

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 671 OF 1995

The State of Maharashtra	]	...Appellant (Orig. Complainant)
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VERSUS

1. Jalinder Pandurang Patil, Age-38, Occ- Service	]]	
2. Prakash Pandurang Patil Age - 32, Occ-Service,	]]	
3. Niwas Pandurang Patil Age-28, Occ- Serivce	]]	
All r/o. Village Kande, Tal. Shirala, Dist. Sangli	]]	...Respondents (Orig. Accused)

Mrs. M.M. Deshmukh, APP for Appellant – State.
Mr. R.R. Bhosale a/w Mr. Kedar Patil for the Respondent.

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

RESERVED ON : 11th NOVEMBER 2019
PRONOUNCED ON: 16th JANUARY 2020.

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

1. This Criminal Appeal is directed against the judgment and order dated 31st December 1994 passed by the Learned Joint District Judge and Additional Sessions Judge, Sangli acquitting Accused – Respondents herein

for the offences punishable under Sections 302, 324, 341 read with Section 34 of the Indian Penal Code.

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

A. The accused persons are alleged to have committed murder of one Shivajirao Anandrao Patil of village Kande. The accused persons are also from the same village. According to the prosecution, way back in the year 1988 one Babasaheb Pandurang Patil brother of the accused persons was murdered and in that connection deceased Shivaji and his two brothers Babasaheb and Vasant as well as wife of the deceased and one Maruti Patil were prosecuted. The case was decided in the year 1990. The deceased and his brother were convicted while the other accused persons were acquitted in that case. Deceased Shivaji was sentenced to imprisonment for five years and his brothers were sentenced to imprisonment for two years. The three brothers preferred appeal and were incidentally released on bail. It is alleged by the prosecution that, the accused persons were harboring vengeance in their minds and they took opportunity in the Jyotiba fair of village Kande.

B. On 18.06.1994 when deceased Shivaji was returning home at about 3.00 p.m. along with his nephew (sister's son) Dhananjay by tractor

MTK – 9145. Accused No. 2 Prakash pointed a gun and accused Jalinder and Niwas pelted stones at the deceased and said Dhananjay and compelled them to take the tractor to their house (house of the accused persons) in Sutar galli. Tractor was made to halt in front of their house, and there the accused persons assaulted the deceased with sticks, sword, axe, stones etc on various parts of his body. They also assaulted complainant Dhananjay. In the assault complainant Dhananjay received some injuries while the injuries received by the deceased proved fatal and the deceased died on the spot.

C. On account of fair at village Kande, there was police Bandobast. Head constable Nangare and Head Constable Kulkarni alongwith other were at the Grampanchayat office and they learnt about the incident and so they rushed to the spot. In the mean while brothers of the deceased also arrived on the spot. Police allegedly directed Dhananjay and one Bhaskar patil brother of the deceased to go to Shirala Police Station and lodge the complaint. Accordingly, they went to Shirala Police Station and lodged complaint. PSI Mane who recorded the complaint and registered the offence at C.R. No. 23 of 1994 against the three accused persons referred complainant Dhananjay to Medical Officer Shirala. He then collected a photographer from his home and Dhananjay from the hospital by a Government vehicle and rushed to the place of incident. Routine investigation followed. Inquest panchana was done. Place

of offence was inspected in presence of the panch witnesses weapons like axe, sword, sticks etc were recovered from the tractor. Some blood stains found on the tractor as well as samples of blood stains on earth were collected. The house of the accused persons was also searched in presence of the panch witnesses. In that search it is seen that a photograph of Babasaheb, the deceased brother of accused persons was seen hanging on the wall and on said photograph, on the glass and frame there was a blood mark staining from the nose in upwards direction upto forehead. The said photograph along with photographs of Jalindar and Prakash and also the blood stained sticks were recovered from the house of the accused persons and the same were attached. Post mortem examination was done on the dead body. Cause of death was shown as fracture of occipital bone and intracerebral hemorrhage. Viscera was preserved. The blood stained clothes of the complainant and on the dead body were attached.

Accused namely Niwas was arrested on the very night. Other two accused persons filed an application for anticipatory bail, but were unsuccessful and so they surrendered themselves at the police station on 07.06.1994, and they were arrested. Statements of witnesses were recorded. Blood samples of accused persons and complainant were collected. The attached property was sent to C.A. office report from C.A. office was received. Some threatening letters received by the deceased and his wife were produced

before police by the widow of the deceased. On completion of the investigation PSI mane filed charge sheet against the accused persons in the Court of J.M.F.C. Shirala on 30.06.1994.

D. Learned Magistrate by his order dated 05.07.1994 committed the case to the Court of Sessions.

E. Learned Sessions Court after hearing both the parties framed charge for the offences under Sections 302, 324, 341 and 34 of the Indian Penal Code against all the three accused persons and also charge under Section 30 of the Indian Arms Act against accused No. 2. The charge was read over and explained to the accused persons. They pleaded not guilty. Defence of the accused persons is one of denial. According to them deceased Shivaji was a Gunda. He had several enemies at Kande and at the near by village as he used to pick up quarrels with the people. It is suggested to the prosecution witnesses that the deceased and the complainant armed with certain weapons were roaming in the village fair and at that time the deceased had consumed liquor and there he had some quarrel with the unknown persons and the unknown persons assaulted them both and in that assault the deceased was killed. It is alleged that taking advantage of this Babasaheb and Vasant the brothers of the deceased with the help of the police brought the dead body and the tractor to

the house of the accused persons in order to falsely implicate them in this case.

According to the accused persons they are falsely implicated in this case.

F. Learned Trial Court after recording the evidence and full fledged trial, acquitted the accused persons from the aforesaid crime. Hence, this Criminal Appeal by the Appellant – State.

3. Learned APP invites attention of this Court to the evidence of eye witnesses, so also medical evidence and other evidence brought on record by the prosecution. It is urged by the learned APP that, Dhananjay (PW 6) is injured eye witness and he has witnessed the entire incident, and therefore, the Trial Court ought to have believed the evidence of Dhananjay (PW 6). There are two other eye witnesses whose evidence corroborates with the version of Dhananjay (PW 6). The medical officer has given categorical finding that, the death of Shivaji was homicidal. There is evidence in the nature of CA report which lends support to the prosecution case.

