

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.215 OF 2003

The State of Maharashtra.
Through Police Station Officer,
Hingoli (Rural), District Hingoli.

...APPELLANT

-VERSUS-

1. Bhaskar Tukaram Kamble, (DEAD)
Age : 36 years, Occupation : Agriculture,
R/o Khaperkheda, Tq. And Dist.Hingoli.
2. Baburao Gyanoji Kamble,
Age : 36 years, Occupation : Service,
R/o As above.
3. Ramchandra Nagoji Kamble,
Age : 49 years, Occupation : Agriculture,
R/o As above.
4. Tukaram Masaji Kamble,
Age : 64 years,
Occupation and R/o As above.
5. Natha Gyanoji Kamble,
Age : 39 years,
Occupation and R/o As above.
6. Gyanoji Masaji Kamble, (DEAD)
Age : 66 years,
Occupation and R/o As above.
7. Shivaji Gyanoji Kamble,
Age : 34 years,
Occupation and R/o As above.
8. Vinod Ramchandra Kamble, (DEAD)

Age : 23 years,
Occupation and R/o As above.

9. Shobhabai Tukaram Kamble,
Age : 58 years, Occupation : Household,
R/o As above.
10. Antakalabai w/o Gyanoji Kamble, (DEAD)
Age : 59 years, Occupation : Household,
R/o As above.

...RESPONDENTS
(Original Accused)

...
Shri R.D. Sanap, APP for the Appellant/ State.
Shri S.P. Salgar, Advocate (appointed) for the respondents/ accused.
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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

Reserved on 24th February, 2021

Pronounced on 04th March, 2021

JUDGMENT (Per Ravindra V. Ghuge, J.):

1. By this appeal under Section 378(2)(b) of the Code of Criminal Procedure, 1973 (CrPC), the State seeks to challenge the judgment and order dated 13.11.2002 delivered by the learned Additional Sessions Judge, Hingoli in Sessions Trial No.42/1999, vide which, all the ten accused have been acquitted from the charge of having committed

offences punishable under Sections 302, 307, 325, 326, 147, 148 and 149 of the Indian Penal Code and Section 135 of the Bombay Police Act, 1951 (hereinafter referred to as “the 1951 Act”).

2. Out of the ten accused, accused No.1 (Bhaskar Tukaram Kamble) and accused No.10 (Antakalabai w/o Gyanoji Kamble) have passed away during the pendency of the case before the Trial Court. The trial, therefore, abated as regards these two deceased accused. During the pendency of this appeal, accused No.6/ Gyanoji has passed away on 27.11.2007 and accused No.8 Vinod has passed away on 25.05.2015. This Appeal against acquittal, therefore, abates against accused No.6/ Gyanoji and accused No.8/ Vinod.

3. The prosecution had put forth it's case before the Trial Court as under :-

(a) The first informant -Deorao Amruta Gaikwad (PW-1) lodged a complaint at Hingoli Rural Police Station at about 06:30 AM on 20.08.1998 and stated therein that on 19.08.1998, he was returning from the field at about 06:00 to 06:30 PM. The accused Baburao Gyanoji Kamble was sitting on the platform (otaa) in front of his house along with Bhaskar Kamble, Shivaji Kamble, Tukaram Kamble, Antakalabai Kamble, Shobhabai Kamble. The brother of PW-1, namely, Mohan (deceased victim) approached Bhaskar, whose wife Bhartabai was the proprietor of the fair price licence shop. The deceased Mohan had gone to Bhaskar for

demanding the grains from the quota of the previous month. Noticing that Mohan was demanding grains, Bhaskar called him closer and started abusing him. Thereafter, Bhaskar gave a physical blow to Mohan, who fell down on the ground. Baburao Kamble picked up a big stone and smashed the face of Mohan. Shivaji then came with an axe and assaulted Mohan. Natha Kamble assaulted Mohan with stick and stones. Vinod Kamble then assaulted Mohan with stones. Ramchandra Kamble, Gyanoji Kamble, Tukaram Kamble, Antakalabai Kamble and Shobhabai Kamble were pelting stones on Mohan, who had fallen to the ground. The mother of the deceased Gayabai started shouting and screaming. Baburao Kamble gave a stone blow on the forehead of Gayabai. Shivaji Kamble also assaulted her with an axe. Vinod Kamble, Ramchandra Kamble, Gyanoji Kamble, Tukaram Kamble, Antakalabai Kamble and Shobhabai Kamble were pelting stones. The sister-in-law of the informant, Shobhabai had tried to cover the body of Mohan so as to protect him. Shivaji Kamble gave an axe blow on the right side of her forehead. These accused picked up stones and pelted them towards the deceased. Natha Kamble used a stick to beat the mother of the deceased. PW-1 started shouting. Bhaskar Kamble gave a stick blow and Baburao Kamble assaulted Shobhabai with a stone. Natha Kamble assaulted her with a stick, which fractured her right hand. It was around 08:00 PM when this incident took place. There were electric bulbs on the public lamp poles. There were two bulbs on that pole and the pole

was in front of the house of PW-1. Two electric bulbs affixed by the informant were also lighted at his door and two bulbs were also lighted at the door of Baburao Kamble.

(b) The work of constructing a portion of the house of Baburao Kamble was undertaken and electric bulbs were lighted. PW-1 could see the incident even during the night hours. The accused were pelting stones on the body of Mohan by picking up such stones from the construction material.

(c) At about 08:30 PM on the same date, PW-1 went to the Police Patil. It was raining. There was mud on the way. The jurisdiction of Devthana Police Station extended to the village. From Devthana, PW-1, village Police Patil Shrirang R. Patil and Gyanba Patil went to Kanhergaon after waiting for sometime for a vehicle at Phalegaon cross road. So, they went to Kanhergaon on foot, which was about 4 kilometers away from the residence of PW-1. They waited at Kanhergaon upto 04:00 AM on the next day. After a train came to Kanhergaon, they traveled to Hingoli and lodged a complaint at 06:30 AM.

(d) After a complete trial, the Trial Court came to a conclusion that the accused persons were not guilty of the offences punishable under the provisions of the Indian Penal Code referred to above. Their bail bonds were cancelled and they were acquitted.

4. We have noted the strenuous submissions of the learned prosecutor and the learned advocate on behalf of respondent Nos.2 to 5, 7 and 9.

5. The submissions of the learned prosecutor can be summarized as under :-

(a) On 19.08.1998, at about 08:00 PM, the deceased Mohan approached accused No.1 Bhaskar, who was sitting on an Otta (platform in the front yard) along with other accused chitchatting after dinner. Mohan demanded grains from his previous month's quota from the fair price shop operated by Bhaskar on behalf of his wife, who had a licence of the said shop.

