

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.204 OF 2014

Chandrakant @ Gotya Ramdas PawarAppellant

Versus

The State of MaharashtraRespondent

Mr. S.T. Bhosale, Advocate for the Appellant.

Mr. A. Sait, APP for the Respondent-State.

CORAM : RANJIT MORE AND SURENDRA P.TAVADE, JJ.

DATE ON WHICH JUDGMENT IS RESERVED : JANUARY 28, 2020

DATE ON WHICH JUDGMENT IS PRONOUNCED: FEBRUARY 28, 2020.

JUDGMENT (Per S.P. Tavade, J.):

1. The appellants/original accused Nos.1, 2 & 4 to 6 have preferred this appeal to challenge the Judgment and conviction order passed against them by the learned Ad-hoc Additional Sessions Judge, Solapur in Sessions Case No.246 of 2011. The appellants were charged for the offences punishable under Sections 143, 147, 148, 149, 302, 324, 323, 504 and 506 of Indian Penal Code, 1960 (hereinafter referred to as the IPC). The appellants are held guilty under Section 302 read with Section 149 of the IPC and sentenced to suffer life imprisonment and to pay fine of Rs.3,000/- each, in default of payment of fine, they are directed to undergo rigorous imprisonment for six months. They are also convicted for the offence punishable under Section 148 of the IPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- each, in default of payment of fine they are directed to undergo rigorous

imprisonment for three months. The appellants are also convicted for the offence punishable under Section 506 read with Section 149 of IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- each, in default of payment of fine they are directed to undergo rigorous imprisonment for three months. The above conviction order is under challenge.

2. The facts giving rise to the prosecution against the appellants can be summarised as under:-

(A) Informant/Anil Pawar is son of deceased Aruna Pawar. Informant/Anil is resident of Shinde Wasti, Sayyad Warwade, Tal. Mohol, Solapur. He was residing along with his mother/deceased Aruna, two brothers, sister-in-law and nephews. Appellant No.1 is step-brother of informant. Appellant No.1 was residing nearby the house of informant along with his three wives and children.

(B) Appellant Nos.1, 2 & 4 to 6 and informant belong to Pardhi Community. On 23.05.2011 at about 8.00 p.m. appellant No.1 had called meeting of Community Panchayat. In the said meeting, informant, his family members were called. Appellant No.1 had demanded idols of god from deceased/Aruna. There was quarrel on the said count between deceased/Aruna and appellant No.1. Appellant No.1 had also raised question as to why she (deceased/Aruna) resides with son-in-law. The said incident was reported to Mohol Police Station by appellant No.1. Since the said incident, appellant No.1 was having grudge against deceased/Aruna.

(C) On 02.06.2011 at about 8.00 p.m. informant, his wife-Mandakani, his sister-Manisha, her husband Vinod Shinde and deceased/Aruna had non-veg dinner in the house of Sudhir Kale/son-in-law of deceased/Aruna. After dinner, informant and deceased/Aruna were watching TV. Rest of the family members went to bed. The door of the house was open. While watching TV, informant and deceased/Aruna were slept. Around 11.30 p.m., stone came into house of the informant through window, hence, informant got up. Appellant No.1 along with Harkun Ramraya Kale (absconding), Kamraya Harkun Kale (absconding), Chandu Jalindar Pawar (appellant No.5), Uttam Jalindar Pawar (appellant No.2), Santosh Uttam Pawar (appellant No.6), Madhu Meharban Pawar (appellant No.3), Samir Khan (appellant No.4) and Ajay Pawar (absconding) entered into the house. They were armed with swords, Sattur and sticks, wooden stick. On seeing the appellant No.1 and others, the informant got up, but appellant No.1 put sword on his neck and asked him to keep quite and directed him to seat in the corner of the room. Meanwhile, Madhu Pawar (Appellant No.3) put knife on the stomach of the informant and abused him. On hearing commotion, sister Manisha and his brother-in-law Vinod Shinde came in the first room. Appellant No.6/Santosh Uttam Pawar assaulted Vinod Shinde by stick on his head, left leg and left shoulder. On seeing the incident, deceased/Aruna went to the second room. Appellant Nos.1, 4, 6 and absconding accused Harkun Kale, Kamraya Kale, Ajay Pawar followed deceased/Aruna and assaulted her by weapon in their hands. Accused Madhu Pawar sat

near by the informant. The appellants were asking explanation of deceased/Aruna as to why she used to lodge complaint against them to police. Appellant No.1 also asked deceased/Aruna as to why son-in-law is residing with her. The appellants assaulted deceased/Aruna by sword, statur on her head. Deceased/Aruna again came in the first room near the informant. She was again assaulted by appellants by means of Sword, Sattur on her forehead, on the ear, behind the ear, hand, leg and stomach. While appellant No.1 was assaulting deceased/Aruna, Manisha intervened and caught hold of the sword of appellant No.1 by her hand and in that course she sustained injury to her hand. The other appellants assaulted Manisha and her husband by sticks and kicks. Due to assault, deceased/Aruna collapsed on the ground. Thereafter, all the appellants and absconding accused ran away from the house.

