued by him on the same day.

9. All the Advocates appearing for respective accused before the Trial Court, have declined to cross examine (PW-17) Medical Officer. Therefore, it appears that defense did not contest

that death of Hira was 'homicidal' Upon careful perusal of the evidence of Medical Officer and the injuries noticed by him on the dead body of Hira, it clearly appears that death of Hira was homicidal. But, the core question is that, who is the author of the said injuries caused to Hira.

10. Now, we will examine the evidence of other prosecution witnesses. The prosecution has examined PW-1 Yallappa Jairam Pujari. He deposed that since his childhood he is living with his family at Kothrud, Pune. His family consists of his parents, brother Yuvraj and Hira. At the time of incident his sister Narsu was also present at his house. He further deposed that his brother Hira was doing the work of A.C. repairs. He knows all the accused as they are residing in the same area where he resides. He further deposed that as his brother Hira belongs to one group [Mandal] and accused belongs to other group, their relations

were strained. His brother Hira belongs to Shrikrushna Mandal and accused belongs to Bholenath Mandal. One Yogesh Nimbare (PW-2) was the friend of his brother Hira. A day prior to the incident, in the evening quarrel took place between Yogesh Nimbare and accused. The said matter came to be reported to the Police.

11. PW-1 Yallappa further deposed that on 11th October, 2008, at about 11.00 to 11.30 hours in the morning his brother Hira and sister Narsu were only present at the house. At that time he was present in the nearby flour Mill. He further deposed that at the relevant time he had seen Dhananjay Chavan, Bandu Chavan, Vijay Chavan, Sagar Chavan, Dnyaneshwar Sathe, Navnath Pawar, Rahul Padwal, Sagar Mokar, Deepak Chavan with weapons in their hands and while marching towards his house, therefore, he went towards his house. At the relevant time Yogesh Nimbare and Sakhare

were also seen on motorcycle while proceeding towards his home but after seeing the above accused persons, Yogesh and Sakhare have left the motorcycle and escaped. At the relevant time the above persons entered into his house, they then assaulted his brother Hira. On seeing those persons, he himself took shelter at adjacent house. He further deposed that after assaulting his brother Hira, the above persons then went away. He then came at his home and seen his brother Hira with several injuries from which blood was oozing. Then he himself, Sanjay Gokhale and one another person took his brother Hira at Shaswat Hospital. The Doctor treated him but in vain and his brother Hira died. Then dead body was shifted to Sasoon Hospital. He further deposed that he knows all the accused by their names as they are residing in his locality and he can identify them.

12. During the course of cross examination, PW-1 Yallappa stated that his duty hours commences from 10 hours in the morning and ends at 5 hours in the evening. His brother Yuvraj is driver by profession, who used to proceed on work usually about 10 hours in the morning and return home about 7 p.m. His father also used to do the work and used to leave home at 9.00 hours in the morning and return home about 6.00 p.m. He further stated that their financial condition is not sound. Police recorded his statement on the day of incident at about 6.00 to 7.00 p.m. He was unable to recollect the exact time of recording statement of his sister and mother. He further stated that on the date of incident at about 10 hours in the morning, he went on duty. On that day, the quarrel did not take place between his brother Hira and others. He further stated that on the day of incident about 9 hours in the morning, he learnt about the likelihood of assault over his brother

Hira. The distance between his house and Alankar Police Chowki is about 15 minutes by foot. On that day he did not feel it necessary to inform the police about likelihood of assault over brother Hira. He is not aware as to whether his brother Hira anyway related with the dispute took place on the prior day or on the day of incident. He further stated that on that day about 11.30 hours in the noon when he came, he noticed that the glasses of windows of the house of Chand Shaikh, a neighbourer, were broken and house was locked. Similar was the condition of the glasses of windows of his house. He further stated that he was not accompanied with Hira in the Hospital. At that time his mother had been in the Hospital and he himself and his sister were at home. He further stated that he himself, not tried to lift his brother Hira, however, his sister and mother attempted to lift Hira. At the relevant time the clothes of his mother and sister were stained with

blood. He further stated that his clothes had not stained with blood. He further stated that when police visited his house, he has not narrated about the incident to the police at the relevant time. He further stated that the cases were registered against the group of Yogesh Nimbare. He further admits that in some cases name of his brother Hira was also involved. He further admits that all those cases were instituted on the complaint by some of the accused. He further stated that his house is situate in thickly populated locality. He further stated that in his lane about twenty houses are there. He further stated that he has not gone through the contents of his statement recorded by police. While recording the statement he did not narrate to the police about the two groups i.e. Shrikrushna Mandal and Bholenath Mandal. He further stated that he had not narrated the police while recording the statement that one day prior to the

incident quarrel took place in between accused and Yogesh Nimbare. Yogesh Nimbare was the friend of Hira since his childhood. The house of Yogesh situate about half kilo meter away from his house. Hira was on visiting terms at the house of Yogesh. He is not aware whether the cases were registered against Yogesh by police. He is not aware whether Yogesh was in jail for some days. He further stated that their locality is hutment area, known as Gosavi Vasti. He admits that large number of persons by name Chavan are residing in their locality. The distance between his house and Kothrud police station is about ten minutes by walk.

13. During the course of further cross examination PW-1 Yallappa stated that after the incident for about 15 minutes he was at home. At the time of incident, large number of persons gathered there. At Shaswat Hospital, Police

Officials had reached. At the relevant time simultaneously his mother and sister went to lodge the complaint. He further stated that at Shaswat Hospital, police did not interrogate him and he did not talk to them at that time. Prior to leaving for Sasoon Hospital, Police did talk to him, however, he did not disclose the entire incident to the police. He further stated that, they were in Shaswat Hospital for about two hours and police were there all the while at the Hospital. Then other persons went to Sasoon Hospital along with dead body and he went to Police Station. He told the entire incident to the Police and the police recorded the same in writing. He was unable to recollect whether police obtained his signature on that day. He further stated that while recording the statement, he has not narrated to the police that, in the incident took place at about 9.00 p.m. on 10th October, 2008 Santosh Mekar was involved. He further stated that

the portion marked 'A' in his statement read over to him is incorrect. He was unable to state as to why it was so recorded. He is not aware whether on next day quarrel took place between Santosh Mekar and Yogesh Nimbare. While recording the statement, he had not stated to the police that on 11th October, 2008 at about 9.00 a.m. at Gosavi Vasti quarrel took place in between Yogesh Nimbare and Santosh Mekar and then both the sides went at Alankar Police Chowki to lodge the report. He further stated that portion marked 'B' from his statement, read over to him, is incorrect. He was unable to assign any reason as to why it was so recorded. He further stated that there was no any dispute between deceased Hira and Rahul Padwal prior to the incident.

