

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

CRIMINAL APPEAL NO.298 OF 1998

The State of Maharashtra	]	].....Appellant
versus		
1] Dnyaneshwar Yeshwant Mutalik	]	
age about 34 years, resident	]	
230 Shaniwar Peth, Satara	]	
	]	
2] Rajendra Madhukar Gaikwad	]	
age about 22 years, resident	]	
of 20 Chimanpura Peth, Satara	]	
3] Nana Alias Sanjay Babanrao	]	
Mandhare, age about 26 years	]	
resident of 19 Chimanpura	]	
Peth, Satara	]	
	]	
4] Appa alias Dipak Babanrao	]	
Mandhare, age about 19 years,	]	
resident of 19 Chimanpura Peth,	]	
Satara.	]	]
		]..... Respondents
		](Orig. Accused)
		]
(Dismissed as against Respondent Nos.2 to	]	
4 as per Court's order dated 7/9/98.	]	

Mrs. S V Sonavane, APP for the Appellant.
Mr. Rahul S. Kate for the Respondents.

CORAM : S. S. SHINDE &
N B SURYAWANSHI, JJ.
DATE : 15th NOVEMBER 2019

JUDGMENT : (PER S. S. SHINDE, J)

1 The Appellant-State has preferred this Appeal against the Judgment and Order of acquittal dated 23/07/1997 passed by the learned Additional Sessions Judge, Satara in Sessions Case No.202 of 1995.

2 At the outset it is required to be noted that the Appeal against Respondent Nos.2 to 4 (Original Accused Nos.2 to 4) has been dismissed by this Court (Coram : Tipnis and Parkar, JJ) by order dated 07/09/1998 which reads thus :-

“Heard both sides. Perused the Judgment. It is conceded by Ld. P.P. that there is hardly any evidence against Respondents Nos. 2 to 4 (Orig. accd. No.2 to 4). Hence appeal dismissed so far as Respondent Nos.2 to 4 are concerned. However we find that case against accused/Respondent No.1, requires to be considered by this Court, Hence leave granted and appeal admitted only as against Respondent No.1 Orig. accused No.1”

3 In view of the aforesaid order, the Appeal requires to be considered on the basis of the findings recorded by the Trial Court as also the evidence and material placed on record by the prosecution, only as against Respondent No.1 Original Accused No.1.

4 The prosecution story in nutshell can be stated as under :-

The accused Nos. 1 to 4 have been charge-sheeted for the offences punishable under Sections 120-B, 302 read with Section 34 of the Indian Penal Code. Ajeet Balkrishna Mutalik (i.e. the deceased) and Dnyaneshwar Yeshwant Mutalik (i.e. Accused No.1) are cousin brothers. Both are residing along with their respective families in the same Wada. The relations of Accused No.1 with the family of deceased were not cordial on account previous domestic quarrel.

At the relevant time, Ajeet Balkrishna Mutalik (hereinafter referred to as “the deceased”) was serving in a Doburg Company situated in MIDC Area, Satara. On the date of incident i.e. on 14/07/1997 the deceased Ajeet left his house in the morning for attending his job at Doburg Company. At around 8.30 am when the deceased reached near the corner of road going towards his factory, he was accosted by Accused Nos.1 and 2 who came from behind and launched a murderous assault on the person of deceased by means of dagger and immediately fled away from the spot of incident. Due to the said assault, the deceased cried and shouted loudly for help. At that time one Mohan Bhaudas Tombare (Pw 5) who was attending cleaning work in the police out post, MIDC Satara, heard the hue and cry from the spot of incident, therefore, he rushed towards the spot of incident and found that the deceased was lying in injured condition on the road. Many employees of Doburg company gathered there. They saw the critical condition of injured Ajeet therefore autorickshaw was called at the spot of incident. Thereafter, at about 8.45 am the deceased was taken to the Civil Hospital, Satara in a rickshaw and, was admitted in the hospital. On the date of incident, Dr. Kauchle was on duty as casualty Medical officer. After taking history from the patient Dr. Kauchale examined the injured patient on the trolley and immediately carried the patient in emergency room of the hospital. At that time two constables Mr. Mane and Mr. Vairat were accompanied with the patient. After examining the patient, the doctor asked the police to make arrangement for recording the dying declaration of the

