

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 515 OF 1996

1. Gorakh Ramdas Kandge
Age: 23 years, Occ: Agriculturist

2. Pandurang Dattoba Kandge
Age: 27 years, Occ: Agriculturist

Both residing at: Nhavre,
Tal : Shirur, Dist: Pune.

Appellants
(Original accused nos.
... 4 & 5)

Versus

1. State of Maharashtra
2. Balasaheb Babanrao Khandagale
Age: Adult, Occ: Agriculturist
Residing at : Nhavre, Tal : Shirur,
Dist : Pune

... Respondents
(Respondent No. 2
(PW.13) being the heir
of deceased Baban)

WITH
CRIMINAL APPEAL NO. 586 OF 1996

1. Narayan Baburao Kandge
Age : 25 years, Occ: Agriculturist
2. Arun Dattoba Kandge
Age : 30 years, Occ: Agriculturist

Both residing at: Nhavre,
Tal : Shirur, Dist: Pune

... Appellants (Original
accused Nos. 2 & 3)

Versus

1. State of Maharashtra
2. Balasaheb Babanrao Khandagale

Age: Adult, Occ: Agriculturist
Residing at : Nhavre, Tal : Shirur,
Dist : Pune

... Respondents
(Respondent No. 2
(P.W.13) being the heir
of deceased Baban)

**WITH
CRIMINAL APPEAL NO. 517 OF 1996**

1. Kisan Dhondiba Kandge
Age Adult, Occ. Agriculturist
2. Aba Dhondiba Kandge
Age Adult, Occ. Agriculturist
3. Sainath Dhondiba Kandge
Age Adult, Occ. Agriculturist

All residing at Nhavre, Tal. Shirur, Dist.
Pune
(At present lodged in Yerwada Central
Prison at Pune)

... Appellants
(Original accused Nos.
6,9 & 10)

Versus

1. State of Maharashtra
2. Balasaheb Babanrao Khandagale
Age Adult, Occ. Agriculturist
Residing at : Nhavre, Tal : Shirur,
Dist : Pune

... Respondents
(Respondent No. 2
(P.W.13) being the heir
of deceased)

.....

Mr.D.D.Shivde a/w. Mr.Anil Shitole i/b. Mr.S.S.Chaudhari for the
Appellants in Criminal Appeal No. 515 of 1996.

Mr.Raju Patil, Senior Advocate i/b. Mr.V.S.Tadake for the Appellants in Criminal Appeal No. 586 of 1996.

Mr.Shantanu R. Phanse, appointed for the Appellants in Criminal Appeal No.517 of 1996.

Mrs.S.V.Sonavane, APP for the Respondent-State.

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**CORAM : S.S. SHINDE &
V.G.BISHT, JJ.**

RESERVED ON : 24TH FEBRUARY, 2020

PRONOUNCED ON: 16TH JULY, 2020

.....

JUDGMENT (PER: V.G.BISHT, J.)

1. These three Appeals arise out of a common judgment and order passed by learned Additional Sessions Judge at Pune dated 12th August, 1996 in Sessions Case No. 94 of 1995.

2. Criminal Appeal No. 515 of 1996 has been preferred by accused Gorakh Ramdas Kandge (A-4) and Pandurang Dattoba Kandge (A-5), Criminal Appeal No. 517 of 1996 by accused Kisan Dhondiba Kandge (A-6), Aba Dhondiba Kandge (A-9) and Sainath Dhondiba Kandge (A-10); and Criminal Appeal No. 586 of 1996 by accused Narayan Baburao Kandge (A-2) and Arun Dattoba Kandge (A-3).

3. They have been convicted under Sections 302/149 of the Indian Penal Code (for short, "IPC") and sentenced to life imprisonment and to pay a fine of Rs.1000/- each, in default to suffer rigorous imprisonment for four months, besides sentencing them under Sections 147, 148, 324 and 447 of the IPC. The substantive parts of sentences were directed to run concurrently. As however all the three Appeals arise out of the same judgment, we propose to decide these Appeals by one judgment.

4. Briefly put, the facts may be summarized as follows :

(a) On 02.10.1994 at about 6.00 p.m., when Babaso Walmikrao Khandagale, informant, was present in his locality, one Ganesh Balaso Khandagale came running and informed informant that a quarrel is going on between Aba alias Baban Khandagale (deceased) and Gorakh Kandge (A-4) on the ground of taking tractor through the field of Marutrao Shankar Khandagale (PW-14). The informant and said Ganesh Balaso Khandagale accordingly went to the field of PW-14 and found a tractor belonging to A-4 standing in the field of PW-14, and deceased and A-4 were quarreling. At the relevant time the neighboring field workers, namely, Shivaji Vinayak Khandagale (PW-12), Balu Vishnu Khandagale (PW-10), Tukaram Vishnu Khandagale (PW-9), Suresh Vishnu Khandagale (PW-8),

Raghunath Balaso Khandagale (PW-11) and Balu Baban Khandagale (PW-13) were present.

(b) According to prosecution at about 6.30 pm, accused Ramdas Baburao Kandge (since acquitted), A-2, A-6, A-5, A-3, accused Sunil Dattoba Kandge (since acquitted), accused Dadabhau Bhagwanso Kandge (since acquitted), accused Balu Kandge (since acquitted), A-9, A-10, accused Baban Jaywant Kandge (since acquitted), accused Sada Shripati Kandge (since acquitted), accused Narayan Sakharam Kandge (since acquitted) and son-in-law of one Dattoba Kandge, accused Dattoba Waman Kandge (since acquitted) and other five to six persons came from the orange orchard of A-2. The prosecution alleges that all the above said persons were armed with cycle chain, koyata (sickle), spade, wooden plank, axe, sword and iron rod and all of them suddenly started assaulting informant and others.

(c) The prosecution further alleges that A-1 started beating all the Khandagales by means of cycle chain. A-2 assaulted deceased by means of sickle. A-3 assaulted Suresh Khandagale and Bala Baban Khandagale by means of an axe. A-4 and A-5

were armed with spade (khore) whereas A-6 with wooden plank. A-7 and A-8 gave fists and kick blows. A-9 was armed with a sword. A-10 with an iron rod and A-11 with wooden plank. A-12 to A-14 assaulted by means of fists and kick blows. In the said assault, the prosecution alleges that Aba alias Baban Khandagale (since deceased), Balu Baban Khandagale (PW-13), Shivaji Vinayak Khandagale (PW-12), Balu Vishnu Khandagale (PW-10), Tukaram Vishnu Khandagale (PW-9), Suresh Vishnu Khandagale (PW-8) and Raghunath Balaso Khandagale (PW-11) got seriously injured.

(d) Later on, the informant lodged the report with Shirur Police Station, District Pune. On the basis of which, Crime No. 92 of 1994 under Sections 302, 307, 147, 148, 149, 447, 324, 323, 504 of the IPC and under Section 135 of Mumbai Police Act came to be registered against all the accused.

5. In course of the investigation that followed, usual steps for holding inquest, preparing panchnama of the scene of offence, seizure of blood stained clothes were taken and the autopsy was get done through Medical Officer. All the injured were also sent to the concerned Medical officer for examination and treatment. Certain incriminating weapons were also

recovered at the instance of some of the accused persons during investigation. After completion of investigation, the police submitted a chargesheet and in usual course the case was committed to the Court of Session. The accused persons pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated. The learned Additional Sessions Judge after considering the material on record convicted the accused as indicated above. Hence these Appeals.

6. We have carefully perused the evidence on record with the assistance of learned Counsel. In order to substantiate the offences against the accused persons, the prosecution has examined 25 witnesses.

7. We will now proceed to examine the evidence on record.

8. In case of murder, factum of homicidal death assumes significance and it is to be established beyond reasonable doubt by the prosecution. In order to prove that the death of Aba alias Baban Khandagale was homicidal, the prosecution has relied on the evidence of PW-20 Dr.Narayan Krishna Kamble, PW-19 Dr.Manisha Vasant Kshirsagar and PW-15 Dr. Shrikant Suresh Chandekar. It may be noted here that PW-15 conducted postmortem on the dead body of Aba alias Baban Khandagale.

9. PW-20 Dr. Narayan Krishna Kamble states in his evidence (**Exh. 102**) that at the relevant time he was attached to Sasoon Hospital as CMO. On 02.10.1994 he was on duty as CMO. At that time about 8 injured persons were brought in the casualty department. He examined Babanrao Khandagale (since deceased) who was more serious amongst others. There was an incised wound transverse on his nose. The nose was separated into two parts. The injury was 3 cm. X 1 cm. X ½ cm. There was an incised wound on the left parietal region antero posteriorly 7 cm. X 2cm. bone exposed. Outer table was fractured. He also found incised wound on left parietal region near injury No.3 and it was 8 cm. X 2 cm. bone exposed. According to him, the cause of the injury was hard and sharp object. The injured was taken to Ruby Hall by his relatives against medical advice. He then proved the certificate of the injured at **Exh. 103**.

10. From the evidence of this medical officer, it is quite clear that the deceased was examined by him at the first available opportunity and he found various injuries on his person as is reflected through his evidence and as also from the medical certificate (**Exh. 103**). The evidence of medical officer also shows that the injuries noted by him were possible by muddemal articles, namely, sickle, spade and sword. It is also relevant to note that the deceased was then moved to Ruby Hospital against the

medical advice and therefore, the deceased was again examined by PW-19 Medical Officer.