(D) The informant rushed towards deceased/Aruna and found that she was dead on the spot. Informant took Manisha and her husband Vinod Shinde to Mohol by truck. He took them to Government Hospital, but the Medical Officer directed him to bring medical requisition from the police. All of them went to Mohol Police Station. The information of incident was given to the Mohol Police Station. Police referred Manisha and Vinod to medical examination. Both of them were treated at the Government Hospital. The Police Head Constable Shankar Chavan recorded FIR of informant. API Upendra Bhalchandra Lotlikar rushed to the spot. He prepared inquest-panchanama of dead-body. He collected sample of blood of

deceased/Aruna, sticks from the spot. He also seized the clothes of deceased/Aruna under Panchanama. The scene of offence panchnama was drawn. Mr. Lotlikar-API also recorded statement of witnesses. Appellant Nos.1 to 5 came to be arrested. After completion of investigation, P.I. Mr. Ashok Kore filed charge-sheet against the appellants in the Court of Judicial Magistrate First Class, Mohol under Sections 302, 143, 147, 148, 324, 323, 504, 506 of IPC. As the offence under Section 302 of the IPC was triable exclusively by Court of Session, hence, the case of appellants and absconding appellants committed to the Court of Sessions, Solapur.

(E) On appearance of the appellants, charge came to be filed against the appellant No.1 to 5 at Exhibit 20. Appellant No.6 came to be arrested, subsequently, the supplementary charge-sheet was filed against him and charged was framed against him at Exhibit 62. The appellants pleaded not guilty and claimed trial. Defence of the appellants is of total denial.

(F) To prove the charge against the appellants, the prosecution has examined in all nine witnesses. On going through the evidence on record, the learned trial Court held the appellants guilty for the offence punishable under Section 143, 147, 148, 149, 302 and 506 of the IPC and sentenced them as aforesaid. After conviction, appellant No.3 expired. Hence, this appeal is preferred by appellant Nos.1, 2 and 4 to 6.

3. Heard learned counsel on behalf of the appellants. He submits

that a day before the incident, there was heavy rain. There was no electricity in the vicinity at the time of incident. There was enmity between appellant No.1 and family members of the deceased/Aruna. Deceased/Aruna had enmity with many persons. The villagers were annoyed with her, hence, she must have been killed by unknown persons. But due to enmity, the appellants have been implicated. It is also submitted that the witnesses examined by the prosecution are on inimical terms with the appellants and they are interested in getting conviction of appellants. The evidence of the said witnesses is not properly evaluated by the learned trial Court, therefore, the findings of the learned trial Court are not legal and proper. Hence, it is prayed that the sentence imposed on the appellants be quashed and set aside and they may be acquitted.

4. On the other hand, the learned APP submits that there is no evidence on record to establish that there was no electricity in the house wherein the incident was taken place. There was enmity between appellant No.1 and deceased/Aruna, the appellants assaulted deceased mercilessly and she died on the spot. The appellants are properly identified by the witnesses in the light of TV. Their evidence cannot be brushed aside. One of the witnesses Manisha is injured in the incident. Therefore, her presence on the spot is established. Hence, it is prayed that the findings of learned trial Court are legal and proper. There is no need to interfere with the same. Hence, he prays for dismissal of appeal.

5. The information of incident was given to Mohol Police Station at about 1.30 p.m. by the informant. His report was recorded (Exhibit 77). On the basis of the FIR, Crime No.213/2011 came to be registered

against the appellants and others. The investigation was given to the API- Upendra Lotlikar (PW-8). It is come in the evidence of Upendra Lotlikar that on receipt of the information, he rushed to Shinde Wasti at Sayyad Warwade. He went to the house where deceased/Aruna was assaulted. He saw the dead-body of deceased/Aruna in the pool of blood in the living room of the said house. He prepared inquest-panchnama (Exhibit 74) in presence of Mangal Kale (PW-2) and sent dead-body of Aruna to autopsy.

6. The prosecution has relied on the evidence of Mangal Kale (PW-2, who deposed that police prepared panchnama of dead body of deceased/ Aruna. She saw the dead-body lying on the ground. She noticed following injuries on the dead-body of the deceased/Aruna:-

- (i) Three injuries above the eyebrow of deceased, one of it was 3 inches in length and deep.*
- (ii) Injury on the head of deceased*
- (iii) Cut injury behind her ear and bone was exposed.*
- (iv) Injury on left arm.*
- (v) Her right hand was hanging.*
- (vi) Cut injury on the chest of the deceased towards right side.*
- (vii) Grievous injury on her left leg and the bone was exposed.*

7. The police had prepared inquest-panchnama (Exhibit 74). Deceased/Aruna was wearing printed Saree and white blouse. Her clothes were stained with blood. She further deposed that the photographs of dead-body were also taken by Bhimrao Shankar Chormale. In her cross-examination, she admitted that Sudhir Kale is her son. The inquest-panchnama was prepared in the house of Sudhir Kale.