4. On the other hand, learned counsel appearing for respondents-original accused invites attention of this Court to the findings recorded by the Trial Court and submits that, the Trial Court has scrutinized the evidence of all the witnesses and reached to the conclusion that, there is no convincing and

cogent evidence to form the base of conviction of the respondents. The view taken by the Trial Court is plausible and therefore, there is no merit in the appeal filed by the State.

5. We have given due consideration to the rival submissions. With the able assistance of learned APP and learned counsel appearing for respondents we have carefully perused the entire notes of evidence, so as to find out whether the findings of acquittal recorded by the learned Trial Court are in consonance with the evidence brought on record or there is perversity.

6. In order to find out whether the death was accidental, suicidal or homicidal the prosecution examined P.W. No. 10 – Dr. Vilas Vishnu Raval. In his examination in chief he stated that, from 18th July 1989, he was attached to Rural Hospital Shirala as Medical Officer on 13.04.1994 he was Duty Medical Officer in the hospital. Shirala Police Station had referred to him dead body of Shivaji Anandrao Patil for post mortem examination. He conducted the post mortem examination on 18.04.1994 between 9.00 p.m and 10.00 pm. He found following external injuries on the dead body.-

1. CLW over right eye brow 6cm X 3 cm horizontal.
2. CLW over version 3cm X 3 cm fractural nesal bone.
3. Incised wound over scalp deep bone seen.

4. Incised wound over center of parietal region oblique. 7Cm X 2cm scalp deep bone seen.
5. CLW over left eye brow mid part 2cm X 1 cm
6. Contusion over left shoulder anteroirtilly 6cm X 1 cm.
7. CLW over left cheek upper part, 4cm X 2cm.
8. CLW over left ear inner part, 8cm X 2cm certilleges seen cut.
9. Incised wound above occipital region 6cm X 2cm oblique scalp deed bone seen.
10. Incised wound over right parietal eminance 9cm X 2 cm scalp deep skull bone seen.
11. CLW over occipital region right side oblique 12 cm X 8 cm scalp totally separate fracture occipital bone seen 3 cm length.
12. Contusion over right shoulder posteriorly 8 cm X 6cm.
13. CLW over left tibial tuberosity 1 cm X ½ cm. All these injuries were ante mortem.

7. On internal examination he found fracture of occipital bone and intra cerebral hemorrhage. During post mortem examination it was noticed that there was semi digested food material in the stomach. Death occurred within six hours of last meals. In his opinion the cause of death was due to intra cerebral hemorrhage. He had preserved viscera for analysis. He opined

that, the injuries found on the dead body are sufficient in the ordinary course of nature to cause death. Incised wounds described at Sr. No. 3, 4, 9 and 10 of post mortem notes column No. 17 are possible by sharp object. The weapons sword and the axe before the court shown to him, may cause the said incised wounds and all other injuries described in column no. 17 of post mortem notes are possible by hard and blunt objects like stick which are shown to him before the Court. While conducting the post mortem examination he prepared a memorandum. The entries therein were taken by him. There was no smelling of alcohol to the contents in the stomach. On 18.04.1994 one Dhananjay Subhash Patil was referred to him by Shirala Police Station for medical examination at 5.45 p.m. He examined him clinically at 5.45 p.m. and he found the following injuries on his persons.

1. Abrasion over right thigh anteriorly lower 1/3rd, 4cm X ½ cm oblique, reddish colour.
2. Abrasion over left thigh lower 1/3rd anterioral 6cm X 4 cm oblique.
3. Contusion over left forearm lower 1/3rd flexer aspect medically, 6cm X 5cm swelling plus, tenderness plus.
4. Contusion over left forearm lower part dorsal aspect 6cm X 2cm reddish colour minimal swelling plus.

5. Abrasion over left forearm upper part near elbow joint, 3cm X 2cm reddish colour oblique dorsal medially.
6. Contusion over right forearm mid part 11cm X 2cm oblique swelling plus tenderness plus, reddish colour.
7. Abrasion over right side chest, pectoral region above right nipple, 2cm X 1cm.
8. Minor abrasion over right pectoral region medial to injury no. 7 three minor abrasions.
9. Abrasion over back on left side over scapular region oblique 12 cm laterally linear.
10. Abrasion over back on left side medial to medial border of left scapula 6cm X 3cm.
11. Linear abrasion over back in between two scapula mid part laterally to vertebral column left side oblique 6cm in length.
12. Linear abrasion over right hand palmer aspect 2cm at the base of thumb oblique.
13. Linear abrasion over right hand palmer aspect medially 1 ½ cm.

The age of injuries at the time of examination was within six hours and the injuries were possible by hard and blunt object. Medical officer opined that, all these injuries are possible by the sticks shown to him before

the Court. He has accordingly issued certificate about the injuries found on the person of Dhananjay Subhash Patil.

Evidence of Dr. Vilas Raval (PW 10) would clearly shows that, Shivaji (deceased) died homicidal death. So far injured witness Dhananjay (PW 6) is concerned, he was also examined by the said doctor. It appears from his evidence that, the police officer from Shirala police station brought Dhananjay (PW 6) for medical examination at 5.45 pm on 18.04.1994. The medical officer opined that, the injuries on the person of Dhananjay (PW 6) were within six hours and caused by hard and blunt object. It is important to note that, the time of bringing Dhananjay (PW 6) for medical examination was at 5.45 pm.

8. As already observed Shivaji (deceased) died homicidal death. However, who is the author of said injuries which caused death of Shivaji is to be seen. Prosecution placed heavy reliance upon evidence of injured witness Dhananjay (PW 6), Babasaheb Patil (PW 8) and Shankar Nagre (PW 4). It would be apt to discuss their evidence hereinafter.