11. Let us go through the evidence of PW-19 Medical Officer.

12. PW-19 Dr.Manisha Vasant Kshirsagar states in her evidence (**Exh.92**) that in the year 1994 she was working in surgery department of Ruby Hall Clinic. Injured Babanrao Khandagale (since deceased) was brought to Ruby Hall on 2.10.1994 at about 10.30 p.m. She examined him and found the following injuries on his person:

1. Sharp incised cut injury on left parietal region 12 cm. X horizontally placed.
2. Sharp cut wound at the same place 5 cm. in length vertically placed.
3. Incised cut wound on right frontal region 3 cm. in length.
4. Multiple fracture of the left parietal bone.
5. Avulsion – of none.

13. As per her evidence the injuries were fresh. The injured was admitted in the hospital. X-ray of skull, chest and C.T.Scan was done. C.T.scan showed fracture of left parietal bone with multiple depressed fragments. There was a hemorrhagic contusion on the left parietal region. Defused cerebral oedema was noticed. The patient was operated for extra

deral haematoma and intra cerebral clot. Duroplasty was also done. However, the patient died on 07.10.1994 at 1.35 a.m. She then proved the case papers at **Exh. 94**.

14. The evidence of Medical Officer then shows that the injuries noted by her could have been caused by sharp weapons and were sufficient in the ordinary course of nature to cause death. When the muddemal articles, namely, sickle, sword and spade were shown to her, she opined that the injuries mentioned by her were possible by those weapons.

15. From the evidence of Medical Officer it is more that clear that the injuries noted by her were not only on the prominent part of the body of the deceased but those injuries were sufficient in the ordinary course of nature to cause death. This being so, we would like to find out from the postmortem report of the deceased as to the cause of death.

16. PW- 15 Dr. Shrikant Suresh Chandekar states in his evidence (**Exh. 77**) that the dead body of Baban Shankar Khandagale was referred to him by Bundgarden Police Station on 07.10.1994 and he did the postmortem between 7.30 a.m. to 8.40 a.m. According to him, he observed the following external injuries:

1. Stitched incised wound 3.5 c.m. in length oblique glabbels in direction situated 8 cm. above glabbels with 3 stitches, bone deep, surrounded by healing abration (scab fallen) in an area measuring 3 X 3 c.m.
2. Stitched incised wound 5 cm. in length, verticle in direction, starting 8 cm. above left ear, going upwards with 5 stitched bone deep.
3. Stitched incised wound 6.5 cm. in length, almost parallel and 3 cm. left lateral to saggital plane, starting from upper end of injury no.2 going backwards, with 7 stitches, bone deep.
4. Stitched incised wound 16 cm. in length, curved starting from vertex going to left postauricular region, with 15 stitches, bone deep.
5. Stitched incised wound 1.5 cm. in length, 8 cm. left lateral to occipital protruberance with 1 stitch, muscle deep.
6. Stitched incised wound 6 cm. in length, across the nose involving both alae and bridge, with 9 stitches.
7. Stitched wound 0.8 cm. in length, 2 cm. below medical canthus of right eye, with 1 stitch.
8. Linear healing abrasion (with scab) 4.5 cm. in length, verticle, above right mid clavicle.

9. Linear healing abrasion (scab fallen) 5 cm. in length, transverse, above left scapular spine.
 10. Healing abrasion (scab fallen) measuring 7.5 X 1 cm. oblique, running from lower end of left scapula towards mid line.
 11. Healing abrasion (scab fallen) 6 cm. length. transverse, going across dorsal mid line at T10, spine.
 12. Injection mark on flexer aspect of right forearm.
 13. Two injection marks below left nipple.
17. His evidence then shows that he also noticed the following internal injuries:
1. Hematoma below scalp, all over skull cap.
 2. Incised wounds over left temporalis muscle, measuring 3 cm. and 4.5 cm. verticle in direction bone deep.
 3. Piece of left parietal bone missing, measuring 8 X 6 cm. approximately. Margins irregular at places.
 4. Linear fracture from left to right parietal bone along front to parietal suture measuring 10 cm.

5. Linear fracture of left parietal bone, measuring 5 cm. parallel to sagittal suture.
 6. Brain coverings lacerated in left parietal region in an area 4 X5 cm.
 7. Left parietal lobe of brain contused, lacerated in an area measuring 5 cm. X 7cm. X 3 cm.
18. According to this witness all the external and internal injuries were ante-mortem. Subdural and subarachnoid hemorrhages found present. External injuries Nos. 1 to 5 can lead to brain damage mentioned in the internal injuries and in his opinion death was due to fracture skull bones, subdural hemorrhage with laceration of left parietal bone. Accordingly, he prepared the postmortem report. He then proved the postmortem report at **Exh. 78**.
19. Lastly, this witness opined that the injuries were possible by multiple blows with force and were sufficient in the ordinary course of nature to cause death.
20. There is absolutely no cross examination to the version of this witness. It must be noted immediately that as per version of this witness and that of PW-19, the injuries were sufficient in the ordinary course of

nature to cause death. If we see the final opinion given by PW-15, then it would be seen that the death was due to fracture skull bones. PW-19 Medical Officer had also noticed subdural hemorrhage with laceration of left parietal bone. There is no challenge to the version of Medical Officer to the cause of death in clear terms. In the light of medical evidence, we have no difficulty in holding that the victim died of homicidal death.

21. Mr.Patil, learned Counsel for A-2 and A-3, strenuously urged that the learned trial Judge erred in holding the offence as proved against the accused and failed to consider the evidence adduced by the prosecution in proper perspective. Even the defence version and the defence theory put forth by accused was not believed. According to learned Counsel, the learned trial Judge also overlooked the evidence regarding existence of bandh in question in the middle part of the land of PW- 14 and the fact that the said bandh is being used by the accused for reaching their lands.

22. Apart from this, learned Counsel also assailed the very presence of the deceased inasmuch as according to learned Counsel, the presence of the deceased on the spot is nowhere explained by any of the prosecution witnesses and rather the presence of PW-6 is shown who nowhere finds place in the FIR. Even otherwise the learned trial Judge ought to have held him an interested witness not only because he was cultivating the

land in question on crop-share basis but because admittedly he is closely related to the prosecution witnesses.

23. The learned Counsel has, during the course of argument, also produced injury chart vis-a-vis prosecution witnesses and pointed out various inconsistencies qua the evidence of Medical Officer. All witnesses being interested witnesses, their testimony ought to have been rejected by learned trial Judge but the same has been accepted improperly.

24. The learned Counsel then next submitted and criticized the alleged recovery of weapons and contended that no blood stains were found on the weapon which is contrary to the Chemical Analyzer's Report. Thus, having regard to the totality of the prosecution evidence it cannot be held with a sense of satisfaction that the prosecution has been able to prove the guilt beyond reasonable doubt. In support of his submissions, the learned Counsel has placed reliance in *Tanaji Govind Misal Versus State of Maharashtra and others* connected Criminal Appeals¹, *Lalji and Others Versus The State of U.P.*², *Atmaram Zingarji Versus State of Maharashtra*³,

1(1997) 8 SCC 340

2(1974) 3 SCC 295

3.(1997) 7 SCC 41

Masalti v. The State of U.P.⁴, ***Lakshmi Singh and others v. State of Bihar***⁵ and ***State of Maharashtra Versus Kailas Jagannath Pradhan & Ors.***⁶.

25. Mr. Shivde, learned Counsel for A-3, A-4 and A-5, has adopted the submissions advanced by Mr. Patil. Additionally, learned Counsel contended that no overt act has been attributed on the part of A-4 and A-5, except their presence. All the victims injured being related to deceased their testimony thus being interested ought not to have been accepted by learned trial Judge, argued learned Counsel.

26. Mr. Phanse, learned amicus curiae advancing submission on behalf of A-6, A-9 and A-10, broadly canvassed the submissions as canvassed by Mr. Patil and Mr. Shivde. He emphasized that not only the genesis of the incident is suppressed but the same is also not at all established. Moreover, non-explanation of injuries on the person of the accused has proved fatal and therefore, this benefit must go in favour of the accused. Learned counsel placed reliance in ***Lakshmi Singh and others v. State of Bihar*** (*supra*) and ***Masalti v. The State of U.P.*** (*supra*).

4. AIR 1965 SC 202

5. AIR 1976 SC 2263

6. 2018 (2) Bom. C.R. (Cri.) 495.

27. Per contra, Smt.Sonawane, learned APP, contended that not only the evidence of prosecution witnesses is in consonance with the theory of prosecution but at the same time it gets due corroboration from the medical evidence. Repelling the contentions that the victims/ injured are the interested witnesses, the learned APP contended that in the facts and circumstances of the case, they cannot be termed as “interested witnesses” inasmuch as they are the very victim of the incident and above all their testimonies being quite intact, their versions cannot be thrown to the winds. Chemical Analyzer Report is also handy and takes further the case of prosecution. All these aspects are duly considered and looked into by the learned Sessions Judge and thus conviction awarded is fully justified, argued learned APP. Learned APP also placed reliance in *State of Karnataka Versus K. Gopalakrishna*⁷, *Shankar Mahto v. State of Bihar*⁸, *Shyam Sunder v. State of Chattisgarh*⁹, *Mohar and another v. State of U.P.*¹⁰ and *Gurdev Singh v. State of Punjab*¹¹.