It is suggested that being relatives of deceased, she falsely implicated the appellants in the crime. No panchnama was preparation in her presence, but the said suggestions are denied by the witness. From the evidence of Mangal Kale (PW-2), it is established that in her presence, inquest-panchnama was prepared and she has seen the injuries on the dead-body of the deceased/Aruna.

8. Dr. Mahesh Ramling Mastud (PW-6) performed postmortem examination on the dead-body of deceased/Aruna. He deposed that in the year 2011, he was attached to Rural Hospital, Mohol as a Medical Officer. On 03.06.2011 between 9.15 a.m. to 9.45 a.m. he performed postmortem examination on the dead-body of deceased/Aruna. On examination, he found Rigor mortise present. There was bleeding from ear and nose. He noticed that right wrist was amputated. There was CLW on left knee point and knee bone was visible. There was multiple abrasions on right thigh and right shoulder. There was CLW on right side of abdomen and fracture of right wrist and left knee. The said injuries were ante mortem injuries. In fact, the medical officer did not mention all external injuries in Column No. 17, which was requirement of the rules. The medical officer is required to note down all external injuries in Column No.17 of the postmortem report, but the medical officer has simply mentioned in Column No.17 that deceased/Aruna had multiple abrasions on right thigh and right shoulder. The injuries on head, legs, abdomen, chest are not mentioned in Column No.17. In Column No.16 the witness has mentioned the injuries on right wrist, left knee, left knee joint. In Column No.16 the medical officer was required to note arm and finger

position in case of drowning. The medical officer has wrongly mentioned external injuries on wrist, left knee and leg in that column. The medical officer has not mentioned injury sustained to deceased/Aruna on head, abdomen, chest, ear. He has candidly admitted that he has not mentioned all external injuries in Column No.17 of the postmortem report (Exhibit 92).

9. It appears that the medical officer has not performed his duty properly. He has failed to mention all external injuries in Column No.17 of the postmortem report, but in the inquest-panchnama, Upendra Lotlikar, Investigating Officer, has rightly noted all external injuries sustained to deceased/Aruna viz. (i) injury on head, center of forehead having length of 3 inches and deep; (ii) injury above right eye having length of 2.5 inches; (iii) injury on right ear; (iv) injury behind right ear; (v) injury on right hand and below the knee; (vi) injury on abdomen having length 5 inches; (vii) deep injury on left ear (viii) cut injury on left leg and bone was visible; (ix) right wrist was hanging.

10. Be that as it may, the medical officer has opined that the deceased/Aruna died due to head injury. The head injury and other injuries found on the person of deceased/Aruna were sufficient to cause death of deceased/Aruna in ordinary course of nature. The opinion of medical officer is simply challenged by the defence, but fact remains on record that deceased/Aruna died due to head injuries. So it can be concluded that the death of deceased/Aruna was homicidal.

11. To prove the authorship of the homicidal death of

deceased/Aruna , the prosecution has heavily relied on the evidence of Anil Pawar (PW-3) and Manisha Shinde (PW-4). Admittedly, Anil Pawar (PW-3) is son of deceased/Aruna. He deposed that he resides along with his wife, brothers Nagesh and Amol, their wives and children. At relevant time, his mother Aruna was residing along with him. Appellant No.1 is his step-brother, who resides adjacent to his house. The above facts are not disputed, so it can be said that appellant No.1 and deceased/Aruna were residing adjacent to each other. He further deposed that on 23.05.2011 at about 8.00 p.m., appellant No.1 had called meeting of Community Panchayat. He quarreled with deceased/Aruna. He demanded idols of god from deceased/Aruna. Thereafter, deceased/Aruna had lodged complain against the appellants. Similarly, the appellants had also lodged complaint against the deceased/Aruna. Due to the said incident, appellant No.1 was annoyed with deceased/Aruna. The above facts are also not disputed by the defence. So it can be said that prior to the incident, the relation between appellant No.1 and deceased/Aruna were strange.

12. He further deposed that on 02.06.2011 at about 8.00 p.m., he along with deceased/Aruna his brother-in-law Vinod Shinde, sister Manisha Shinde, his wife Mandakani had a dinner in the house of Sudhir Kale. At about 9.00 p.m., he along with deceased/Aruna were watching TV. Other family members went to bed. He further deposed that while watching TV, he and deceased/Aruna went to sleep. However, TV was on. At about 11.30 p.m. one stone landed near his pillow through window. Hence, he woke up. The door of house was open. Appellant No.1,