(b) Bhaskar began assaulting Mohan and threw him on the ground. Accused No.2 Baburao lifted a big stone and dropped it on the face of Mohan. Accused No.7 Shivaji began assaulting Mohan with a stick. Accused No.5 Natha and accused No.8 Vinod started assaulting Mohan by pelting stones on his body. Similarly, accused No.3 Ramchandra, accused No.6 Gyanoji, accused No.4 Tukaram, accused No.10 Antakalabai w/o Gyanoji and accused No.9 Shobhabai w/o Tukaram also started pelting stones at Mohan.

(c) PW-8 Jayabai w/o Amruta (mother of deceased Mohan) and PW-6 Shobhabai w/o Mohan tried to rescue Mohan. Baburao gave a stone blow on the forehead of Jayabai and Shivaji gave an axe blow to her. As

Shobhabai w/o Mohan threw herself on the body of Mohan to protect him, she was given an axe blow by Shivaji. Bhaskar also gave a stick blow on the head of PW-1 Deorao s/o Amruta (brother of deceased Mohan).

(d) There were four eyewitnesses viz. PW-1 Deorao, PW-6 Shobhabai, PW-8 Jayabai and PW-10 Sadashiv. Though three eyewitnesses deposed in corroboration with each other, the Trial Court has discarded their testimony purely on an unsustainable ground that PW-1 Deorao was the real brother of Mohan, PW-6 was the wife of Mohan and PW-8 was the mother of Mohan. The Trial Court concluded that they are interested witnesses.

(e) The Trial Court acquitted all the accused by discarding the testimony of the three eyewitnesses in totality, did not consider the postmortem report and concluded that the evidence proving the assault should be precise and even a minuscule discrepancy is fatal to the case of the prosecution.

(f) The deceased Mohan had already lodged a complaint with the revenue authorities against Bhaskar as he was manipulating the fair price shop records and distribution of food grains. Bhaskar and his family members were attempting to force Mohan to withdraw the complaint. Mohan did not succumb to the pressure tactics of Bhaskar and continued to expose the misdeeds of Bhaskar in operating the fair price shop by proxy on behalf of his wife.

(g) Reliance is placed upon the judgments delivered by the Honourable Supreme Court in *State of Rajasthan vs. Teja Ram, AIR 1999 SC 1776* and *Namdeo vs. State of Maharashtra, 2007 Cri.L.J. 1819 (SC)*.

6. The synopsis of evidence is tendered by the learned advocate for the respondents/ accused. His submissions can be summarized as under :-

(a) The date of alleged incident is 19.08.1998, 08:00 PM and the FIR was lodged with the Hingoli Rural Police Station about 40 kilometers away, at 07:00 AM on 20.08.1998.

(b) The FIR could have been lodged at the Kanhergaon Police Outpost, which is about 4 kilometers away.

(c) Though the Police Patil accompanied the informant PW-1, he was not examined.

(d) Though the quarrel took place at Hingoli about 2 to 3 days prior to the incident between Mohan and Bhaskar, Mohan has not lodged any police complaint.

(e) There are several omissions and contradictions in the testimony of eyewitnesses. PW-10 Sadashiv, an eyewitness, had turned hostile.

(f) The use of axe was not proved and there was no evidence about use of deadly weapons. The informant is silent about the use of axe.

(g) Section 149 of the IPC was rightly held inapplicable because family members and close friends (all accused) were sitting on the Otta which belonged to Bhaskar and it was not a public place.

(h) PW-2 doctor, who conducted the postmortem, has stated that the incise wound suffered by Mohan can be caused by a sharp weapon. There is no evidence of the use of a sharp weapon.

(i) Though PW-6 Shobhabai claims to have been hit by an axe by Shivaji, there is no disclosure of the use of an axe.

(j) PW-7 I.O., has stated that an FIR could have been lodged at the Kanhergaon Police Outpost.

(k) The injuries suffered by Jayabai are not corroborated with the testimony of Deorao and the injury certificate does not corroborate such injuries.

(l) Except Bhaskar assaulting Mohan leading to his fall on the ground and inflicting a skull smashing stone blow, other injuries to the other alleged victims are not corroborated by evidence.

(m) Since the incident took place in darkness, it was impossible for the witnesses to identify the assailants.

(n) The Trial Court has properly appreciated the evidence and has rightly concluded that all the accused deserved an acquittal.

7. The learned APP, after perusing the written notes and the synopsis of evidence tendered by the learned advocate for the respondents on 11.01.2021 in the Court, submits that the accused are admitting that Bhaskar assaulted Mohan and the stone that he banged on the skull of Mohan led to his death, only because Bhaskar is no more and the appeal has abated to his extent. The accused are now finding it safe to put the blame on Bhaskar since Bhaskar has met with an untimely death before the trial was completed.

8. The learned APP further submits that the blood group of the deceased Mohan was established as blood group B, the blood group of Shobhabai was A and the blood group of Jayabai was B. The blood detected on the articles Exhibit Nos.1 to 13 was established to be human blood. These articles include stones, an axe, a wooden stick, different types of clothes/ saree/ blouse/ choli, etc.. This medical evidence could not have been ignored by the Trial Court.

9. The prosecution has examined the following witnesses:-

(a) PW-1 Deorao Amruta Gaikwad, Exhibit-32, informant, injured eyewitness and brother of the deceased.

(b) PW-2 Dr.Ganesh Bangar, Exhibit-39, the Medical Officer who performed the autopsy and submitted his postmortem report at Exhibit-40.

(c) PW-3 Sambar Ramji Pattebahadur, Exhibit-44, who is a panch witness of the inquest panchanama.

(d) PW-4 Dhondiba Nathaji Gahule, Exhibit-47, panch witness for seizure of clothes of the deceased, who turned hostile.

(e) PW-5 Ramrao Sonaji Issaye, Exhibit-48, panch witness for seizure of clothes of the deceased, who turned hostile.

(f) PW-6 Shobhabai Mohan Gaikwad, Exhibit 49, who is the injured eyewitness, wife of the deceased.

(g) PW-7 Digambar Kishanrao Tihare, Exhibit 50, Assistant Sub Inspector, who recorded the complaint, registered the crime and handed over the investigation to the I.O..

(h) PW-8 Jayabai Amruta Gaikwad, Exhibit 51, injured eyewitness and mother of the deceased Mohan.

(i) PW-9 Narayan Ganpatrao Gaikwad, Exhibit 52, who is the panch witness for the recovery of the clothes of the injured eyewitnesses Jayabai and Shobhabai.

(j) PW-10 Sadashiv Nagoji Mukade, Exhibit 54, an eyewitness, who turned hostile.

(k) PW-11 I.O. Vilas Dinkar Nikam, Exhibit 55, Police Sub Inspector, who is the Investigating Officer.

10. In the statements under Section 313 of the Cr.P.C., all the accused have denied the incident, have exercised their right to silence and have neither examined themselves nor any witness.

WHETHER, THE DEATH OF MOHAN IS HOMICIDAL?