28. Now we are concerned with the incident in question. We propose to initiate the discussion with the evidence of PW-7 informant.

7.(2005) 9 SCC 291

8.AIR 2002 SC 2857

9.AIR 2002 SC 3292

10.AIR 2002 SC 3279

11.AIR 1992 SC 1924.

29. PW-7 Balasaheb Walmikrao Khandagale states in his evidence (**Exh. 64**) that he stays at Khandagale locality, Nhavare since his birth. He knows all the accused. They hail from Kandge locality. He knows the deceased and injured. It is his further evidence that Marutrao Khandagale (PW-14) is brother of deceased Baban Khandagale. The land belonging to Marutrao Khandagale abuts Nhavare Shirur Road and the land belonging to accused Ramdas (A-1), Narayan (A-2) and Gorakh (A-4) is beyond the land belonging to Marutrao. The land belonging to Marutrao (PW-14) is cultivated by Sampat Salunkhe (PW-6). Marutrao (PW-14) stays at Chandan Nagar, Pune and his land was managed by Baban i.e. deceased.

30. His evidence then shows that the incident took place on 02.10.1994 in the evening and in the land belonging to Marutrao PW-14). At the relevant time, onion crop was standing there. In the evening, he was in his house when Ganesh Balasaheb Khandagale came running and informed him that Gorakh (A-4) had driven a tractor in the land belonging to Marutrao and altercations were going on between Baban (deceased) and Gorakh (A-4). By that time Balasaheb Baban Khandagale (PW-13) came to him.

31. It is his further evidence that he, PW-13 and Ganesh then proceeded to the land belonging to Marutrao. They found that the tractor belonging to Gorakh (A-4) was standing in the land belonging to Marutrao. Sunil (A-7), Kisan (A-6), Gorakh (A-4) and Baban (deceased) were standing in the said land and altercations were going on between Baban (deceased) and Gorakh (A-4). It is his further evidence that by that time from the orange orchard belonging to Narayan Kandge (A-2), Ramdas Kandge (A-1), Narayan Kandge (A-2), Pandu Kandge (A-5), Arun Kandge (A-3), Aba Kandge (A-9), Sainath Kandge (A-10), Dattoba Kandge (A-14) , Baban Kandge (A-11), Dadabhavu Kandge (A-8) and Sadashiv Kandge (A-12) came running. They were armed with weapons. A-1 was armed with cycle chain, A-2 with sickle, A-5 with spade, A-9 with a sword, A-4 with spade, A-11 with a wooden bar, A-10 with an iron bar, A-6 with a wooden bar and A-3 with an axe.

32. It is his further evidence that A-1 and A-2 attacked Babanrao (deceased). They gave him blow of chain and sickle. Shivaji Khandagale (PW-12), Tukaram Khandagale (PW-9), Balasaheb Khandagale (PW-10), Raghunath Khandagale (PW-11), Suresh Vishnu Khandagale (PW-8) and Balasaheb Babanrao Khandagale (PW-13) had gathered there to see what was going on. Sampat Salunkhe (PW-6) and his wife were also working in the said land.

33. The evidence of informant then goes on to show that A-3 attacked PW-13 and PW-8 with the help of an axe. Other persons attacked PW-12, PW-8 and PW- 9 with the help of weapons possessed by them. PW-10, PW-13, PW- 11, PW- 12 and PW- 8 were also attacked by the accused. Those persons who were unarmed used their fists and kicks in attacking them. Babanrao (deceased), PW-12, PW-9, PW-13, PW-11 and PW-8 fell down after receiving injuries. The accused then went away towards orange orchard.

34. Lastly, he stated that the injured were moved to the police station and from there to the hospital. He then lodged the complaint in the police station. He then proved his complaint at **Exh. 65**. All the accused and the muddemal articles used in the commission of offence came to be identified by informant during recording of his evidence.

35. We are absolutely satisfied to hold that the informant in his substantive evidence before the Court has corroborated the contents of FIR. During the course of argument, learned Counsel for appellants tried to make capital of the fact that the presence of deceased in the field and the absence of mentioning of the fact of PW-6 in the field in FIR during

the course of incident is something which the prosecution has tried to fabricate and create evidence in order to fasten the criminal liability on the accused.

36. Before we put a comment or two on this material aspect, we would like to go through the evidence of PW-6 Sampat Khasherao Salunkhe (**Exh. 59**) and PW- 14 Maruti Shankar Khandagale (**Exh. 74**).

37. PW- 6 Sampat Khasherao Salunkhe states in his evidence (**Exh.59**) that he is staying in Nhavare since birth. He knows all the accused as all of them are resident of Nhavare. He also knows the prosecution witnesses and deceased Baban. It is his further evidence that he was cultivating the land belonging to Marutrao Shankarao Khandagale (PW-14) i.e. brother of deceased Baban. Marutrao stays at Pune. Deceased Baban used to stay in the locality and take sugarcane, onion and jowar crops from the land belonging to Marutrao. The deceased also used to look after the land belonging to Marutrao. The house belonging to Narayan (A-2) is on the eastern side of the land of Marutrao.

38. PW- 6 then states that on the day of incident, plantation of onion was in progress in the land of Marutrao. He had engaged some labourers and himself and his wife were also working with them. At about 5.30

p.m, the labourers left. He and his wife then started watering the onion crop. By that time, a tractor came from village Nhavare. A-4, A-6, A-7 and wife of A-2 were in the said tractor. They made an entry in the land belonging to Marutrao where onion crop was standing. They started taking tractor to their house. Babanrao Khandagale (deceased) and Ganesh Khandagale came there and deceased stopped the said tractor and told them not to carry that tractor from the land. As there was no road for tractor from the bandh, A-4 told Baban (deceased) that he and the owner of the land Marutrao would see to it. Alternations then went on between them. By that time Shivaji Khandagale (PW-12) arrived on the spot. Narayan's (A-2) wife then went towards her house in the locality. By that time Balu (PW-13), Balasaheb (PW-7) and Ganesh Khandagale came there.

39. The evidence of PW-6 then shows that Ramdas (A-1), Aba (A-9), Arun (A-3), Narayan (A-2) came from the direction of orange orchard. Pandurang (A-5), Baban (A-11), Balu (A-16), Sainath (A-10) came from that side. Ramdas (A-1) was armed with a cycle chain, Narayan (A-2) with sickle, Aba (A-9) with a sword, Pandurang (A-5) with a spade and Arun (A-3) with an axe, Gorakh (A-4) with a spade, Kisan (A-6) with a knife and Sainath (A-10) with an iron road.

40. Deposing further PW-6 states that while alternations were going on, Ramdas (A-1) gave blow of a cycle chain to deceased. Narayan (A-2) gave sickle blow on deceased's head. Pandurang (A-5) gave blow of spade. Baban fell down. Aba (A-9) then gave a blow of sword on the hand of Shivaji Khandagale (PW-12). Baban's son Balasaheb (PW-13) came there. Narayan (A-2) gave blow of sickle on his head. Gorakh (A-4) gave blow of spade. Rajaram, Shivaji Khandagale and Tukaram Khandagale came there. Narayan (A-2) gave a sickle blow to Rajaram and Tukaram and Pandurang (A-5) gave a blow of spade to Tukaram. When Balasaheb Khandagale (PW-13) came there, he was attacked by Aba (A-9), Narayan (A-2) and Gorakh (A-4) with the help of sickle, sword and spade. Balu Vishnu (PW-10) ran away and his shirt fell on the scene of offence. Suresh (PW-8) and Rahgunath (PW-11) then came on tractor by Nhavare Shirur Road. Pandurang (A-5), Ramads (A-1), Aba(A-9), Sainth(A-10), Kisan (A-6) and Gorakh (A-4) went near the tractor and beat Suresh (PW-8) and Raghunath (PW-11) by pulling them down from the tractor. They were beaten with the help of sickle, sword, spade and sticks. The incident of beating Baban and others took place in the land where onion was planted in blocks. Thereafter, Kandge's (accused) proceeded to their house. The evidence lastly shows that Baban succumbed to the injures in the hospital.

41. PW- 14 Maruti Shankar Khandagale, on his part, states in his evidence (**Exh.74**) that he hails from village Nhavare. Babanrao i.e., deceased was his brother. They have ancestral lands. Some of the lands are partitioned and some of them are kept joint. The land which abuts Nhavare Shirur Road is known as Malachi Jamin. On the eastern side of the said land there is a land belonging to Ramdas Kandge (A-1) who has constructed a house in his land. He further states that his land was looked after by deceased i.e. his brother Babanrao and was cultivated by Sampat Salunkhe (PW-6) on crop share basis. According to him, there was no access to the land of accused from his land. He later on came to know about the incident in which his brother died.

42. The testimonies of PW-6 and PW-14 are answer to the queries of learned Counsel for the appellants, who have questioned the presence of deceased and PW-6 at the time of incident. It is very much clear from the evidence of PW-14 that deceased was not only his brother but also used to look after the land in question where the incident took place. Similarly, the presence of PW-6 in the field at the time of incident was quite natural inasmuch as at the relevant time he used to cultivate the land of PW-14 on crop-share basis. Admittedly, the FIR does not disclose the presence of PW-6 and his wife at the time of incident but that does not in itself is a ground to discard the testimony PW- 6.

