

JPP

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

CRIMINAL APPEAL NO. 647 OF 2016

1. Santosh Arjun Chavan
Age - 27 Years,
2. Shivaji Arjun Chavan
Age - 27 Years,
3. Ravi Taru Rathod
Age - 23 Years,

All are R/o. - Ghodatanda,
Tq-South Solapur, Dist. - Solapur
At present Kolhapur Central Prison ... **APPELLANTS**
(Orig. Accused No.2 to 4)

VERSUS

- 1) State of Maharashtra
- 2) Smt. Bharati Vilas Chavan,
Age Adult, Res: At Ghodatanda,
Post Kumatha,
South Solapur - 413224.
- 3) Smt.Mathurabai Ramu Chavan
Age Adult, Res: At Ghodatanda,
Post Kumatha, South Solapur
Dist. Solapur - 413224. ... **RESPONDENTS**

W I T H

CRIMINAL APPEAL NO. 303 OF 2014

1. Raju Arjun Chavan,
Age : 25 years,
Occ.: Labourer

2. Santosh Arjun Chavan,
Age : 25 years,
Occ.: Labourer
3. Shivaji Arjun Chavan,
Age : 26 years,
Occ.: Rickshaw Driver
4. Ravi Taru Rathod,
Age : 22 years,
Occ.: Rickshaw Driver
5. Dipak Ramhari Chavan,
Age : Adult.

*(Appellant Nos.2, 3, 4 deleted as per
Court's order dt. 6/12/2016)*

All residing at Ghodtanada,
Taluka South Solapur, District Solapur

At present in Solapur Jail,
Dist. Solapur

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APPELLANTS

(Orig. Accused Nos.1 to 5)

VERSUS

1. The State of Maharashtra
(At the instance of Vijapur Naka Police
Station, Solapur, C.R. No.152 of 2012)
2. Smt. Bharati Vilas Chavan,
Widow Adult,
Res: At Ghodatanda,
Post Kumatha, South Solapur – 413224.
3. Smt.Mathurabai Ramu Chavan
Age Adult, Mother,
Res: At Ghodatanda,
Post Kumatha, South Solapur
Dist. Solapur – 413224.

... RESPONDENTS

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Ms. Anita A. Agrawal, Advocate for the Appellants in both the Appeals.

Ms. S.V. Sonawane, APP for Respondent No.1 – State.

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**CORAM : S. S. SHINDE AND
A.S.GADKARI, JJ.**

DATE OF RESERVING JUDGMENT : 11TH OCTOBER, 2018.

DATE OF PRONOUNCING JUDGMENT: 23RD OCTOBER, 2018.

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

1. Both these Appeals are directed against the Judgment and Order dated 21st March, 2014, passed by the II Ad-hoc Additional Sessions Judge, Solapur in Sessions Case No.268 of 2012 thereby convicting accused No.1 – Raju Arjun Chavan, accused No.2 – Santosh Arjun Chavan, accused No.3 – Shivaji Arjun Chavan, accused No.4 – Ravi Taru Rathod and accused No.5 – Dipak Ramhari Chavan for the offence punishable under Section 302 read with 149 of the Indian Penal Code [for short 'IPC'] and sentencing them to suffer rigorous imprisonment for life and to

pay a fine of Rs.15,000/- each, and in default of payment of fine to suffer further rigorous imprisonment for one year. The trial Court also convicted accused Nos.1 to 5 for the offence punishable under Section 396 of IPC and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.5000/- each in default to suffer further R.I. for one year. The trial Court also convicted accused nos.1 to 5 for the offence punishable under Section 397 of IPC and sentenced them to suffer rigorous imprisonment for seven years. All the sentences were directed to be run concurrently.

2. Originally Criminal Appeal No.303 of 2014 was filed by all the five original accused i.e. Appellant Nos.1 to 5. Thereafter, by order dated 6th December, 2016, the names of the Appellant Nos.2, 3 and 4 [original accused Nos.2, 3 and 4] came to be deleted from the said Appeal. After deletion of their names from the said Appeal, original accused

Nos. 2, 3 and 4 have filed separate Appeal bearing Criminal Appeal No.647 of 2016. Both these Criminal Appeals are arising out of one and the same Judgment and Order passed by the trial Court, hence the same are being decided by this common Judgment.

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

A] On 27.05.2012 Vikas Ramu Chavan filed complaint alleging that, he is residing along with his mother Mathurabai and one brother Vilas together. Vikas and Vilas both are married and are driving rickshaw. The informant further alleged that on 26th May, 2012 at 6.00 p.m. there was quarrel while some boys were playing cricket on the ground of school in Ghodatanda. At that time, when his brother Vilas went to rescue the quarrel, Santosh Arjun Chavan, Shivaji Arjun Chavan, Raju Arjun Chavan and Ravi Taru Rathod, resident of Ghodatanda, gave abuses to the brother of informant. At the time of incident some villagers

gathered and they gave understanding to them and the matter was settled. Therefore, the complaint was not lodged.

B] The informant further alleged that on 27th May, 2012, in the morning at 8.00 a.m. his brother Vilas by taking amount of Rs.50,000/- for purchasing second hand rickshaw, proceeded alone in his rickshaw bearing No.MH-13/G-8746 from house. Approximately at 9.00 a.m. Ex-Sarpanch, namely, Fulchand Chavan of his Tanda gave information on phone that Santosh Arjun Chavan, Shivaji Arjun Chavan, Raju Arjun Chavan, Ravi Taru Rathod and other two persons came with motorcycle bearing registration No.MH-13-BE-2866 and one another motorcycle near Hatture Vasti bus stop and they obstructed by putting motorcycle in front of rickshaw of Vilas Chavan and after alighting from motorcycle they forcibly gave blow of knife on stomach, chest and right hand of Vilas Chavan and they removed amount of Rs.50,000/- from Vilas Chavan and ran away. One Tulshiram Rathod brought injured

Vilas in Civil Hospital, Solapur. Thereafter, the informant came in Civil Hospital, Solapur. He found injuries on left side stomach and also found intestine came out of the stomach. There was incised wound on left side chest, one blow injury on right hand and leg of Vilas. Vilas was unconscious and during treatment he died. As per the complaint of the informant, offence was registered at 10.20 a.m vide CR.No.152/2012 for the offence punishable under Sections 397 and 396 of the IPC in Vijapur Naka Police Station, Solapur.

C] Investigation was handed over to PSI Shri.B.V.Suryavanshi. Inquest panchnama was drawn between 10.30 to 12.15 hrs. by PSI Sanap in presence of two panchas, namely, Dashrath Ramu Rathod and Taru Parshuram Pawar. Dead body was sent for Postmortem. The Postmortem was carried out between 12.50 to 1.50 p.m. The Medical Officer found nine injuries like stab injury on chest and abdomen. He gave provisional cause of death certificate. Probable cause of death

is stab injury to abdomen. However, two bottle viscera, one bottle blood, nail clipping of both hands, gauze pieces soaked with blood presented and handed over to police for Chemical Analysis. After Postmortem dead body was handed over to the relatives of the deceased.