11. We find that it is nobody's case that Mohan has met with a natural death or has committed suicide. The postmortem report is self explanatory. While considering the surface wounds and injuries, PW-2 Dr.Bangar has noted the injuries at Sr.Nos.17 and 18 as under :-

17. <i>Surface wounds and injuries:- Their nature, position, dimensions (measured) and directions to be accurately stated.</i> <i>Their probable age and causes to be noted.</i> <i>If burries be present what is the condition of the subcutaneous tissues?</i> <i>(N.B.:- When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed).</i>	<i>1. Left side of face is compressed. There is elo # frontal parietal & temporal bones on left side. Elo subcutaneous haemorrhages.</i> <i>2. Incised wound 10x4 cm in leg loin.</i> <i>3. Incised wound. 6 cm below right scapula 6x2 cm.</i> <i>4. Contusion 4x4 cm in right subcostal area in MCL.</i> <i>5. Contusion 5x5 cm in middle 3rd of right calvicle.</i> <i>6. Contusion 5x5 cm in left subcostal area.</i> <i>7. Incised wound 5x2 cm in middle 3rd of right leg.</i> <i>8. Incised wound 3x1 cm in occipital area.</i> <i>9. Incised wound 3x1 cm right mantoid area.</i> <i>10. Contused lacerated wound right palm 4x1/2 cm.</i>
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18.	<i>Other injuries discovered by external examination or palpation as fractures etc.</i>	<i>All injuries are ante-mortem as subcutaneous haemorrhages and bleeding present on cut section.</i>
	<i>(a) Can you say definitely that the injuries shown against serial Nos.17 and 18 are ante-mortem injuries?</i>	

12. The injuries at clause 19, post internal examination, are recorded as under :-

19.	<i>Injuries under the scalp- their nature.</i>	<i># frontal, parietal & temporal bone. On leg side.</i>
ii)	<i>Skull :- Vault and base- describe fractures, their sites, dimensions, directions, etc.</i>	<i>Elo frontal, parital bone and temporal bone. 15x0.5 cm bones were compressed, fracture fragments present in brain tissue.</i>
iii)	<i>Brain:- The appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (weight M. 3 gram F. 2.75 grams).</i>	<i>Crush injury brain present due to fracture frontal parietal and temporal bones. Intra cenetrial haemorrhage present.</i>

13. PW-2 has expressed an opinion as regards the probable cause of death being “*Crush injury of brain due to fracture of frontal, parietal and temporal bones*”. It is obvious that Mohan was assaulted by more than one person and had suffered several injuries as noted above. The postmortem report reflects this fact and the cause of death is mentioned therein. No further debate is necessary and it is doubtable that Mohan has suffered a homicidal death.

**WHETHER THE EVIDENCE OF EYEWITNESSES CAN BE DISCARDED
MERELY ON THE GROUND THAT THEY ARE RELATED TO THE VICTIM
OR ARE INTERESTED WITNESSES?**

14. It is well settled that every court has to be extra cautious and careful while appreciating the testimony of eyewitnesses and more so, if such eyewitnesses are related to the victim. An extra caution has to be adopted by the courts while analyzing the testimony of witnesses related to the victim. The court also has to assess whether, such relatives are manufactured witnesses.

15. In the matter of *Deepak Kumar vs. Ravi Virmani and another*, (2002) 2 SCC 737, the Honourable Supreme Court has held that if independent witnesses are available, the prosecution should examine such witnesses to add strength to the case of the prosecution. The Honourable Apex Court has not laid down the law that merely because a victim eyewitness is related to the deceased, that the testimony of such witness should be discarded.

16. In *State of Rajasthan vs. Teja Ram*, AIR 1999 SC 1776, the Honourable Apex Court dealt with the aspect of over insistence to have witnesses having no relations to the victims. It was concluded that such over insistence often results in criminal justice going awry. It would be apposite to reproduce the conclusions in *Teja Ram (supra)* in paragraph 20 as under :-

“20. Another reason which the High Court advanced to repel the testimony of such a good number of probable witnesses is that they are all close relatives of the deceased and that independent witnesses were not examined by the prosecution. The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also.”

17. In ***Namdeo vs. State of Maharashtra, (2007) Cri.L.J. 1819***, the Honourable Apex Court has concluded that the testimony of a solitary witness can also be a basis for conviction. So also, it was held that merely because a witness is related to the deceased or the victim of a crime, such witness cannot be characterized as an interested witness. The term “interested” postulates that a witness must have direct or indirect interest in getting an accused convicted due to animosity or for some other oblique motive. Paragraphs 21 to 31 read as under :-

“21. In Vadivelu Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614, referring to Mahomed Sugul, this Court stated;

On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established :

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

22. *Quoting Section 134 of the Evidence Act, their Lordships stated that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated."*

23. *The Court proceeded to state;*
It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence

of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.

24. *The Court also stated;*

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

25. *In the leading case of Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."*

26. *In Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly*

reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

27. *In Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 : JT 1995 (8) SC 425, referring to several cases, this Court stated; "On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence."*

28. *In Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397 : JT 2003 (7) SC 270, this Court had an occasion to consider a similar question. In that case, the sole testimony of a young boy of 15 years was relied upon for recording an order of conviction. Following Mohamed Sugal and reiterating the law laid down therein, this Court stated:*

"The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial

evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact."

29. *Recently, in Bhimappa Chandappa v. State of Karnataka, (2006) 11 SCC 323, this Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.*
30. *From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134, Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye witness, therefore, has no force and must be negated.*
31. *It was then contended that the only eye witness PW6-Sopan was none other than the son of the deceased. He was, therefore, 'highly interested' witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our*

judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive.”

18. In ***Dalip Singh and others vs. The State of Punjab, AIR 1953 SC 364***, the Honourable Apex Court has dealt with the issue of two eyewitnesses being ignored merely because they were closely related to the deceased. It was observed by Vivian Bose, J. (as His Lordship then was), speaking for the Court, in paragraph 26 as under :-

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

19. In ***Darya Singh and others vs. State of Punjab, AIR 1965 SC 328***, the Honourable Apex Court concluded that the evidence of a witness, who is a near relative of the victim, should be closely scrutinized, but no

corroboration is necessary for acceptance of his evidence. Speaking for the Court, Gajendragadkar, J. (as His Lordship then was) concluded in paragraph 6 as under :-

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable

that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted light-heartedly without very close and careful examination; and so, we cannot accept Mr.Bhasin's argument that the High Court committed an error of law in accepting the evidence of the three eye witnesses without corroboration."

20. In ***Mst. Dalbir Kaur and others vs. State of Punjab, (1976) 4***

SCC 158, the Honourable Apex Court concluded in paragraph 11 as under

:-

"11. "There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here. In the instant case there is absolutely no evidence to indicate that either Jaswant Kaur or Shiv Kaur bore any animus against the accused. "

21. In ***Kartik Malhar vs. State of Bihar, AIR 1995 SCW 540 : (1996) 1 SCC 614***, the Honourable Apex Court has held in paragraph 7 as under :-

“7. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelyu Thevar's case (supra) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence.”

22. In ***Harbans Kaur and another vs. State of Haryana, AIR 2005 SCW 2074***, it was held in paragraph 7 as under :-

“7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.....”