43. At the time of lodging of report, what was bearing in the mind of informant was to apprise and elaborate the police about the incident. Every nitty-gritty of the incident is not supposed to be a part of FIR and what was essential was to set the police machinery in motion having regard to the nature and gravity of the offence.

44. Both these aspects are duly taken into consideration properly by learned trial Judge and we do not find any infirmity in his findings when he overruled the objections of defence questioning the very presence of PW-6 and deceased.

45. Except one omission appearing in the evidence of PW-6 to the fact that A-5 gave blow of his spade and deceased fell down, the rest of the evidence by and large is in conformity with the evidence of informant.

46. The cross -examinations of both these material witnesses, namely, PW-7 informant and PW-6 throw light as to the line of defence adopted and canvassed by accused. Certain suggestions were given to the informant in the cross examination which are denied by him. First of all it may be noted that the presence of accused at the place of incident is not disputed. The suggestion was given to this witness that A-4 was telling deceased and others that he was taking the tractor as usual and Babanrao

(deceased) was not listening to it. Similarly, PW-6 admits in his cross examination that there is bandh in the land belonging to Marutrao running from Nhavare road upto the end of his land. He further admits that the police inspected the said bandh and the marks of cart wheel were found on the said bandh. He then denied the suggestion that Narayan (A-2) and his family members were using the said bandh for coming and going out. He further denied the suggestion that A-2 and others were using the said bandh as a way to approach their lands.

47. From the cross examination of PW-7 it is clear that he and others were chargesheeted for assaulting the accused arising out of same incident that is to say case and counter case came to be registered against each other.

48. From the respective cases of the parties as seen above, the following undisputed facts emerge:

- (i) Incident took place in the field of PW 14;
- (ii) said field was managed by deceased;
- (iii) a quarrel ensued between deceased and A-2, A-4, A-6 and A-7 over taking of tractor by A-4 through the said field;

- (iv) other persecution witnesses viz. PW-6 to PW-13 witnessed the incident; during the scuffle, other accused armed with weapons joined;
- (v) incident of assault took place in which deceased, namely, Babanrao succumbed to the injuries on the next day and prosecution witnesses and accused also suffered injuries; and
- (vii) complaint and counter-complaint came to be registered against accused and informant party.

49. Be that it may, which of the two rival groups was the aggressor will have to be ascertained.

50. Presently, after reading the evidence of PW-6 and PW -7, there is no dispute to the fact that when A-4 and others tried to take the tractor to the field of PW-14, deceased obstructed them and asked them not to do so. He also raised protest against the act of said accused. It is quite obvious that other accused also joined and came to the spot armed with sickle, axe, spade, iron bar, wooden bar etc and it seems that their purpose was to allow the tractor pass through the field of PW- 14 at any cost and cause such injury as may be necessary for achieving that object.

51. Whether this glimpse of aggression on the part of accused is furthered and strengthened by the other prosecution witnesses or not will have to be seen after scanning and scrutinizing their respective testimony. Before that, during the course of argument, learned Counsel for the appellants assailed the credibility of PW-6 by inviting our attention to his cross-examination wherein he has stated that till police recorded his statement he did not disclose the incident to anybody.

52. We fail to understand how the conduct of this witness can be questioned, particularly, when FIR came to be lodged promptly and on the very day of the incident by none other than PW-7 eye witness. It is also not the case that there was huge delay in recording the statement of PW-6, rather it appears from the cross-examination that on the very next day of the incident he was called by police and his statement came to be recorded. Again, this is not the case wherein PW-6 is the sole eye witness. Therefore, we do not find any substance in the statement of learned Counsel for the appellants questioning the credibility of PW-6 and consequently the same stands rejected.

53. This takes us to other eye witnesses i.e., PW-8 to PW-13.

54. PW-8 Suresh Vishnu Khandagale states in his evidence (**Exh.66**) that he is staying in Khandagale locality since his birth. The incident took place on 02.10.1994 in the evening. He was proceeding to village Nhavare in his tractor and when he came near the land belonging to Marutrao Khandagale (PW-14), he found that Aba Kandge (A-9), Ramdas Kandge (A-1), Gorakh Kandge (A4), and Arun Kandge (A-4) were beating Babanrao (deceased).

55. It is his further evidence that Arun (A-3) was armed with an axe, Aba (A-9) with a sword and Gorakh (A-4) with a spade. All the accused were also present on the spot. Khandagale's were also present on the scene of offence. It is his further evidence that Ramdas (A-1), Narayan (A-2), Aba (A-9), Arun (A-3), Gorakh (A-4) and other Kandge's obstructed his tractor . Arun (A-3) gave an axe blow on his head. Aba (A-9) raised a sword to inflict a blow on his back but he tried to escape himself and therefore, the blow hit on the middle finger of his left hand. It was partially cut and the tip of the ring finger was cut. Gorakh (A-4) gave a blow of spade on his head and blood started oozing out from his injuries. He became unconscious. Lastly, he states that he regained consciousness in Budhrani Hospital.

56. As far as the evidence of this witness showing that he found A-9, A-1, A-4 and A-3 beating deceased is concerned, the same has come on record by way omission because that does not found part of his statement recorded by Investigating Officer during the course of investigation. However, when confronted in the cross examination he insisted of having told that A-1, A-3, A-4 and A-9 were assaulting deceased. PW-22 Investigating Officer, however, has proved (**Exh.123**) the said omission in his cross-examination at paragraph No.3 by stating that PW-8 had not stated before him that Babanrao (deceased) was beaten by Ramdas (A-1), Gorakh (A-4), Arun (A-3) and Aba (A-9).

57. The latter part of his evidence is in consonance with the contents of FIR and the testimonies of PW-6 and PW-7 which proves that A-3 was armed with an axe, A-9 with a sword and A-4 with a spade. Further, that all the accused were also present on the spot and so also Khandagales. His evidence also shows that A-3 gave an axe blow on his head. So also A-9 raised a sword to inflict a blow on his back. Raising of sword and as also giving a blow of spade on his head by A-4 gets due corroboration from the mouth of PW-13. Then there is medical evidence as well to corroborate his version.

58. PW-16 Dr. Ganesh Bajirao Chavan states in his evidence (**Exh. 79**) that on 02.10. 1994 he was attached to Sasoon Hospital and was on duty in ward No.7. PW-8 Suresh Vishnu Khandagale was brought under a police yadi and was admitted in the hospital. He examined him and found injuries, namely, 1. Amputation of left middle finger and 2) Contused lacerated wound trifoliate, bone deep, triangular bone piece depressed. 7 cm. X 4 cm. X 3 c.m. in the left eye parietal region. This witness was then referred to Ruby Hall Clinic for C.T. scan and revealed depressed fracture on the left parietal bone. He then proved his notes of examination at **Exh. 82**. According to him, the injuries were possible by muddemal articles, namely, spade and sword.

59. From the medical evidence it is more than clear that PW-8 suffered those injuries as noted by medical officer at the hands of said accused. Thus, there is due corroboration from the medical officer regarding injuries sustained by PW-8 in the assault at the hands of A-4, A-3 and A-9.

60. PW-9 Tukaram Vishnu Khandagale states in his evidence (**Exh. 69**) that on the day of incident he had gone to market of village Nhavare. In the evening he started proceedings towards his locality. He came near the land belonging to Marutrao Khandagale (PW-14). Onion crop was standing in the land. He saw the tractor belonging to Gorakh Kandge (A-

4) standing in the onion crop belonging to Marutrao Khandagale (PW-14). Ramdas (A-1), Narayan (A-2), Aba (A-9), Sainath (A-10), Kisan (A-6), Pandu (A-5), Arun (A-3), Dattu (A-14), Sunil (A-7), Balu (A-16), Baban (A-11), Gorakh (A-4), all Kandges and A-8 and one of their relative i.e. son-in-law of Dattu Kandge (A-14) were present in the land. It is his further evidence that Ramdas (A-1), Narayan (A-2) and Aba (A-9) were beating Babanrao Khandagale (deceased) with sickle and sword. He tried to intervene. Pandu (A-5) gave a blow of spade on his back. Narayan (A-2) gave a sickle blow on his head. Aba (A-9) gave a blow of sword on his chest. Blood started coming from his head and he became unconscious. According to him, he regained consciousness in Sasoon Hospital.

61. The evidence of PW-9 showing that A-1, A-2 and A-9 were beating Babanrao Khandagale (deceased) with sickle and sword has come by way of omission . In the cross examination when he was confronted with the said omission he denied of having not said so before police officer but then PW-21 Investigating Officer in his cross examination (**Exh. 111**) in paragraph 10 clearly stated that this witness had not stated before him that he had seen A-1, A-9 and A-2 attacking deceased Babanrao with sickle, sword and chain. His evidence then also shows that when he tried to intervene he was also assaulted by A-5 by means of spade on his back, sickle blow on his head by A-2 and blow of sword on his chest by A-9.

However, the medical evidence pertaining to this witness is quite different and does not support all the above said assaults.