Harkun Kale, Kamraya Kale (absconding accused), Chandu Pawar (appellant No.5), Uttam Pawar (appellant No.2), Santosh Pawar (appellant No.6), Madhu Pawar (appellant No.3), Samir Khan (appellant No.4) and Ajay Pawar (absconding) entered into the house. They were armed with swords, Sattur and sticks, wooden stick. Appellant No.1 put sword on his neck and threatened him to keep quite and directed him to seat in the corner of the room. Appellant No.6/Santosh Pawar assaulted his brother-in-law Vinod Shinde by stick on his head, left leg and left shoulder. His mother woke up and ran in the middle room of the house. Appellant Nos.1, 4, 6 and absconding accused Harkun Kale, Kamraya Kale, Ajay Pawar rushed towards deceased/Aruna Pawar and they started assaulting her by means of weapon in their hands. Accused Madhu Pawar was standing in front of him. The appellants assaulted deceased/Aruna Pawar by sword and they were asking her as to why she lodged complaints to police against them. They also asked deceased/Aruna Pawar why she was not giving idols of god and residing with her son-in-law. He further deposed that her mother/deceased/Aruna Pawar again came to the first room of the house, but the appellants and others again assaulted her. Appellant No.1 assaulted her mother by sword. Manisha Shinde (PW-4) intervened and caught hold the sword of appellant No.1 by her hand and in that course she sustained injury to her hand. Due to assault, deceased/Aruna Pawar collapsed on the ground. Her sister Manisha Shinde tried to help her, but she was assaulted by appellant No.1 and others. Vinod Shinde was also assaulted by means of sticks and fist blows. He saw all appellants in the light of TV. After assault, the appellants ran away from the house. He rushed to his mother

and noticed that she was dead. He brought Vinod Shinde and sister Manisha to the hospital at Mohol. Both of them were treated at Rural Hospital, Mohol. Thereafter, all of them were rushed to Mohol Police Station. He lodged FIR (Exhibit 77) against the appellants and other accused persons.

13. In his cross-examination, the distance between village Sayyad, Mohol and Narkhed was brought on record. It is also brought on record that the day prior to the incident, there was heavy rain in Sayyad Warawade as well as surrounding area.

14. It is admitted by Anil Pawar that deceased/Aruna Pawar used to lend money to others, but she was not having money lending licence. He also admitted that Vinod Shinde used to accompany deceased/Aruna Pawar for recovery of money. Both of them used to go on motorcycle for recovery of loan amount. On the basis of said admissions, it is vehemently submitted on behalf of the appellants that deceased/Aruna Pawar had enmity with many persons as she used to recover loan amount with force with the help of Vinod Shinde. But in fact there is no material on record to established that deceased/Aruna Pawar had forcefully recovered the amount, no complaint was lodged by any of her borrowers with the police, therefore, the admissions given by the witness Anil Pawar will not help to establish that there was possibility of attack on deceased/Aruna by her borrowers.

15. It is suggested that deceased/Aruna Pawar had closed relations with Nana Bhosale. Witness has admitted that Nana Bhosale used to visit

his house and used to have discussion with deceased/Aruna Pawar in the respect of money advanced by her.

16. It is suggested that Nana had political back ground. He used to help deceased/Aruna, hence, many villagers were having grudge against Aruna. But entire story is denied by the informant. Thus said suggestions are not helpful to defence.

17. Informant/Anil Pawar has admitted that deceased/Aruna Pawar was acquainted with police officers of Mohol Police Station. It is also admitted that one Bhalchandra Pawar was murdered at Mohol. It was suggested to him that deceased/Aruna Pawar was eye-witness to the said murder case. One Sambha Kale was accused in the said case. Due to evidence of deceased/Aruna Pawar, Sambha Kale was convicted, hence, he had a grudge against deceased/Aruna Pawar, but the witness has shown ignorance about the same. He simply admitted that Bhalchandra Pawar was murdered at Mohol, but the involvement of deceased/Aruna Pawar was not admitted by the witness. No documentary evidence is produced on record showing that deceased/Aruna Pawar had deposed in that case whereby the accused Sambha Kale was convicted and therefore mere suggestion will not help to establish the enmity between deceased/Aruna Pawar and Sambha Kale.

18. It is suggested to witness Anil Pawar that his brother-in-law Vinod Shinde was involved in a crime registered at Tembhurni police station. Witness has shown his ignorance about the same, but he admits that deceased/Aruna Pawar used to visit Mohol police station for meditating

the crimes against Vinod Shinde. Witness has also admitted that crimes are pending against his brother Amol at Mumbai and Solpaur railway police station. He also admits that one Barkya Shinde was also co-accused along with Amol in the crime at Mumbai. Barkya Shinde and his brother Amol are resident at Shinde Wasti. The said admission has no bearing to the murder of deceased/Aruna Pawar because the case against Vinod Pawar and brother of informant will not help to prove that out of vengeance of these cases, deceased/Aruna Pawar was killed.

19. It is suggested to witness Anil Pawar that deceased/Aruna Pawar used to give shelter to many criminals. She used to receive share in stolen property. If she is not given share in the stolen property, she used to give information of the crime to police. Therefore, many criminals were angry and annoyed with deceased/Aruna. The above suggestions are refuted by witness, but it appears that deceased/Aruna Pawar was doing social work for her community. She had good relations with police and some political leaders, but that also will not help to establish that somebody must have killed deceased/Aruna Pawar.