23. After considering the above case law in ***Namdeo (supra)***, the Honourable Apex Court concluded in paragraph 42 as under :-

“42. From the above case-law, it is clear that a close relative cannot be characterised as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and

wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

24. In the light of the above, the conclusion of the Trial Court that the testimony of three eyewitnesses viz. PW-1, PW-6 and PW-8 does not inspire confidence and more so, since another eyewitness PW-10 has turned hostile rendering the evidence of eyewitnesses unreliable, is unsustainable. From the above referred judgments of the Honourable Apex Court, it is apparent that if eyewitnesses are also injured victims and are natural witnesses, there should not be over-insistence for corroboration. In the present case, PW-1, PW-6 and PW-8 have also suffered bleeding injuries. PW-6, wife of the deceased, had thrown herself upon Mohan to cover his body and suffered injuries. PW-8, mother of the deceased, also had suffered severe injuries. In the face of a brutal attack by multiple accused, a minor discrepancy about the manner of receiving blows, cannot be expected to be vividly remembered and narrated by the victim eyewitnesses with clinical precision.

REGISTERING OF THE F.I.R.

25. Insofar as the conclusion of the Trial Court that the FIR was registered after an inordinate delay, we find that the Trial Court has over

reacted to the fact that the incident had occurred at about 08:00 PM on 19.08.1998 and the FIR was registered by PW-1, after travelling overnight, at 07:00 AM on 20.08.1998 at the Police Station which was 40 kilometers away and did not have bare minimum conveyance. It has come on record that there was a police outpost at Kanhergaon. However, in the backdrop of a brutal attack, PW-1 approached the Police Patil of village Khaparkheda and accompanied by him, he went to Phalegaon Cross Road. As no vehicle was available in night, both walked to Kanhergaon Railway Station and took a train to reach the Hingoli Rural Police Station at about 06:30 AM and lodged the FIR exhibit 35. As such, we do not find these facts to be so glaring as to doubt the contents of the FIR in view of the time lag of about 11 hours in registering the FIR.

EVIDENCE AS AGAINST ALL THE ACCUSED

26. In the backdrop of the crystallized position of law, we have analyzed the testimony of the witnesses and omissions that appeared to us.

(A) Evidence of PW-1 Deorao Gaikwad

27. The first informant and other injured witnesses as well as all the accused are resident of one and the same Khaparkheda village, Taluka and District Hingoli. The ration card of the deceased Mohan, was attached to the fair price shop run by accused No.1 Bhaskar. On 19.08.1998, the

deceased Mohan and PW-1 returned back to their house at about 07:30 PM from their agricultural land. At about 08:00 PM, they both noticed that all the accused persons were sitting together on a platform (otta) in the front yard of the house of accused No.2 Baburao.

28. The deceased Mohan went to the platform and questioned Bhaskar, who was operating the fair price shop by proxy on behalf of his wife Bharati, as to why he was not given food grains from the last month's quota. Bhaskar was infuriated. He abused Mohan and then rushed towards him, assaulted him in such a way that Mohan fell on the ground. At that time, Baburao picked up a big stone and smashed the face of Mohan. As this happened, Shivaji, Natha, Ramchandra, Vinod, Tukaram and Gyanoji picked up stones lying at the construction site near the platform on which they were sitting and pelted them on the body of the deceased Mohan. The deceased accused No.10 Antakalabai and accused No.9 Shobhabai were supplying stones to the other accused. Mohan died on the spot as his face and skull got smashed.

29. PW-1, PW-6 and PW-8 tried to rescue Mohan. Bhaskar assaulted PW-1 with his stick and Baburao gave a blow of a stone on the head of PW-8 Jayabai. As PW-6 Shobhabai had covered the body of Mohan, the accused pelted stones on Shobhabai.

30. In the testimony of PW-1, it was narrated that Shivaji assaulted Mohan with an axe. After PW-6 laid on the body of her husband

Mohan in order to rescue him, Shivaji gave an axe blow on the right side of her forehead near the right ear. Baburao assaulted her with a stone and Natha assaulted her with a stick. When PW-1 Deorao started screaming, Bhaskar gave a stick blow on his head and the other accused pelted him with stones. Two electric bulbs attached to the electric pole were already switched on in front of the house of Baburao, which is the spot of the crime. In addition to these two lamp posts, two electric bulbs at the door of the house of Baburao were also switched on. The construction of a portion of the house of Baburao was going on. PW-1, therefore, could see the incident clearly under the said lights.

31. Following are the omissions brought on record from the cross-examination of PW-1 Deorao and which were proved in the evidence of PW-11 I.O.:-

(a) On the date of the incident, PW-1 and the deceased Mohan had returned home from their agricultural field at about 06 to 06:30 PM.

(b) Accused Shivaji assaulted Mohan with an axe.

(c) Accused Shivaji assaulted Gayabai with an axe.

(d) Accused Shivaji gave an axe blow on the right side of the forehead and near the right ear of Shobhabai.

(e) Accused Natha Kamble assaulted Shobhabai Gaikwad by a stick, due to which, she sustained a fracture to her hand.

(f) Gayabai shouted in high tone “my son died, run, run.”.

(g) The pole having two electric bulbs was located in front of his house.

(h) Two bulbs were also lighted at the door of his house.

(i) Two electric bulbs were lighted at the door of the house of accused Baburao.

(j) PW-1 could see the incident in the light of these bulbs.

(k) At about 03:30 AM, he went to the Police Patil with a view to give him a complaint.

(l) At that time, it was raining.

(m) The road was full of mud and water.

32. Following important fact came on record through cross-examination of PW-1 Deorao :-

(a) PW-1 left the spot for going to the Police Station after confirming that his brother Mohan is no more in this world.

(B) Evidence of PW-6/ Shobhabai Gaikwad

33. The gist of the testimony of PW-6 Shobhabai Gaikwad, who is a victim and an eyewitness:-

(a) On 19.08.1998 at about 08:00 PM, the incident took place. On the date of incident, her husband Mohan had demanded food grains from accused No.1 Bhaskar. Bhaskar had assured her husband of giving

food grains of his quota, which he had not lifted for the last month. At that time, all accused were sitting at the spot of incident i.e. platform.

(b) Accused Bhaskar caught hold of and thrashed her husband Mohan, who fell on the earth. Accused Baburao gave a stick blow on the head of her husband. Then accused Shivaji gave him a stone blow. Then, accused Ramchandra gave him a stone blow. All the accused started pelting stones. Bhaskar caused fracture injury to the leg of her husband. Bhaskar gave an axe blow on the waist and backside as well as on the head of her husband Mohan.

(c) She and her mother-in-law were also assaulted by the accused, when they intervened. A stick blow on the head of her brother-in-law Deorao was also given by the accused. Shivaji had given her an axe blow on her face on the right hand side of the lower corner of the right eye-socket. Old aged accused persons were instigating other accused saying "her husband and Deorao should die and not remain alive". At the time of the incident, she was at a distance of two feet from her husband.