D] On 27th May, 2012, the Investigating Officer has drawn spot panchnama between 13.00 to 14.15 hours in presence of Taru Pawar and Dashrath Pawar. The Investigating Officer seized black colour Pulsar bearing registration No.MH13/BE2866 and one rickshaw bearing No.MH13/G8746. The spot of incident is from Hatture Bus stop and it is upto Ganpati temple towards northern side of Hatture Vasti. On 27th May, 2012 the Investigating Officer arrested accused Raju Arjun Chavan at 20.30 hours. After arrest, accused Raju was physically examined by panchas and found one injury on left side of chest and Raju gave explanation about injury that in the morning while quarreling with Vilas Chavan iron sheet of rickshaw

is hit to his chest and he sustained injury. On the same day at night at 21.00 hours, Police Constable Choughule produced the blood stained clothes of deceased before PSO Shri Babar, which were handed over by the Medical Officer to him after Postmortem. On 29th May, 2012 accused Ravi Rathod was arrested and the clothes which he had worn at the time of incident, were seized. On 30th May, 2012 accused Santosh Chavan and Shivaji Chavan were arrested and the clothes which they had worn at the time of incident, were seized. On 2nd June, 2012 accused Raju Chavan gave his memorandum statement before two panchas and said that how he committed offence and he kept two knives wrapped in clothes on the tin roof of house of maternal aunt Meenabai Mane. Accordingly, two knives and one shirt was seized from the tin roof of Meena Mane.

E] On 27th May, 2012, the statements of 14 witnesses were recorded. On 28th May, 2012 the statements of four witnesses were recorded. On 29th

May, 2012, the statements of Fulabai Rathod, Baby Rathod and Fulchand Rathod were recorded. Thereafter, statement of PHC Gurav, who carried the muddemal and statement of Vilas Deshpande, with whom the deceased had gone for inquiry to purchase second hand rickshaw, were recorded.

F] The Investigating Officer has sent muddemal clothes and samples to C.A. Pune along with letter dated 5th June, 2012. The Investigating Officer also sent viscera with PHC Gurav with letter dated 6th June, 2012. Accused Dipak Chavan was arrested on 8th September, 2012. After completion of investigation, the Investigating Officer filed the charge sheet against the accused before JMFC Court No.2 Solapur.

G] As the offence punishable under Sections 396 and 397 of the IPC are exclusively triable by the Court of Sessions, the case came to be committed to the Court of Sessions. The charge vide Exhibit-16 for the offence punishable under Sections 396 and 397 of

the IPC, 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 defence that deceased received injuries in accident and died.

4. After recording the evidence and conducting full-fledged trial, the trial Court convicted the Appellants – accused for the offence punishable under Sections 396 and 397 of the IPC and sentenced them to suffer rigorous life imprisonment and to pay fine, as afore-stated. Hence these Appeals are preferred by the accused – Appellants, challenging the conviction and sentence.

5. Learned counsel appearing for the Appellants in both the Appeals submitted that the trial Court erred in convicting the Appellants for the offence punishable under Section 302 read with

149 of the IPC without framing charge to that effect, or without altering the charge which was already framed, and therefore the same deserves to be quashed as no opportunity of being heard and explaining the said charges has been given to the Appellants. Learned counsel further submits that PW-2 Fulchand and PW-5 Baby, who were examined by the prosecution as eye witnesses, are highly interested witnesses being close relatives of the deceased. In the light of evidence of PW-1 Dashrath and medical evidence, the presence of PW-2 and PW-5 at the place and time of the incident is doubtful. PW-1 Dashrath stated in his evidence that after the incident all villagers gathered, including PW-2 and PW-5. Learned counsel submits that at the time of incident PW-1, PW-2 and PW-5 all were at Ghodatanda and not at the place of incident. Learned counsel further submits that after due deliberation, the FIR was lodged. The evidence of PW-1 Panch is liable to be discarded as he himself admitted that he is related to deceased.

6. Learned counsel appearing for the Appellants further submits that PW-2, uncle of the deceased, being close relative is also interested witness. Learned counsel further submits that the conduct of PW-2 is quite unnatural and untrustworthy and therefore his evidence deserves to be discarded. PW-2 claims to have witnessed the incident dated 27th May, 2012, allegedly occurred at 8.30 a.m., however, he being the uncle of the deceased, has neither tried to rescue the deceased nor immediately approached the police station to lodge the complaint.

7. Learned counsel further submits that regarding the alleged incident of scuffle took place on the earlier day of the incident no complaint was filed by PW-2. Therefore in absence of any evidence regarding said incident, the same could not have been considered as motive for commission of alleged offence by the Appellants. According to learned counsel PW-4 Fulabai is also closely related to the deceased and she is tutored witness and she has

improved the version regarding giving knife blow by Raju Chavan on the chest of Vilas Chavan. Learned counsel submits that PW-5 Baby is real maternal aunt of deceased and her evidence is also not reliable as there are various improvements and omissions in her evidence. PW-7 is not an eye witness and her evidence also deserves to be discarded as the same is full of improvements. Learned counsel further submits that the prosecution has examined only interested witnesses and not examined any independent witness though, according to the prosecution witnesses crowd gathered at the place and time of the incident. The prosecution has not examined any witness from Hatture Vasti though the same is crowded area.

8. Learned counsel further submits that one Vinod Ratansingh Rathod was cited as witness by the prosecution and even the I.O. has also recorded his statement under section 161 of the Code of Criminal Procedure, as a person who carried the deceased to hospital and as this witness has stated the place of

incident as Asara Chowk, which is more than 2-3 Kms. away from the place of alleged incident i.e. Hatture Vasti, the prosecution therefore has deliberately not examined the said witness, and therefore, he was examined on behalf of the defence. Learned counsel submits that the findings recorded by the Trial Court are not in consonance with the evidence brought on record. Therefore, it is prayed by the learned counsel that the appeals deserve to be allowed.

9. On the other hand, learned A.P.P. appearing for the State submits that the incident took place at 8.30 a.m. in the morning hours. Learned A.P.P. submits that in the present case, there are as many as three eye witnesses. Learned A.P.P. submits that the incident in question is witnessed by PW-2 – Fulchand, PW-4 – Fulabai and PW-5 Baby. The evidence of these prosecution witnesses is reliable, trustworthy and consistent, and there is no manner of doubt that they have witnessed the incident. Learned A.P.P. submits that the Trial Court after

considering the entire evidence on record, reached to proper conclusion and the findings recorded by the Trial Court are in consonance with the evidence brought on record by the prosecution. Learned A.P.P. therefore submits that the Appeals deserve to be dismissed.

10. 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.

11. First we will examine the evidence of Medical Officer i.e. PW-8 Dr. Santosh Bhoi, who conducted postmortem on the body of Vilas. He deposed that on external examination, he found following injuries:

(1) Stab injury present on chest, left side, places obliquely, with inner end lower than outer end. The length is 1.5 cm maximum width at the center 1 cm muscle deep. The center of the wound is 5 c.m. away from the midline and 3.5 cm above and medial to the left nipple. The inner end is blunt, outer end is sharp.

(2) Stab injury present on abdomen, left side placed obliquely with inner end upper than the outer end, the length is 6 cm. Maximum width at center is 3.5 cm. the wound is cavity deep. The center of the wound is 11 cm superolateral to umbilicus on left side and 9 c.m. away from midline. The inner end is blunt and outer end is sharp. The track of wound is established. The wound passes through muscles peritoneum and penetrates to the large intestine. Evidence of rocking present.

(3) Stab wound present on left thigh, placed obliquely, with inner end lower than the outer end. The length is 3 cm maximum width at the center is 1 cm. The injury is muscle deep. The center of the wound 14 cm. below and lateral to the anterior superior illiac spine. The inner end is blunt, outer end is sharp.

(4) Stab injury present on left thigh, posterior aspect placed vertically, the length is 3 cm. Maximum width at center is 1.5 cm. The injury is muscle deep. The center of the wound is 30 cms. Below the posterior superior illiac spine. The upper end is blnt lower end is sharp.

(5) Incised wound present on right forearm, inner aspect oblique, placed in upper half region. The length is 6 cm. Maximum width 2 cm. Injury is muscle deep.