14. Thus upon careful perusal of the entire evidence of PW-1 Yallappa it appears that he was not present at the spot when the incident took

place. Various contradictions and improvements in his evidence are brought on record during the course of his cross examination. In his cross examination, he stated that his duty hours are from 10 a.m. till 5.00 p.m. He specifically admitted that on the day of incident, he went to attend his duty. Though he has stated that at about 11.30 a.m. he came to house and noticed that the glasses of windows of his house were broken, but as per the prosecution, the incident took place at about 12.00 to 12.30 noon and thus it appears that this witness is not deposing true facts. PW-1 Yallappa has deposed that due to fear of accused persons he took shelter in the adjacent house. This conduct of the witness does not appears to be natural conduct as when his real brother was being assaulted, in such situation his natural conduct would have been to enter in the house and try to rescue his brother from the assault. His evidence further discloses that after

the incident, he has not tried to lift his brother Hira to reach him to Hospital. It is pertinent to note that this witness is real brother of deceased Hira and his conduct in not lifting his brother Hira for reaching Hospital does not appears to be natural. Though it is the case of the prosecution that from the injuries sustained to Hira, blood was oozing and this witness claims that soon after the incident of assault, he reached at the spot of incident but still he specifically admits that his clothes were not stained with blood. It is unbelievable that, this witness has even not touched to the body or clothes of his real brother deceased Hira or not tried to help him, at least by offering drinking water if really he was present at the spot. Thus it appears that PW-1 Yallappa is a got-up witness, and he was neither present at the spot when the incident took place nor he visited the spot soon after the incident. This witness claims that at the time of incident

he was at the spot and witnessed the incident but when police visited the spot after the incident, he has not narrated the incident to the police, and when his statement was recorded on next day of the incident, then only he narrated the incident to the police. This is unbelievable. Therefore, upon perusal of the entire evidence of this witness, it does not inspire confidence.

15. The prosecution has examined PW-2 Yogesh Ajit Nimbare. He deposed that he is residing at Gosavi Vasti, Kothrud Pune since last 24 years. He knows all the accused as they are residing in the vicinity where he resides. He further deposed that he himself and his companions are members of the Shrikrushna Mitra Mandal whereas all the accused and their companions are the members of Jai Bholenath Mitra Mandal. Since last 5-6 years quarrels were going on amongst the members of the said two Mitra Mandals. Regarding incident, he

deposed that the incident of the present case had taken place on 11th October, 2008, in the noon at about 12.00 to 12.30 p.m. On the said date, at about 9.30 a.m. quarrel took place between him and Santosh Mekar, Sagar Mekar and father of accused No.6 Prakash Mekar, on the ground of earlier quarrel which took place at about 10.45 p.m. on 10th October, 2008. He further deposed that on 11th October, 2008 at 9.00 to 9.30 a.m. when he was proceeding from the side of house of Ganpat Sharma, accused No.6 and his father Sagar Mekar met him and abused him on the ground of incident occurred in the previous night. At that time Santosh Mekar had given blows of bamboo sticks over his head and therefore he had been to Alankar Police Chowki to lodge the report. After medical treatment, when he was proceeding towards above said Outpost by Pinac Society Road along with Shankar Sakhare, at that time some persons informed him that some boys had gathered in front

of his house. Then by canal road they moved their motorcycle to the said Police Outpost. On the said spot, on the way accused No.11, accused No.8 Vijay Chavan, accused No.2 Bandu Chavan, accused No.3 Dhananjay Chavan, accused No.7 Dnyaneshwar Sathe, accused No.1 Deepak Shinde, accused No.5 Nitin Chavan, accused No.10 Rahul Padwal, accused No.4 Navnath Pawar, accused No.6 Sagar Mokar, accused No.12 Sharad Nana Chavan, deceased accused Balaji Chavan were found gathered. All the said accused were armed with swords, sticks and scythe. Accused came towards the witness and Shankar Sakhare when they were in riding condition on the motorbike but they could not turn the bike on that spot as the road situate thereon was under repair. Then they parked motorcycle on the said spot and came to back side of the house of Jayram Pujari where house of Gokul Khavale is also situate. He further deposed that they have closed themselves in the said house of Gokul Khavale for security. There

they listened the shouts from the side of house of Hira (deceased).

16. PW-2 Yogesh further deposed that Hira Jayram Pujari was member of their Mitra Mandal and hence was known to him. He further deposed that thereafter he himself and Shankar Sakhare came to their motor bike, at that time they noticed all the accused running armed with swords, scythes and sticks. Thus the said persons have given blows by means of the above said weapons and the sticks on their motorbike and caused damage to the same. He further deposed that then he along with Shankar Sakhare came in front of the house of Hira Pujari. By that time injured Hira was moved by brother of the witness namely Mangesh and Sanjay Gokhale to the Hospital. He further deposed that thereafter they learnt about Hira Pujari being declared dead by the Doctor.

17. During the course of cross examination,

PW-2 Yogesh stated that in respect of above stated incident, Investigating Officer has recorded his statement on 12th October, 2008. While making statement, the time of the incident occurred in the morning on 11th October, 2008 was not stated by him. While making statement, it was stated by him that when they reached to the Sasoon Hospital, they learnt by phone call about the injured being taken to the Shaswat Hospital. He admits that on 12th October, 2008, at 2.45 p.m. he had lodged the report against accused No.6, his father and one Santosh Mekar. On 11th October, 2008, at about 10.00 to 10.30 p.m. he had been to Alankar Police Outpost to lodge report. He further stated that the report dated 12th October, 2008, about the incident was correctly recorded as per his say hence he has signed it and the contents of the same are true and correct. He admits that quarrels were going on in between their Mitra Mandal and Mitra Mandal of the accused on the point of

installation of God Ganesh and recovery of contribution thereto. He further admits that the Mandal of the accused had lodged police cases against them wherein he was also arrested. He does not know whether Mrs. Narsu Jegali is real sister of the deceased. He was unable to state whether said Narsu had been to Shaswat Hospital when they had been there but he states that Yallappa Pujari was present in the Hospital. On the date of incident, he had been back to home at about 4.00 to 5.00 p.m. and at the said time the police were present in their vicinity. At the said time due to confusion on account of incident, he did not feel it necessary to narrate the incident to the police. He further stated that after return from Shaswat Hospital, he did not visit the house of the deceased. In Shaswat Hospital, the incident was narrated by him to the Police Officer Rajeshirke. At that time only his name and address was noted down by the said Police Officer without

recording full-fledged statement. His statement was completed on 12th October, 2008 in between 2.00 to 3.00 p.m. At that time other witness Rahul Kanjare, Sachin Thakar, Rajesh Shekhane, Sanjay Gokhale, Nikhil Thakar, his mother Anita, brother Mangesh, Shankar Kamble, Shankar Sakhare, Aniket Makar etc. and others were present but he did not recollect their names. Narsu, Yallappa and Yuvraj Pujari were also present along with mother of deceased Naggappa. During further cross examination, he stated that their vicinity is hutment area. He further stated that the deceased might have been facing 2-3 criminal cases including riot. Deceased was arrested under preventive detention at the time of Ganpati festival. He further stated that so far he is facing criminal trial in 4-5 crimes. He was also detained during Ganpati festival. He further stated that after the incident of the present case, father of accused No.6 had lodged the report

against him about the damage caused to his auto rickshaw and his wallet of cash amount being robbed by him. He further stated that the immediate neighbour of the deceased is one Shaikh but he did not recollect the name of other neighbour. He further stated that he does not know whether no case between deceased and accused No.11 was pending. He admits that accused No.11 is not accused in any of the crime registered on the basis of report lodged by them.