(d) Accused No.7 Shivaji took two stones in his hands, went a little ahead from the place where her husband Mohan was lying motionless and started challenging "one who wants to support Mohan, come forward".

(e) The house of accused Baburao and her house are situated near to each other. Two electric bulbs each were lighted in front of her

house as well as in front of the house of the accused Baburao. So also, one bulb was lighted on electric pole.

(f) Accused Baburao gave a blow of a very big stone to her husband. Accused No.5 Natha was assaulting with a stick whereas, other accused persons Baburao, Tukaram, Gyanoji, Vinod, Shobhabai and Antakalabai were assaulting by stones.

(g) Since accused No.1 Bhaskar was not giving the quota of food grains from his fair price shop and was not distributing food grains to the ration card holders, an application was made to the Tahasildar by many persons of their village with signatures, including that of her husband. Mohan and his family were assaulted as the said Mohan signed the aforesaid application, which was submitted to the Tahasildar. She has identified accused Nos.2 to 9 and also the muddemal weapons viz. axe and stick.

34. Following are the omissions brought on record through cross-examination of PW-6 Shobhabai and proved in the evidence of PW-11, I.O.:-

(a) Moving an application to the Tahasildar complaining that accused No.1 Bhaskar was not distributing the food grains properly to the ration card holders and her husband Mohan's signing the said application.

(b) Mohan's killing by the accused since he had signed the application made to the Tahasildar complaining against accused No.1 Bhaskar.

(c) Two bulbs each were lighted in front of her house and the house of accused No.2 Baburao Kamble.

(d) In addition to the above, there was one electric bulb on the electric pole.

(e) She was standing at a distance of about two feet from her husband Mohan, when the accused were assaulting him.

(f) She pleaded to accused No.7 Shivaji to stop assaulting Mohan since nothing remained (as he was almost dead).

(g) Accused No.7 Shivaji then picked up two stones in his hand, went a little away from the body of Mohan and started challenging the persons who had gathered around by saying "whoever wants to support Mohan, come forward".

(h) The aged accused persons were instigating the other accused (young accused) to assault Mohan.

(i) Accused No.7 Shivaji gave an axe blow below her right eye-socket.

(j) All accused persons were sitting on the platform when the incident occurred.

(C) Evidence of PW-8 Jayabai Amruta Gaikwad

35. PW-8, mother of PW-1 and the deceased, has deposed at exhibit 51 that about five years ago, at about 08:00 PM, the said incident took place. On the date of the incident, the deceased Mohan and PW-1 Deorao had gone to their field for spraying insecticides on the standing cotton crop. They returned home from the field. Accused No.1 Bhaskar, accused No.2 Baburao, accused No.3 Ramchandra, accused No.5 Natha and accused No.7 Shivaji were sitting on the platform situated in front of their house. Accused No.8 Vinod was also amongst them. Mohan asked Bhaskar and Baburao to give him the food grains of his share from the previous month's quota from the fair price shop, upon which, Bhaskar physically threw Mohan on the ground. Then, Baburao lifted a stone and threw it towards Mohan. The said stone stuck the left side of his head near the left upper back of the forehead. They were shouting and requesting people to come forward for rescuing Mohan. Then, Bhaskar gave a stick blow on the head of Deorao. Tukaram and Natha pelted stones which stuck the back of PW-1 Deorao. Bhaskar gave an axe blow to the leg and head of Mohan. He also gave an axe blow on the waist of Mohan. Shobha was raising shouts asking for people to rescue Mohan. Natha gave a stick blow on her forearm. Bhaskar gave her an axe blow on the right side of her face. It hit her near the right side of the right eye-socket. PW-8 started shouting asking the assailants to desist from the assault. Baburao gave a

stone blow on her forehead on the top left side. Shivaji gave an axe blow on upper part of the left side of the chest of PW-8. She then said that Bhaskar had given her an axe blow. Because of such blows and stone hits on her back, she was unable to sit or get up. Due to the stick blow given by Natha, Shobha suffered a fracture to her right forearm. She identified the accused and the muddemal crime weapons like axe, stick and stones. The deceased Mohan had told her that he was obstructed at Hingoli by Bhaskar, Baburao, Natha, Ramchandra and Shivaji.

36. Following are the omissions which have been brought on record through the cross-examination of PW-8 Jayabai and proved in the evidence of the Investigating Officer:-

- (a) Mohan had told her about the obstruction caused by Bhaskar, Baburao, Ramchandra, Natha and Shivaji, at Hingoli.
- (b) She was shouting and requesting the accused to stop the assault.
- (c) PW-6 was asking the people to come forward for rescuing Mohan.
- (d) Stones were pelted by Tukaram and Natha hitting the back of PW-1.
- (e) Mohan had demanded food grains from the last month's quota of the fair price shop, from Bhaskar and Baburao.

(f) The stone pelted by Baburao had hit the left side of the head of Mohan.

37. Considering the testimonies of these eyewitnesses and upon perusing the omissions, which were proved through the testimony of PW-11 I.O., we are assessing the admissible evidence available against all the accused.

38. Admissible evidence against accused No.1/ Bhaskar (now deceased):-

(a) According to the admissible evidence of PW-1, accused No.1 Bhaskar had abused and assaulted Mohan and had physically banged him on the ground.

(b) According to the admissible evidence of PW-6 Shobhabai, accused No.1 Bhaskar had physically assaulted Mohan and had thrown him to the ground.

(c) According to the PW-8 Jayabai, accused No.1 Bhaskar had physically assaulted Mohan and had thrown him to the ground, had given a stick blow on the head of PW-1 Deorao and had give axe blows on the leg, head and waist of Mohan. He also gave an axe blow on the right side of the face of PW-8.

39. Admissible evidence against accused No.2/ Baburao:-

(a) As per the admissible evidence of PW-1 Deorao, accused No.2 Baburao gave a blow of a big stone on the face of Mohan and had hit a stone on the forehead of PW-8 Jayabai.

(b) As per the admissible evidence of PW-6 Shobhabai, accused No.2 Baburao had given a stick blow on the head of Mohan.

(c) As per the admissible evidence of PW-8 Jayabai, accused No.2 Baburao had hit a stone on her forehead and also to the deceased Mohan.

40. Admissible evidence against accused No.3/ Ramchandra:-

(a) According to the admissible evidence of PW-1/ Deorao, accused No.3/ Ramchandra had pelted stones on the body of Mohan.

(b) As per the admissible evidence of PW-6/ Shobhabai, accused No.3/ Ramchandra along with other accused had assaulted Mohan.

(c) As per the admissible evidence of PW-8/ Jayabai, accused No.3/ Ramchandra had obstructed her son Mohan at Hingoli along with other accused.

41. Admissible evidence against accused No.4/ Tukaram:-

(a) As per the admissible evidence of PW-1/ Deorao, accused No.4/ Tukaram along with other accused pelted stones towards Mohan.