20. It is suggested to witness that there was no electricity connection in the house of Sudhir Kale, where the incident had taken place. It is also suggested that due to darkness, he along with other witnesses could not identify the assailants, but due to enmity with appellant No.1 all appellants are falsely implicated. The said suggestions are refuted by the witness. On this point, the scene of offence panchnama is required to be perused. To prove the scene of offence panchnama, the prosecution has relied the evidence of Samir Shinde (PW-1), who categorically deposed that he was

called for panchnama in the house of Sudhir Kale on 03.06.2011. In his presence, police took inspection of all three rooms of the house. In the first room, there was TV, ceiling fan. So it can be said that there was electricity connection in the said house. Informant/Anil Pawar has admitted that Sudhir Kale used to extract the electricity by putting hook on the main line. The defence has suggested that he knew how to extract electricity by putting hook on line. The informant admitted in cross-examination that he knew how to extract electricity from main line. He also admitted that extracting electricity by using hook is an offence. The above suggestions impliedly show that defence knew that informant was extracting electricity from main line.

21. The electric gadgets found in the house, those were in working condition. Informant/Anil Pawar and his sister-in-law has categorically stated that TV was on at the time of incident and they could see the appellants properly. The scene of offence panchnama establishes that there was electricity connection in the house. Therefore, the suggestion of defence that there was no electricity connection in the house at the time of incident, has no substance.

22. It is suggested to informant that appellant No.1 inflicted blows of sword on the head of deceased/Aruna Pawar. It is suggested that about 5-7 blows were given on the head of deceased/Aruna Pawar by sword and sattur. The brain was visible from the head injury sustained to deceased/Aruna Pawar, there was injury on the head and brain was visible. Deceased/Aruna Pawar had also sustained injury on her right hand and wrist, one of sword blow was given to right wrist of

deceased/Aruna. There was injury below the right ear and it was cut injury. There was one injury on right ear and one injury behind the right ear. Both of them were bleeding injuries. There was injury on left knee. It was cut injury and bone was visible. There was injury on abdomen, it was also bleeding injury. All these suggestions are accepted by the informant. By way of said suggestions, defence wanted to establish that the attack was so grave, but no severe and grievous injuries were caused to deceased/Aruna. The medical officer had lethargically failed to mention the external injury in postmortem report, but it is proved through the inquest-panchnama that the deceased/Aruna had severe and grievous injuries on vital parts. The inquest-panchnama is not denied by the defence. There were injuries on head, ear, abdomen, both the hands, both the legs, so it could be said that there was repeated blows of weapon on the person of deceased/Aruna Pawar, therefore, she sustained many grievous injuries. Most of them are cut injuries, which could be possible by weapons like sword, sattur and knife. By giving suggestions to the informant, the defence has impliedly admitted the injury sustained to deceased/Aruna Pawar.

23. The informant has admitted that his T-shirt and half pant was stained with blood when he helped his mother, but the said clothes are not taken charge of by the police. The Investigating Officer had visited the spot, similarly, the Investigating Officer had seen informant immediately after the incident. So Investigating Officer had an opportunity to seize the clothes of informant and other witnesses. But clothes are not seized by the Investigating Officer, for which the informant and witnesses cannot be

blamed.

24. In his cross-examination, the informant has admitted that he did not sustain injury on his person. He felt that he should rescue his mother, but due to fear of pointing of knife on his abdomen, he could not help his mother. The said admissions are crystal clear that the witness was put in fear of death. It is deposed by witness that appellant No.3 Madhu Pawar was standing in front of him by pointing knife towards him, so he was confined and unable to move anywhere. He was in pathetic condition to simply watch attack his mother so his inaction to rescue mother cannot be used adversely against him as he was under fear of death.

25. It was suggested on behalf of appellant No.4 that name of wife of appellant No.4 was Chandrakala. Informant/Anil Pawar had a love affair with Chandrakala when he was at Mumbai. Appellant No.4 was doing centering work at Govandi, Mumbai, but the witness has shown his ignorance about the same. But he admitted that he knew the wife of appellant No.4. It was suggested to informant that he had strong desire to marry with Chandrakala, but she did not give any response to him and marry to appellant No.4. Hence, he had a grudge against appellant No.4. The said suggestions are flatly refuted by the informant/Anil Pawar. Mere suggestions will not establish anything against the informant because appellant No.4 was working at Govandi, Mumbai and some time he used to visit his native place and meet the informant. Merely because appellant No.4 got married to Chandrakala, hence, informant had a grudge against him and he falsely implicated appellant No.4 in this case cannot be believed/accepted.

26. On going through the evidence of informant, it is established that he was very much present in the house at the time of incident. He was confined by appellant Nos.1 and 3 during the incident. Therefore, he could not help his mother. He took his sister, brother-in-law to hospital, and thereafter lodged a report. He had an opportunity to witness the incident in the light of TV. Therefore, his evidence is reliable.