(6) Stab wound present on right forearm. Outer aspect vertically placed. The length is 4 cm. Maximum width at center 1.5 cm., the inujury is muscle deep. The center of wound 9 cm. Below the tip of elbow. The upper end is blunt and lower end is sharp.

(7) Incised wound present on the back, on right side horizontally placed. The length is 7 cm. The maximum width at center is 2 cm. The injury is muscle deep. The center of wound is placed 44 cm. Below occipital protberank and 3.5 cm. away from the midline on right side.

(8) Theraputic venesation present at right

ankle.

(9) Therapeutic venesation present at left ankle.

12. PW-8 Dr. Santosh further deposed that probable age of injuries was less than 12 hours. Stab injuries could be possible by sharp pointed weapon and incised injuries could be possible by sharp cutting edged weapon. He further deposed that all the injuries were ante-mortem. All injuries were grievous and sufficient to cause death in ordinary course of nature. He further deposed that on internal examination, he found that puncture wound was present on large intestine. PW-8 Dr. Santosh opined that cause of death was "Stab injury to the abdomen".

13. Upon careful perusal of the evidence of this Medical Officer PW-8 Dr. Santosh and the injuries noticed by him on the dead body of Vilas, it appears that death of Vilas was homicidal.

14. Now, we will examine the evidence of eye

witnesses. The prosecution examined PW-2 Fulchand Lalu Chavan, PW-4 Fulabai Kashinath Rathod and PW-5 Baby Anil Rathod, who actually witnessed the incident.

15. PW-2 Fulchand Lalu Chavan deposed that he knows Vikas Chavan and Vilas Chavan, who are his nephews. He also knows the accused. He further deposed that he himself, the accused, deceased Vilas and Vikas, brother of deceased all are residing at Ghoda Tanda. He deposed that on 26th May, 2012 at about 6.00 p.m. he was proceeding to house from the ground of primary school at Ghoda Tanda. At that time children were playing cricket on the playground. Raju Chavan was sitting on the Katta of school. While children were playing cricket, their ball gone towards the house of Raju Chavan, so he gave slap to one boy. As slap was given to a boy, he started crying, so Vilas Ramu Chavan proceeded towards the said boy and asked Raju Chavan why he beat to the boy. Then Raju Chavan gave abuses to Vilas Chavan

and said that he will see Vilas. Ramu Chavan was giving filthy abuses in Laman language. At that time villagers gathered there. He further deposed that he himself and others have given understanding to Raju Chavan and asked him not to quarrel. Then Raju Chavan was sent to house. Thereafter again Raju Chavan, Shivaji Chavan, Santosh Chavan, Ravi Taru Rathod came in playground. Raju Chavan was holding knife in his both hands. They again started giving abuses in Laman language. They said to Vilas that they will see him. The persons gathered on the spot gave understanding to the above-said persons and after some time again by pursuing them, they were sent to house.

16. PW-2 Fulchand further deposed that on 27th May, 2012, in the morning as he was intending to go to Solapur, he was waiting for Tamtam vehicle on Hatture Vasti Bus Stop between 8.00 to 8.30 a.m. At that time he saw that Vilas Chavan was going by rickshaw towards market side. At that time Raju

Chavan, Santosh Chavan, Shivaji Chavan, Ravi Taru Rathod and Dipak Chavan and one unknown person obstructed rickshaw of Vilas Chavan. The above-said persons removed Vilas Chavan from rickshaw. He further deposed that at that time, he saw Raju Chavan was removing bundle of notes from the pocket of Vilas Chavan. He further deposed that he felt, they might have money transaction, so he stood on that place. He further deposed that he saw they were also beating to Vilas Chavan. As they were beating to Vilas Chavan, he felt that he has to go to rescue Vilas, but as Raju Chavan was having knife in his hand, he frightened and did not go further. Raju Chavan gave knife blow on hand of Vilas. Vilas Chavan rescued from them and ran towards Ganpati Mandir. They chased Vilas Chavan. He further deposed that he went behind them. Construction of one apartment was going on away from Ganpati Mandir. The said persons surrounded Vilas Chavan in front of construction of the apartment. He saw that Raju Chavan was in front of Vilas, Santosh Chavan and Shivaji Chavan were

standing on both sides of Vilas Chavan. Ravi Taru Rathod and Dipak Chavan were standing back side of Vilas Chavan. He further deposed that he was standing within 15 to 20 feet distance and saw that Raju Chavan gave knife blow on hand of Vilas, Dipak Chavan gave knife blow from back side of Vilas and others were beating by kick blows and hand blows to Vilas Chavan. He saw Raju Chavan was dragging Vilas by holding him in arm towards Ganpati mandir. Due to fear, the persons were not coming to rescue him. He further deposed that he saw that Raju Chavan gave knife blow on chest of Vilas in front of Ganpati temple. As he saw Vilas Chavan became unconscious, he became giddy and so he stopped there. He informed Vikas about the incident on phone. He identified accused - Shivaji Chavan, Santosh Chavan, Ravi Taru Rathod, Dipak Ramhari Chavan and Raju Chavan, who were present before the Court. PW-2 Fulchand identified the knife (Article No.11), which Raju was holding and the knife (article no.12), which Dipak was holding.

17. During the course of cross-examination, PW-2 Fulchand stated that he was Ex-Sarpanch of Ghoda Tanda. He admits that there are two political groups, one is headed by Congress and another is headed by Shivsena and he was worker of Congress party. He does not know uncle of all accused was worker of Shivsena. He admits that Sarpanch and members of Gram Panchayat, at the relevant time, were of Congress party. He further stated that distance from his house to primary school is 30-40 feet. He was unable to say names of boys who were playing cricket. He was unable to say the name of boy to whom slap was given. He stated that he has not seen giving slap to boy. He further stated that 20-25 persons gathered on ground at the relevant time. He personally gave understanding to Raju Chavan about quarrel.

18. PW-2 Fulchand further denied various suggestions put to him. He further stated that on 27th May, 2012, he went from the house at 7.30 a.m.,

he came by rickshaw to Hatture Vasti. He does not know that distance between MIDC Police Station to Hatture Vasti is 3 K.M. He was unable to tell, of which Apartment construction near Ganpati Mandir was going on. He admits that in his statement before police he stated that Raju Chavan gave blow by knife on hand of Vilas Chavan, but in his statement word 'on hand' is not mentioned. He was unable to assign any reason why police have not mentioned word 'on hand'. He has stated before police due to blow on chest of Vilas, nobody came to rescue him. He was unable to assign any reason why the said fact is not mentioned by police in his statement.

19. Thus, the evidence PW-2 Fulchand shows that on the earlier day of the incident i.e. on 26th May, 2012, on the issue of boys playing cricket near the house of accused No.1 Raju, quarrel took place at which time deceased Vilas when intervened, accused No.1 Raju and other accused, namely Santosh, Shivaji and Ravi gave abuses to Vilas. Regarding the main

incident of 27th May, 2012, the evidence of PW-2 Fulchand shows that in the morning hours, as he was intending to go to Solapur, he was waiting for transport vehicle at Hatture Vasti Bus stop between 8.00 to 8.30 a.m., when he witnessed the incident. Thus, this witness is the natural witness to the incident. His evidence shows that he saw Vilas was going by rickshaw towards market side at which time, Raju Chavan, Santosh Chavan, Shivaji Chavan, Ravi Rathod and one unknown person obstructed the rickshaw which Vilas was driving and they pulled out Vilas from rickshaw. Raju Chavan removed bundle of notes from the pocket of Vilas. The accused persons started beating Vilas. The evidence of PW-2 further shows that though he felt to rescue Vilas but as accused Raju was having knife, he frightened and did not go further. His evidence further shows that Raju gave knife blow on the hand of Vilas. Vilas rescued from them and ran towards Ganpati Mandir but the accused persons chased Vilas. PW-2 further specifically attributed to the specific role of each of the

accused, namely, Raju, Santosh, Shivaji, Ravi and Dipak. His evidence further shows that accused Raju gave knife blow on the hand of Vilas, Dipak Chavan gave knife blow from back side of Vilas and others were beating Vilas by kick blows and hand blows. Raju Chavan was dragging Vilas by holding in arm. Due to fear of the accused, persons were not coming to rescue Vilas. Raju Chavan gave knife blow on chest of Vilas and Vilas became unconscious. The evidence of PW-2 further shows that he became giddy and therefore he stopped there. PW-2 informed Vikas (informant) about the incident on phone. Thus, evidence of PW-2 Fulchand shows that accused forcibly snatched the amount from the pocket of Vilas and committed dacoity and in the process of dacoity, accused persons killed Vilas with deadly weapons.