(b) PW-6/ Shobhabai has not deposed anything against accused No.4/ Tukaram.

(c) As per the admissible evidence of PW-8/ Jayabai, accused No.4/ Tukaram along with accused No.5/ Natha had pelted stones, which struck PW-1 Deorao on his back.

42. Admissible evidence against accused No.5/ Natha:-

(a) As per the admissible evidence of PW-1/ Deorao, accused No.5/ Natha assaulted PW-6 Shobhabai with a stick.

(b) As per the admissible evidence of PW-6/ Shobhabai, accused No.5/ Natha caused a fracture to her forehead by inflicting a stick blow and also assaulted her husband along with other accused, till he died.

(c) As per the admissible evidence of PW-8/Jayabai, accused No.5/ Natha gave a stick blow on the right forearm of PW-6 Shobhabai, which resulted in a fracture injury. Natha had obstructed Mohan at Hingoli, along with other accused.

43. Admissible evidence against accused No.6/ Gyanoji:-

The appeal abates as against accused No.6/ Gyanoji.

44. Admissible evidence against accused No.7/ Shivaji:-

(a) PW-6/ Shobhabai has stated that accused No.7/ Shivaji gave a blow of stone to Mohan and an axe blow on her face below the right eye socket and along with other accused, had assaulted Mohan till he died.

(b) PW-8/ Jayabai deposed that accused No.7/ Shivaji gave her an axe blow on the left side upper back of her chest. She then stated that

the said axe blow was given by accused No.1 Bhaskar and accused No.7/ Shivaji along with other accused had obstructed Mohan at Hingoli.

45. Admissible evidence against accused No.8/Vinod :-

This appeal abates as against accused No.8/ Vinod.

46. Admissible evidence against accused No.9/Shobhabai :-

(a) PW-1/ Deorao has stated that accused No.9/ Shobhabai, pelted stones towards the deceased Mohan.

(b) PW-6/ Shobhabai and PW-8/ Jayabai have stated nothing against accused No.9/ Shobhabai.

47. Admissible evidence against accused No.10/ Antakalabai:-

This appeal abates as against accused No.10/ Antakalabai.

**IS THE MEDICAL EVIDENCE CORROBORATED BY THE TESTIMONY OF
EYE WITNESSES?**

48. PW-2 Dr.Ganesh Bangar had performed the postmortem on the body of Mohan. The wounds noticed by him have been set out in the postmortem report, which have been reproduced herein above. There were ten injuries. The injuries mentioned at Sr.Nos.1 and 2 clearly indicate that the face and skull of the deceased Mohan was crushed due to a large stone having been dropped on his face by the accused Baburao. The internal examination indicated a fracture of the frontal, parietal and temporal bones on the left side. Fragments of fracture were present in the

brain tissue. The crush injury was caused due to fracture of these bones. Intra cerebral haemorrhage was present. In the opinion of the doctor, the cause of death was the crush injury to the brain due to the fracture of the above mentioned bones.

49. PW-2 Dr.Bangar specifically recorded his opinion in cross-examination that a heavy stone can cause injury No.1. He has supported his opinion with his explanation that the left side face was compressed with fracture of frontal, parietal and temporal bones leading to crush injury to the bones and intra-cerebral haemorrhage. The said injury with corresponding internal injuries is possible by using a big stone. He then pointed out the bigger stone from amongst the two stones in the muddemal, as being the cause of death.

50. PW-2 Dr.Bangar has then referred to injury Nos.2, 3 and 7 to 9 and has opined that these injuries are possible due to the axe that was shown to him (muddemal article No.1). Injury Nos.4 to 6 and 10 are possible by sticks (article No.3).

51. PW-2 Dr.Bangar then examined other victims PW-1 Deorao, PW-6 Shobhabai and PW-8 Jayabai. He has described their injuries which are corroborated by their injury certificates. He has described in details the said injuries from paragraph 8 to paragraph 12 of his testimony at Exhibit-39. He has specifically opined that the death of Mohan was caused by injury No.1.

52. PW-2 Dr.Bangar has withstood an extensive cross-examination. The cross-examination could not bring out any discrepancy in his testimony. He has specifically averred that none of the ten injuries could be caused due to Mohan falling on the ground. He has then negated the suggestion that injury No.1 caused to Mohan was possible by dashing him against a wall and that the compression of his skull was due to the object having been dropped “from above to below downward and not from the lateral side only”. As such, nothing significant emerges from his cross-examination which would dent his version and the contents of the postmortem report.

53. It is, therefore, quite evident that the testimony of the victims, though may have minor or negligible discrepancies, are corroborated by the medical evidence.

54. Evidence as regards available lights to identify the assailants:-

(a) PW-6, eye-witness and wife of the deceased, has stated in her examination-in-chief that there was an electric pole in front of the house of accused No.2/ Baburao. Two bulbs were lighted in the front yard of the said house. She could not assign any reason why her statement under Section 161 of the Cr.PC. does not bear this version. She was pleading to the accused/ Shivaji to stop further attack as “nothing had remained” and the accused/ Shivaji asked her (mocked at her) as to whether, he should stop the further assault? and he held two stones in his hand and

challenged the villagers to support Mohan. These statements were also not recorded in her 161 statement. She could not assign any reason why they were not recorded.

55. PW-7 Assistant Sub-Inspector identified the complaint filed by PW-1 and stated that it's contents were correct.

56. PW-11 is the Investigating Officer, who has deposed at exhibit-55. He has specifically narrated that an axe, stones and stick stained with blood were lying at the crime spot. After a spot panchanama was drawn in the presence of the panch, the weapons used in the offence were seized. He identified the axe, stick and stones before the Trial Court. In his cross-examination, he has stated that it did not transpire in his investigation that electric bulbs were on in front of the house of the deceased Mohan or the house of accused No.2/ Baburao. There is no reference to the axe injuries on the backside of the neck, back waist, backside of right lower limb and stone injuries to the upper portion of the right side of the forehead. Insofar as two bulbs lighted in front of the house of PW-6 are concerned, PW-11 has stated that PW-6 had not mentioned this aspect. PW-6 has also not stated in her statement under Section 161 that the accused Shivaji had given her an axe blow on her face or right hand side of lower corner of her right eye-socket.

57. PW-11 further mentioned that PW-8 had not stated before him that the accused Bhaskar, Baburao, Natha, Ramchandra and Shivaji had accosted him at Hingoli. He then further stated that though there are slips pasted on the stick, axe and two stones, they do not bear his signatures.

WHETHER, THE ASSAILANTS WERE IDENTIFIABLE?