27. The second eye-witness to the incident is Manisha Shinde (PW-4). She is daughter of deceased/Aruna. She deposed that appellant No.1 had held Panchayat of her community. There was quarrel between appellants and her mother on the ground of idols of god. Both of them had abused each other. Her mother was having idols of gold and appellant No.1 was demanding the same, but deceased/Aruna refused to hand over idols. Her mother had lodged complaint against appellant No.1 with Mohol Police Station. Hence, appellant No.1 was annoyed.

28. She further deposed that her mother was residing in the house of Sudhir Kale. In the night of incident at about 9.00 p.m. she along with her husband Vinod Shinde, mother Aruna Pawar, brother Anil Pawar, his wife Mandakani had a dinner. After dinner, all of them were watching TV for sometime. Thereafter, she along with her husband went to bed in middle room. However, the TV set was on. In the midnight, she heard noise, hence, she woke up. She saw appellant No.1 pointed sword on the neck of her brother Anil Pawar (Informant). She also saw other assailants namely Madhu Pawar (appellant No.3), Santosh Pawar (appellant No.6), Uttam Pawar (appellant No.2), Kamraj Kale (absconding), Harkun Kale (absconding), Samir Khan (appellant No.4) and Chandu Pawar (appellant

No.5). She further deposed that all of them were armed with weapons like sword, sattur, knife, sticks. Madhu Pawar (appellant No.3) put knife on the abdomen of her brother Anil Pawar. She further deposed that her husband also woke up and tried to intervene in the scuffle, but Santosh Pawar (appellant No.3) inflicted blows of stick on head and wrists. She further deposed that her mother woke up and ran away from the TV room to kitchen. Appellant No.1/Gotya Pawar was armed with sword and followed her mother. Santosh Pawar was armed with Sattur. Kamraj Kale and Ajay Pawar were armed with stick and followed her mother to kitchen and assaulted her. She further deposed that Harkun Kale, Chandu Pawar, Uttam Pawar assaulted her and her husband by fist blows and kicks in the TV room. She further deposed that while assaulting mother, appellant No.1/Gotya, Santosh Pawar were asking her as to why she did not give idols of god and why she lodged complaint against them. They also asked her mother why she resides with son-in-law. She further deposed that her mother came to TV room. Appellant No.1/Gotya Pawar and others followed her and again assaulted her on head, forehead, eyebrows, ear. Appellant No.1 inflicted blow of sword on her mother, but she caught the weapon, therefore, she sustained injuries.

29. In her cross-examination, it has suggested to witness that on the day of incident, she was at her matrimonial house along with parents-in-law, but the said suggestion is flatly refuted by the witness. It is also suggested to her that she threatened her husband that if she is not allowed to depose in the case, she would give divorce to him. It is also suggested to witness Manisha (PW-4) that she threatened her husband

that, if he refused to give evidence in the present case, she will divorce him and contract second marriage. The said suggestions are flatly refuted by the witness. In fact, Manisha (PW-4) has deposed in the case and she substantiated the evidence of the informant. She has admitted that there was telephone connection in the house of Sudhir Kale. Her husband was having mobile phone at relevant time, but she could not give cell number to her husband. The said admissions do not help defence story to any way.

30. She has further admitted that after the said incident, her brother brought her and her husband to Mohol Police Station by truck loaded with sand. She also admitted that she went to Government Hospital, but the Medical Officer asked her to bring written requisition from police. The said facts are not mentioned in her previous statement. Therefore, those have come on record as omissions. She further deposed that she went to Mohol Police Station. She was referred to the Government Hospital, Mohol where she was treated. The investigating officer has also deposed that injured witnesses were referred to medical examination. But he did not collect the medical certificates of Manisha (PW-4) and her husband. But fact remained that she was present at the time of incident.

31. She has admitted that she saw sticks in the hands of the appellants, when they went out of the house after the incident. She saw assailants upto distance of 40 feet. The sticks were in the hands of appellants till that time. The above admissions are crucial because the Investigating Officer has seized five sticks from the raised platform situated outside the house.

32. On the basis of evidence, learned counsel appearing on behalf of the appellants submits that the recovery of sticks from the raised platform of the house is false. But on this count, the evidence of panch-witness and Investigating Officer is also required to be considered. The Investigating Officer Upendra Lotlikar (PW-3) has categorically deposed that when he reached to spot, he inspected the spot. He prepared inquest-panchnama of dead-body of deceased/Aruna (Exhibit 74) and scene of offence panchnama (Exhibit 69). He further deposed that he seized five sticks from the courtyard. The said sticks were stained with blood.