20. PW-4 Fulabai Kashinath Rathod deposed that at the time of incident she was residing in village Savarkhed, Taluka- South Solapur. She knows deceased Vilas Chavan and accused. She was having visiting

terms in Ghoda Tanda as her daughter Surekha was residing in Ghoda Tanda, so she knows deceased Vilas Chavan and accused. Arjun Chavan is father of Raju Chavan. Arjun Chavan was doing pipeline work in Jyotiba Kolhapur. She herself and her husband were working under Arjun Chavan about pipeline. So also she knows the sons of Arjun Chavan.

21. PW-4 Fulabai further deposed that at the time of incident, she was selling vegetables near Ganpati Mandir in Hatture vasti. Incident took place about 1½ years ago from the date of recording her evidence. She used to sit for selling vegetables between 8.00 to 8.30 a.m. On the day of incident, she put her vegetables bundle in cloth on her place. She saw Raju Chavan was dragging in her armpit to Vilas Chavan near Ganpati Mandir. She saw body of Vilas Chavan was fully blood stained. Vilas Chavan had kept his hand on his stomach and his hand was also blood stained. Raju Chavan was holding knife in his right hand. The said knife was blood stained. She saw that

Raju Chavan gave knife blow on left side of chest of Vilas Chavan. She asked Raju Chavan why he was quarreling and beating Vilas Chavan. Raju Chavan threatened her and therefore she did not intervene further. She saw one motorcycle was standing in front of Ganesh Mandir. She saw Raju Chavan gave kick blow to motorcycle and motorcycle fell down. Raju Chavan was shouting to the shopkeepers to close the shops. There were other shops near Ganapati Mandir. She saw Raju Chavan was dragging Vilas Chavan towards road side. Vilas Chavan said in Banjara language to her to give water. She rushed to take water from canteen to give Vilas Chavan, but Raju Chavan saw her and again threatened her of dire consequences, she frightened and stopped there. After one hour she came to know that Vilas Chavan died. She knows accused Raju Chavan. She also knows his brothers. When the knife (Article No.11) was shown to her, she identified the knife which was in the hand of Raju Chavan at the time of incident.

22. During the course of cross-examination, PW-4 Fulabai stated that she was bringing vegetable in evening from land and was selling the same in next morning. She admits that she used to come for selling vegetables at about 8.30 to 9.00 a.m. She admits that there are two medical shops and three sweet shops in Hatture Vasti. She was unable to assign any reason why it is not mentioned in her police statement that on the day of incident she "put vegetable bundle on the spot". She admits that she stated before the police that Raju Chavan gave blow of knife on left side of chest of Vilas Chavan. She was unable to assign any reason why the same is not mentioned in her statement. Further, this witness denied various suggestions put to her by the defence.

23. Thus, the evidence of PW-4 Fulabai shows that her business is of selling vegetables near the spot of incident, in the morning hours and therefore she was present at the spot of incident for conduct of her business of selling vegetables. Thus, her

presence at the spot of incident was natural. Her evidence shows that she saw accused Raju dragging Vilas Chavan near Ganpati Mandir, at which time Vilas was fully blood stained and has kept his hand on his stomach. Raju Chavan was holding knife in his right hand, which was also blood stained. Her evidence further shows, she had seen that Raju gave knife blow on left side of chest of Vilas and when she tried to intervene Raju threatened her with dire consequences. Raju Chavan created terror in the vicinity and he was shouting the shopkeepers to close down the shops. Her evidence further shows that on the request of Vilas when she tried to give water to Vilas, accused Raju again threatened her. Though the prosecution has brought on record some contradictions and omissions regarding the surrounding area near the spot, the nearby roads, shops, the said contradictions and omissions are of a minor nature and do not affect core/substratum of the prosecution case and therefore the same can be ignored. Thus, the evidence of PW-4 Fulabai is reliable and trustworthy.

24. PW-5 Baby Anil Rathod is the another eye witness. She deposed that she along with her family resides in Ghoda Tanda. She knows Vilas Chavan, who was son of her sister. She knows the accused, who are residing in Ghoda Tanda. She further deposed about the quarrel which took place on 26th May, 2012, at 6.00 p.m. between Vilas and accused persons, on the issue of boys playing cricket near the house of accused No.1 Raju.

25. Regarding the main incident, PW-5 Baby deposed that on 27th May, 2012, between 8.00 to 8.30 a.m., she was proceeding to doctor in Hatture Vasti, due to cough and cold. She was proceeding towards Hatture Vasti Bus Stop. She saw Vilas Chavan taking his rickshaw from Hatture bus stop towards vegetable market. She further deposed that she saw Raju Chavan pulled out Vilas Chavan from rickshaw. She saw Raju Chavan had taken amount from the pocket of Vilas Chavan. She saw Raju, Santosh, Shivaji, Ravi, Deepak

and one unknown person were beating by kick blows and fist blows to Vilas Chavan. As there was quarrel on account of money, she was going towards them, at that time, Raju Chavan gave knife blow on the hand of Vilas Chavan. Vilas rescued himself from them and ran towards the construction near Ganpati Mandir. Then these five persons ran away behind Vilas Chavan towards the said construction. She saw these five persons surrounded Vilas Chavan. She further deposed that she saw Shivaji was standing on right side of Vilas Chavan, Dipak and Ravi were standing behind Vilas Chavan and Raju Chavan was standing in front of Vilas Chavan. Santosh was standing on left side of Vilas. She saw Raju Chavan gave knife blow on stomach and hand of Vilas Chavan. Others were beating by kick blows and hand blows to Vilas. She further stated that she saw Raju Chavan dragged Vilas Chavan in armpit in front of Ganesh Mandir. She was watching this incident from the distance of 10 to 15 ft. Raju Chavan brought Vilas Chavan in front of Ganpati temple and gave knife blow on his chest. She saw that

Vilas Chavan was lying unconscious on the spot and therefore she frightened and went to house to tell about incident to her sister. She further deposed that she knows the accused and she identified the accused who were present before the Court. She identified the knife (Article No.11) which Raju Chavan was holding at the time of incident and the knife (Article No.12) which Dipak was holding at the time of incident.

26. During the course of cross-examination PW-5 Baby admitted that she is real maternal aunt of Vilas. She further stated that it takes 10 to 15 minutes for coming from Ghoda Tanda to Hatture Vasti, by rickshaw. She does not know distance between Ghoda Tanda to Vasti is 15 K.M. She stated before the police that after hearing commotion she went towards school. She was unable to assign any reason why the same is not recorded by police in her statement. She does not know that there are 10 to 15 doctors and dispensaries between Kumtha village to Hatture Vasti.