62. PW-20 Narayan Krishna Kamble states in his evidence (**Exh. 102**) that at the relevant time he was attached to Sasoon Hospital as CMO. On 02.10.94, eight injured persons were brought in the casualty department. He examined Tukaram Vishnu Khandagale i.e., PW-9 and found injuries, namely, 1. C.L.W. over right parietal region 5 cm. X $\frac{1}{2}$ cm. X scalp deep bleeding plus and 2. C.L.W. over left elbow, lateral aspect 1cm. X $\frac{1}{2}$ X $\frac{1}{2}$ cm. bleeding present.

63. It is his further evidence that haematoma on left scapular region 4 cm. X 4cm. was present. The injuries were caused by means of hard and sharp object and then opined that the injuries noted by him may be caused by spade, sword and sickle. He then proved the medical certificate issued by him at **Exh. 105**. Only injury No.1 noted by PW-20 corroborates the version of PW-9. Rest of the injuries deposed by witness do not get support from medical evidence.

64. PW-10 Balasaheb Vishnu Khandagale states in his evidence (**Exh. 70**) that he is staying in Khandagale locality since his birth. On 02.10.1994 it being a market day he was proceeding from market to his

house. When he came near the land belonging to Marutrao Khandagale (PW-14) he found that a tractor belonging to Kandge's was standing in the onion crop belonging to Maruti Khandagale (PW-14). A quarrel was going on between Shivaji Vinayak Khandagale (PW-12), Babanrao Khandagale (deceased) and Balasaheb Khandagale (PW-13) on one hand and Gorakh Kandge (A-4), Ramdas Kandge (A-1), Narayan Kandge (A-2), Pandurang Kandge (A-5), Sunil Kandge (A-7), Sainath Kandge (A-10), Dadabhau Kandge (A-8), Sadashiv Kandge (A-12) and Dattoba Kandge (A-14) on the other on the point of tractor. When he went to intervene, A-1 gave a blow of cycle chain on his head and A-2 gave a sickle blow on his head. He sustained bleeding injury. He felt giddy and escaped himself. He then states that other Kandges were armed with weapons like axe, sword, spade etc.

65. This witness clearly supports the presence of the accused named at the place of incident in consonance with the testimony of other witnesses. It further appears that when this witness tried to intervene he was assaulted by A-1 and A-2 by cycle chain and sickle respectively and again this version gets due corroboration from the mouth of PW-13 who was very much there. However, his evidence showing that other Kandges were armed with weapons like sword, axe and spade being a vague one has

come on record by way of omission. This omission is duly proved by PW-21 Investigating Officer (**Exh.111**) who stated in his evidence in paragraph No. 11 that this witness had not stated before him that other Kandges were armed with weapons like sword, sickle and spade. That being so, whether the injury sustained by this witness gets corroboration from the medical evidence or not is required to be seen.

66. PW-17 Dr. S. Tyagraj Murthy states in his evidence (**Exh. 84**) that at the relevant time he was attached to Sasoon Hospital. On 02.10.1994, Balasaheb Vishnu Khandagale i.e., PW-10 was examined by him and on examination he found injuries, namely, 1. C.L.W. $\frac{1}{2}$ cm. X $\frac{1}{2}$ cm. on right parietal region, 2) C.L.W. on left parietal region 0.5 cm. X 0.5 cm. And 3) C.L.W over left eye brow 1 cm X 0.5 cm.

67. According to him, the injuries were possible by hard and sharp object like muddemal sickle. He then proved the certificate issued by him at **Exh. 87**. Thus, the version of PW-10 that he had sustained sickle blow at the hands of A-2 on his head gets due corroboration from medical evidence.

68. PW- 11 Raghunath Balasaheb Khandagale states in his evidence (**Exh. 71**) that the incident took place on 02.10.1994. At about 6.30 p.m. he was proceeding from village Nhavre to Khandagale locality and when he

came near the land belonging to Marutrao Khandagale (PW-14), he found that there was onion crop in which the tractor belonging to Gorakh Kandge (A-4) was standing. He saw Ramdas Kandge (A-1), Aba Kandge (A-9), Kisan Kandge (A-6), Dattu Kandge (A-14), Pandurang Kandge (A-5), Narayan Kandge (A-2) and Gorakh Kandge (A-4) present on the spot. It is his further evidence that all 16 accused persons were present. Babanrao Khandagale (deceased), Tukaram Khandagale (PW-9), Shivaji Khandagale (PW-12), Suresh Khandagale (PW-8), Balasaheb Khandagale (PW- 7) and Balasaheb Vishnu Khandagale (PW- 10) were also present there. He also noticed that deceased and other Khandagales were injured. When he went to intervene, Dattu Kandge gave a blow of sharp weapon on right leg and left hand. Pandurang Kandge (A-5) gave a blow of spade on his head. He sustained bleeding injury because of blow given by Dattu Kandge.

69. As far as the evidence of this witness regarding the presence of A-1, A-9, A-6, A-14, A-5, A-2 and A-4 on the spot is concerned, the same has come by way of omission and that omission has been duly proved by PW-21 Investigating Officer by stating in paragraph No.12 that he had not stated before him of having seen A-1 to A-4, A-6 to A- 13, A-15 and A-16 on the spot. It appears that this witness was also examined by PW-20.

70. PW- 20 Dr. Narayan Krishna Kamble states in his evidence (**Exh. 102**) that on 02.10.1994 he examined Raghunath Balasaheb Khandagale i.e. present witness and found injuries on his person, namely, 1. Incised wound over left arm antero medially 7 cm. Above elbow 3 cm. X ½ cm. X muscle deep bleeding plus 2. Incised wound just above right knee 6 cm X 1 cm. X muscle deep and 3. Bleeding from left ear.

71. Needless to say the above injuries noted by medical officer are not in consonance with the evidence of PW-11 inasmuch as according to PW-11 he was assaulted on his head by means of spade by A-5. No such injury appears to have been found on the head of this witness. Therefore, oral evidence of this witness read in the light of medical evidence does not corroborate and satisfy us.

72. PW-12 Shivaji Vinayak Khandagale states in his evidence (**Exh. 72**) that he knows the accused and witnesses Khandagales. On the day of incident, while he was proceeding from his village to Khandagale locality where he stays, he came near the land belonging to Marutrao Khandagale (PW-14) and found that one tractor was standing in the onion crop belonging to Marutrao Khandagale (PW-14). Gorakh Kandge (A-4), Kisan Kandge (A-6), Sunil Kandge (A-7) and wife of Narayan (A-2) were also present. Babanraon Khandagale (deceased) had obstructed the tractor.

Narayan's wife proceeded to her house. There were altercations going on between them. Ramdas Kandge (A-1), Narayan Kandge (A-2), Aba Kandge (A-9), Pandurang Kandge (A-5), Dattoba Kandge (A-14,) Sainath Kandge (A-10), Baban Kandge (A-11), Sadashiv Kandge (A-12), Balu Kandge (A-16) and Dattoba's son-in-law came there. They were armed with weapons. Narayan (A-2) was armed with a sickle, Aba (A-9) with a sword, Pandurang (A-5) with a spade, Gorakh (A-4) with a spade, Baban (A-11) with a stick (wooden bar) and Sainath (A-10) with an iron bar.

73. He further states in his evidence that all of them started beating Babanrao Khandagale (deceased) with weapons they possessed. He intervened to rescue them. Pandurang (A-5) gave a blow of spade on his head. He fell down. Aba (A-9) then inflicted a blow of sword on his head. He sustained bleeding injuries and became unconscious.

74. The evidence of PW -12 showing the presence of accused armed with weapons gets due corroboration from the contents of FIR and as also from the testimonies of PW-6 to PW-9. His evidence is also clear to the fact that the deceased was assaulted by A-2, A-4, A-5, A-9 and A-10 with their respective weapons which they possessed at the time of incident. His evidence then showing that he was also assaulted by A-5 and A-9 by

means of spade and sword gets due corroboration from the mouth of PW-13. It appears that he was also examined by Medical Officers i.e., PW-17 and PW-20. Let us go through their evidence.

75. PW-17 Dr. S. Tyagraj Murthy states in his evidence (**Exh. 84**) that on 02.10.1994 he examined Shivaji Vinayak Khandagale i.e., present witness and found injuries on his person, namely, 1. C.L.W. on right parieto occipital region 10 X 2 X 1 cm. Bone deep, fracture parietal, bone, dura exposed 2) C.L.W. right forearm on the dorsel aspect 5 X 3 cm. tendon exposed fracture radius bone, tender injury plus and 3) C.L.W. left frontal region 4 X 3 X 2 cm.

76. His evidence further shows that this witness was sent for CT scan which revealed fracture of left occipital bone. He then proved the certificate issued by him at **Exh. 86**. According to him, injuries were possible by hard and sharp object, namely, sword. He further opined that the injuries were possible by muddemal spade and sword.

77. The evidence of PW-20 Dr. Narayan Krishna Kamble (**Exh. 102**) is also on similar lines, who was CMO at the relevant time and was attached to Sasoon Hospital. His evidence also shows that on 2.10.1994 he examined Shivaji Vinayak Khandagale i.e., present witness and found

injuries on his person, namely, 1. C.L.W. on right parietal region, bone exposed. Fracture of parietal bone 6 cm. 2cm. X 1 cm. and 2. CLW on right forearm dorsal 5 cm. X 4 cm. tendon exposed. Fracture radius middle 1/3rd. According to him, these injuries were possible by spade and sword. He then proved the certified issued by him at **Exh. 104**.