33. The prosecution has also examined panch-witness to the scene of offence namely Samir Shinde (PW-1). He deposed that on 03.06.2011 he was called in the house of Sudhir Kale for panchnama. Police prepared panchnama in his presence. The house in which the incident had taken place was consists of three rooms. Two rooms were admeasuring 13 feet x 15 feet and third room was admeasuring of 10 feet x 10 feet. The incident had taken place in the first room, wherein the dead-body of deceased/Aruna was lying. The police seized five sticks. He gave the size of sticks. According to him, only one stick was stained with blood. The seized sticks were sent to CA. On analyzing the said sticks, the CA has opined that four sticks were stained with human blood. Out of which, three sticks were stained with blood of 'B' group. The blood group of deceased/Aruna was 'B'. Her clothes were also stained with blood of 'B' group. So it is established from the evidence of Investigating Officer and panch-witness that sticks were seized from the house of Sudhir Kale.

Though there is inconsistency regarding the blood stains on the sticks, but the CA report is very crystal clear that out of five seized sticks, four were stained with blood. So the prosecution has proved the nexus between the seized sticks and the crime.

34. Coming to the evidence of Manisha (PW-4), she has admitted that one assailant assaulted her mother with sword. He gave three blows of sword on the person of her mother on three different places. The blows of sattur were inflicted by three persons on the person of her mother. The assailants also assaulted her mother by sticks till she died. The said suggestions are admitted by the witness Manisha (PW-4). By the said suggestion, it is crystal clear that the assailants used sword, sattur and sticks to assault deceased/Aruna. It is also established that deceased/Aruna had sustained many injuries right from head to leg. The said injuries were cut and incised injuries, which could be possible by sharp-edged weapon namely sword and sattur. By way of suggestion, it is established that deceased/Aruna was assaulted by sword and sattur. She further admits that her mother was assaulted for about 1½ hours. The said admission is exaggeration. It is not case of prosecution that deceased/Aruna was assaulted for 1½ hours. In fact, the informant has stated that the incident lasted for 10-15 minutes. The exaggeration of Manisha (PW-4) on the duration of incident is simply required to be ignored.

35. Manisha (PW-4) has admitted that the crime is registered against herself, Sudhir Kale, her husband Vinod Shinde, informant Anil Pawar, Shamal Kale at Mohol Police Station. The said crime is in respect of

murder of Manisha Bokya Kale. She also admitted that one crime is registered against herself for offence of rape. The said offence was registered at the instance of daughter of appellant Madhu Pawar.

36. On the basis of said admissions, learned counsel for the appellants submits that the informant and witnesses are having criminal record, their evidence should be scrutinized minutely. It is true that the informant, witnesses and deceased/Aruna are from Pardhi community. They are having criminal record. One of the cause for assault on deceased/Aruna was that she used to give information of crimes to police. The appellants are also having criminal record. Therefore, mere criminal record of informant and witnesses will not help defence to discard ocular evidence of eye-witnesses. The informant and witness Manisha (PW-4) were the natural witnesses. Manisha was also injured in the incident, therefore, the criminal record of informant and Manisha will not come in the way of prosecution.

37. On going through the evidence of Manisha (PW-4), it can be said that there are minor omissions, but the said omissions do not affect the prosecution case. She has corroborated the evidence of informant on material particulars of assault on deceased/Aruna. She has rightly identified the appellants as an assailants. Therefore, her evidence is required to be accepted.

38. The prosecution has also relied on the evidence of Archana Kale (PW-5), but she is not eye-witness to the incident. She is wife of Sudhir Kale and daughter of deceased/Aruna. She deposed that on 23.05.2011

appellant No.1 had called meeting of Panchayat community. In the said meeting, there was quarrel between appellant No.1 and her mother on the ground of idols of god. She further deposed that her mother had lodged complaint against appellant No.1. Similarly, appellant No.1 had also lodged complaint against her mother. Since the said meeting, appellant No.1 was annoyed with her mother. She has substantiated the evidence of informant and Manisha on the point of meeting held on 23.05.2011. The said facts are not denied by the defence.

39. The witness further deposed that on 25.05.2011 she along with her husband Sudhir Kale and children went to village Narkhed. Her mother, brothers, sisters-in-law and their children started residing in her house. So it is established that on the day of incident, deceased/Aruna, informant, her brothers and other family members were residing in the house of Sudhir. It is come in the evidence of Archana that on 02.06.2011 at about 12.05 a.m., she received phone call from her sister-in-law Rani. She described the incident to her. Rani called her at Narkhed Chowk. According to her, she along with her mother-in-law Mangal Subhash Kale reached Narkhed chowk where she met her brother Anil Kale, Kalavati Kale, brother Amol and his wife Rani. Thereafter, all of them went to Mohol Police Station. The said evidence also simply established that witness Archana got the information through Rani, but prosecution has not examined Rani in this case. The witness Archana has described entire incident of assault, but it is based on hearsay information. She was cross examined by defence at length and her evidence on the point of alleged incident is denied. In fact she had no personal knowledge of the

alleged incident.