18. Thus, upon careful perusal of the entire oral testimony of this witness, it is crystal clear that PW-2 Yogesh has not witnessed the actual incident. During the course of his examination in chief itself, he has stated that he along with Shankar Sakhare closed themselves in the house of Gokul Khavale for security and thus they were not present at the spot when the incident took place. Though this witness claims

that he was present near the spot of incident when incident took place, but when he had opportunity to narrate the incident to the police on the same day at about 4.00 to 5.00 p.m., he had not narrated the incident to the police and on the next day i.e. on 12th October, 2008, when his statement was recorded by the police at that time only he disclosed that he was present on the spot when the incident took place. PW-2 Yogesh admitted that so far he was facing criminal trial in 4-5 crimes and he was also detained by Police during Ganpati festival. Thus it is clear that this witness is deposing falsely that he was present at the spot when incident took place and it appears that in fact he was not present on the spot at the time of incident. The trial Court has also disbelieved the evidence of this witness PW-2 as the documents placed before the trial Court discloses that PW-2 came to know about the incident from others and he was not present at the

spot when incident took place. The evidence of PW-2 shows that on 11th October, 2008 he had been to Police Station, Sasoon Hospital, and therefore, he was not anywhere near the place of incident and he does not know how deceased was assaulted, but being highly interested and friend of deceased and having inimical terms with accused, PW-2 has posed himself as eye witness. This shows that PW-2 is a got up witness. The trial Court has held that PW-2 has not witnessed the incident and therefore rightly observed that his evidence is of no help to the prosecution as eye witness of actual incident.

19. The prosecution has examined PW-3 Yuvraj Jairam Pujari. He deposed that deceased was his real elder brother. He himself, his two brothers, one sister and parents reside jointly. He further deposed that the incident had took place on 11th October, 2008, on Saturday at about 11.00 to 11.30

a.m. At that time he was present in Datta Mandir Chowk of there vicinity. The said Chowk situate at 40 to 50 feet from his house. He further deposed that, at that time all the accused armed with stick, axes, scythes and swords rushed towards his house. He further deposed that accused No.1 Deepak, accused No.2, accused No.3, accused No.4, accused No.5, accused No.6, accused No.7, accused No.8, accused No.9, accused No.10, accused No.11 and accused No.12, are the same persons. He knew the said accused since his childhood. At that time PW-2 and Shankar Sakhare were proceeding by the motorcycle from the spot and after looking to the accused they have left the motorcycle and fled. Then the said motorcycle was damaged by all the accused. Then the accused marched towards his house. He followed them at that time his sister Sau.Narsu tried to close the door but the door was pushed by all the accused. At that time deceased was sleeping in the house on cot. Then his sister

raised the shouts, till then accused started assaulting to his brother Hira. Therefore, he himself, his brother Yallappa [PW-1] and mother rushed towards their house. At that time accused No.2 given blows by means of an axe on the head of Hira. At the same time accused No.8 and accused No.7 assaulted his brother by means of scythes. He further deposed that they tried to enter into the house but were not allowed by the accused Nos.1, 4 and 6. The said accused were armed with swords and on the point of the same, they were threatened and not allowed to enter into the house. He further deposed that, then he noticed Hira lying in blood pool. Then they requested all the accused not to assault his brother Hira but at that time accused No.4 instigated others to kill Hira. Due to the said incident, attention of public was also attracted at the spot. Thereafter also accused Nos.10 and 12 threatened them not to enter in the house. Then due to the arrival of the public and

the crowd accused fled from the spot.

20. PW-3 Yuvraj further deposed that, then one Sanjay Gokhale, Mangesh Nimbare had lifted injured Hira and carried him to Shaswat Hospital. He also accompanied them. In the said Hospital, Hira was declared dead by the Doctor. Then as per the instruction of the Doctor, body of Hira was carried to the Sasoon Hospital. He further deposed that in respect of the said incident, Investigating Officer has recorded his statement on 12th October, 2008. He further deposed that he can identify above said sticks, axes, swords and scythes if shown.

21. During the course of cross examination, he stated that Narsu is his real sister, Yallappa is his real brother and the deceased was his step brother. He further stated that Sau.Narsu after the marriage is residing with them. Deceased was

jobless. Their vicinity is the thickly populated. He further stated that Ganesh Mandal of his group and Ganesh Mandal of group of accused are separate and therefore on account of collecting contribution of both the Mandals for installation of God Ganesh oftenly there used to be quarrels between the members of the said Mandals. He admits that the accused have filed criminal cases against PW-2 and the deceased. He further admits that accused have filed criminal cases against the members of his Ganesh Mandal. He further stated that all the quarrels stated above had taken place during Ganpati Festival. He further admits that before the incident in the night, quarrel took place between Yogesh Nimbare [PW-2] and his rivals. He admits that Alankar Police Outpost situate 2-3 minutes distance by walk from his vicinity. He further stated that his father possessed splendor plus motorcycle and his friends residing in their vicinity do possess bikes. The

distance between Alankar Police Outpost and their vicinity by walk is 15-20 minutes. He is Car Driver on the vehicle of one Mrs.Mimli Datta and attends duties in between 10.00 a.m. to 6.00 p.m. and used to have weekly offs on each Saturday and Sunday. The culprits who entered in his house had departed from there after 15 minutes. During the said span, all the culprits were continuously assaulting to his brother Hira by means of weapons. They have forcefully given blows on the person of Hira by means of above stated weapons. He further stated that during the said span of time, he had no occasion to enter into the house as he was not allowed to do so. During the period of said assault, his sister Sau.Narsu was inside the house. He further stated that he had witnessed his sister rescuing his brother Hira from assault. He further stated that he had witnessed each culprit having given 3-4 blows on the person of Hira. He further stated that he had no occasion to

lift his injured brother for carrying him to Hospital. He did not render assistance to the persons who had carried injured in the Hospital. While making statement before the Police, it was stated by him that he followed Sanjay Gokhale and Yogesh Nimbare when they had carried injured in Shaswat Hospital, however, his statement is silent in that respect. He was unable to assign any reason for the same. He further stated that at the relevant time cell phone was possessed by him and not by PW-1. He further stated that on the said date it was possible to dial hundred number for police aid but on account of holiday, on Saturday and Sunday, he used to switch off his cell phone completely. He further stated that when he visited Shaswat Hospital, Police had been to the Hospital, however, at that time he did not approach the police, and did not narrate the said incident to them though he was feeling to narrate the same. He further stated that, in Sasoon Hospital Police

Outpost situate near entrance gate. He further stated that, to the said police also, he did not narrate the incident, and such incident was not narrated by him to the police till the time of recording his statement.

22. During the course of further cross examination, PW-3 Yuvraj has stated that in the next day morning, he had dialogue with his sister Narsu about lodging the report of the incident. He further stated that, he had dialogue with PW-1 and sister Narsu in mentioning the names of all the culprits. No enquiry was made by him with the said witnesses, whether they have informed about it to the police. He further stated that on the muddemal articles identified by him there is no specific identification mark on each and such property is easily available in market. He further stated that to all three sides of their house, there was no window. He further stated that their house is

having only one door and one window and at the time of incident, curtain was applied to the window only. He further stated that deceased was facing criminal cases and PW-2 is also facing criminal cases. He further stated that while making statement it was stated by him that Deepak Shinde [accused No.1] did not allow to enter into the house to save his brother but further admits that his statement is silent to that effect and he was unable to assign any reason for the same. He further admits that PW-2 Yogesh Nimbare and PW-4 Mangesh Nimbare are his fast friends and likewise they were friends of the deceased. He admits that one day prior to the incident quarrel took place between PW-2 and Santosh Mokar. He further admits that on 11th October, 2008, again quarrel took place between said persons and father of PW-2. He further stated that till the date of recording his evidence, he was not aware whether police had prepared the panchanama of the spot. He further

admits that, they were not having any sort of strained relations with accused No.6, his brother Santosh and their family members. He further admits that accused No.10 is not member of any Ganesh Mandal, and he is not resident of their vicinity. He further stated that while making statement before the Police it was stated by him that accused No.10 had obstructed him from entering into the house for saving brother Hira but his statement is silent to that effect and for which he was unable to assign any reason. He further stated that he has no strained relations with accused No.11 and admits that said accused is not member of their Ganesh Mandal. A suggestion was put to this witness that due to pendency of many criminal cases against deceased, he was having many more enemies. He denied the suggestion put to him that unknown persons / enemies have committed murder of his brother hence he has falsely named the accused persons.