patient, since the condition of the patient was critical. Again at 8.50 am. Dr. Kauchale examined the patient and found that the patient was pulseless, artillary was not palpable. Therefore Dr. Kauchale asked the police to record the dying declaration of the patient, since the Executive Magistrate was not available in the hospital, therefore Police Head Constable Vairat started writing the dying declaration of the patient as per his narration and completed the work of writing the dying declaration at about 9.15 am. At about 9.55 am. Dr. Kauchale again examined the patient and he finally declared that the patient Ajeet Mutalik is no more. Police Constable Mane gave information to the City Police Station, Satara about the sad demise of deceased Ajeet. On the basis of the dying declaration, the police registered the offence against the accused persons. Thereafter Assistant Police Inspector Mr. Maneri recorded the inquest panchanama (Exh.126) of the dead body of deceased in the presence of two panchas. The cloths of the deceased were also seized by the police under the seizure panchanama (Exh.67). Thereafter API Maneri came to police station, he deleted Section 307 of the IPC and added by Section 302 of IPC. Entry to that effect was made in the station diary at Exhibit 26. Thereafter police visited the spot of incident, called panchas and recorded the spot panchanama (Exh.60) in the presence of panchas. The blood mixed earth and simple earth were collected from the spot of incident. Thereafter API Maneri received telephone call and he was informed by PSI Shinde that accused No.1 applied for anticipatory bail in the court of Additional District Judge. The said

anticipatory bail application was opposed by the police by filing a Say. On 17/07/1995 the interim anticipatory bail applicaton was rejected by the learned Additional District Judge. Thereafter on 14/07/1995 against API Maneri visite MIDC area and recorded the statements of relevant witnesses. On 15/07/1995 the police recorded the statements of 7 witnesses who were the relatives of the deceased. Witness Padmakar Mutalik produced three cassets and one certified copy of judgment of civil suit and some photographs which were seized by police under panchanama. On 17/07/1995 Accused No.1 came to be arrested. On 20/07/1995 police interrogated accused No.1 in the presence of panchas, and accused No.1 voluntarily made a statement in presence of panchas. Accordingly memorandum panchanama was recorded. Thereafter police went to the house of accused No.1 in a police jeep. The accused No.1 produced dagger concealed under the empty gunny bag kept on the top of steel cupboard in the said house. The said dagger was seized by the police under the seizure panchanama. Accused No.1 also produced clothes which were also seized by the police under seizure panchanama. During the course of investigation, a conspiracy was revealed, and therefore, the police added Section 120-B of IPC and entry to that effect was taken in the station diary which is at Sr.No.23. Thereafter police arrested Accused Sanjay Mandhare on 05/08/1995, accused Rajendra Gaikwad on 08/08/1995. The police referred the dagger to Medical Officer, who gave his opinion which is at Exh.99. All incriminating articles were sent to Chemical Analyzer, Pune for

examination and report. Thereafter Police requested the Tahasildar, Satara to visit the place of incident and draw a map of scene of offence. Accused Appa alias Dipak Mandhare was absconding. After completing the investigation the police filed charge sheet in the court of learned Chief Judicial Magistrate, Satara. Thereafter on 26/08/1996 accused Dipak alias Appa Babanrao madhare was arrested, and therefore, a supplementary charge sheet against him was submitted in the Court on 18/09/1996. Since the offences are triable by the Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Court of Sessions.

5 Thereafter a charge was framed against the Accused by the Sessions Court. The Accused Nos.1 to 4 pleaded not guilty to the charge and denied the commission of offences. It is the case of the Accused that they are innocent and they have not committed any offences as alleged by the Police and the prosecution witnesses, and they have wrongly implicated in a false case merely on suspicion.