58. The Trial Court disbelieved PW-1, PW-6 and PW-8 on the ground of they are related to the deceased and has concluded that there was no sufficient light at the scene of the offence and hence, the eye-witnesses may not have been able to identify the accused. We do find from the gist of the admissible portions of the testimonies of the victims/ eye witnesses reproduced by us herein above, that PW-1 did not mention in the complaint that two bulbs were lighted at the door of his house and two bulbs were lighted at the door of the house of accused No.2 Baburao. So also, PW-6 Shobhabai has repeated the same version in her testimony and has also stated that one bulb was lighted on the public lamppost. These particular statements amount to omissions as they were not set out in the FIR and in the statements recorded under Section 161 of the Cr.P.C.. Even if we conclude that these omissions will have to be ignored, it is common knowledge that electricity has reached the villages in all parts of

the State and gone are the days when the villagers used to live in darkness or lanterns having kerosene wicks.

59. Be that as it may, the Trial Court has failed to notice that the deceased Mohan and PW-1 had identified the members of the Kamble clan sitting on their otta (platform) adjacent to their front door of the house. Having lived for decades in the same village and having known each other for decades, these two and the eye witnesses could identify the members of the Kamble clan and therefore, the deceased Mohan went upto accused No.1 Bhaskar to start a conversation on the fair price shop grain supply, which led to the unfortunate incident. Even the accused could identify the deceased Mohan and therefore, they attacked him. They also identified PW-1 being the brother of the deceased Mohan and assaulted him. When PW-6/ Shobhabai, the wife of the deceased Mohan, threw her body to cover Mohan and protect him from further blows, accused No.2/ Baburao and accused No.7/ Shivaji could identify her as well as the mother of the deceased Mohan i.e. PW-8/ Jayabai. The attack on the victims was not a result of mistaken identity. If the accused could precisely identify the victims, it would be true vice-versa.

60. In this backdrop and with whatever light that was available and as the victims were fully acquainted with the accused, the informant specifically recorded the manner of attack by the accused on the deceased Mohan, on himself, PW-6 and PW-8. We are, therefore, of the view that the

Trial Court has casually ignored the evidence and has failed to apply it's mind in this case.

61. We have already dealt with the omissions in the testimony of PW-1, PW-6 and PW-8 and we have culled out only the admissible evidence. It is, therefore, established that accused No.2 Baburao, accused No.3 Ramchandra, accused No.4 Tukaram, accused no.5 Natha, accused No.7 Shivaji and accused No.9 Shobhabai, had participated in the attack on the deceased Mohan and the other victims like PW-1 Deorao, PW-6 Shobhabai and PW-8 Jayabai. The injury caused by Baburao, alone proved to be fatal.

Whether, the accused coming together after dinner on the platform in the front yard of the house of Baburao, can be said to have formed an unlawful assembly under Section 141 of the Indian Penal Code?

62. We have carefully gone through Sections 141 to 149 of the IPC. We find it apposite to reproduce Sections 141 and 149 as under :-

*“141. Unlawful assembly.—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—
First.—To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or
Second.—To resist the execution of any law, or of any legal process; or*

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

63. In the State of Punjab vs. Sanjeev Kumar @ Sanju, AIR 2007 SC 2430 and in the *State of Karnataka vs. Chikkahottappa, AIR 2008 SC 2690*, the Honourable Apex Court concluded that Section 149 has its foundation on constructive liability which is the *sine qua non* for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that common object is one of those set out in Section

141 of the IPC. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the aid of Section 149 of the IPC.

64. In *Lalji vs. State of U.P., AIR 1989 SC 754*, the Honourable Apex Court concluded that Section 141 of the IPC makes every member of an unlawful assembly, at the time of commission of the offence, guilty of the offence. The section creates vicarious liability for the unlawful acts committed pursuant to the common object by any other member of the assembly. The basis of such constructive liability is mere membership of such assembly with the requisite common object or knowledge. Therefore, once the Court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every member of that unlawful assembly is to be held guilt of that offence. After arriving at such finding, it would not be open to the Court to assess as to who actually did the offensive act or require the prosecution to prove which of the members did the offensive act.

65. In *Bikau Pandey vs. State of Bihar, AIR 2004 SC 997* and *Madan Singh vs. State of Bihar, (2004) 4 SCC 622*, the Honourable Apex Court held that it cannot be laid down as a general proposition of law that

unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only factor required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 of the IPC.

66. In *Tanaji Govind Misal vs. State of Maharashtra, (1997) 8 SCC 340*, the Honourable Apex Court held that when there was a sudden unpremeditated free fight between two groups, the members of such groups would not be said to have formed an unlawful assembly. In *Haramant vs. State of Karnataka, 1994 Cr.L.J. 1422 (SC)*, while dealing with the aspect of common object, the Honourable Apex Court concluded that the common object has to be inferred from the facts and circumstances of each case. It is to be inferred from the membership of the assembly, the weapons used and the nature of injuries and surrounding circumstances.

67. In *Gangadhar Behra vs. State of Orissa, 2003 SCC (Cri.) 32* and in *Bikau Pandey (supra)*, the Honourable Apex Court held that the object should be common to the persons who composed the assembly, that is to say that they should all be aware of the object and conquer in it. The common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or few members of the assembly and other members may just

join. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression “in prosecution of common object” as appearing in Section 149 of the IPC has to be strictly construed as equivalent to “in order to attain the common object”. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only upto a particular stage and not thereafter.

68. In ***Bikau Pandey (supra)***, it was held in paragraphs 11, 12 and 13 as under :-

“11. 'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or

the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instanti.

12. *Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true;*

there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first offences committed in prosecution of the common object would be generally, if not always, with the second, namely, offences which the parties knew to be likely committed in the prosecution of the common object. [See Chikkarange Gowda and others v. State of Mysore, (AIR 1956 SC 731)].

13. *Therefore, Section 149 has been rightly applied when the factual position as highlighted by the eyewitnesses is considered. Even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. The first information report was lodged almost immediately and whatever elaboration has been done is really very minor in nature. Mere seemingly inconsistencies which are not contradictions or omissions or are of trivial nature do not affect substratum of the prosecution version. That is the situation in the case at hand. The number of injuries even if not co-related to the number of assailants is not material. [See Leela Ram (dead) through Duli Chand v. State of Haryana and another (AIR 1999 SC 3717)]”*

69. In the facts before us, the Kamble clan (all accused) were chitchatting on the platform constructed in the front yard of the house of accused No.2/ Baburao. The construction material, inclusive of stones and sand, was lying at that spot. They had finished their dinner and were relaxing on the platform. To the misfortune of the deceased Mohan and the other victims, the deceased and PW-1 (brother of Mohan), while

returning from their field, noticed that the members of the Kamble family were sitting on their otta (platform). As Mohan found accused No.1/ Bhaskar, who used to operate the fair price shop by proxy for his wife, sitting on the otta with his family members that Mohan was reminded of he having not been given his quota of the grains for the earlier month. He took this opportunity to question Bhaskar for the non supply of the food grains. This was the flash point, which infuriated Bhaskar, who abused Mohan and physically threw him on the ground. As Mohan landed on his back on the ground, accused No.2 Baburao seemed to have a sudden gush of adrenaline. He picked up a large stone (article No.2) and smashed the face/ skull of Mohan on the left side. Probably Mohan may have turned his face to the right to rescue himself since he may not have expected that Baburao would throw a stone at him. The crushing of his frontal, parietal and temporal bones of the skull, appear to have caused his death instantly.