She does not know there is hospital of Dr. Mali in the corner of Kumtha village. She does not know that there is dispensary of Dr. Kavishwar and Borkar in Kumtha. She does not know there is a Kamna Clinic hospital of Dr. Roy in between Railway gate to Hatture Vasti. She specifically stated that Fulsing and Fulabai (PW-4) were present near the spot of incident. She has stated before the police which knife was in whose hands. She was unable to say why the same was not recorded in her statement. She has stated before the police that Dipak was holding iron knife. She was unable to assign reason why the same was not mentioned in her statement. Further, PW-5 Baby denied various suggestions put to her by the defence.

27. Thus, the evidence of PW-5 Baby shows that on the earlier day of incident, there was quarrel between Vilas and accused persons on the count of boys playing cricket on the playground. Regarding the incident, her evidence shows that on 27th May, 2012,

between 8.00 to 8.30 a.m., she was going to the doctor as she was not feeling well, and when she was proceeding towards Hatture Vasti bus stop, she saw that accused Raju Chavan pulled Vilas from rickshaw. She saw that Raju Chavan had taken amount from the pocket of Vilas. Raju, Santosh, Shivaji, Ravi, Deepak were beating Vilas by kick blows and hand blows. Raju Chavan gave knife blow on the hand of Vilas. Vilas rescued himself from the clutches of accused and ran towards Ganpati Mandir but the accused chased Vilas. Her evidence further shows that accused surrounded Vilas. Shivaji was standing on right side of Vilas, Dipak and Ravi were standing behind Vilas, Raju was standing in front of Vilas and Santosh was standing on left side. Her evidence further shows that Raju gave knife blow on stomach and hand of Vilas. Dipak gave blow of knife from back side of Vilas. Others were beating by kick blows and fist blows. Raju Chavan dragged Vilas Chavan in armpit in front of Ganpati Mandir and gave knife blow on his chest. Her evidence shows that she was watching the incident

from the distance of 10 to 15 ft. She noticed that Vilas was lying unconscious. Due to the said incident, she frightened and went towards her house. Thus, evidence of PW-5 is consistent, reliable and trustworthy. Her evidence shows that accused persons took out the amount from the pocket of Vilas. She has specifically stated about the role played by each of the accused in the incident. Her evidence further shows that all the accused persons surrounded Vilas so that he should not run away and thereafter they assaulted him. Though the prosecution has brought on record some contradictions and omissions regarding the spot of incident, peoples residing in surrounding area, distance between Ghoda Tanda to Hatture Vasti, hospitals in the area, the said contradictions and omissions are of a minor nature and do not affect core/substratum of the prosecution case and therefore the same can be ignored. Thus, the evidence of PW-5 Baby is consistent, reliable and trustworthy.

28. Thus, on conjoint reading of the evidence

of these three eye witnesses i.e. PW-2 Fulchand, PW-4 Fulabai and PW-5 Baby, their evidence is consistent and trustworthy. They have corroborated the testimony of each other. Their presence at the spot of incident was natural. PW-5 Baby has specifically stated that PW-2 and PW-4 were present near the spot of incident, at the time of incident. These three witnesses have specifically stated that when Vilas was going in his rickshaw, the accused pulled out Vilas from the rickshaw, the accused robbed the amount from the pocket of Vilas, and in the process assaulted him with deadly weapons. The evidence of these three eye witnesses further discloses that when Vilas tried to run away from the clutches of accused persons, they chased and encircled him, assaulted him and killed him on the spot. The accused made terror in the vicinity and due to fear, though several persons were present on the spot, including eye witnesses, no one tried to rescue Vilas from the assault. Thus, the prosecution has brought on record sufficient evidence in the nature of evidence of PW-2 Fulchand, PW-4

Fulabai and PW-5 Baby. Their evidence corroborates with each other on material particulars. As observed earlier, though the defence has brought on record some contradictions and omissions regarding the spot of incident, surrounding area, the nearby roads, the shops, medical stores and dispensaries in the vicinity, the said contradictions and omissions are of a minor nature and do not affect core/substratum of the prosecution case and therefore the same can be ignored. The Supreme Court in the case of Mukesh and another vs. State (NCT of Delhi) and others (supra), in Paras 86 to 89 of the Judgment, held as under:

"86. In this context, we may fruitfully reproduce a passage from *State of U.P. v. M.K. Anthony*¹: (SCC p. 514, para 10)

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is

1 (1985) 1 S.C.C. 505

undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ..."

87. In *Harijana Thirupala v. Public Prosecutor*², it has been ruled that: (SCC p. 476, para 11)

"11. ... In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in

2 (2002) 6 S.C.C. 470

totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses."

88. In *Ugar Ahir v. State of Bihar*³, a three-Judge Bench held: (AIR p. 279, para 6)

"6. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of

3 A.I.R. 1965 S.C. 277

its own out of the rest."

89. In *Krishna Mochi v. State of Bihar*⁴, the Court ruled that: (SCC pp. 104-05, para 32)

"32. ... The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have

4 (2002) 6 S.C.C. 81

become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time. In *Inder Singh*⁵, Krishna Iyer, J. laid down that: (SCC p. 162, para 2)

'2. ... Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.'

In *State of U.P. v. Anil Singh*⁶, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

29. Thus, the prosecution has brought on record

5 (1978) 4 S.C.C. 161

6 1988 Supp. S.C.C. 686

sufficient evidence in the form of evidence of three eye witnesses that the accused persons had committed dacoity and in the said process, killed Vilas with deadly weapons and therefore we need not search for other evidence. Still, we would refer to the evidence of other witnesses which are examined by the prosecution.

30. The prosecution has examined PW-1 Dashrath Ramu Rathod. He deposed that on 27th May, 2012, police called him in Civil Hospital Solapur. There was dead body of Vilas @ Vikas Ramu Chavan. He has seen the dead body. There were injuries on body. There was injury on chest on left side. There was big injury on stomach on left side and intestine were came outside. Injury on chest was sharp and big injury. There were two injuries on right hand above wrist. Out of them one injury was big size by cut and another injury was small. There was injury on right leg inside above ankle. There were three injuries on left leg; one injury is above ankle inside, another

injury was stab injury on back side and one stab injury on front side of thigh. There was stab injury on back side in middle. He further deposed that Police has prepared inquest panchnama in his presence and another panch Taru Parshuram Pawar. Panchnama was drawn between 10.30 p.m. to 12.30 p.m. He proved the inquest panchanama (Exhibit-35).

31. PW-1 Dashrath further deposed that thereafter they went to the spot of offence, which is at Hatture Vasti near bus stop. They have seen spot of offence. The spot was shown from Hatture Vasti bus stop to Ganesh Mandir, Ganesh Mandir to Bhaji Mandai and Bhaji Mandai to in front of Shete Apartment on road. He further deposed that the police drawn the spot panchnama in his presence and seized Pulsar and rickshaw which were on the spot of incident. He proved the spot panchnama (Exhibit-36).

32. PW-1 Dashrath further deposed that again on 27th May, 2012, at 9.00 p.m. the police called him in

police station for seizure of clothes of deceased Vilas Chavan. The Police Constable Choughule produced the clothes of deceased in his presence. The police had seized one white baniyan with blood stains and its both shoulder were torn. The police have also seized green colour underwear with blood stains, black colour cotton pant with blood stains. The police sealed seized clothes. The police sealed with paper label having signatures. The police sealed each clothes separately. The police prepared panchnama and then obtained his signature. Thus he proved the seizure panchanama (Exhibit-37) regarding seizure of clothes of deceased. PW-1 Dashrath further proved panchnama of the seizure of the clothes of accused Ravi like white shirt of full sleeves of Mehendi colour and Marun colour pant. The police has sealed clothes in separate piece of paper and put the labels having signatures of panchas on it. The police drawn panchnama in his presence then obtained his signature. Thus this witness has proved another seizure panchanama (Exhibit -38), regarding the

seizure of clothes of the accused Ravi. PW-1 Dashrath further proved seizure panchnama (Exhibit – 39) of clothes of accused Santosh Arjun Chavan and Shivaji Arjun Chavan.