40. In the cross-examination, the witness has admitted that her father was priest, but was not attending any temple. He had idols of god in the house. Deceased/Aruna had constructed temple of her father. She further admitted that some people came to demolish construction of temple. Watchman of the forest also came to demolish the construction. It was suggested to her that the construction of temple was unauthorized. Therefore, many villagers were annoyed with her mother, but the said suggestions are flatly refuted by the witness. The defence has tried to bring it on record that due to the acts of deceased/Aruna, villagers were annoyed with her. I have observed that deceased/Aruna was social worker and leader of Pardhi community. She was helping police. Similarly, she had also criminal record, but the fact remains on record that deceased/Aruna had disputed with appellant No.1. The incident was witnessed by informant and Manisha Shinde. Though the villagers were annoyed with deceased/Aruna, it cannot be said that she was killed by unknown persons. There is ocular evidence of informant and Manisha Shinde to establish the assault on defeated/Aruna by the appellants. So it can be said that the evidence of Archana is relevant to the fact of community meeting dated 23.05.2011 and she received the information of incident immediately and she met the witnesses in the same night.

41. The prosecution has relied on the evidence of Investigating Officer Upendra Lotlikar (PW-8). According to him, he received information of incident, accordingly, on 03.06.2011 between 3.00 a.m. to 4.00 a.m., he reached the scene of offence. He inspected the spot of incident. He

prepared inquest-panchnama (Exhibit 74) and scene of offence panchnama (Exhibit 69). He collected blood samples from the spot. He seized the clothes of deceased/Aruna. He categorically deposed that while inspecting the site, he saw the blood sprinkle on the wall of middle room. Similarly, there was blood trail from the first room to middle room. The dead-body of deceased/Aruna was lying in pool of blood, so it can be said that the incident had occurred in first room as well as in the second room. The said fact is substantiated by informant/Anil Pawar and Manisha Shinde (PW-4).

42. The Investigating Officers Upendra Lotlikar deposed that he seized five sticks from the kitchen platform. As per the scene of offence panchnama, the kitchen platform is outside the house. The sticks were stained with blood and the said fact is established from the CA report. He further deposed that he arrested Uttam Pawar (appellant No.2) on 03.06.2011. On 26.06.2011 he arrested Madhu Pawar (appellant No.3). He took custody of appellant No.1 from Central Prison, Thane on 28.07.2011. The Investigating Officer Ashok Kore arrested Chandu Pawar (appellant No.5) on 17.09.2011 and Santosh Pawar (appellant No.6) on 13.11.2012.

43. Upendra Lotlikar (PW-8) admitted that he dispatched the seized articles to CA on 26.06.2011. In his cross-examination, he has admitted that he could have sent the said articles earlier also. On perusal of CA reports (Exhibits 114, 115 & 116), it appears that the blood sample was analyzed, but blood group cannot be determined. But in rest of the articles, CA has given his opinion that all the articles were rightly analyzed

and report to that effect is produced on record. So delay in sending articles has not affected the prosecution case.

44. Upendra Lotlikar (PW-8) has admitted in his cross-examination that, deceased/Aruna had contested election for the post of Sarpanch of Sayyad Warwade, but she was defeated. Deceased/Aruna was a leader of Pardhi community. She used to visit police station frequently. Deceased/Aruna was helping police. She used to produce absconding accused from her community whenever she was requested. She also admitted that sometimes if person was not listening to her, she used to give his information to police. It is also admitted that some persons from the village were opposing the political acts of deceased/Aruna.

45. On the basis of above said admissions, learned counsel appearing on behalf of the appellants submits that deceased/Aruna had a criminal records. She was having good relations with police, therefore, many persons were having grudge against her. So there is possibility that she must have been killed by persons having grudge against her. It is true that deceased/Aruna had contested election of Sarpanch, but she was defeated. She proclaimed herself as a leader of Pardhi community. She used to help persons from her community. Sometimes she used to produce the absconding accused from her community before police. Sometimes she used to give information of crimes to police. Therefore, there is possibility that some persons might be having grudge against her. The dispute between deceased/Aruna and appellant No.1 was that deceased/Aruna used to lodge false complaint against him and others. Therefore, the admissions given by the Investigating Officer simply

explained the character and behaviour of deceased/Aruna.

46. It appears that the present incident occurred due to dispute between appellant No1. and deceased/Aruna. The eye-witnesses have categorically deposed that they witnessed the incident and rightly identified the assailants. They described the incident with minute details in respect of the acts of the appellants and other. Therefore, the admissions given by the Investigating Officer will not affect the ocular evidence of informant and eye-witness Manisha (PW-4).

47. On going through the evidence of Upendra Lotlikar (PW-8) it appears that he has carried out investigation properly. Ultimately, the charge-sheet came to be filed by Ashok Kore.

48. On going through the evidence on record, the learned trial Court has rightly considered the same and come to the correct conclusion. There is no need to interfere with the findings and order of the learned Trial Court. Hence, we hold that that prosecution has proved the offence against the appellants. Therefore, the Appeal has no merit and the same is dismissed.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]