9. The prosecution examined Dhananjay Subhashrao Patil (PW 6). In his examination in chief he stated that, he is B.E. (Civil), He passed B.E. (Civil) examination in the last academic year. He did his B.E. at Budhagaon

college. Parents of his mother hails from Kande. Deceased was a second brother of his mother. Since his childhood he has been visiting village Kande during holidays every year. He knows the accused persons before the Court from last 5 to 6 years. The house of the accused persons is in Sutar galli. In the year 1988 his three maternal uncles and one Maruti Patil were accused of having committed murder of brother of accused. The name of brother of the accused persons who was murdered was Babasaheb Patil. He was not knowing said Babasaheb. Wife of his second maternal uncle was also accused in that murder case. Said wife of his maternal uncle and Maruti Patil were acquitted. His eldest maternal uncle Babasaheb and the youngest one Vasant were convicted and were sentenced to two years imprisonment while deceased Shivaji was convicted and sentenced to 5 years imprisonment. The said case was decided in Sangli court in November 1990. His maternal uncle preferred appeal to the High Court and they were released on bail. On 17.04.1994 late in the evening he visited village Kande. He wandered in the fair with the son of his maternal uncle. He halted at Kande that evening. His second maternal uncle i.e. deceased Shivaji that time resided in the farm house, which is in the field on the southern side of the village. He visited his farm house at about 10.30 a.m. or 11.00 a.m. on 18.04.1994. That house of his second maternal uncle is adjacent to the Panand on the south of the village. He meet his maternal uncle in his house. He was preparing to go out from there. He told

his maternal uncle that he was to return to his village that day. He asked him to stay in the village and said that he would visit the field and then see me. His maternal uncle then left for the field and He stayed in the house. His maternal uncle went to the field by his tractor. His maternal uncle went to the land of Achar Patti. The said field is by the side of Kande Sagaon road. This field is on the left side of the road while going to Sagaon. This field is about 1000 feet from the Panand Road.

10. He waited for his maternal uncle to return but his maternal uncle did not return for quite some time. He therefore took his meals in that house at 1.30 p.m. After meals, he waited in the house for 10 to 15 minutes. He then went to the house of his eldest maternal uncle after telling the wife of his second maternal uncle that he was to return to his village after seeing his second maternal uncle (deceased Shivaji) in the field. The house of his eldest maternal uncle is 250 ft away from the house of second maternal uncle. He waited for some time in the house of eldest maternal uncle. Babasaheb Patil his wife and his sons, his youngest maternal uncle and his wife and children live in that house. At about 2.30 p.m after taking leave from his maternal uncles and family members in that house he went to Achar Patti field. His maternal uncle was sitting there in the land. He went to the field walking the distance and via the fair. He had talks with his maternal uncle for sometime and then

he told him that he was leaving from his village. His maternal uncle said that, he was to return home and asked him that then he should go there after. He and his maternal uncle then boarded the tractor. His maternal uncle was driving the tractor and they started returning to his house. In the tractor he was sitting on the left side of his maternal uncle. They came upto the western panand road and had turned to the south. As they turned the three accused persons namely Jalinder Patil, Prakash Patil and Niwas Patil all of sudden came in front of them. Parkash was holding rifle, Jalinder was having with him an axe and Niwas was carrying a stick. Prakash asked them to stop the tractor at the point of the rifle. They were compelled to stop the tractor. In the mean while Jalinder and Niwas started assaulting them by means of stick and axe. They bet him and his maternal uncle. Jalinder gave 2-3 forcible blows with the axe on the head of his maternal uncle from the back side. His maternal uncle fell unconscious reiling of his shoulder. The three accused persons forced him to take the tractor towards their house. He drove the tractor to their house. The house of the accused is about 150 to 200 ft. away from the place where they were first assaulted. They asked him to halt the tractor in front of their house. They asked him to get down from the tractor. He got down from the tractor, after he got down Niwas pointed a sword at his back and asked him to stand quiet. He stood by the side of the road. That time Jalinder and Praksh beat his maternal uncle with sticks and axe. When the accused were assaulting

his maternal uncle he was sitting on the driver seat on the left and had his head resting on the steering. He was unconscious. Niwas also dropped the sword on the tractor and started assaulting his maternal uncle with sticks and Jalinder assaulted him with axe. His maternal uncle received the blows on his head. There were bleeding injuries on the head of his maternal uncle. Accused persons were shouting while assaulting and then police were seen coming. Babasaheb Patil and Vasantrao Patil also come there. Police and his said two maternal uncles came in Sutar Galli from east. Police were first to come and they were followed by his maternal uncles. When they come upto a distance of 35 ft. from the tractor one or two policemen came ahead and others stopped his maternal uncles there only. On seeing the police the accused persons dropped the weapons and ran away. The accused persons ran into their house. After sometime his two uncles Babasaheb and Vasantrao and policemen came to the tractor. His second maternal uncle was found dead. Police asked him to lodge complaint at Shirala Police Station. He and Babasaheb Patil then went to Shirala to lodge complaint. They went to Police Station to lodge the complaint orally and it was reduced into writing. He signed the complaint and he was sent to Shirala Hospital with a constable. Complaint dated 18.04.1994 shown to him. Due to assault he had received injuries on his hands, legs and on his back and so he was sent to the hospital.

11. He further stated that, in the hospital, he was being treated by the doctor and when he was still under treatment PSI came there and took him to the place of incident. Police drew inquest panchanama and sent the dead body for post mortem examination. Police then drew the panchanama of the place of incident and searched the house of the accused persons. He was present for that search. Some weapons were recovered in the search of the house of accused persons. They went to the Grampanchayat Office. His clothes i.e. shirt and pant were blood stained. Police seized the same in Grampanchayat Office. The axe, sticks and rifle as well as the sword shown to him before the Court are the same articles with which they were assaulted by the accused persons.

12. We have carefully perused the evidence of Dhananjay (PW 6). He has named three accused persons namely Jalinder Patil, Prakash Patil and Niwas Patil. He has also stated that, Prakash was holding rifle in his hand, Jalinder was having axe and Niwas was carrying stick. Prakash asked them to stop the tractor at the point of the rifle. Thereafter, tractor was stopped. In the meanwhile Jalinder and Niwas started assaulting his maternal uncle Shivaji (deceased) by means of sticks and axe. Jalinder gave two, three forcible blow with the axe on the head of his maternal uncle from the back side thereafter his maternal uncle fell unconscious railing of his shoulder. Then the three accused persons forced Dhananjay (PW 6) to take the tractor towards their

house, and thereafter he drove the tractor to their house. The house of the accused as stated by him is at about 150 to 200 ft. away from the place where they were first assaulted. They asked him to halt the tractor in front of their house. He was asked to get down from the tractor, and after he got down Niwas pointed sword at his back and asked him to stand quite. Then he stood by the side of the road and Jalinder and Praksh beat his maternal uncle with sticks and axe. When the accused were assaulting his maternal uncle he was sitting on the driver seat on the left and his head resting against steering. Then his maternal uncle became unconscious. He further deposed that, Niwas dropped the sword on the tractor and started assaulted his maternal uncle with sticks and Jalinder assaulted him with axe. His maternal uncle sustained bleeding injury due to assault on head. It is stated by him that, accused persons were shouting while assaulting and then police were seen coming to the scene of offence. Babasaheb Patil and Vasantrao Patil also came at the spot. They came in Suttar Galli from east and on seeing the police, accused persons dropped weapons and ran away. It is important to note that, though the prosecution examined three witnesses who actually witnessed the incident, nevertheless none of three eye witnesses or any other person who gathered on the spot tried to catch hold the accused persons. He has also stated in his evidence that, after assault accused persons dropped their weapons on the spot and ran away. He has not stated that, his two maternal uncles namely