6 To bring home the guilt of the accused, during the trial, the prosecution has examined in all 21 witnesses in support of its case. Statements of accused under Section 313 of the Criminal Procedure Code were recorded by the Trial Court. The learned Additional Sessions Judge after considering the oral as well as documentary evidence put forth by the prosecution on record,

particularly the evidence of Medical Officer and dying declaration (Exhibit 121), did not believe and accept the said dying declaration, and came to a conclusion that the prosecution has miserably failed to establish its case beyond reasonable doubt that accused mounted murderous assault on the person of deceased Ajeet by means of dagger. The learned Additional Sessions Judge has recorded a finding that there is no other evidence connecting the accused persons with the crime, and the accused are entitled to get the benefit of doubt. As stated herein above, the learned Additional Sessions Judge, Satara by the impugned judgment and order acquitted the accused Nos.1 to 4 of the offences punishable under Sections 120-B and 302 read with Section 34 of the Indian Penal Code by giving benefit of doubt.

7 We have heard the learned APP for the Appellant/State and the learned counsel appearing for the Respondent No.1 i.e. Accused No.1. With their able assistance perused the grounds taken in the Appeal memo, the evidence led by the prosecution, the documents produced on record, particularly the witnesses examined by the prosecution to prove the dying declaration of deceased, and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

8 The learned APP submits that the learned Additional Sessions Judge has erred in acquitting the accused and not taking into

consideration the material on record. She submits that the Trial Court has failed to appreciate the evidence of witnesses who were examined to prove the dying declaration, which evidence is sufficient to hold the accused guilty. It is further submitted that accused No.1 had a very strong motive to harm the members of the family of deceased. It is further submitted that filing of an application by accused No.1 for anticipatory bail, and discovery of blood stained dagger at his instance are the relevant circumstances brought on record by the prosecution indicating involvement of accused in the alleged offences. She further submits that the prosecution has proved the chain of circumstances which leads to only hypothesis of guilt of the accused. It is submitted that the deceased was assaulted on a public road by accused, and the deceased suffered 7 incise injuries on different part of his body. She further submits that the evidence of medical officer lends support to the case of the prosecution. She lastly submits that the prosecution has produced clinching evidence on record to prove the dying declaration which is sufficient to hold at least Respondent No.1 – Accused No.1 guilty. The learned APP therefore submits that the impugned judgment and order passed by the learned Additional Sessions Judge, Satara on 23/07/1997 in Sessions Case No.202 of 1995 acquitting the accused of the offences punishable under Sections 120-B, 302 read with 34 of the IPC is erroneous and is liable to be quashed and set aside.

9 The learned counsel appearing for Respondent No.1 i.e. Accused

No.1 submits that the prosecution has failed to bring home the guilt of the accused. There is no material and/or circumstantial evidence which could connect the accused with the crime. It is submitted that though the Executive Magistrate was present in the hospital at the relevant time, the dying declaration was recorded by the police. It is well settled that the dying declaration recorded by the Magistrate in question and answer form would always stand on higher footing vis-a-vis recorded by the police officer. It is also submitted that the prosecution has failed to prove the motive of the accused No.1. He further submits that there was no eye witness to the incident and the case of the prosecution rests upon the sole dying declaration and other evidence collected by the Investigating Officer. It is submitted that the prosecution has failed to prove the link in the chain of circumstantial evidence. He also submitted that there is no sufficient evidence produced by the prosecution to prove the complicity of Respondent Nos.2 to 4 under Section 120-B of the Indian Penal Code, and therefore, the Trial Court has rightly extended the benefit of doubt in favour of the accused due to lack of evidence. The learned counsel for Respondent No.1 submits that the impugned judgment and order passed by the learned Additional Sessions Judge is a well reasoned order and needs no interference. He, therefore, submits that the Appeal against the judgment and order of acquittal of the accused filed by the Appellant/State may be dismissed.