23. Upon perusal of evidence of PW-3 though he states that for 15 minutes the accused were continuously assaulting his brother Hira and further he has seen that, each accused has given 3-4 blows to Hira, but in next breath he stated that he was not allowed to enter in the house by the accused persons. The prosecution has brought on record that entire incident took place in the house itself. When this witness was not allowed to enter in the house, then, it is not possible to believe that he has witnessed the actual incident of assault. PW-3 further stated that for about 15 minutes continuously all the assailants were assaulting his brother Hira. However, if the medical evidence is perused, it shows that deceased Hira received in all 7 external injuries. If the evidence of PW-3 is accepted that 12 accused persons were continuously assaulting Hira for about 15 minutes with deadly weapons which he

has described, in such situation Hira would have received multiple and many more injuries, and therefore it appears that evidence of PW-3 has not witnessed the incident. PW-3 Yuvraj further admits that at the said time of incident cell phone was possessed by him and on the said date it was possible to dial hundred number for police aid. But he further stated that, on account of holiday on Saturday and Sunday, he used to switch off his cell phone completely. It is difficult to believe that, when such serious incident of assault on his real brother Hira was taking place, and he was very well present there, having cell phone with him, but he has not switched on his cell phone to call the police for reporting the incident and saving his brother from the assault. Further he has stated that, he himself and his brother Yellappa (PW-1) have not tried to lift Hira and take him to the hospital after the incident. This conduct of the witness appears to be unnatural.

PW-3 further admits that for the first time, he has stated that Sanjay Ghokhale and Mangesh Nimbare carried Hira to Shashwat Hospital. This material improvement shows that PW-3 has tried to fill in the gap by making this additional statement. PW-3 further admits that, till his statement was recorded by the Police on 12th October, 2008, he did not disclose or narrate the incident to anybody. Thus it is difficult to believe that, this witness was present on the spot when the incident was going on. The conduct of PW-3 is not natural as he has not tried to rescue his brother Hira from the assault. PW-3 Yuvraj has specifically admitted that on the next day morning of incident, he had dialogue with his sister Narsu about lodging the report of the incident and he had dialogue with PW-1 Yallappa and sister Narsu in mentioning the names of all the culprits. Thus it is clear that after due deliberation with his sister Narsu and his brother Yallappa (PW-1), this

witness decided to lodge the report and to name all the accused persons.

24. The prosecution has examined PW-4 Mangesh s/o Ajit Nimbhare. He deposed that he born and brought up at Gosavi Vasti, Happy Colony, Kothrud. He was knowing the deceased. The incident had taken place on 11th October, 2008 at about 12.00 to 12.30 noon. At that time he was in lane No.1 near Ganesh Temple. At that time, accused Nos.3, 2, 8, 11, 7, 5, 6, 9, 4, 10 and accused No.12 armed with weapons noticed proceeding towards the house of deceased. He followed them. At that time PW-2 and Shankar Sakre were proceeding by their bike by canal road, however, they dropped their bike on that spot due to arrival of accused armed with weapons, and fled towards the house of Somnath Khavale. Then the accused persons had caused damage to the bike of PW-2 and Shankar Sakare. Then, they all proceeded towards the house of the

deceased and entered into the house, therefore, there was commotion. Then they assaulted to Hira Pujari. Thereafter shouts were raised by the family members of Hira Pujari. After assault the accused left the house of Hira Pujari. Thereafter, he heard noise of weeping from the house of Hira Pujari, hence he had been there, and entered in the house. Then he noticed Hira Pujari lying in injured state in pool of blood in his house. Therefore this witness himself, Sanjay Gokhale, lifted injured in their arms and carried him in Shaswat hospital through auto rickshaw. Then within 2-3 minutes police had been to the said hospital. Thereafter, doctor declared Hira Pujari dead. He further deposed that, when the police inquired with PW-1, PW-2 and he himself, as to who had assaulted Hira, then he informed the names of all the accused to police about being author of the incident. Police have recorded his statement.

25. During the course of cross-examination, PW-4 Mangesh Nimbare stated that, his statement has been recorded by the Investigating Officer in Shaswat Hospital itself. When he himself and Sanjay Gokhale lifted injured, their clothes were stained with his blood, however nothing was informed to the police in that respect. His shirt and shirt of Sanjay Gokhale were stained with blood. When police inquired him about the incident, no inquiry thereto was made by the police with Sanjay Gokhale. There was no impediment to inform the police that their clothes were stained with blood of the injured. After the statement recorded at Shaswat hospital, Investigating Officer has not made any inquiry with him nor has recorded statement. On 12th October, 2008 no statement was made by him before the Investigating Officer. PW-2 Yogesh is his real brother. At the time of inception of incident, PW-3 Yuvraj was not with him at Ganesh Temple as

he was alone there. When the body was moved to Sasoon Hospital, he did not accompany it. He admits that PW-2 Yogesh was facing criminal trials. He further admits that from the spot where he was stand up at the time of incident, the incident going on in the house of Hira was not visible. When he lifted injured, he noticed injuries sustained on the body of Hira on particular part. There were no injuries on calfs of legs, thighs. No injuries were found on stomach, back, hand and shoulder of Hira. While making statement, it was stated by him that from some distance, injured was carried to Shaswat Hospital, but he admits that his statement is silent to that effect and for which he was unable to assign any reason.

26. During the course of further cross examination, PW-4 Mangesh stated that he does not know whether on 10th October, 2018, there was

quarrel between PW-2 Yogesh and Santosh Mekar. He does not know whether on next day also, quarrels took place between the said person and father of Sagar Mekar. His statement was not read over by the Investigating Officer to him. The portion mark 'A' appearing in his statement is correct. On next day also, quarrel took place. He does not know whether PW-2 Yogesh and Santosh Mekar have lodged report against each other with Police. While making statement to the Police, name of accused No.6 was stated by him to the Investigating Officer, but he admits that his statement is silent to that effect and he was unable to assign any reason for the same. While making statement, he has stated that accused Nos.9 and 10 armed with weapons were witnessed by him, but he admits that his statement is silent to that effect and he was unable to assign any reason for the same. He further stated that the population of their vicinity is of about 5000. It is hutment

area and thickly populated. All the house situate in the said area are attached to each other. He further stated that he is facing one criminal case of physical assault.