Babasaheb and Vasantrao tried to chase the accused persons so as to catch hold them. Neither police personnel who came at the place of incident tried to chase the accused so as to catch hold of them. It would be also interesting to see that, whether the weapons which were according to these witnesses were left/dropped by these accused at the spot were actually recovered by the investigating officer. In his evidence he has nowhere stated that, after climbing on the tractor accused persons assaulted his maternal uncle Shivaji (deceased). He has also not stated that, he knew driving the tractor or he has some driving license in his possession. He is the star witness of the prosecution case. If the assault by accused is by standing on floor/land on the head of maternal uncle of Dhananjay (PW 6), it would have been appropriate for the prosecution to lead evidence to find out whether it was possible for the accused to assault Shivaji (deceased), who was sitting in the tractor on his head. But there is no evidence to that effect led by the prosecution.

13. We carefully perused the cross examination of Dhananjay (PW 6). He stated that, on the north of the house of Shivaji (deceased) there was road. He stated that, all his three maternal uncles are known as "Sawkar" (money lender) in the village. He stated that, while recording statement by police under Section 161 of Cr.P.C., he stated that, he knew the accused persons since long. However, he cannot state why the said fact stated by him

has not appeared in his police statement. He stated that, Shivaji (deceased) was tall and robust person. He was also a wrestler. A suggestion was given to this witness that, on the way to Achar Patti he came across number of persons going to village Kande on foot, on bicycle, in bullock cart and other vehicles. He stated that, he came across only two to three persons. He denied a suggestion that, he also received blows on head, neck and shoulder. He further stated that, assault continued for about a minute and thereafter Shivaji (deceased) became unconscious. No body gathered at the place of the assault during and after the assault. He did not see any person passing by in their journey from the first place of incident upto the second place of incident. He stated that, none of the accused persons gave blows to the Shivaji (deceased) after climbing on the tractor. He did not narrate the incident to the police at that place, and his two maternal uncles followed the police, but they were not accompanied by any relatives or by anybody. We will make comments on evidence of this witness at the later stage, when we will discuss the evidence of other witnesses.

14. The prosecution examined Shankar Jambu Nagare (PW 4). He stated in his examination in chief that, he has been attached to Shirala police station since 1988. Since May, 1994 he has been promoted as Assistant Sub Inspector. Prior to his promotion he was designated as police head constable.

Since 1989 he worked as Nagadi and Karakun as Beat Havaladar. Beat No. 2 was assigned to him and village Kande, Mangale, Devavadi are in his beat. He know the accused persons. Accused No. 2 Prakash has a licensed gun. So also in the year 1990-91 sandle wood was recovered from the vasti of the father of the accused persons. On these counts he knows the accused persons, he has very often visited the house of the accused persons in that connection. He stated that, the incident occurred on 18.04.1994. From 17.04.1994 there was a fair at village Kande. He himself police head constable, Kulkarni Police Officer Bhor (1354), police constable Ralekar (1300), police constable Rajput were on bandobast duty in that fair. On 18.04.1994 at about 3.30 pm or 3.45 pm, he was infront of the grampanchayat office. There he learnt that, there was quarrel in Sutar galli. Sutar galli is about 200 or 250 feet from the grampanchayat office. He himself and head constable Kulkarni rushed to Sutar galli on receiving information and at that time other policemen followed them. In Sutar galli they saw a tractor standing infront of the house of the accused. That tractor was facing to east. They entered the Sutar galli from east. They saw that accused Jalinder, Prakash and Niwas were assaulting the person sitting on the driving seat of tractor. All three accused persons were near the tractor. Jalinder, Prakash and Niwas who were assaulting the persons are the accused before the Court. The three accused persons were assaulting that person with sticks and axe. He states that, he does not remember as to which

one of them was assaulting with which weapon. They were in uniform and on seeing them three accused persons ran away. They went to the place and found that the person sitting on the driving seat was dead. He knew the deceased Shivaji Anandrao Patil. In the meanwhile one Babasaheb Patil and his younger brother who are brothers of deceased arrived there. There were injuries on the dead body. There was blood on the head, neck and clothes of the deceased. There were two sticks lying on the road. They called police force from Sangli. When they entered the Sutar galli the number of person he had seen, and those were three accused persons. Deceased and one more boy by name Dhananjay, was standing by the side of road and he was in frightened state. Dhananjay had received injuries. He asked Dhananjay and brothers of deceased to lodge complaint in the police station.

15. Shankar Nagare (PW 4) stated that, he was present at village Kande alongwith his other colleagues and alleged incident occurred on 18.04.1994. He stated that, there was fair at village Kande. It goes without saying that, there was a fair at village Kande there must be huge crowd of people to participate in the said fair. He has stated that, he was standing on the front of office of Grampanchayat, when he learnt about quarrel in Suttar Galli. He has not stated in his evidence that, who has informed him about said quarrel. As stated by him, it is relevant to mention that, the Suttar Galli is