10 We have gone through the entire record and proceedings of the Trial Court. With the assistance of the learned counsel for the parties, we have perused the evidence led by the prosecution before the Trial Court and the documents produced on record. It is pertinent to mention at this stage that the entire prosecution case rests upon the dying declaration of deceased Ajeet, and therefore, it is necessary to consider the evidence of prosecution witnesses who were examined to prove the dying declaration, and the evidence of the Medical Officer to whom the patient has given history of assault. It is an undisputed fact that deceased Ajeet died due to the severe injuries sustained by him. It is also undisputed fact that deceased died in the hospital on the very same day of the incident at about 9.55 am. The prosecution in support of its case has examined the Medical officer Dr. Vilas Mahadev Kuchale, who at the relevant time, was attached to Civil Hospital, Satara, as PW No.11. He stated that on 14/07/1995 at about 8.45 am one seriously injured patient was brought to the hospital by the workers of Doburg Factory, Satara. He examined the patient. The general condition of the patient noted by the Doctor is as follows :-

1. He was pulseless.
2. Pallor ++
3. Pupils normal size and reacting to light.
4. His blood pressure recorded was 50 Ml. S. G. (brachiul)
5. He was bleeding profusedly from his abdominal wounds.
6. He was conscious. Fully oriented and was talking properly and he gave history as follows.

“Some two persons stabbed him near Bombay Restaurant 15 minutes back (ago)”

The Doctor deposed that after hearing the patient, he informed the police for recording his dying declaration because police constables were present near the trolley when he examined the patient. The Doctor examined the patient and found the following injuries on the person of the patient.

1. Incised and perforating wound on left iliac fossa with omentum protruding out, bleeding positive, dimensions of wound are 4 cm x 3 cm incise wound and perforating wound just below umbilicus, 5 cm x 2 cm abdomen deep.
2. Semi-circular, incised and perforating wound just below umbilicus, 5 cm x 2 cm abdomen deep, bleeding positive.
3. Incised wound on right hypochondriac region 1 x $\frac{1}{2}$ x $\frac{1}{2}$ cm.
4. Incised wound on right side of chest, meet axillary line, horizontal 5 x 2 x 2 cms bleeding profusely. Extension below skin towards axilla 6 cm.
5. Superficial incised wound on front of chest, below right clavical, 10 cm x 2 cm x $\frac{1}{2}$ cm. Bleeding positive.
6. Small incised wound on chest on left side in midaxillary line. 2 x $\frac{1}{2}$ x 1 cm bleeding positive.

- 7 Incised wound on right hand in between thumb and Index finger,
6 x 3 x 2 cm, bleeding positive.

The Medical Officer deposed that there was no talk between him and the patient except the initial talk which was materialized between him and the patient. After general examination the patient was shifted to Emergency Room on trolley. The Medical Officer started giving treatment to the patient. He recorded the general condition of the patient from time to time. The medical officer deposed that at about 8.50 am he again examined the patient and found that that the patient was pulse less, brachial artery was not palpable, but still the patient was conscious and he was answering properly. At about 9.05 am again he examined the patient and found him in following condition :-

1. Patient was drowsy.
2. He was deadly pale.
3. There was hypoxic struggle.
4. he was pulse less.

Against at about 9.15 the Medical Officer examined the patient and found him in following condition :-

1. The patient was unconscious.
2. He was deadly pale.

3. Bleeding profusely from abdominal wounds
4. Brachial was not palpable.
5. B. P was not recordable.

The Medical Officer again examined the patient at about 9.55 am and found that the patient is not alive. The Medical Officer has deposed that on the very same day he conducted post mortem examination on the dead body of the said patient, and found the injuries which have been mentioned in column No.17 of the post mortem notes. As per the opinion of medical officer the cause of death was, hemorrhagic shock due to stab injuries. According to the medical officer the injuries which have been mentioned in the column No.17 of the post mortem notes were sufficient to cause death in the ordinary course of nature. The Medical officer also stated that while he was treating the patient, the dying declaration of the patient was recorded by the Police Head Constable accompanied by Police Constable. He also stated that after perusal of dying declaration, he made his endorsement in the margin of the said dying declaration that the patient was conscious and oriented. He stated that he is aware of the importance of dying declarations in such cases.