27. The perusal of evidence of PW-4 Mangesh shows that, he was not present on the spot at the time of incident. If entire evidence of PW-4 is perused, he is silent about the presence of PW-1 (Yallappa), PW-2 (Yogesh), PW-3 (Yuvraj) and PW-16 (Narsu) at the spot of incident. This is quite contradictory and conflicting evidence to that of the other witnesses. It appears that the statement of this witness and other prosecution witnesses were recorded on 12th October, 2008 i.e. on the next day of the incident. The defence has brought on record material contradictions and omissions in the evidence of this witness in respect of involvement of accused Nos.6, 9 and 10. This witness is also highly interested and real brother

of PW-2 and also friend of deceased and PW-1 and PW-3. The prosecution has failed to examine Sanjay Gokhale, who is material and important witness. The prosecution has also failed to examine mother of the deceased. The case of the prosecution that PW-4 along with Sanjay Gokhale took the deceased to the hospital does not appear to be true.

28. The prosecution has examined PW-5 Anita Ajit Nimbare. In her examination-in-chief she stated that, she is residing at Happy Colony, Lane No.2, Kothrud-Pune, since last 25 years. She was knowing the deceased being resident of same vicinity. The incident had taken place on 11th October, 2008 at about 12 to 12.30 noon when she was present in the entrance door of her house. At that time from lane No.1 towards lane No.2 some boys came, those were accused No.8, deceased Balaji Chavan and accused No.2. She further deposed that accused No.7 is shown as accused

No.11 and she was unable to name other persons, but she deposed that in all there were 12-13 boys. They were armed with swords, sticks and axes. Out of the said boys somebody uttered words, catch up the mother of Yogesh. Thus, due to fear of the said boys, she hide herself in the house of one Bhangarwala. As her son PW-4 Mangesh was in the same vicinity, after 10-15 minutes, she had been in search of Mangesh. At that time, she noticed commotion from the house of deceased. Then she entered in the house of deceased and noticed him lying in pool of blood. Then, PW-4 Mangesh and Sanjay Gokhale had carried injured Hira to Shaswat Hospital.

29. During her cross examination, PW-5 Anita stated that, Investigating Officer had recorded her statement on the date of incident. Statement of mother of deceased, and PW-2 Yogesh was also recorded by the police. Before statement of PW-1

was recorded by the Investigating Officer, she had dialogue with them. She further stated that, at that time informant and her mother informed her about Hira being assaulted by unknown persons. Accordingly, statement was made by her to the Investigating Officer. She admits, police had informed her to depose that, she had witnessed some persons armed with sticks, axes and swords and accordingly she deposed.

30. Upon careful perusal of the evidence of PW-5 Amita, it is crystal clear that she has not seen the incident nor she was present at the spot. During her cross examination, she has specifically stated that, during the relevant time informant and her mother informed her about Hira being assaulted by unknown persons, and accordingly statement was made by her to the Investigating Officer. This admission given by PW-5 (Anita) washed out the entire prosecution case that

accused persons assaulted Hira. She further admitted that police had informed her to depose that she had witnessed some persons armed with sticks, axes and swords and accordingly she deposed. Thus, it is clear that she has not seen accused persons going towards the house of the deceased, armed with weapons, prior to the incident. However, she has deposed about the same as per the say of the police. It is pertinent to note that PW-5 (Anita) is mother of PW-2 (Yogesh) and PW-4 (Mangesh), who are friends of deceased and his brothers, and therefore, highly interested witness.

31. The prosecution has examined PW-6 Sou. Manda Sarjerao Khavale. PW-6 in her examination-in-chief deposed that the house of the deceased situate to the back side of her house, hence deceased and his family members are known to her. The incident had taken place on 11th October, 2008

at 12.00 noon, when she was cooking food in her house. At that time, PW-2 Yogesh and his friend rushed to her house. They asked her to allow them to have shelter in her house as some boys of Chavan were chasing them. Thereafter, she heard noise of breaking glasses and tin sheets and so she was frightened. After five to ten minutes she came towards canal and noticed some boys carrying blood stained scythes and proceeding towards 'nulha'. Out of the said boys, three were known to her namely Dhananji Chavan, Bandu Chavan. Accused Nos.2 and 3 are the same Bandu and Dhananjay.

32. PW-6 Manda further deposed that, thereafter she had been to the house of Hira Pujari and noticed him lying in pool of blood in his house. In this regard, Investigating Officer has recorded her statement on next day of the incident.

33. During the course of cross examination, PW-6 Manda has stated that she had two sons namely Gokul and Somnath. She admits that prior to the incident on the allegations of house breaking of the house of accused Nos.2 and 3, her two sons were arrested by the Police. She admits that due to the said incident, relations between themselves and the accused were strained. She further admits that quarrel took place between PW-2 Yogesh and accused Nos.2 and 3. She further stated that after the incident, she witnessed police in front of the house of the deceased. At that time, she being neighbourer of the deceased, Police made enquiry with her about the incident. Therefore, statement was made by her about having no knowledge who was the author of the incident of killing Hira. She further admits that on the next day as per the call of PW-2 Yogesh, she had been to the police station. She further admits that as the accused Nos.2 and 3 are resident of their vicinity, she

had identified them. She further stated that she did not remember whether she had made statement before the Police having had witnessed some boys passing from the side of house of Hira, armed with blood stained swords, sticks and axes. Her statement is silent in that respect and she was unable to assign reason for the same.

34. Thus upon perusal of the evidence of PW-6 it has been stated that, she had noticed some boys carrying weapons, and named only two accused persons i.e. accused No.2 Bandu and accused No.3 Dhananjay. She further stated that, statement was made before the Police that she was not having knowledge about who was the author of the incident of killing Hira. Her statement was not recorded till next day of the incident nor she has disclosed anything to the Police. Though she has deposed that she heard the noise of breaking glasses and tin sheets. However, the prosecution

has not brought on record any panchanama drawn to that effect. Thus it appears that at the instance of PW-1 to PW-5, PW-6 has given false oral account. Further she has specifically admitted in her cross examination that, her sons were arrested by the police at the instance of accused Nos.2 and 3. Therefore, possibility cannot be ruled out that out of vengeance she has deposed against the accused persons.

35. The prosecution has examined PW-7 Rahul Jalindar Khandare. PW-7 Rahul in his examination-in-chief stated that on 11th October, 2008 at about 12.15 noon, he had been at his home for lunch. At that time he learnt about death of Hira Pujari, and he being taken to Shaswat Hospital and therefrom to Sassoon Hospital. Hence, he had been in the said Hospitals. In between 4.30 to 5.15 p.m. dead body of Hira was shown to him in Sassoon Hospital and the same was identified by him. He

further deposed that on the person of Hira, four injuries were found on head and injuries on right hand palm, arm and shoulder. Accordingly, inquest panchanama of the said body was drawn in presence of him and other panch Sanjay Gokhale. This witness further stated that, after perusing the said panchanama, the same was signed by them. He identified the said inquest panchanama [Exhibit-113].

36. During his cross examination, PW-7 Rahul has stated that he had been to Sasoon Hospital along with the dead body and that all the while when he was in Sasoon Hospital, PW-3 Yuvraj and Sanjay Gokhale were with him. He further stated that Crime No.121/2008 has been registered against him with Kothrud Police Station, about damage caused to private property and accusations were made against him that he caused damage to the houses of accused Nos.2 and 3. Thereafter chapter

case was also instituted against him in which PW-2 Yogesh and others are accused. Thus it appears that the prosecution has examined this witness to prove inquest panchanama Exhibit-113.