78. The evidence of both these medical officers clearly supports the version of PW-12 in respect of injuries sustained by him at the hands of A-5 and A-9.

79. PW-13 Balasaheb Babanrao Khandagale states in his evidence that Babanrao alias Aba (deceased) was his father. They used to stay in Khandagale locality. Marutrao Shankarrao Khandagale (PW-14) is his uncle. They have got joint family lands and individual lands near Khandagale vasti. The land which abuts in Nhavare road stands in the name of his uncle who stays at Chandan Nagar, Pune and runs a grocery shop. One Sampat Salunke (PW-6) cultivates the land belonging to Marutrao Khandagale (PW-14).

80. It is his further evidence that his father used to look after the said land. His evidence then shows that the incident took place on 02.10.1994. In the evening, he was in his house when Ganesh Khandagale and

Balasaheb Walmik Khandagale (PW-7) visited his house and informed that Gorakh (A-4) was taking his tractor through the onion crop of his uncle and his father has obstructed the said tractor. He, Balasaheb Walmik Khandagale (PW-7) and Ganesh Khandagale rushed to the land belonging to Marutrao Khandagale (PW-14). They saw that a tractor was standing in the onion crop. His father was standing near the tractor and asking Gorakh (A-4) not to take the tractor from the onion crop whereupon A-4 retaliated by saying that the land is not of his father.

81. Deposing further, according to him, by that time from the direction of house of Ramdas Kandge (A-1), Ramdas Kandge (A-1), Narayan Kandge (A-2), Aba Kandge (A-9), Pandurang Kandge (A-5), Dadabhau Kandge (A-8) and Dattoba Kandge's son-in-law came running armed with weapons. A-2 was armed with sickle, A-9 with a sword, A-5 with a spade and A-1 with motor cycle chain. A-9 gave a blow of sword on the head and nose of his father. A-2 gave a sickle blow on his head. A-5 gave a spade blow to him. A-2 gave a sickle blow on his head and waist. A-5 gave a spade blow on his back. Shivaji Khandagale (PW-12) was also beaten by A-2, A-9, and A- 5 with the help of their respective weapons. A- 9 assaulted Suresh Khandagale (PW-8) with the help of sword and A-4 gave a blow of spade on the head of Suresh. A-2 gave a sickle blow on the

head of Balasaheb Vishnu Khandagale (PW-10). A-2 gave a sickle blow on the waist of Raghunath Khandagale (PW-11). These persons also assaulted Tukaram Khandagale (PW-9). According to him, he sustained injuries on his head, hands and back and was admitted in Sasoon Hospital.

82. From the cross examination of this material witness, it is clear that he had seen the incident right from its inception till the accused left and that is precisely in accordance with the theory put forth in the FIR by the informant. This witness has clearly supported and corroborated the contents of FIR and as also the version of PW-6 and PW-7 who were also very much present right from the time of incident till it got over. Again, the injuries sustained by his father at the hands of A-2, A-5 and A-9 not only gets support from the FIR but also from the mouth of PW-6 and PW-7.

83. As far as injuries sustained by PW-8, PW-9, PW-10 and PW-12 are concerned, I have already pointed out this fact while discussing the testimonies of said prosecution witnesses. Regarding the injuries sustained by this witness, the prosecution has also adduced evidence of medical officers. They are PW 17 and PW-20.

84. PW-17 Dr. S.Tyagraj Murthy in his evidence states that on 02.10.1994 he examined Balasaheb Babanrao Khandagale i.e., PW-13 and found following injuries on his person :

1. Contused lacerated wound on occipital region 10cm. X 2 cm. bone deep. Occipital bone was exposed and crack was felt.
2. Incised wound over left iliac crest 7X 0.5 cm.
3. Incised wound over the right upper parietal region 7 X 0.5 cm. bone crack was felt.

He then proved the certificate issued by him at **Exh.85**. According to him, the injuries were possible by hard and sharp object, namely, sickle, sword and spade.

85. Similarly, PW-20 Dr. Narayan Krishna Kamble, the then CMO of Sasoon Hospital, also examined this witness on 02.10.1994 and found following injuries on his person:

1. CLW over occipital region 10 cm X 2 cm. bone deep, bone exposed, crack left side.
2. Incised wound on left side chest 7cm X 1/4th X 1/4th along with firth rib.

86. According to him, injuries were caused by sharp and hard object like muddemal sickle, spade and sword.

87. Needless to say the findings of these medical officers qua the injuries sustained by PW-13 are not much at variance and rather lend support to the version of PW-13.

88. We must at this stage advert to the spot panchnama, recovery of weapons at the instance of accused and Chemical Analyzer's report issued by Regional Forensic Science Laboratory.

89. PW-1 Sahebrao Krishnaji Khandagale states in his evidence (**Exh. 44**) that he is staying in village Nhavare since his birth. On 03.10.1994 he was called near 1 km. marking stone from village Nhavare on Nhavare Shirur Road. Other panch witness, police and one Sampat Salunkhe (PW-6) were also present there. They saw the land belonging to Marutrao Khandagale (PW-14). The land belonged to Maruti and was being looked after by deceased Baban. It is his further evidence that PW-6 showed them a place of offence. Nhavare Shirur Road runs south-north. The land of Maruti is situated on the eastern side of the said road. There is a bandh in the land belonging to Maruti. The said bandh starts from about distance of 250 ft. from km. margin stone. At that time, there was onion crop standing and there were neem trees on the bandh. The place where Babanrao Khandagale was killed was shown to them and it was on the eastern side of the neem tree. The onion crop was found damaged on

both sides of bandh. Blood was found on the scene of offence. Blood stained soil and plain soil were taken in two different plastic bags.

90. It is his further evidence that they then went about 65 ft. towards the western side of neem trees. There, they found onion crop damaged and foot prints on the said land. They then went on the northern side of the neem tree. There also they found onion crop damaged. They then again saw a spot at a distance of 15 to 20 ft. from the neem tree on the northern side. There also they found onion crop damaged.

91. It is his further evidence that he knows accused. They reside in Kandge locality situated on the northern side of the land belonging to Marutrao Khandagale. Lastly, he states that a panchnama of the entire event was prepared. He then proved the panchnama at **Exh. 45**.

92. PW-21 Investigating Officer, on his part, states (**Exh. 111**) that on 03.10.1994 he visited the scene of offence along with panch witnesses. The scene of offence was in the land belonging to Marutrao Khandagale (PW-14). He seized the blood stained soil, plain soil, cap, handkerchief and shirt lying on the scene of offence. Thus, from the evidence of PW -21 Investigating Officer and that of PW -1 panch witness, it is clear that on 03.10.1994 spot panchnama of the place of occurrence came to be drawn.

From the evidence of PW-1 panch witness, it is clear that witness found onion crop damaged. Even otherwise the presence of accused and scuffle in the field is not disputed.

93. In the cross-examination, PW-1 panch witness admitted that bandh which is in the land of Marutrao runs towards the bungalow of Narayan but denied that there was a cart road on the said bandh. He further denied that the bandh was used for plying tractors, trucks, bullock carts etc. By giving the above suggestion, the defence wanted to show that there is a regular way to approach the house of accused through the bandh situated in the land of PW-14. However, that suggestion is plainly denied by panch witness.

94. Coming to the aspect of recovery of weapons, we have two witnesses on that count, namely, PW-2 and PW-5.

95. PW-2 Ramchandra Vithal Bahirat states in his evidence (**Exh. 46**) that on 29.10.1994 he had gone to Tehasildar office near police station Shirur. Other panch, namely, Narsing Kurekar was also present at that time. Police called them. Aba (A-9), Narayan (A-2) and Gorakh (A-4) were present in the police station. Police asked them to listen as to what Aba (A-9) says. According to this witness, A-9 told them that he would

show the sword (by which he committed maramari) and the place where he had kept it. His statement was reduced into writing. He then proved the said memorandum at **Exh. 47**.

96. It is his further evidence that he, other panch, Aba (A-9), Gorakh (A-4), Narayan (A-2) and police then sat in a jeep and went from Nagar-Pune Road upto Nhavare diversion. It was stopped there. Aba (A-9) told them to take vehicle from Nhavare road. The jeep came near Khandagale stop. From there the vehicle was taken towards Kandge locality by Kaccha road. Aba (A-9) led them to the uprooted groundnut bushes which were kept in a heap and from there he removed a sword from the said heap. The said sword was stained with blood. It was wrapped in a paper and label bearing their signatures was put on it. Accordingly, the panchnama was prepared. He then proved his signature on the panchnama at **Exh. 48**.

97. His evidence then shows that they all came near the jeep. Narayan (A-2) who was sitting in the jeep told them that he had concealed the sickle (by which he committed maramari) and he would produce the same. His statement was reduced into writing. He then proved his signature over the statement and statement itself at **Exh. 49**.

98. Pursuant to the statement of A-2, A-2 led them towards an orange orchard and removed a sickle from the second road of the garden. It was wrapped in a paper. Panchnama was prepared. He then proved his signature on the panchnama at **Exh. 50**.