In the cross examination, the medical officer stated that the condition of the patient was very critical, when he was brought on the trolley. He also stated in his cross examination that the first question was put by him to the patient is, "Kay Zala Tula". The patient replied to his questions that,

“two persons assaulted him. The doctor did not ask to the patient as to whether the patient was knowing the assailants, and he did not ask the patient who actually assaulted him. He further stated that servants of Doburg company were already present there when he asked the above stated questions to the patient. He stated that he wrote history of the patient in his chair till that time the patient was shifted resuscitating room. Upto 9.05 am he was in the said room and thereafter he might have come out of that room and again entered into that room. The medical officer stated that upto 9.05 am all the while he was not present near the patient, and between the gap he was coming out of that room for taking medicines. He stated that at about 8.45 am he asked the police persons to make necessary arrangement of bringing an Executive Magistrate for recording the dying declaration of the patient. Though he asked police persons to bring Executive Magistrate, police did not secure Executive Magistrate, till the patient was intubated, and was not in position to give the statement. At about 8.50 again he informed to police to make necessary arrangement of bringing an Executive Magistrate to record dying declaration. He admitted that the doctor is supposed to make endorsement at two times at the beginning of recording the statement of dying declaration of the patient and at the time of completion of dyeing declaration. The Medical officer admitted that he put his both endorsements on the dying declaration of the patient after recording the dying declaration. He also admitted that he did not mention the time of completion of dying declaration in his endorsement. He

stated that he cannot tell the time at what time the dying declaration of the patient was completed. He further stated in his cross examination that till the time he put his endorsement on the dying declaration of the patient, the Executive Magistrate had not reached there. The Medical Officer further admitted that the C.M.O. is required to certify mental condition of the patient whose dying declaration is being recorded by Executive Magistrate.

11 In so far as Dying Declaration is concerned, the prosecution tried to prove the same through one of the Police Constable – Mr. Kumar Pandurang Mane (PW-20), who was present at the relevant time in the hospital along with the Police Head Constable (Scribe) Mr. Vairat who has recorded the dying declaration of deceased Ajeet. In the dying declaration the deceased Ajeet told the scribe that deceased cousin by name Dnyaneshwar Yashwant Mutalik and his friend assaulted the deceased and, his cousin stabbed him with sharp knife. It appears from perusal of the said dying declaration that recording of the said dying declaration started at 8.45 am and completed at 9.15 am. At the end of the dying declaration there is an endorsement of Chief Medical Officer Mr. Kawachale that, “Police Constable is asked to take witness statement at 8.45 am as Patient conscious. 8.45 am patient conscious oriented.” On careful perusal of the dying declaration it shows that the scribe of the said dying declaration is a Police Head Constable, and not an Executive Magistrate. However, there is no separate endorsement as to when the said scribe started

recording the dying declaration and when it was completed.

12 The prosecution has tried to prove the said dying declaration (Exhibit 121) through Police Constable Pandurang Mane (PW 20) who was not the scribe of the dying declaration. PW No.20 stated in his evidence that at that time P H C Vairat was standing near the police help centre, he gave call to Vairat stating that one injured has been brought. He stated that at that time Medical Officer Dr. Kauchale was on duty. Dr. Kauchale asked to the injured person what happened, there upon the patient told him that he was assaulted by two persons. At that the same time Dr. Kauchale asked them to make arrangement of recording the statement of patient as he is conscious. Further Dr. Kauchale told them to make arrangement of bringing an Executive Magistrate for recording statement of the patient. PW 20 stated that PHC Vairat was also present there. It has also come in the evidence of PW No.20 that when PHC Vairat was taking entry in the register, the Executive Magistrate reached there and he told them that he has come in order to record the dying declaration of Rekha Khade. PHC Vairat gave yadi to executive magistrate of the instant case. The executive magistrate told them that first he will record the statement of Rekha Khade and then he would come down. Thereafter patient was shifted to emergency room on the trolley. Dr. Kauchale started giving treatment to the patient, at the same time Vairat and PW 20 started recording his dying declaration. At that time patient was conscious and he was

in a position to give statement. PW 20 has specifically stated in his evidence that Vairat reduced into writing the statement of Ajeet Mutalik i.e. the deceased. PW also stated that the endorsement which appears in the Margine of the dying declaration is in the handwriting of Dr. Kauchale. After recording the dying declaration Vairat obtained the endorsement of Dr. Kauchale on the same. PW 20 also stated that Executing Magistrate sitting in the room where the medical officer used to sit and police constable Salunkhe met him in the police help centre. PHC Vairat handed over the dying declaration of the burn lady Rekha Khade so also the dying declaration of Ajeet Mutalik to PC Salunkhe to be taken to the police station, Satara.