37. The prosecution has examined PW-8 Bhagwan Pandurang Lokhande to prove the seizure panchanama Exhibit-119 regarding seizure of clothes on the persons of accused Nos.7 and 8 at the time of incident. However, this witness turned hostile and did not support the prosecution case. PW-9 Ashok Devba Waghmare is a panch to the spot panchanama Exhibit-124. However, this witness turned hostile and did not support the prosecution case. PW-10 Prabhakar Vishwanath Kasab is a panch to the memorandum statement Exhibit-126 and discovery panchanama Exhibit-127 regarding discovery of three wheeler Tempo wherein swords were kept, at the instance of accused No.3. However, this witness also turned hostile and did not support the

prosecution case. PW-11 Anil Jannappa Devkar is a panch to the memorandum statement and discovery panchanama regarding swords at the instance of accused No.1 and discovery of scythe at the instance of accused No.8. However, this witness also turned hostile and did not support the prosecution case. PW-12 Ganesh Vijay Bhagat is a panch to the memorandum statement and discovery panchanama regarding discovery of axe at the instance of accused No.2. However, this witness also turned hostile and did not support the prosecution case. PW-13 Prakash Tippanna Manjulkar is a panch to the seizure panchanama of blood stained clothes of accused No.7 and accused No.8. However, this witness turned hostile and did not support the prosecution case. PW-14 Bhagwan Baban Chandere is a panch to the discovery panchanama of wooden stick at the instance of accused No.9 and discovery of sword at the instance of accused No.11. However, this witness turned hostile and

did not support the prosecution case. PW-15 Pandurang Bhikoba Dangat is a panch to the discovery panchanama of stick at the instance of accused No.12 and wooden stick at the instance of accused No.9. However, this witness turned hostile and did not support the prosecution case.

38. Thus it is clear from the perusal of the evidence of PW-8 to PW-15 that these are the witnesses on memorandum statement and seizure panchanama regarding the alleged weapons used in the commission of crime by various accused persons and clothes alleged to have been on the person of accused at the time of incident. However, all these witnesses turned hostile and therefore the prosecution failed to prove the memorandum statement and discovery panchanamas.

39. PW-16 Narsu Raju Jegali is the informant. She deposed that she had three brothers and one

sister. PW-1 (Yallappa) and PW-3 (Yuvraj) are her brothers. Deceased Hira was her brother. Regarding the incident, she deposed that the incident took place on 11th October, 2008 at 12.00 noon. At that time, she was at her parents house along with her brother Hira. Her mother had been at neighbours house at the relevant time. PW-1 and PW-3 were also out of the house. House of her parents consists of two rooms, out of it, Hira was sleeping in the first room and she was in the second room. At that time, 10-15 persons having concealed their faces under handkerchief entered in their house. They were armed with swords, scythes and axes. She further deposed that she could not witness their faces as those were concealed, hence she cannot state who were those persons. She further deposed that all the above said persons had assaulted her brother Hira by means of above said weapons. In the said assault, Hira had sustained bleeding injury on his head,

hand and shoulder. Due to the said incident, she has raised shouts for help. After the assault, all the assailants had fled from the spot. Thereafter, she had been in Alankar Police Outpost from where she was sent to Kothrud Police Station. Thereafter oral report was lodged by her in the Police Station, which computerized by the said person. Thereafter, it was read over to her. Thereafter the report was signed by her. Likewise her thumb mark was taken on the report. She identified the report dated 11th October, 2008, which bears her signature. She further deposed that she cannot read and write Marathi. When, the contents of the report were read over to the witness in Marathi, she deposed that she cannot state whether the contents of paras 3 and 4 are correct or not. She does not know whether accused Nos.1, 2, 3, 4, 7 and 8 are the resident of their vicinity. She specifically denied that all the persons and accused had assaulted Hira by above said weapons,

hence she had named them in the report. At this point, the APP has sought permission of the Trial Court to cross examine the witness.

40. During the course of cross examination by the APP, PW-16 has denied that all the accused present before the Court were resident of their vicinity, hence she knew them. She further stated that, she does not know whether there was quarrel between the accused and deceased. She further denied that she had actually witnessed that accused Nos.1, 2, 3, 4, 7 and 8 had entered in her house armed with swords, scythes and axes and assaulted her brother Hira and caused him grievous injuries. Further, all the suggestions put to her by the APP were denied by this witness and thus she has not supported the prosecution case.

41. During the course cross examination by the Advocate appearing for the accused, PW-16

admitted that when the assailants entered into her house, the door curtain was displayed in order. She further admitted that last assailant while departing from the spot had pulled the curtain, hence it was torn and had fallen on the ground. She further admits that after the incident, injured Hira was taken to Shaswat hospital, wherein discussion had taken place in between her, PW-1 to PW-3 and her mother, accordingly. She further specifically admitted that after the incident nobody from her parents side was present in the house, hence by phone she had called PW-1 and PW-3 on the spot. She further admits that while lodging report, it was stated by her that unknown persons had assaulted her brother Hira.

42. PW-16 Narsu Raju Jegali is the informant and star witness of the prosecution. It is the case of the prosecution that when the incident of alleged assault took place at that time along with

deceased Hira, this witness Narsu was only present in the house and she has opportunity to witness the entire incident. However, this star witness on whose oral testimony the entire prosecution case is based, has turned hostile and did not support the prosecution case. In her examination in chief itself, she has specifically deposed that 10 to 15 persons having concealed their faces with handkerchief, entered the house armed with scythes, swords and axes. She further deposed that she could not witness their faces as those were concealed, hence she could not state who were those persons. During the course of her cross examination by APP on behalf of the prosecution, she has denied the suggestion put to her that she actually witnessed accused Nos.1, 2, 3, 4, 7 and 8 entering the house armed with swords, scythes and axes and assaulted Hira and caused grievous injuries. During the course of her cross examination by Advocate for accused, she admitted

that while lodging report it was stated by her that unknown persons had assaulted her brother Hira. Thus upon careful perusal of the entire evidence of this witness, who is informant, she has specifically stated that 10 to 15 persons having concealed their faces with handkerchief entered the house armed with weapons. She has specifically admitted that while lodging report, it was stated by her that unknown persons had assaulted her brother Hira. As the informant itself turned hostile and did not support the prosecution case, the prosecution has failed to prove the contents of First Information Report itself. Furthermore, PW-16 Narsu was the first person, who saw the incident in the house and she herself was present at that time.

. The prosecution has brought on record that the deceased and his associates including PW-1 to PW-4 and others were on inimical terms with

the accused persons. There were cross cases against both the groups. We find considerable force in the argument advanced by the learned counsel appearing for the accused that, in fact if the incident has taken place in presence of PW-16 and the accused persons had really assaulted the deceased and done to death, then there is no reason for her to give different versions in favour of the accused and resile from her First Information Report.

43. On careful perusal of the evidence of the evidence of PW-5 (Anita), it is clear that she has specifically stated that she learnt from PW-16 and her mother that, some unknown persons have assaulted Hira.