33. During the course of cross examination, PW-1 Dashrath stated that dead body was given in possession of Vikas between 5.00 and 5.30 p.m. He admits that after receipt of dead body, there was discussion between he himself, Fulchand Chavan, Vikas and other relatives, who were gathered in the hospital. He does not remember the day when Vilas died. He admits that in Laman community, it is a practice if somebody is died beyond the village, dead body is not brought in the village and funeral ceremony is performed outside the village. He admits that he has not met with Police after dead body was given in possession of relatives till the funeral ceremony. He further stated that Vilas is not his relative. He further stated that he was present on the spot when Police told about the spot. He does not

remember when he went on the spot of offence. He does not remember timing also. He admits that Police brought clothes of Vilas. Accused – Ravi was arrested on 29th May, 2012 at about 4.30 to 5.00 p.m. He further admits that Police shown the clothes of accused and obtained his signature.

34. Thus evidence of PW-1 – Dashrath shows that he saw the dead body of Vilas and he proved the inquest panchanama (Exhibit-35). His evidence discloses that he noticed multiple stab injuries on the dead body of Vilas and he noticed that even the intestine of Vilas was come out. It is pertinent to note that we have already held that death of Vilas is homicidal. Further this witness has proved spot panchanama (Exhibit – 36) and seizure panchanamas (Exhibit-38 and 39). Though learned counsel appearing for the Appellants has argued that evidence of PW-1, panch to the spot panchnama is liable to be discarded as he has shown the different spot than the spot where the actual incident alleged to have been

happened. This submission of learned counsel deserves no consideration for the simple reason that, as per the prosecution case the main incident took place near Hatture Vasti Bus stop. The evidence of PW-1 discloses that the spot of incident was shown from Hatture Vasti Bus Stop to Ganesh Mandir, Ganesh Mandir to Bhaji Mandai and Bhaji Mandai to in front of Shete Apartment on road. Even all three eye witnesses have also stated the spot of incident as Hatture Vasti Bus Stop. The evidence of eye witnesses (PW-2 Fulchand, PW-4 Fulabai and PW-5 Baby), shows that near Hatture Vasti Bus Stop accused persons obstructed the rickshaw of Vilas and pulled him out of rickshaw and robbed the amount from the pocket of rickshaw and started to assault him. Vilas rescued himself from the clutches of accused and ran away towards Ganpati Mandir, at which time all accused persons chased him, caught him and again made murderous attack on Vilas. The evidence further shows that accused Raju dragged Vilas towards the apartment where construction was going on. Thus, it is clear

that the incident took place near Hatture Vasti Bus Stop, then near Ganesh Mandir, Bhaji Mandai and then in front of Apartment. Thus, PW-1 has shown the actual spot of incident in the spot panchnama.

35. The prosecution examined PW-3 Ismayeel Yunus Shaikh, who is the panch to the memorandum of accused Raju. He deposed that on 2nd June, 2012, police called him in Vijapur Naka Police Station, PSI and accused were present in the Police Station. At that time, accused Raju Chavan told that he will show two knives which were used in offence and a shirt, which articles were kept in house of his paternal aunt in Zopadpatti No.2. His statement was recorded by police. He proved the Memorandum of statement Exhibit-45. PW-3 further deposed that thereafter he himself, another panch, police and accused proceeded towards Zopadpatti No.2 by police jeep as per the direction of accused Raju Chavan. The accused took them in front of house of his paternal aunt and produced two knives and shirt which were kept on iron

sheets. One knife was of steel and one knife was of iron. Shirt was of green colour. Police seized two knives and shirt under panchnama. Knife was sharp and shirt was blood stained and having white buttons. Iron knife was having 4 inch handle. The police seized knives and shirt and the same were sealed. The police obtained his signature and signature of another panch on panchnama. Thus, PW-3 Ismayeel proved seizure panchnama Exhibit-46 regarding seizure of two knives and shirt, at the instance of accused Raju. When articles No.11, 12 and 13(two knives and shirt) were shown to him, he identified the same. PW-3 Ismayeel also identified accused Raju Chavan, who was present before the Court. This witness was extensively cross-examined by the defence, but nothing contrary was brought on record.

36. Thus, evidence of PW-3 shows that at the instance of accused Raju, two knives were recovered, which were used in the commission of offence and the said knives were blood stained.

37. The prosecution examined PW-6 Vilas Narsinh Deshpande. He deposed that he was selling and purchasing vehicles. He was also doing travel business. He knows Vilas Chavan. He further deposed that on 25th May, 2012, Vilas Chavan came to his house as he was intending to purchase rickshaw. Vilas came at 8.00 to 8.30 a.m. to his house and told that he want to purchase old rickshaw of single focus and rear engine. He further deposed that he told Vilas that value of vehicle was about Rs.50,000/- to Rs.55,000/-. He further deposed that Vilas Chavan told him to see rickshaw and he will come after two days. He waited for two days. He did not come. His office time is from 9.00 a.m. to 8.00 p.m., and he used to visit the persons in the house before 9.00 a.m. and after 8.30 p.m.

38. During the course of cross-examination, PW-6 stated that since 1985-1986 he was doing the business of auto consultancy but he does not possess

Shop Act License. He further stated that he was serving in Tirupati Auto Consultancy on Akkalkot road and he personally was also doing consultancy work in his house. He admits that auto consultants can legally sell and purchase vehicles. He further stated that he used to receive commission if customer was taken to auto consultant. He admitted that he has not stated before the police about his office timing.

39. Thus, through the evidence of PW-6 Vilas Deshpande, the prosecution has brought on record that deceased Vilas intended to purchase second hand rickshaw and for the said purpose, earlier, on 25th May, 2012, deceased Vilas visited the house of PW-6 and stated that he wants to purchase second hand rickshaw and PW-6 told deceased Vilas that, at the relevant time market value of second hand rickshaw was Rs.50,000/- to Rs.55,000/-. Thus, evidence of PW-6 lends support to the prosecution case that on the day of incident, Vilas was going to visit PW-6, having an amount of Rs.50,000/- with him, for the

purpose of purchasing second hand rickshaw.

40. The prosecution examined PW-7 Vikas Motiram Rathod, brother of deceased Vilas, who is informant. He deposed that deceased Vilas was his step brother. He further deposed that he has stated his name as "Vikas Motiram Rathod" while giving complaint. He further deposed that he does not know why police wrote his name as "Vikas Ramu Chavan". He further deposed that he has stated that deceased Vilas Ramu Chavan is his brother, but police wrote his name as Vikas Ramu Chavan. Deceased Vilas was driving his own rickshaw.

41. PW-7 Vikas further deposed that on 26th May, 2012 at evening 6.00 p.m. small boys were playing cricket on playground of school. School is in village Ghodatanda. Accused Raju Chavan gave slap to one boy, who was playing cricket. He further deposed that his deceased brother Vilas had gone to rescue the quarrel. Raju Chavan gave abuses in Laman language.

Villagers from Ghoda Tanda gathered on the playground of school. Villagers rescued the quarrel between Raju Chavan and Vilas Chavan. Then Raju Chavan went to house. Again accused Raju came along with Santosh Chavan, Shivaji Chavan and Ravi Rathod. Raju Chavan came along with two knives, one was of steel and another was of iron. He further deposed that Raju Chavan was loudly shouting that he would kill Vilas Chavan. At that time, Raju Chavan was also abusing in Laman language. Villagers from Tanda came and gave understanding to Raju and then all went to their house. He knows Raju, Santosh, Shivaji and Ravi.