about 200 or 250 feet from the Grampanchayat office. He alongwith head constable Kulkarni reached to the Suttar Galli on receiving information about quarrel, and they saw a tractor standing in front of the house of the accused. That tractor was facing towards east. He entered the Suttar Galli from east. Then he saw that accused Jalinder, Prakash and Niwas were assaulting the person sitting on the steering of the tractor, and Dhananjay (PW 6) was standing near the tractor. However, he stated that, he does not remember as to which one of them assaulting with which weapon. It is important to note that, though he stated that, he saw those accused persons and after seeing him and his colleague, the accused persons ran away, he has not stated in his evidence that, he himself or his colleague tried to chase the said accused persons, so as to catch them. In normal course they would have chased the accused persons so as to catch them. On the contrary, he admitted in his evidence that, he did not made attempt to chase the accused persons. It reveals from his cross examination that, he went to the said village on 17.04.1994 at about 9.00 am to 10.00 am for bandobast and thousands of devotees from nearby village Kande visits the temple during the fair. Though he admits that, there was crowd on the date of incident, nevertheless he stated that, he did not had any difficulty while going through the crowd at the spot of incident, which cannot be believed. He also stated that, before proceeding to Suttar Galli from Grampanchayat office he has instructed head constable Kulkarni to disperse

the crowd, therefore, it is abundantly clear that, on the date of incident there was crowd in the said village. Therefore, a assertion of this witness that, he easily reached at the spot of incident through crowd cannot be believed. As already observed, from whom he learnt about quarrel in Suttar Galli has not been stated by him. Neither he has stated approximate time took by him to reach to the spot. We will further make comments about this witness at the later stage. Since at this stage, we would like to discuss the evidence of Babasaheb Patil (PW 8).

16. The prosecution further examined Babasaheb @ Dinkarrao Anandrao Patil (PW 8). He deposed in his examination in chief that, deceased Shivaji was his younger brother . He knows the accused persons who are present before the Court. The accused persons are from his brotherhood. Deceased Shivajirao used to use the western side road to go to his land Achar-Patti and to return from the land.

On 18.04.1994 at 3.30 pm he was present in his house. Some villagers informed him that his brother was being beaten at the corner of Suttar Galli. He then rushed to Sutar Galli. He entered the galli from the eastern side. After crossing a distance of 100 or 150 feet in Sutar Galli. He saw that his brother was sitting in the tractor and he was being assaulted by the accused persons. He saw that accused persons were assaulting him with sticks

and axe. Accused Jalindar was holding an axe in his hand while accused Prakash and Niwas had sticks with them. Two police men were walking ahead of him. They stopped him at a distance of 40 feet from the tractor. The accused persons then went in their house. Before going in the house Jalinder threw his axe on the tractor. He also saw nephew (sister's son) Dhananjay standing some 2-3 feet away from the tractor on the west side of the door of the house of the accused persons. He was injured and there was blood on his clothes. On seeing PW 8 Dhananjay came to him and then he himself, Dhananjay and head constable Nangare again went to the tractor. He saw that his brother was dead. He then took his nephew with him and went to Shirala police station to lodge a complaint. His nephew lodged the complaint at Shirala Police Station. He stated that, there is a back door to the house of the accused persons.

17. He also admits in his evidence that, villagers were present at the spot and villagers informed him that his brother is being beaten at the corner of Suttar Galli and then he reached to the Suttar Galli. He entered the Suttar Galli from the eastern side after crossing distance of 100-150 feet in Suttar Galli and he saw that, his brother was sitting in the tractor and he was being beaten by the accused persons. He has also stated the role played by each of the accused person and which weapon they were holding in their hands. He

also saw Dhananjay (PW 6) standing 2-3 feet away from the tractor. On seeing Babasaheb (PW 8), Dhananjay came to him and then he himself, Dhananjay (PW 6) and head constable Nangare went to the tractor and then they saw that Shivaji (deceased) is already dead. Then they went to Shirala Police Station to lodge a complaint. In his examination in chief he has nowhere stated that, he tried to chase and catch hold the accused persons. Said conduct of this witness does not appear to be normal when his brother was being beaten by the accused. In normal course after seeing that accused persons are beating his brother, he should have immediately rushed near the tractor, so as to rescue his brother.

During his cross examination he stated that, he cannot give the name of person who informed him that, his brother was being beaten up. He states that, he did not see people standing in the crowd on the east of the tractor. He deposed that, in his statement recorded by the police he had stated that accused Jalinder had thrown his axe on the tractor before leaving the place. However, he cannot tell the reason why said version has not appeared in his police statement.

As already observed he was not able to tell the name of the villager who informed him about his brother is being beaten by the accused. Secondly, he is not truthful witness when he said that, he did not see people standing in the crowd near the place of incident. Thirdly, his normal conduct

would have been to rescue the accused to save his brother. Fourthly, in normal course he should have chased the accused to catch hold of them. The prosecution has not brought on record, the time taken by this witness to arrive at the spot of incident. If it is assumed for a moment that he immediately came to the spot, nevertheless it was not possible at least for 15-20 minutes, if according to the version of this witness he saw accused beating his brother Shivaji (deceased). It means the accused were assaulting Shivaji (deceased) for more than 15 minutes with weapons like sword, axe and sticks. However, total injuries stated by Dr. Vilas Raval (PW 10) are only 13-14. There should have been much more injuries inflicted by accused if they were continuously assaulting Shivaji (deceased) for more than 15-20 minutes. Therefore, version of this witness does not appear to be truthful, and it would be unsafe to place reliance on his evidence.

18. The prosecution has examined Ashadevi Shivajirao Patil (PW 7) who is wife of Shivajirao Patil (deceased). In her examination in chief she has stated that, deceased Shivajirao was her husband. She know the accused persons. She did not know the brother of the accused persons who was murdered. In the year 1990 her husband received a letter in which there were threats given to him that, he would not be kept alive. The letter muddemal article no. 26 shown to her is the same received through post on their house

address. She cannot say as to, in whose handwriting the contents of letter are written. There is no signature on the letter.

She further stated that, in the year 1991 they received another letter. That letter was addressed to her husband. That was also an inland letter. The letter was received by post. That letter also carried similar threats to her husband. She identified the letter muddemal article no. 25. She does not know in whose handwriting the contents of said letter are written.

19. Ashadevi Patil (PW 7) who is wife of Shivaji (deceased) was not eye witness to the incident. She has only stated that she received inland letter i.e. article no. 26. The said letter was received through post on the address of her husband at their house. However, she stated that, in whose handwriting the said letter is written is not known to her. There was no signature on the said letter. She also stated that, in the said letter threats were given to her husband. In her cross examination she stated that, Shashikala is the first wife of his husband Shivaji (deceased) and at the relevant time said Shashikala was alive. The evidence of this witness is not much useful to the prosecution.