44. PW-18 Sopan Maruti Nawadkar is a Police Naik, who visited the spot of incident at about 12.15 noon on 11th October, 2008 and noticed that

Hira was being taken to Shaswat Hospital. PW-19 Kumari Tejaswani Jaisingh Yadav was the Police Sub Inspector, Kothrud Police Station, Pune at the relevant time, who conducted spot panchanama Exhibit-163. PW-20 Vijay Vasant Rao Palsule was the Police Inspector, Deccan Police Station, Pune at the relevant time, who arrested accused Nos.1, 2, 3, 4, 5 and 6 and taken entry in the Station Diary to that effect [Exhibit-166]. PW-21 Arun Balbhim Kadam was Police Inspector, Kothrud Police Station, Pune at the relevant time. He drew arrest panchanama [Exhibit-168] of accused Nos.1 to 6 on 13th October, 2008. He has also arrested accused Nos.7 and 8. PW-22 Shekhar Vithal Rao Koli was Police Inspector, Kothrud Police Station, Pune at the relevant time, who arrested accused Nos.10, 11 and 12.

45. PW-23 Anant Yashwantrao Rajeshirke and PW-24 Vilas Narnawar are the Investigating

Officers and they have deposed about the manner in which they have carried out investigation in the crime.

46. We have carefully gone through the entire evidence brought on record by the prosecution. The prosecution has examined only interested witnesses. PW-1 to PW-6 are from one and the same group and closely related to deceased Hira. As observed earlier, even the trial Court has disbelieved the oral evidence of PW-2 (Yogesh), who claims that at the time of incident he was present at the spot and witnessed the entire incident. The relations between the group of PW-1 to PW-5 and group of accused persons were strained and several cross complaints were registered against each others. As observed earlier, as per the prosecution case, the incident took place at about 12.00 to 12.30 a.m. at which time PW-1 to PW-4 were present on the spot. It is pertinent to

note that none of these prosecution witnesses have approached the Police Station immediately nor they had informed Police on phone about the incident and it is only when on the next day of incident, when their statements were recorded by the Police, they have narrated the incident to the Police. The evidence on record reveals that though Police were making inquiry by visiting the house of the deceased and also Shaswat Hospital where PW-1 to PW-5 and PW-16 were present, none of them had disclosed the names of the assailants or accused to the Police. Police panchanama, inquest panchanama, making inquiry by visiting the place of incident, contacting the brothers, sisters, mother in the house and also in hospital, clearly shows that investigation has already been started without any official First Information Report. The non-disclosure of the names of the accused persons to the Police and doctor by the prosecution witnesses at the time when first opportunity was

available to them, clearly shows that nobody knew who were the real assailants. Though the witnesses were present immediately after the incident, in the house and also in the Hospital, there is no explanation as to why the Investigating Officer took time to record the statements till next day of the incident. None of the panch witnesses have supported the prosecution case and therefore all the recovery and other panchanamas are of no use to the prosecution. Therefore, we find considerable force in the argument advanced by the learned Counsel appearing for the appellants that the possibility of false implication of the accused persons cannot be ruled out.

47. Learned counsel appearing for the respective Appellants placed reliance upon the exposition of law in the reported Judgments in respect of their submissions regarding appreciation of evidence in a case where

allegations are of large number of accused participated in the incident and several persons have claimed to have seen the incident.

48. Mr. Shirish Gupte, learned Senior Advocate appearing for the appellants, in support of his submission about how to appreciate the evidence of hostile witnesses, placed reliance on the observations made in paragraph 16, in the case of *Paramjeet Singh alias Pamma Vs. State of Uttarakhand*¹. In para 16 of the said judgment, it is observed thus:

"16. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight

1 [2010] 10 SCC 439

should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide *State of Rajasthan V. Bhawani*²)."

49. Mr. Shirish Gupte, learned Senior Advocate appearing for the appellants, in support of his submissions also relied upon the observation made in paragraph 26 in the case of *Lahu Kamalakar Patil and another Vs. State of Maharashtra*³. In para 26 of the said judgment, it is observed thus:

"26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from

2 [2003] 7 SCC 291

3 [2013] 6 SCC 417

individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded."

50. Mr. D.G. Khamkar, learned counsel appearing for the appellants, in support of his submissions, placed reliance upon the exposition of law in the case of *Masalti Vs. The State of Uttar Pradesh*⁴. In para 16 of the said judgment, it is observed thus:

"16.That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it

4 AIR 1965 SC 202

can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case."

51. Mr. D.G. Khamkar, learned counsel appearing for the appellants also relied upon the exposition of law in the case of *Chandra Shekhar Bind and others Vs. State of Bihar*⁵. In para 9 of the said judgment, it is observed thus:

"9. However, this is an incident in which a large number of accused had participated. The Constitution Bench of this Court has, in the case of *Masalti V. State of U.P.*⁶ held that

5 [2001] 8 SCC 690

6 AIR 1965 SC 202

under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict the accused persons, whereas evidence given by half-a-dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. It was held that in a sense, the test may be described as mechanical, but it cannot be treated as irrational or unreasonable. It was held that even though it is the quality of the evidence that matters and not the number of witnesses, still it is useful to adopt such a mechanical test."

52. Relying upon the ratio laid down in the aforesaid reported Judgments, learned counsel appearing for the appellants submitted that, where large number of accused participated in the incident and several persons have seen the incident, it would not be unreasonable or irrational to adopt the test that conviction could

be sustained only if it is supported by at least two or more witnesses, who give consistent account of the incident. In the facts of this case, we accept aforesaid submissions made by the learned counsel appearing for the appellants, in view of the number of accused involved and also seven witnesses claim either they have seen the accused proceeding to the house of Hira [deceased] or accused actually assaulting deceased or accusing going / returning back from the spot of the incident. If afore-stated test laid down in the case of *Masalti* [supra] and *Chandra Shekhar Bind* [supra] is applied, in that case due to inconsistencies in the evidence of the prosecution witnesses and since Narsu [PW-16], who is star witness of prosecution case, turned hostile, it can safely be concluded that said test not satisfied.

53. It is pertinent to note that the articles

like clothes and weapons were seized soon after the incident on various dates. The letters Exhibit-191 and Exhibit-214 shows that some of the seized articles were sent to the office of the Chemical Analyzer on 12th November, 2009 for Chemical Analysis. Thus, it is clear that for considerable period the seized material was in the custody of the investigating officer. The prosecution has not brought on record whether the said articles were properly sealed or not and kept in safe custody. The Rajasthan High Court in the case of **The State V. Motia and other Accused**⁷, in para no. 8 held that:

“8. Learned counsel for Motia accused has raised a number of objections about this evidence against Motia. In the first place, he points out that there is no evidence to show that after the various articles had been recovered from the possession of Motia, they were

7 A.I.R. 1955 RAJASTHAN 82 (Vol. 42 C.N. 27)

kept sealed so that it was not possible for any one to sprinkle blood stains on them while they were in the custody of the police and before they were, sent for examination by the Chemical Examiner. We must point out that this lacuna in the prosecution evidence is there. Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the Chemical Examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused. It is, therefore, necessary for the prosecution to produce evidence

that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of course, not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken, the argument raised on behalf of the accused that this might have been done remains unrefuted. Under these circumstances, we find that we cannot place the same reliance on the discovery of blood stains on these various articles as we would have done if necessary precautions had been taken."

54. In the facts of the present case, we find considerable force in the argument advanced by

learned counsel for the Appellants that muddemal articles were in the custody of the investigating officer for considerable period and during the said period possibility of tampering with the muddemal articles cannot be ruled out. Considering the over all evidence and the circumstances brought on record, explicit reliance cannot be placed upon the chemical analysis report.