In the cross examination, PW 20 admitted that whenever Magistrate comes to the hospital for recording dying declaration of the patient, in such event the executive magistrate avails their help. However, this witness did not know as to whether on 14/07/1995 executive Magistrate had come at hospital at about 7.30 am for recording dying declaration of one patient. He stated that in that night one burn patient namely Rekha Khade was admitted at about 2.00 am and there was movement in respect of recording her dying declaration. PW No.20 in paragraph 6 of his cross examination stated thus, “we used to take care of the patient till his or her dying declaration is recorded by Executive Magistrate with the care that nobody should meet her or him. PW No.20 further stated in his cross examination that two persons who had

brought Ajeet Mutalik to the hospital were present near the stretcher when doctor was examining the patient in casualty room. PW 20 in his cross examination admitted that Vairat was doing writing work since he being the Police Head Constable. It has also come in the evidence of PW-20, that when the work of recording the statement of the patient was going on, the executive magistrate had not come there, and when he saw executive magistrate in the casualty room, he requested him to record the dying declaration of Ajeet Mutalik. It has also come in his Cross examination that they did not carry executive magistrate towards Ajeet Mutalik in the emergency room. The defence has put the following suggestions to PW-20 in his cross examination, which the witness denied:- when Ajeet Mutalik was brought to the hospital at that time he was unconscious; when Ajeet Mutalik was admitted in the emergency ward all his relatives were gathered around him; that the contents of the statement of Ajeet Mutalik were dictated by his father and advocate Kshirsagar, that the thumb impression of Ajeet Mutalik was obtained on the alleged statement when he was unconscious.

13 It is important to note that there is no eye witness to the alleged incident in question. Therefore, the prosecution case is based upon the alleged dying declaration (Exhibit 121). The whole case of the prosecution revolves around the dying declaration. There are certain admitted facts which are fatal to the case of the prosecution. In the hospital when the Medical Officer Dr.

Kuchale (PW 11) asked patient Ajeet as to what is happened, the patient replied that two persons assaulted him. The patient never disclosed the names of the assailants. PW 20 Mane has stated that two persons who had brought Ajeet Mutalik to the hospital were present near the stretcher when doctor was examining the patient in casualty room. PW 20 in his cross examination admitted that Vairat was doing writing work since he being the Police Head Constable. It is clear that the scribe of the dying declaration of patient Ajeet is Police Head Constable Vairat, and not the Executive Magistrate. It was possible to record the statement of the victim by the executive magistrate who was present in the hospital at that relevant time.

The Hon'ble Supreme Court in the case of Khushal Rao v/s. State of Bombay¹, in paragraph 16, observed that, a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character.

PW 20 Mane further stated that when the work of recording the statement of the patient was in process, the executing magistrate had not come there, and when he saw executive magistrate in the casualty room, he

¹ AIR SC 22

requested him to record the dying declaration of Ajeet Mutalik. Even the police did not carry executive magistrate towards Ajeet Mutalik in the emergency room. The prosecution has made futile efforts to show that though the Executive Magistrate was present in the hospital at that time, he was busy in recording the dying declaration of another patient Rekha. However, the said patient was admitted in hospital in the night at 2.00 am. A suggestion is also given to PW 20 that Executive Magistrate was present in the hospital at 7.30 am. It appears that the deceased in the instant case admitted in the hospital at around 8.45, and at about 9.55 am. Dr. Kauchale again examined the patient and finally declared that the patient Ajeet Mutalik is not alive. If the doctor requested the police to call the executive magistrate to record the dying declaration of the patient, and if the executive magistrate was present in the hospital at that time, considering the deteriorating condition of the patient, the police could have secured the presence of the executive magistrate, however, the police did not do so. One more important aspect which goes against the prosecution is that Police Head Constable Mr.Vairat is the scribe of the dying declaration, however, the prosecution did not examine him. The endorsement of CMO Mr. Kawachale, which appears on the dying declaration, is to the effect that, "Police Constable is asked to take witness statement at 8.45 am as patient conscious. 8.45 am patient conscious oriented. There are no endorsements of doctor showing the timing and condition of the patient when the recording of statement was started and, at the completion of recording.