20. The prosecution examined Amruta Rama Mane (PW 9). In her examination in chief she stated that, from 13/01/1994 to 04/09/1994 she was attached to Shirala police station as P.S.I.. She was present in the Shirala police

station on 18/04/1994. On that day, at about 4.15 pm, Dhananjay Patil and Babasaheb Patil came at the police station. Dhananjay reported that his maternal uncle Shivajirao was murdered. She took charge of the station diary. She had the report of Dhananjay recorded by her writer as per the say of Dhananjay. She obtained signature of Dhananjay on that report. She also signed the same as the recording officer. On the basis of the FIR lodged by Dhananjay she registered the offence in the station diary at C.R. No. 23/94. Accordingly she made endorsement on the FIR and signed the same. She sent a copy of the FIR to the Court on the very same day. She sent a wireless message to the superior officers about registration of offence. She also sent an express report immediately after recording the complaint. She referred Dhananjay to medical officer Shirala as he was injured. She sent a constable to photographer Mirajkar to be ready to go to Kande. She herself and the staff then visited the house of Mirajkar in a government vehicle. They collected Mirajkar in their vehicle and then went to the Government dispensary Shirala where complainant was under the treatment. They took the complainant in the vehicle. All of them then visited village Kande. At village Kande the complainant showed the place of incident in Sutar galli. At Kande in front of the house of the accused persons there was a tractor bearing No. MTK-9145 standing with its face towards east. On the tractor at the steering there was a dead body and complainant Dhananjay identified as that of his maternal

uncle Shivajirao. She called two panch witnesses for inquest. She also instructed the photographer to take photographs and he started taking photographs. The dead body was taken down from the tractor and was kept on the road near the tractor. Inquest was held. She then sent the dead body to Shirala, Medical Officer for post mortem examination through a constable.

She further stated that, she then called two other persons as witnesses for the panchnama of the place of incident. Complainant showed the place of incident and she drew a detailed panchnama of the place of incident. She herself and the panch witnesses signed the panchnama. At the time of panchnama the weapons like axe, sword, dagger, sheath, a liquor bottle. Blood and blood stained earth were recovered from the tractor. Blood stained earth and ordinary earth samples were collected from the ground below the tractor. There were 11 stones found in the tractor and one under the tractor and those were attached to panchnama (exhibit.14), which bears her signature and that of panch witnesses.

She stated that, then she called two more panch witnesses and in their presence she took search of the house of the accused persons. Pandurang Patil- father of accused persons was present in the house. They offered him to take search of them, but he declined to take their search. She herself and the panch witnesses then entered the house alongwith complainant and Pandurang Patil. In the first room there were photographs to the east-west wall

facing towards south. One of the photograph on the wall having the name 'Kailaswasi Babasaheb Pandurang Patil' and on the glass of the photo frame there was a blood mark from nose upwards to the forehead. She also attached photographs of the accused Prakash and Jalinder from the said wall alongwith the certificate of Prakash. There were three blood stained sticks found in the north west corner in that room. Those sticks were identified by the complainant as the same weapons with which the accused persons assaulted. Three photographs and three sticks were attached and detailed panchnama was drawn. She herself and panch witnesses signed the same. The attached sticks and photographs were sealed with signature of herself and panch witnesses. Panchnama Exh. 16 shown to her which bears her as well as signature of panch witnesses.

She then attached the clothes on the person of the complainant in the Grampanchayat office (exh. 9). She attached clothes because there were blood stains on the same. The clothes were seized with signature of herself and that of panch witnesses. She recorded statements of complainant and Babasaheb and A.S.I. Nangare and other witnesses. She searched for the accused persons. She nabbed accused Niwas. She took him to the police station and arrested him under a panchnama in presence of panch witnesses at 23.30 hours.

On 19.04.1994, she recorded statements of 36 persons including

Ashadevi Shivajirao Patil After post mortem examination, the clothes of the deceased were produced by constable Rajput before the P.S.O. Shirala. The P.S.O. attached the same under a panchnama (at Exh.10) and handed over the same to her. She took search for accused Prakash and Jalindeer but they were not traced. At the relevant time accused Prakash was serving in Warnanagar Warna College. She sent a letter to the principal of the college to inquire whether Prakash had attended the college on 17/04/1994 and onward. The principal replied immediately that accused Prakash was present on duty on 17/04/1994 and that on 18/04/1994 was holiday, and further that on 19/04/1994 Prakash was absent. She received that letter through a constable. She identified the letter dated 19/04/1994 shown to her. It purports to bear signature of the principal of the college. She put an endorsement receipt of the latter and the date thereof with her signature.

She stated that, on 20.04.1994 she sent a constable to Shahu Mill Kolhapur in search of Jalinder as he was working there. She had given a letter with the constable. The constable returned with a letter from the Manager of Shahu Mill informing that from 15/04/1994 onwards accused Jalinder had not reported on duty. She put endorsement on that letter about the receipt of the letter and date with her signature. She referred accused Niwas to Medical Officer, Shirala to collect sample of his blood. She recorded statements of panch witnesses Rajaray Bapusaheb Takale and Niwasaheb Janardhan Patil

and 7 others. She collected the birth certificate of the deceased. Certificate dated 21/04/1994 shown to her which bears her signature, which is issued by Head Master Z.P. School No. 1, Kande (exh. 43).

On 21/04/1994 she referred the complainant to the medical officer Shirala to collect sample of his blood. On that day, she sent all the attached case property as well as as the blood samples of accused Niwas and complainant Dhananjay and the viscera of the deceased to C.A. office through constable Rajput. She had given two covering letters with the constable alongwith office copies. Constable handed over the property and the letter at C.A. office Pune and returned to the police station on 23/04/1994 alongwith acknowledgment of C.A. office, about receipt of articles in the form of signature and endorsement on the office copy from the concerned clerk on letter dated 21/04/1994. She received the reports from the C.A. office. The same are produced on record.