42. PW-7 Vikas further deposed that on 27th May, 2012, between 7.30 to 8.00 a.m. his brother Vilas by taking amount of Rs.50,000/- for purchasing second hand rickshaw, went from house with his rickshaw bearing No. MH-13/G-8746. He further deposed that at about 9.00 a.m., he received phone of Fulchand Lalu Chavan informing that persons of their Tanda namely, Santosh Chavan, Shivaji Chavan, Raju Chavan, Ravi

Rathod, Dipak Chavan and one another person have beaten his brother Vilas by knife near Hatture Vasti Bus Stop. Fulchand Chavan told him that said persons came on two motorcycles, one motorcycle is of black Pulsar motorcycle bearing registration No.MH-13/BE-2866 and one another motorcycle. Fulchand Chavan told him that said persons obstructed rickshaw of his brother and they gave knife blow on abdomen, chest and right hand of his brother Vilas and they have taken amount of Rs.50,000/- from his brother and ran away. He further deposed that Fulchand told him that one Tulshiram Rathod admitted his brother in hospital. He further deposed that he came to Civil Hospital, Solapur and seen his brother Vilas. He saw intestine of his brother came out from abdomen. He saw blow on chest and right hand of his brother. He also saw his brother was having injury of blow on his both legs. His brother was unconscious and died during treatment. Police came in the hospital and recorded his complaint - Exhibit-52. When PW-7 Vikas was shown knives (Article 11 and 12), he identified

the same and stated that the said knives were in the hands of Raju Chavan on 26th May, 2012. He also identified the clothes (Article 1 to 3) of his brother, which were shown to him.

43. During the course of cross-examination PW-7 Vikas was asked about the leaders in their vicinity, Ghoda Tanda and he stated their names. He denied that deceased Vilas was residing separately and was having separate ration card. He admits that he has stated before police that on 26th May, 2012, Raju Chavan gone to his house and later on came with knife along with Santosh, Shivaji, Ravi. He was unable to assign any reason who police have not recorded the said fact in his complaint. He further admits that he has stated before the police that Raju Chavan and others went to their house after making commotion. He was unable to assign reason why the said facts were not mentioned in his complaint. He admits that Motiram Rathod, Fulchand Chavan came in the hospital after he reached to the hospital. Further, he denied the

various suggestions which were put to him by the defence.

44. Thus, through the evidence of the informant PW-7 Vikas, the prosecution has brought on record the earlier incident of quarrel between deceased Vilas and accused persons which took place on 26th May, 2012 on the issue of boys playing cricket. The evidence of PW-7 further shows that on the day of incident between 7.30 to 8.00 a.m. his brother Vilas (deceased) took amount of Rs.50,000/- for purchasing second hand rickshaw and went from the house in the rickshaw. Thus, evidence of this witness lends support to the prosecution case that at the time of incident Vilas was having with him an amount of Rs.50,000/-. The evidence of PW-7 further discloses that at about 9.00 a.m. he received phone call from Fulchand Lalu chavan (PW-2) informing that accused Santosh Chavan, Shivaji Chavan, Raju Chavan, Ravi Rathod, Dipak Chavan and one other person had beaten his brother Vilas by knife near Hatture Vasti Bus

Stop. His evidence further discloses that Fulchand (PW-2) told him that the above named persons obstructed rickshaw of Vilas and gave knife blow on abdomen, chest and right hand of his brother Vilas and also snatched the amount of Rs.50,000/- from his brother Vilas and ran away. Thus, evidence of this informant PW-7 is consistent, reliable, trustworthy and the same lends support to the prosecution case.

45. PW-9 Atul Maruti Sathe is the panch to the arrest panchnama Exhibit-66, regarding arrest of accused Raju Chavan. He deposed that accused Raju Chavan was arrested in his presence, and he proved said arrest Panchnama Exhibit-66. PW-10 Chidanand Tukaram Gurav, is the Police Havildar who carried the muddemal articles to the office of Chemical Analyzer at Pune on 7th June, 2012.

46. The prosecution examined PW-11 — Maruti Narhar Babar, Police Jamadar. He deposed that during the relevant time, he was attached to Vijapur Naka

Police Station. He further deposed that on 27th May, 2012, PSI B.V. Suryawanshi has recorded complaint of Vikas Chavan and forwarded to him for registering offence. He further deposed that after receiving complaint, he registered the offence punishable under Section 397 and 396 of IPC. He further deposed that offence was registered vide C.R. No.152/2012 and investigation was handed over to B.V. Suryawanshi. He identified the endorsement on complaint (Exhibit-52), which was in his handwriting and the same bears his signature.

47. PW-12 Somnath Nagnath Chougule was the police head constable, attached to Vijapurnaka police station at the relevant time. He deposed that on 27th May, 2012, information was received from PSO of Vijapurnaka police station about the incident took place in Hatture Vasti and injured was taken to Civil Hospital, Solapur. Then he went to civil hospital and there he came to know that injured died during treatment. Name of injured was Vilas Chavan. Then

police officer Sanap drawn inquest panchnama. He took dead body in mortuary. The doctor removed clothes of dead body before postmortem and given to him. He took the clothes in his possession. Thereafter the said clothes were handed over to PSO Shri Babar. Clothes were seized in presence of panchas. Doctor gave him sealed viscera, blood sample, hair, nail clippings of hand and legs of deceased in sealed condition in his custody, which were handed over to PSO in same condition.

48. PW-13 Brahmanand Vitthalrao Suryawanshi, A.P.I. was the investigating officer. He deposed about the manner in which he has carried out the investigation.

49. The defence has examined DW-1 Vinod Ratansing Rathod. He deposed that he was acquainted to Vilas Ramu Chavan by face as he was plying his rickshaw from their Tanda. He further deposed that on 27th May, 2012, he was going for Gramsevak

examination which was to be held in Social High school, Solapur from Kumthe Tanda. He further deposed that he came from Asra Chowk and he saw that there was crowd and he heard that there was accident. He further deposed that as he was knowing by face to Vilas Ramu Chavan, he brought Vilas in Civil Hospital, Solapur. He further deposed that thereafter brother, mother and uncle of Vilas came in the hospital and he told them that as persons gathered on the spot stated that there was accident, so he brought Vilas in the hospital.

50. During the course of cross-examination, suggestion was put to him and he denied that his marriage was settled with sister of accused Raju prior to the incident and that he has having close relations with accused Raju Chavan. He admits that he has not seen the incident nor he has knowledge about the incident. He further stated that he does not know the accused and one unknown person has stabbed Vilas Ramu Chavan and he was fallen in injured condition.

He has stated before the police about the accident. He admits that his statement was recorded by police on 27th May, 2012. When portion marked "A" was read over to him, he denied that he has stated said portion before police.

51. Thus, evidence of DW-1 Vinod discloses that in order to save the accused, he was deposing falsely that he heard from the crowd that accident took place and that as he was knowing deceased Vilas by face therefore he took Vilas to the hospital. Through the evidence of DW-1, the defence tried to show that Vilas died in the accident. But, DW-1 has specifically admitted that neither he has seen the incident nor he has knowledge about the incident. Even for the sake or argument if the evidence of DW-1 Vinod is admitted as it is, his knowledge about the incident is hearsay and he has not actually seen the incident. Thus, it is clear that evidence of DW-1 Vinod is not at all helpful to the defence. If the evidence of prosecution witnesses is perused, they

have categorically stated that one Tulshiram Rathod brought injured Vilas in the Civil Hospital at Solapur. Thus, the evidence of DW-1 is not at all reliable and the same is not trustworthy and it appears that being closely related to the accused, he has given false evidence.