99. PW-1 then deposed that A-4 who was near the orange orchard told them that he had concealed the spade (by which he had committed maramari) and he would produce the same. His statement was reduced into writing. He then proved the said statement at **Exh. 51**.

100. Pursuant to the said statement, A-4 led them in front of his house. There was a kitchen with tin shed adjacent to which there is a cattle shed of tins. Gorakh climbed on it and removed a spade from the tin. The spade was stained with blood and same came to be seized. He then proved the panchnama at **Exh. 52**.

101. The version of PW-2 regarding disclosure statements of A-2, A-4 and A-9 and subsequent recoveries of the weapons thereto is ably supported and corroborated by PW-23 Investigating Officer in his evidence.

102. During the course of argument, learned Counsel for the appellants invited our attention that though the evidence of PW-2 shows that the

blood stained sword was seized at the instance of A-9 but recovery panchnama (**Exh. 48**) does not show so and so is the case with the alleged recovery of spade at the instance of A-4.

103. True, the recovery panchnamas would not show that the respective weapons were stained with blood but that fact in itself is not sufficient to discard the testimony of PW-2 and PW-23 Investigating Officer. The admitted factual background is of a scuffle having had taken place between both the parties on the day of occurrence. Moreover, the weapon of offence sent to the office of Chemical Analyzer clearly shows that the weapons were stained with blood. Thus, there is nothing to derive any advantage by the defence.

104. The next witness on the point of disclosure and seizure of weapons is PW-5 Chandrakant Gulabrao Thite (**Exh. 58**). Unfortunately, this witness came to be treated as hostile by prosecution. From his cross-examination it appears that A-6, A-9 and A-10 are his real nephews i.e. son of his sister. Even Narayan (A-2) is the uncle of A-6, A-9 and A-10. Thus, naturally this witness being a very close relative of the accused was bound to turn hostile. In this regard, it would be apt to go through the evidence of PW-21 Investigating Officer.

105. PW-21 Investigating Officer states in his evidence (**Exh. 111**) that on 06.10.1994 he took A-3, A-5, A-6 and A-10 in the early morning for recovery of weapons by summoning two panch witnesses. A-6 told before the panch that he would produce the stick used for the commission of offence concealed by him. Accordingly, the memorandum was prepared. Both the panchas signed on the said memorandum in his presence. He then proved the memorandum at **Exh. 113**. It is his further evidence that A-6 then led them to akasia tree from where he produced a stick which was seized under the panchnama. He then proved the panchnama at **Exh. 114**.

106. The Investigating Officer then states that A-3 while in custody also made a statement that he would produce the axe (used in the offence) from the place where he had concealed the same. The memorandum was jotted down. Both the panchas signed the same and it was counter signed by him. He then proved the Memorandum at **Exh. 115**. Thereafter, he, panch and the accused went to the northern direction from Dnyaneshwar Paduka. A-3 produced an axe from the roof which was seized by panchas. He then proved the panchnama at **Exh. 116**.

107. Investigating Officer further states that A-5 also while in custody made a statement that he would produce a spade (used in the offence)

used by him from the place where he concealed the same. The memorandum was reduced into writing and he then proved his signature and the memorandum at **Exh. 117**. Thereafter, the accused took them from Shripati Padela towards western side and produced the spade from the bushes around the neem trees. The same was seized under the seizure panchnama under his signature. He then proved the said seizure panchnama at **Exh. 118**.

108. Lastly, according to Investigating Officer, A-10 while in custody made a statement that he would produce an iron bar (used in the offence) concealed by him. The memorandum of his statement was prepared having his signature. He then proved the memorandum at **Exh. 119**. The accused then took them to his house from where he produced an iron bar from the roof which was seized under the seizure panchnama. He then proved the said seizure panchnama at **Exh. 120**.

109. According to Investigating Officer all the articles were seized and concealed and pasted with the labels of panchas.

110. One characteristic feature of all the disclosure statement of A-2, A-3, A-4, A-5, A-6, A-9 and A-10 is that while giving the disclosure statement they did not mention the place of concealment which is

apparent from the evidence of witnesses and instead took the panchas and the investigating officer straightway to the place of concealment. We think that the investigating officers in both the instances were at fault and they ought to have confronted the concerned accused at the time of making of disclosure statement about the particular place where the particular weapon was concealed. This is definitely a technical lacuna and for the fault of investigating officers, the interest of aggrieved parties cannot be jeopardized. Even otherwise there being a general denial in the cross examination of respective witnesses, we are not inclined to hold that the recoveries of weapons at the instance of accused are marred by shortcomings. Suffice to say the recovery of those weapons is duly established and is here to stay for all purposes.

111. We now come to the Chemical Analyzer's Report.

112. PW-22 Investigating Officer states in his evidence (**Exh. 123**) that he took over the investigation of the crime from API Ethape (PW-21) on 11.10.1994. On 17.10.1994 he sent the blood of deceased to the office of Chemical Analyzer for examination under his letter (**Exh. 125**). He also sent the blood of nine accused under his letter (**Exh. 126**). The Chemical Analyzer's Reports of above are filed on record by him at **Exh. 127 and 128** respectively. He then handed over the investigation to API Patil (PW-23).

113. From Exhibit 127 it is seen that the blood of deceased was analyzed by Assistant Chemical Analyzer's to Regional Forensic Science Laboratory, Pune but the blood group could not be determined as results were inconclusive. However, on the other hand, Exhibit 128 shows the blood group of A-3, A-5, A-6 and A-10 as "O", "A", "A" and "O" respectively.

114. PW-23 Investigating Officer (Exh. 129), on the other hand, has filed on record Chemical Analyzer Report at **Exh. 133** in respect of various articles of which serial Nos. 44 to 47 are the weapon of offence. It is pertinent to note that all these weapons, namely, koyta, axe and spade were found to have stained with blood on blade and handle and on analysis gave reaction for "A", "B" and "O" blood group antigens.

115. It must be remembered here that all these weapons were seized from and at the instance of accused and this facet has already been discussed by us. This report of Chemical Analyzer clearly indicates that these weapons were stained with human blood. Thus, it helps prosecution.

116. We now would like to address the criticism levelled against the prosecution case by learned Counsel for appellants. The criticism deserves a closer look.

117. First. Since the alleged eye witnesses are interested/ related witnesses, they should not be believed for want of evidence of any independent witness, deserves to be rejected for the reasons to follow hereinafter.

118. In **Hari Obula Reddy and Ors. vs. The State of Andhra Pradesh**¹², the Hon'ble Apex Court has opined that it cannot be laid down as "an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction therein" [SCC PP 683- 84, Para 13]

119. In **Kanhaiya Lal and others versus. State of Rajasthan**¹³, the Hon'ble Apex Court held that when relatives, who are alleged to be interested witnesses, are cited by the prosecution, it is the obligation of the Court to scrutinize their evidence with care, caution and circumspection.

12 (1981) 3 SCC 675

13 (2013) 5 SCC 655

120. In **Namdeo vs State of Maharashtra**¹⁴, the Hon'ble Apex Court held: (SCC page 164, para 38)

“38.it is clear that a close relative cannot be characterized as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one”.

121. In **Ram Chander and Others versus State of Haryana**¹⁵, the Hon'ble Apex Court held that there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witness had reason to shield the actual culprit and falsely implicate the accused.

122. In the case at hand, at the cost of repetition, we again emphasise the happening of incident in the field of PW-14. The presence of accused is also an admitted fact. Scuffle leading to filing of complaint and cross complaint is also not disputed by either of the party. In this obtaining situation, it would be wrong on the part of defence to canvass persistently and tediously that no independent witness is examined by the prosecution.

14 (2007) 14 SCC 150

15 (2017) 2 SCC 321.

123. The prosecution witnesses, whose evidence is carefully scrutinized with caution by us, are not only eye witnesses to the incident but victims as well apart from being accused in the cross complaint filed by accused party. The ocular evidence of the prosecution witnesses corroborates with the medical evidence in respect of the injuries sustained by them in a melee. Their testimony is natural and intrinsically reliable.

124. Prosecution witness, namely, PW-13 is not only the victim of incident but also son of deceased. He has lost his father. There is no earthly reason to categorise him as interested witness, for the term “interested” connotes that the witness must nurture or have some animus to see that the accused persons are convicted, though they are not involved in the crime. On the contrary, he would like that the real culprits are prosecuted and convicted. We do not feel that these witnesses harboured any ill-motive against the accused persons, but have deposed as witnesses to the incident.

125. Keeping in mind well settled principle of law, as extracted above, and the discussion thereto, we reject the submissions of the learned Counsel for appellants.

126. Second. The point put forth by learned Counsel on behalf of the appellants is that the prosecution has not explained the injuries suffered

by accused and the fact that the informant and the witnesses were aggressor, the prosecution case therefore ought not have believed.

127. At the outset, it would be relevant to note the settled principle of law on this aspect.

128. In **Kumar Versus State- represented by Inspector of Police**¹⁶, it has been held by the Hon'ble Apex Court that generally failure of the prosecution to offer any explanation regarding injuries suffered by accused, shows that the evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true.

129. In **Lakshmi Singh and others v. State of Bihar** (*supra*), the Hon'ble Apex Court observed: (page 2270, para 11)

“11.....where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalilise the plea taken by the appellants”.