55. Thus upon taking conspectus of entire evidence brought on record by the prosecution, it is clear that the informant herself has not supported the case of the prosecution that the accused i.e., appellants, have assaulted Hira. PW-5 (Anita) has specifically stated that an informant and her mother informed her about Hira being assaulted by unknown persons. As observed earlier, upon careful perusal of the evidence on record, it appears that PW-1 to PW-5 have not at all witnessed the actual incident and therefore

their oral evidence is not reliable. We are of the considered view that upon such inconsistent and unreliable evidence, conviction cannot be based.

56. We have carefully perused the impugned Judgment of the Trial Court. The findings recorded by the Trial Court are perverse. In para 39 of the judgment, the Trial Court has observed that at the time of incident PW-1 to PW-6 were standing just in front of the house or near the house of the deceased. Still the Trial Court has recorded the findings that these witnesses have witnessed the actual incident which had taken place inside the house. In this context, it is pertinent to note that the prosecution witnesses themselves have stated that at the time of incident, the door was closed by the accused from inside. If it is so, then the question of witnessing the actual incident by PW-1 to PW-6 would not arise. In further part of the Judgment i.e. in Para-42 the

trial Court has observed that, it is eloquent from the evidence of PW-1, 3 and 4 that the spot was not visible i.e. from the place they did witness accused marching to the place where the incident had taken place. The above said findings recorded by the trial Court in Para 42 are contrary to the findings recorded in Para 40 of the Judgment that, one cannot venture to say that these witnesses have not witnessed the actual incident. Thus the findings recorded by the trial Court in Para 40 of the Judgment are perverse.

57. In Para 45 of the Judgment the trial Court has recorded the findings that PW-1, PW-3 and PW-4 gave evidence about Hira Pujari being assaulted by 10 to 15 persons. Thus, the trial Court has recorded the findings contrary to evidence brought on record. Though the statements of PW-1 to PW-4 recorded by the Investigating Officer bear the date as 12th October, 2008, the

trial Court has recorded the perverse findings that PW-1 to PW-4 have categorically admitted that their statements were recorded by PW-23 P.I. Rajeshirke on the day of incident i.e. 11th October 2018 itself.

58. In Para 69 of the Judgment the trial Court has recorded the findings that, from the evidence of the witnesses it is eloquent that all the accused in order to accomplish the object of unlawful assembly had entered in the house of Hira Pujari so as to commit his murder by possessing deadly weapons. In this context, it is pertinent to note that in view of the inconsistent evidence of PW-1 to PW-6 and medical evidence showing only seven injuries out of it two fatal, it could not have been concluded that, all the accused in order to accomplish the object of unlawful assembly had entered in the house of Hira Pujari so as to commit his murder by possessing deadly weapons. In

fact only PW-16 had witnessed the incident but she has not supported the prosecution case.

59. The Trial Court has not appreciated the entire evidence brought on record in its proper perspective and reached to a wrong conclusion. The findings recorded by the Trial Court are not in consonance with the evidence brought on record. The Trial Court itself has disbelieved the version of PW-2 Yogesh by observing that he has made futile attempt to prove himself to be eye witness of the entire incident. But his evidence stand falsified on the basis of the report lodged by him vide Exhibit-97. The Trial Court has further observed that the said witness (PW-2) cannot be said to be eye witness of the actual incident. Thus the Trial Court has disbelieved the evidence of prosecution witness PW-2, who claims himself to be eye witness. However, the Trial Court has believed the version of other prosecution

witnesses, who claim to be witnessed the actual incident, though there are various contradictions and omissions in their evidence and the same is not trustworthy. Thus it is clear that the reasoning given by the Trial Court is not proper and contrary to the evidence on record.

60. We are conscious of the fact that, one person has lost his life in his young age. However, in absence of cogent, trustworthy, reliable and sufficient evidence, we are unable to subscribe the view taken by the trial Court. We have to remind ourself of the observations made by the Supreme Court in the case of **Sarwan Singh Rattan Singh V/s State of Punjab**⁸, which are reproduced as under :-

"It is no doubt a matter of regret that a foul cold-blooded and cruel murder like the present should go unpunished. It may be as Mr. Gopal Singh strenuously urged before us that there is an

8. AIR 1957 SC 637(1)

element of truth in the prosecution story against both the appellants. Mr. Gopal Singh contended that, considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

61. Thus upon re-appreciation of entire evidence, we are of the considered opinion that, the evidence brought on record by the prosecution is not sufficient and cogent to form basis for conviction. So also, the evidence on record do not establish beyond reasonable doubt, that it is the accused persons, who have committed the act of murder of the deceased, and involvement of person other than accused is completely ruled out. There is no clinching and credible evidence to convict the accused for the offences levelled against them. The reasons and findings recorded by the Trial Court are found to be perverse and based upon improper appreciation of evidence on record

and findings are not sustainable in law. We are of the view that the prosecution has failed to prove the guilt against the accused beyond reasonable doubt. Therefore, the accused deserves to be given benefit of doubt.

62. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that the appellants are entitled for the benefit of doubt. Hence we pass the following order :

O R D E R

(I) All the Criminal Appeals i.e. Criminal Appeal Nos.1138 of 2011, 181 of 2012, 1295 of 2011, 1126 of 2011, 1223 of 2011 and 447 of 2014 are hereby allowed.

(II) The Judgment and order dated 6th August, 2011, passed by the Additional

Sessions Judge-11, Pune in Sessions Case No.656 of 2009, thereby convicting and sentencing the Appellants – original accused Nos.1 to 12 i.e. accused No.1 – Dipak Sakharam Shinde, accused No.2 – Bandu Mohan Chavan, accused No.3 – Dhananjay Mohan Chavan, accused No.4 – Navnath Madhu Pawar, accused No.5 – Nitin Tukaram Chavan, accused No.6 – Sagar Prakash Mokar, accused No.7 – Dnyaneshwar alias Chadi alias Zipra Ramchandra Sathe, accused No.8 – Vijay Bhanudas Chavan, accused No.9 – Mahendra alias Waghya Arun Waghmare, accused No.10 – Rahul Laxman Padwal, accused No.11 – Sagar Hiranman Chavan and accused No.12 – Sharad Nana Chavan for the offence punishable under Sections 143, 147, 148, 449, 302, 427 read with 149 of the Indian Penal Code,

is quashed and set aside.

(III) All the Appellants – original accused Nos.1 to 12, are acquitted of the offence punishable under Sections 143, 147, 148, 449, 302, 427 read with 149 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellants.

(IV) The order passed by the trial Court to the extent of acquitting the Appellants-original accused of the offence punishable under Section 25 (1B) (b) read with 4 of the Arms Act, is hereby confirmed.

(V) The Appellants – original accused are in jail, they be set at liberty forthwith, if not required in any other

case.

(VI) All the Appellants shall furnish Personal Bond of Rs.15,000/- each and surety in the like amount each, under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Pune.

(VII) In view of the order passed in Criminal Appeals, Criminal Application No.248 of 2018 in Criminal Appeal No.181 of 2012 and Criminal Application No.249 of 2018 in Criminal Appeal No. 1138 of 2011 do not survive and the same stands disposed of, accordingly.

[MRS.MRIDULA BHATKAR, J.]

[S.S. SHINDE, J.]

**Jyoti
Prakash
Pawar**

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