She received post mortem notes and certificate of injuries received by the complainant from Medical Officer Shirala. She attached the same in the case papers. She made search for the absconding accused persons till 23/04/1994, everyday but they were not traced. On 25/04/1994 Ashadevi Shivajirao Patil produced two threatening letters received by her and the deceased. She attached the same under panchnama (Exh.18). She identified the letters (Exh. 33, 34), which were attached under panchnama. She recorded

statement of Ashadevi Patil, Maruti Patil and others. Photographer Mirajkar produced the photographs. She recorded his statement. She wrote a letter to Tahsildar Shirala to have the map of the place of incident. She also wrote letter to grampanchayat, Kande for registering the death of Shiravijaro Patil. She took search for the two absconding persons till 06/05/1994 but they were not traced. They were traced on 07/06/1994 and were arrested on that day.

Accused Prakash produced the rifle license and two rounds. She attached the same under panchnama (Exh.11) on 28/06/1994. She received C.A. report on 03/06/1994. She charge sheeted all of the accused persons in the court of JMFC, Shirala. Chargesheet dated 30/06/1994 shown to her which bears her signature. She stated that, the contents of the same are true.

She further stated that, Shirala is 10 Kilometers away from village Kande. During the investigation it transpired that both sides had their rival groups and that the witnesses who had seen the incident did not come forward.

21. Amruta Mane (PW 9) stated that, Dhananjay (PW 6) came to police station on 18.04.1994 at about 4.15 pm., alongwith his maternal uncle Babasaheb Patil and reported that, his maternal uncle Shivaji (deceased) was murdered and thereafter she made entry in the station diary and C.R. No. 23/1994 was registered. Then she referred Dhananjay (PW 6) to the medical

officer Shirala, as he was injured. They took the complainant i.e. Dhananjay (PW 6) in the vehicle and then all of them visited village Kande. It is stated that, informant i.e. Dhananjay (PW 6) showed the place of incident. She stated in his evidence that, while conducting spot panchnama weapons like axe, sword, dagger, sheath, a liquor bottle was recovered from the tractor. At this stage, it needs to be mentioned that how those weapons and liquor bottle came in the said tractor, is not brought on record by the prosecution.

It appears that, sticks were recovered from the house of accused persons and those sticks were attached. She attached clothes of the complainant which were blood stained. It appears from her evidence that, while preparing spot panchnama, inquest panchnama and other panchnamas Dhananjay (PW 6) was present. In her examination in chief no where she stated that, weapons like axe, sword, sticks and rifle was recovered from the spot of incident. All the three alleged eye witnesses stated that on seeing Shankar Nagare (PW 4) and his colleague police constable, accused ran away dropping/leaving weapons in their hands on the spot of incident. If it was so, then it was but natural to recover the said weapons from the spot of incident. If the alleged incident had happened at 3.30 pm., and if the spot panchnama was immediately carried out within two hours, there is no reason forthcoming on record that why the said alleged weapons which were used by the accused in the commission of offence were not recovered/seized from the spot of

incident. It further appears from her evidence that, she recorded statements of 36 persons on 19.04.1994, however, upon perusal of the notes of evidence it is clear that no independent witness has been examined by the prosecution who was present on the spot of incident at the time of actual happening of alleged incident.

She did not state in her evidence about blood group of Shivaji (deceased). Her evidence shows that, accused Prakash produced rifle license and two rounds and she attached the same. However, she has not stated that, said rifle was recovered from the spot when all three eye witnesses stated that, accused on seeing Shankar Nagare (PW 4) and his colleague head constable ran away by leaving/dropping weapons at the spot. She also stated in her deposition that she did not make any report to the superior that, witnesses were not coming forward to depose.

22. She admitted in her cross examination that, on 17.04.1994 there was fair at village Kande and she was aware that she had deployed 15 member team headed by head constable for bandobast for the fair at village Kande. Two-three policemen were also equipped with rifles. She also visited village Kande on 17.04.1994. She admitted in her cross examination that, on 18.04.1994 the event of wrestling was scheduled at 4.00 pm. Therefore, it is abundantly clear that, there was crowd on 17.04.1994 and also on 18.04.1994

in village Kande. It also appeared in her evidence that, population of adjoining village namely Sagaon is more than ten thousand, and therefore, it was but natural that villagers from said village might have also attended the fair at village Kande. Her evidence clearly demonstrated that there was crowd on 17.04.1994 and 18.04.1994 in village Kande. As stated by Shankar Nagare (PW 4) and Babasaheb Patil (PW 8) the spot of incident was only 100 feet away from the place where they learnt about quarrels going on in Suttar Galli. She stated in her cross examination that, Dhananjay (PW 6) had not stated while recording his complaint that, he knew the accused persons since long. Admittedly, Dhananjay (PW 6) was not from village Kande and said village is place of his maternal uncles. Therefore, prosecution should have brought on record clear evidence suggesting that, Dhananjay (PW 6) knew the accused persons in absence of his statement in the FIR. It appears that, first time in the Court Dhananjay (PW 6) mentioned that, he told while recording his complaint that, he knew the accused persons since long.

23. Upon careful perusal of panchnama of scene of offence and panchnama of search of house of the accused person (Exhibit-16) it is clear that, both the panchnama's were drawn in the presence of Dhananjay (PW 6). His presence is marked in both panchnama's (Exhibit-15 and 16). Panchnama of scene of offence (Exhibit-14) is shown to have been drawn between 18.05

and 19.00 hours, and panchnama of house search is shown between 19.15 to 20.00 hours. Prior to conducting said panchnama's it appears that, there is also inquest panchnama which has been drawn between 17.15 hours and 18.00 hours. In this panchnam also presence of Dhananjay (PW 6) is marked. The evidence of Amruta Mane (PW 9), so also record maintained by police in relation to the case in hand shows appearance of Dhananjay (PW 6) from 5.15 pm onwards at village Kande. However, evidence of Dr. Vilas Raval (PW 10) shows that, Dhananjay (PW 6) was at the hospital at 5.45 pm., on 18.04.1994 i.e. the date of incident. Therefore, the Trial Court has drawn inference that, Dhananjay (PW 6) cannot be present at the same time before medical officer and also at village Kande.