52. We have considered the entire evidence brought on record by the prosecution and also the evidence of the witness, who was examined by the defence. As observed earlier, PW-2 Fulchand, PW-4 Fulabai and PW-5 Baby had actually witnessed the incident. They have specifically attributed role to each of the accused. The evidence of above three eye witnesses shows that in all there were five accused persons who have conjointly committed dacoity and in committing the dacoity they have committed murder of Vilas by using deadly weapons. The incident took place in broad day light i.e. in the morning hours at 8.30 a.m. All the accused persons encircled Vilas so that he should not run away and then assaulted him

with deadly weapons. While committing the incident the accused persons have created terror in the vicinity. The evidence of eye witnesses shows that accused Raju threatened to the shopkeepers to close down their shops. Though these eye witnesses are relatives of the deceased, their evidence shows that their presence at the spot was natural and therefore their evidence is trustworthy and reliable. The evidence on record shows that though at the time of incident several persons gathered, due to fear and terror created by the accused, no one tried to intervene in the assault and rescue Vilas.

53. Learned counsel appearing for the appellants argued that the evidence of PW-2 Fulchand is not reliable as though deceased was his nephew, he did not accompany the deceased to Hospital. Statement of the PW-2 was recorded after two days. There was deliberation and then FIR has been registered. If the incident which took place on the earlier day of the main incident is considered, then there was no motive

as alleged by the prosecution, of removing money from the pocket of the deceased. There was political enmity. There is variation / discrepancies about the role of each of the accused. PW-2 did not try to rescue Vilas though he was close relative of the deceased. PW-2 did not inform police about the incident, hence, his conduct is unnatural.

54. We do not agree with the submissions advanced by the learned counsel appearing for the Appellants. PW-2 Fulchand has categorically stated in minute details, how incident took place and terror created by the accused. It is but natural that nobody would dare to interfere. Secondly, immediately PW-2 has informed Vikas about the incident. The evidence of PW-2 shows that when he saw that Vilas became unconscious due to assault by the accused, he became giddy and so he stopped there. Therefore, it cannot be said that his conduct was unnatural. Since FIR was promptly lodged on the very day of the incident, delay in recording the statements is not material. As

already observed, accused persons created terror and out of fear people were not coming forward. The witnesses are from "Laman", which is socially backward community, residing at Tanda, and therefore, delay in recording the statements needs to be ignored.

55. It is pertinent to note that there are political party workers in all the villages. When eye witness account gets support from medical evidence and also recovery etc., criticism would take back seat. There are other two eye witnesses whose evidence corroborates to the evidence of PW-2 and also each other. It is well settled that when there is clear, cogent and trustworthy evidence of the eye witnesses, even corroboration is not necessary. But in the present case, evidence of eye witnesses corroborates each other and also there is other evidence on record, which lends support to the evidence of eye witnesses. Eye witnesses have stated that accused removed money from the pocket of

deceased. Prosecution has brought on record that deceased wanted to purchase second hand rickshaw from PW-6, and therefore, deceased was carrying money with him.

56. Learned counsel appearing for the appellants also argued that the trial Court erred in convicting the appellants for the offence punishable under Section 302 read with 149 of the IPC without framing charge to that effect. In this respect, it will be useful to refer the charge Exhibit-16, framed by the trial Court. The prosecution has proved beyond reasonable doubt that the accused committed dacoity and in the said process committed murder of Vilas by using deadly weapons. Therefore, an ingredients of Sections 396, 397 of the IPC are attracted. If the second charge framed by the trial Court is perused, it appears that the trial Court has framed the charge that, all the accused along with unknown persons on 27th May, 2012, at about 8.00 a.m. or thereabout in front of Hatture Vasti Bus Stop, near Bhaji Market,

situate at Hatture Vasti, Hotgi Road, Solapur, at the time of committing the dacoity all the accused used the deadly weapon i.e. knife, sharp weapon and by assaulting informant's brother Vilas Ramu Chavan, caused death of Vilas and the accused thereby committed an offence punishable under Section 397 of the IPC. Thus, charge of dacoity and in the said process committing murder of Vilas by using deadly weapons was very well framed by the trial Court and the same was conclusively proved by the prosecution by bringing on record sufficient evidence including the evidence of three eye witnesses. Therefore, no prejudice has been caused to the accused for not framing separate charge under Section 302 of the IPC.

57. Learned counsel appearing for the Appellants have further argued that if the evidence of all the three eye witnesses is perused, PW-2 Fulchand and PW-5 Baby have attributed the role of assault by using knives against accused Raju and Dipak. PW-4 Fulabai has stated that accused Raju

assaulted Vilas by using knife and others were beating Vilas by fist and kick blows. Further, in the evidence of eye witnesses, there is variance / discrepancies about the role of each of the accused. Thus, in the submission of the learned counsel the trial Court should not have convicted all the accused for the offence punishable under Section 302, 396 and 397 of the IPC.

58. In our considered opinion the said submission of the learned counsel deserves no consideration as all the accused persons were convicted and sentenced under Section 302 with the aid of Section 149 of the IPC. Section 149 of the IPC provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of the committing of that offence is a member of the same assembly, is guilty of that offence. The evidence of PW-2 Fulchand, PW-4 Fulabai and PW-5 Baby shows that all the accused were the

members of unlawful assembly and in prosecution of the common object of that assembly, robbed an amount of Rs.50,000/- from the pocket of Vilas and in that process committed murder of Vilas by using deadly weapons. The evidence on record shows that all the accused persons encircled Vilas so that he should not run away from the spot and thereafter he was assaulted with deadly weapons and murdered. Thus, the trial Court has rightly convicted and sentenced all the accused persons, who were members of the unlawful assembly.

59. We have carefully perused the impugned judgment. The trial Court has considered all the evidence brought on record and rightly observed that the prosecution has proved that accused have conjointly committed dacoity and accused No.1 Raju Arjun Chavan and accused No.5 Dipak Chavan have committed murder of Vilas Chavan. They have knowledge that their blow is likely to cause death of Vilas. They have done the act of giving knife blow

with intention to cause death of Vilas. The trial Court has further observed that accused No.1 Raju and accused No.5 Dipak have committed murder of Vilas and therefore held them guilty for the offence punishable under Sections 302 read with 149, 396 and 397 of the IPC. The trial Court has further observed that accused No.2 Santosh, accused No.3 Shivaji and accused No.4 Ravi were present on the spot and they have conjointly committed dacoity. Even though there is no evidence on record to show that they have actually used weapon, but they were present on the spot. Their actual participation in the incident is proved. They have surrounded the deceased, so deceased Vilas could not rescue himself. They were also having knowledge that act of giving blow is with intention to cause death of Vilas. The trial Court has further observed that accused Nos.2, 3 and 4 are also liable for the overt-act of accused No.1 Raju and accused No.5 Dipak and therefore they are also held guilty for the offence punishable under Sections 302 read with 149, 396 and 397 of the IPC. The trial

Court has convicted all the Appellants – accused for the offence punishable under Sections 302 read with 149, 396 and 397 of the IPC and sentenced them, as afore-stated.

60. Therefore, upon considering the evidence in its entirety, we are of the considered opinion that the findings recorded by the trial Court are in consonance with the evidence brought on record and therefore we do not think it necessary to cause interference in the findings recorded by the trial Court.

61. We do not find that there is any substance in both the Appeals. Accordingly, both the Criminal Appeals stand dismissed.

(A.S.GADKARI, J.)

(S. S. SHINDE, J.)