14 The entire prosecution case rests upon the dying declaration of deceased Ajeet Mutalik. When the history was given to the medical officer, the declarant Ajeet told him that some two persons assaulted him. However, he did not mention the names of the assailants. If the evidence of medical officer is carefully perused it shows that the dying declaration was recorded in between 8.45 am and 9.15 am. However, it is stated by the said medical officer that he was not continuously present while recording the dying declaration of deceased Ajeet. As already mentioned herein above in paragraph 10, the physical as well as mental condition of the declarant Ajeet recorded by the medical officer at 9.05 was that the Patient was drowsy; he was deadly pale, there was hypoyic struggle and he was pulse less. As already observed in the same paragraph 10, again at about 9.15 the Medical Officer examined the patient and found him in condition that the patient was unconscious; he was deadly pale; bleeding profusely from abdominal wounds; brachial was not palpable; and B. P was not recordable.

15 At the cost of repetition, it is required to be noted that the scribe who recorded the dying declaration was not examined by the prosecution which was fatal to the prosecution case. It is also important to note that though the declarant Ajeet told the medical officer that some two persons assaulted him, in the oral dying declaration recorded by Police Head Constable

Mr. Vairat (Scribe), the declarant has told the name of his cousin Dnyaneshwar Yashwant Mutalik as the assailant. However, examination of Police Constable Mr. Kumar Pandurang Mane (PW 20), who was not the scribe of the dying declaration, does not make the prosecution case reliable. If the evidence of medical officer Dr. V M Kuchale (PW 11) is considered in its entirety, it does not inspire confidence so as to reverse the order of acquittal and convict the accused.

16 It is also surprising to note that the medical officer opined that the death is not homicidal. In fact the deceased Ajeet received injuries on the vital part of his body with sharp weapon, and therefore, evidence of medical officer is not reliable and trustworthy.

17 In so far as the charge framed under Section 120-B of the Indian Penal Code is concerned, it is required to be noted that the prosecution has to lead sufficient and cogent evidence to prove the ingredients of the offence of criminal conspiracy i.e. agreement between two or more persons, and an agreement to do or cause to be done either an illegal act or an act which is not illegal in itself but is done by illegal means. In the present case, the prosecution has failed to prove charge of criminal conspiracy by leading cogent and sufficient evidence.

18 The Trial Court after considering the evidence on record, particularly evidence of prosecution witnesses to prove the dying declaration, and the material produced on record, did not deem it appropriate to believe and accept the dying declaration (Exhibit 121). The Trial Court recorded a finding that there is no other evidence connecting the accused persons with crime. The Trial Court therefore held that the prosecution has miserably failed to establish its case beyond reasonable doubt that on 14/07/1995 at about 8.30 am the accused No.1 mounted murderous assault on the person of deceased Ajeet Mutalik by means of dagger and therefore committed his murder. As indicated above, by the impugned judgment and order dated 23/07/1997 the Trial Court acquitted Accused Nos.1 to 4 of the offences punishable under Sections 120-B and 302 read with Section 34 of the Indian Penal Code.

19 The Trial Court has taken a plausible view on the basis of the evidence available on record. There is no perversity in the findings recorded by the Trial Court. In that view of the matter, there is no merit in this Appeal against the order of acquittal of the accused, and hence the same deserves no consideration. Accordingly Criminal Appeal stands dismissed. The impugned judgment dated 23/07/1997 passed by the Additional Sessions Judge, Satara acquitting the Respondent is hereby confirmed. The bail bonds of the Respondent, if any, shall stand cancelled.

[N. B. SURYAWANSHI, J]

[S.S. SHINDE, J.]