24. If the evidence of three eye witnesses, so also investigating officer is considered in its entirety, it raises serious doubt about truthfulness of the incident as stated by them. According to all the three eye witnesses weapons i.e. rifle, sword, axe, sticks etc., were dropped/left by the accused at the spot of incident. However, there is no recovery of said weapons from the spot of incident. Dhananjay (PW 6) stated that, there was no crowd in the vicinity where the incident had taken place and he saw only two to three persons. Shankar Nagare (PW 4), so also Babasaheb Patil (PW 8) have stated that, there was crowd since there was fair on 17.04.1994 and also on 18.04.1994 in village

Kande. If the evidence of Shankar Nagare (PW 4) and Babasaheb Patil (PW 8) is considered in its entirety, it is difficult to believe that they immediately arrived at the spot, since already crowd had gathered near the spot of incident. As rightly inferred by the learned Trial Court that, it might have taken 15-20 minutes for both of them to arrive at the spot of incident. If their version is accepted, in that case if the assault by three accused person would have been continued for more than 15-20 minutes, then Shivaji (deceased) would have received hundreds of injuries, since according to the prosecution case, accused persons were having axe, sword, sticks and also rifle. If the evidence of Dhananjay (PW 6) is carefully perused, he has stated that, after blows were given by Jalinder by axe on the head of Shivaji (deceased), thereafter assault continued for a minute. If it is so, then certainly Shankar Nagare (PW 4) and Babasaheb Patil (PW 8) have not seen the actual incident of assault by accused persons to Shivaji (deceased). It was but natural for Shankar Nagre (PW 4) and his colleague head constable to chase accused persons if they have really seen the accused and further to catch hold them. However, Shankar Nagare (PW 4) has not stated that he made such an attempt to chase the accused persons. Babasaheb Patil (PW 8) who is brother of Shivaji (deceased) also did not make any attempt to rescue his real brother or to chase the accused when they ran away by leaving/dropping weapons at the spot of incident. The entire prosecution case is surrounded by suspicious circumstances and it is difficult

to base the conviction on such shaky evidence.

25. The learned Trial Court did consider the evidence in its entirety and recorded the finding that, on the date of incident i.e. 17.04.1994 and 18.04.1994 there was a fair of Goddess Jyotiba at village Kande. Admittedly, thousands of people from nearby village gathered for fair as well as for wrestling match scheduled on 18.04.1994. All roads leading to village Kande were full of traffic. On busy road i.e. of village Kande and Sagaon the land "Achaar Patti" belonging to Shivaji (deceased) is situated. The learned Trial Court observed that, panchnama of scene of offence (Exhibit-45) virtually makes a reference to the high traffic on the said road, as a result of which there were no marks of commotions available at the place. Therefore, the Trial Court observed that, the complainant cannot be believed when he says that when he and deceased were being assaulted by accused persons with sticks and axe, there was nobody on the road, and that when the prosecution case is that, Prakash had gun and he had pointed the gun at the tractor at the first place of incident, in that case how the said gun was not used by the Prakash in the alleged incident. The Trial Court also observed that, it is difficult to believe that, Prakash did not take part in the actual assault in the first place, but he assaulted Shivaji (deceased) by means of stick in the tractor, in front of his house. Therefore, it is observed by the Trial Court that, it is not known where

Prakash had kept his gun when he was assaulting the deceased by stick. The gun was not seized or recovered from the place of incident by the prosecution, if according to the prosecution witnesses said gun was left by Prakash at the spot of incident. The Trial Court has also observed that, if the sticks were used by accused persons to assault Shivaji (deceased), and if they dropped the said sticks and weapons at the tractor itself, or at the spot of incident, then how those sticks and weapons were not recovered and seized from the place of incident. When the Shankar Nagare (PW 4) said that, he kept one of his colleague at the spot of incident, it is not likely that anybody would take out the stick from the road and bring the same in the house. The Trial Court has also observed that, if the incident would have lasted for long period, in that case number of blows would have been also more. The Trial Court also noted that, Dhananjay (PW 6) has stated that, none of the accused person climbed on the tractor to give blows to the Shivaji (deceased). The Trial Court has also observed that, number of persons had seen the incident before Shankar Nagare (PW 4) and Babasaheb Patil (PW 8) reached to the spot of incident. The investigating officer has recorded the statement of number of persons, however, no independent witness has been examined by the prosecution. It is also observed by the Trial Court that, if the police record shows that, from 5.15 pm., onwards Dhananjay (PW 6) was at village Kande at the time of conducting various panchnamas, then at 5.45 pm, on the very same day, he

cannot be present at two places at same time. The Trial Court has also observed that, weapons sword, axe as well as bamboo sticks were having blood of 'O' group. As a matter of fact there was no assault by sword or axe on the person of Dhananjay (PW 6). These weapons were used against the Shivaji (deceased) only. There was no blood of group 'B' on these weapons. The Trial Court has also observed that, the existence of sticks in the tractor is not explained by the prosecution witnesses. Similarly, the sword and the dagger were admittedly of the deceased. These articles were in the tractor itself, as was bottle of liquor. The prosecution alleged that, there was blood on the road near the tractor, and there was also some blood on the walls of house of one Shivaji Namdeo. But no sample of that blood was taken by the investigating officer. The Trial Court has also noted that, the prosecution has not established motive for such commission of alleged offence by the accused. It appears that, it is also observed by the Trial Court that, all three accused are in service/employment at three different places. The aforesaid findings recorded by the Trial Court are clearly keeping in view the evidence brought on record by the prosecution, and there is no perversity as such.

The accused persons in their defence pleaded that, Shivaji (deceased) was a gunda. He used to lend money. He had many enemies. He always used to have quarrel with people. Some other persons killed him and brought the dead body to their house and forcefully involved them. Said

defence taken might be probable in view of the fact that, the weapon like axe, sword, dagger, sheath, a liquor bottle were in the possession of Shivaji (deceased). In the tractor also there were stones and how those stones were came in the tractor is not explained by the prosecution. It was also come in the evidence of Dhananjay (PW 6) that people used to call his maternal uncle 'Sawkar' (money lender). There is every possibility of roping in the present respondents in the alleged offence, since according to the prosecution case, the brother of accused was killed by Shivaji (deceased) and his associates in the year 1988.

26. In the light of discussion in foregoing paragraphs, we are of the considered view that, the findings recorded by the Trial Court are in consonance with the evidence brought on record, and there is no perversity as such. The learned Trial Court has taken a plausible view. Since we are dealing with the appeal against acquittal and once plausible view is taken by the Trial Court and there is no perversity in the findings recorded, there is no reason for the appellate Court to cause an interference in the order of acquittal. In that view of the matter, the appeal is devoid of any merits and same stands dismissed. The bail bonds, if any, of respondents stand cancelled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)