It was further observed that: (page 2270, para 11)

“11.....in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of alternation is a very important circumstance from which the Court can draw the following inferences;

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

16 (2018) 7 SCC 536

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so also throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

130. In the case on hand, PW-7, PW-8, PW-11 and PW-13 in their respective cross-examination have candidly admitted that they have been chargesheeted for assaulting some of the accused in the present incident. Even PW-21 Investigating Officer in his cross-examination at para 6 stated that during the course of investigation, he came to know that some of the accused were injured in the incident and later on he collected their medical certificates. Thus, one thing is clear, that the prosecution witnesses and the Investigating Officer have nowhere concealed the fact of accused getting injured in the incident. This is not all. The prosecution has also examined PW -25 Dr. Pradeep Pundalik Patil so as to bring on record the medical certificates and the injuries sustained by some of the accused during the incident.

131. PW-25 Medical Officer states in his evidence (**Exh. 138**) that on 02.10.1994 he examined A-4, A-14, A-5, A-7, A-6 and A-3. This witness

found simple injuries on the person of A-4, A-5, A-6 and A-3. So also except clinically fracture rib Nos. 4 and 5, rest of the injuries were simple on the person of A-14. Similarly, except injury found on the left side of scalp (incised wound) on the person of A-7, rest of the injuries were simple.

132. According to this witness, all these injuries were caused by hard and blunt object. He also proved the medical certificates pertaining to the respective accused. Thus, not only the medical officer was examined by prosecution but the medical record pertaining to the injuries of the concerned accused are also brought on record. Since deceased and injured witnesses were suddenly confronted with the necessity of averting an impending danger looming large to their lives at the hands of accused, they put their right of self defence into operation and it was not of self creation. The injuries found on the person of accused including some accused/ appellants, except one fracture, all the injuries were insignificant. The injuries were simple and had been caused by means of hard and blunt object.

133. In our considered opinion, the prosecution has discharged its duty by offering/ producing medical evidence to the Court how the persons viz. A-3, A-4, A-5 and A-6 who have been accused of assaulting the deceased and

witnesses, received injuries on their person in the same occurrence. We, therefore, note that the injuries alleged to have been caused are properly explained.

134. Having closely examined the evidence, we are of the view that infact a scuffle did take place. It is quite obvious from the evidence of PW-6 that A-4, A-6 and A-7 when started taking tractor from the field of PW-14, deceased raised a protest against their act and asked them not to do so. At first, there was remonstrance and counter-remonstrance. Meantime, remaining accused came to the spot armed with sickle, axe, spade, iron bar, wooden bar etc. and formed an unlawful assembly.

135. The relevant consideration to ascertain common object of assembly are, interalia, the motive, weapon used in the attack and the conduct of the accused before and at the time of attack.

136. In **Masalti v. The State of U.P** (*supra*), the Hon'ble Apex Court observed that what has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 of IPC.

137. In **Bharwad Navghanbhaj Jakshibhi and others Versus State of Gujarat**,¹⁷ the Hon'ble Apex Court held that once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused.

138. In the case on hand, the common object of the accused compering the unlawful assembly was to enforce there supposed right of taking tractor through the field of PW- 14 by means of criminal force.

139. We say so because the defence has nowhere established that they had enforceable legal right to take the tractor from the field of PW-14. A fight therefore, ensued in the course of which remaining accused joined and made a common cause with them in assaulting the deceased and injured witnesses. Even assuming for the sake of argument that accused had any legally enforceable right then surely the mode they opted to enforce the same was not justifiable. Before launching assault they were bent upon to see the tractor through the field of PW-14. Realizing that it was not possible to do so they ventured to let loose a terror of attack. Their conduct spoke volumes.

140. Taking a comprehensive view of all the relevant materials, the conclusion is irresistible that the common object of unlawful assembly was

¹⁷ 2016 (3) Crimes 420 (SC)

to take tractor from the field of PW-14 at any cost even by committing murder, if necessary. Eventually, the life of Aba alias Baban Khandagale (deceased) was snuffed out. The accused-appellants must be bracketed as aggressors.

141. In **Lalji and others** (supra), the Hon'ble Apex Court held that as a fighting took place as a result of heat, passion and without any premeditation, the question of forming unlawful assembly or a common object does not arise.

142. However, this decision is factually distinguishable vis-a-vis the case in hand and therefore, the ratio laid down therein with due respect has no application to the case in hand.

143. In *Tanaji Govind Misal Versus State of Maharashtra and others* (supra) it has been observed by Hon'ble Apex Court that law is now well settled that if a sudden unpremeditated free fight takes place between two groups, the members thereof cannot be said to have formed an unlawful assembly within the meaning of Section 141. The above principle, however, has no manner of application to the facts of instant case. The facts and circumstances of the case and as also evidence on record outrightly rule out a conclusion of "sudden unpremeditated free fight" between the parties.

144. In *State of Maharashtra versus Kailas Jagannath Pradhan & Ors.* (*supra*), this Court (**Coram:** Shinde S.S. & Gavhane, JJ.) held that the evidence of the prosecution witnesses cannot be brushed aside merely because of some minor contradictions, if any, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy.

145. In the case in hand, though some omissions are appearing in the evidence of prosecution witnesses as noted by us but they do not otherwise disturb the testimonies of prosecution witnesses as being trustworthy. Moreover, if the whole evidence led by prosecution is read in totality then those omissions do not affect the core of prosecution case and therefore, can be ignored.

146. A very important significant aspect of prosecution case awaits.

147. The learned Sessions Judge has found all the appellants guilty under Section 302/149 of IPC. Whether this finding is in consonance with material on record is an issue which needs closure examination. Before that we may note the dictum from the case of **Masalti** (*supra*).

148. In **Masalti v. The State of U.P.** (*supra*), the Hon'ble Apex Court at paragraph 16 held as under :

“It is true that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. But where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is support by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it cannot be treated as irrational or unreasonable. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give evidence. But sometimes it is useful to adopt a mechanical test”.

149. The case in question is somewhat like that. Initially it involved 14 accused of which 7 came to be acquitted. Number of victims/ injured are 7 besides deceased. This being so, let us find out how many of appellants are responsible for the death of deceased.

150. As per version of PW-6, A-2, A-5 and A-9 assaulted deceased on his head and hand by means of sickle, spade and sword respectively. PW-7 states assault on deceased by A-2 by means of sickle. PW-12 states that A-2, A-4, A- 5, A-9 and A-10 assaulted deceased by sickle, spade, sword and iron bar respectively. PW- 13 states that A-9 gave blow of sword on the head and nose of deceased, A-2 on the head of deceased by sickle and A-5 gave spade blow to the deceased.

151. There is thus consistent evidence of PW -6, PW -7, PW -12 and PW- 13 in respect of assault on the vital part of body of deceased with

specific weapons at the hands of A-2, A-5 and A-9. The ocular evidence of the eye witnesses corroborates with the medical evidence. Even PW -19 Medical Officer has opined that injuries found on the person of deceased were sufficient in nature to cause death. The cause of death in the words of PW- 15 Medical Officer was due to fracture skull bones, subdural hemorrhage with laceration of left parietal bone. This witness also seconded the opinion of PW -19 that injuries were sufficient in the ordinary course of nature to cause death.

152. Essentially speaking, A-2, A-5 and A-9 acted beyond the common object of the unlawful assembly. They are not guilty under section 302/149 of IPC as held by learned Sessions Judge but under section 302/34 of IPC for committing the murder of Baban alias Aba Khandagale. They have been identified by above named prosecution witnesses. Their participation in the incident therefore stands fully established.

153. In the light of evidence, the above accused appellants and as also remaining accused appellants are guilty of rioting as also of an offence under Section 324/149 of IPC. In our opinion, rest of the conviction of accused appellants is well founded and cannot be interfered with.

154. Taking stock of the circumstances and the depositions of prosecution witnesses, we hold that the prosecution has laid the case on real circumstances and proved its case against accused appellants beyond reasonable doubt.

155. Before parting, we place on record appreciation of the assistance rendered by Mr.Phanse, the learned amicus curiae, at the time of hearing.

156. We quantify the fees in the sum of Rs. 15,000/- to be paid to Mr.Phanse, the learned amicus curiae, by the office of Maharashtra State Legal Services Authority within a period of one month from the date of judgment.

157. For the foregoing reasons, we pass the following order:-

ORDER

1. Criminal Appeal Nos. 515 of 1996, 586 of 1996 and 517 of 1996 are partly allowed;
2. Narayan Baburao Kandge (A-2), Pandurang Dattoba Kandge (A-5) and Aba Dhondiba Kandge (A-9) are found guilty for the offence punishable under Section 302 r/w 34 of IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs. 1000/- each, in default to suffer rigorous imprisonment for four months;

3. Arun Dattoba Kandge (A-3), Gorakh Ramdas Kandge (A-4), Kisan Dhondiba Kandge (A-6) and Sainath Dhondiba Kandge (A-10) are, however, acquitted of offence punishable under Section 302 of IPC;

4. Rest of the sentences of all the accused -appellants stand confirmed;

5. Their substantive sentences shall run concurrently;

6. Appellants, if on bail, will now surrender to their bail bonds to serve out the sentences.

(V.G.BISHT, J.)

(S.S. SHINDE, J.)