70. From the admissible evidence of eye witnesses PW-1, PW-6 and PW-8, we find that PW-1 has specifically stated that accused No.2 Baburao picked up a big stone (article No.2) and smashed the face of the deceased Mohan. The admissible piece of evidence of PW-8 Jayabai corroborates the version of PW-1 Deorao that accused No.2 Baburao had picked up a large stone and thrown the same on the face of the deceased Mohan, who was fallen on the ground. On the basis of the medical evidence on record and the testimony of PW-2 Dr.Bangar, the death of

Mohan was caused by the blow of the stone which smashed frontal, parietal and temporal bones of his skull. Having concluded that the private assembly of the Kamble clan would not amount to an unlawful assembly under Section 141 of the IPC, Section 149 of the IPC will have no applicability. Accused No.2/ Baburao is, therefore, clearly responsible to have caused the death of Mohan with the use of the stone.

71. Insofar as accused No.7 Shivaji is concerned, we can easily see that he had participated in this attack on the deceased Mohan, PW-1 Deorao and PW-6 Shobhabai. The eye witness PW-8/ Jayabai has not ascribed any role to accused No.7/ Shivaji. PW-1/ Deorao has stated that accused No.7/ Shivaji had used an axe to strike a blow on Mohan and had also assaulted PW-8/ Jayabai. However, PW-8/ Jayabai has not specifically stated that Shivaji has assaulted her. The admissible evidence of PW-6/ Shobhabai does not indicate that Shivaji has assaulted her with an axe. Her version of the use of an axe by Shivaji has to be ignored in view of the omissions which are referred to in the earlier paragraphs. Due to such discrepancies in the statements and failure to mention these acts in the statements under Section 161 of the Cr.P.C., the version of PW-6 to the extent of the blows inflicted by Shivaji on PW-6 and PW-8 will have to be ignored. We are, therefore, constrained to give the benefit of doubt to accused No.7/ Shivaji, only to the extent of giving axe blows to PW-1 and PW-6.

72. However, as discussed above, there is admissible evidence with corroboration that accused No.7/ Shivaji had given a stone blow to Mohan and had pelted stones on the body of Mohan. As such, accused No.7/ Shivaji is guilty to this extent.

73. As regards accused No.3/ Ramchandra, as recorded herein above, the admissible evidence against him is available from the testimonies of PW-1/ Deorao and PW-6/ Shobhabai, which establish that accused No.3/ Ramchandra had pelted stones on Mohan's body. Accused No.3 appears to have followed accused No.2/ Baburao in injuring Mohan by pelting stones. The medical evidence indicates several such injuries on the body of Mohan having been caused by stones. Accused No.3/ Ramchandra is guilty to this extent.

74. As regards accused No.4/ Tukaram, the admissible evidence of PW-1, PW-6 and PW-8 indicates that he pelted stones on PW-1 Deorao and on the body of Mohan. Accused No.4/ Tukaram is also guilty to this extent.

75. Insofar as the role of accused No.5 Natha is concerned, the admissible evidence from the testimonies of PW-1, PW-6 and PW-8 establishes that accused No.5 Natha assaulted PW-6/ Shobhabai with a stick. He caused fracture injury on the forehead of PW-6 and had also injured the right forearm of PW-6 causing fracture injury with the use of

the stick. The medical evidence corroborates such injuries. Accused No.5/ Natha is, therefore, guilty to this extent.

76. To the extent of accused No.9/ Shobhabai, the admissible evidence of PW-1 indicates that she pelted stones towards Mohan. The eye witnesses PW-6 and PW-8 do not ascribe any role to accused No.9/ Shobhabai through their admissible evidence. In the absence of corroboration to the evidence of PW-1, we are giving benefit of doubt to accused No.9/ Shobhabai.

77. Having held accused No.2/ Baburao guilty of murdering Mohan as the large stone injury on the skull on Mohan proved to be a fatal blow resulting in the death of Mohan, we hold accused Nos.3/ Ramchandra, No.4/ Tukaram, No.5/ Natha, No.7/ Shivaji and No.9/ Shobhabai guilty of causing minor injuries by pelting stones upon Mohan, PW-6/ Shobhabai and PW-8/ Jayabai. Had accused No.2/ Baburao not caused fatal injury, the other injuries caused by these five accused would not have resulted in the death of Mohan.

WHETHER, SECTION 304 OF THE IPC IS ATTRACTED INSTEAD OF

SECTION 302 IN THE CASE OF ACCUSED NO.2/BABURAO?

78. There can be no debate that the Kamble clan had not pre-planned the attack on Mohan. They were sitting idle after dinner on the otta of accused No.2/ Baburao. Neither the Kamble clan had expected the

arrival of Mohan, nor did Mohan pre-plan his visit to the house of Baburao. Since the incident was not pre-planned, the Kamble clan cannot be said to have executed its design to attack and kill Mohan as neither of the gathering would have ever anticipated the arrival of Mohan and the attack by Bhaskar and Baburao on him. So also, the evidence does not indicate that Mohan and PW-1 had planned a visit to the house of Bhaskar.

79. In our considered view, it was an unexpected event that Mohan, upon seeing Bhaskar and other accused sitting on the otta, instead of going home after arriving from the field, directly approached Bhaskar. PW-1 accompanied him and thereafter, the unfortunate incident occurred. We have already concluded that Section 149 of the IPC would not apply as the family gathering on the platform could not be said to be an unlawful assembly under Section 141 of the IPC. The evidence before us, therefore, establishes that neither Mohan/ PW-1 had pre-planned any visit to Bhaskar/ Baburao, nor Bhaskar and the Kamble clan can be said to have expected Mohan to arrive so as to plan an assault on him.

80. In the ***State of Andhra Pradesh vs. Rayavarapu Punnayya and others, AIR 1977 SC 45***, the Honourable Apex Court has culled out a subtle distinction in Sections 299, 300, 302 and 304 of the IPC. It was held in paragraphs 14 to 17 and 20 as under :-

“14. *Clause (b) of Section 299 corresponds with cls. (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge*

possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

15. *Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.*
16. *In Clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. The distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether, a culpable homicide is of the gravest, medium or lowest degree. The word "likely" in*

clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words 'bodily injury sufficient in the ordinary course of nature to cause death' mean that death will be the 'most probable' result of the injury, having regard to the ordinary course of nature.

17. *For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant v. State of Kerala, AIR 1996 SC 1874 is an apt illustration of this point."*

"20. *Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular person or persons--being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid."*

81. This Criminal Appeal is partly allowed. The impugned judgment and order dated 13.11.2002 in Sessions Trial No.42/1999 is quashed and set aside.

82. In so far as accused No.2 Baburao is concerned, we are of the considered view that his case would fall under exception 4 to Section 300

and his act would amount to culpable homicide not amounting to murder. He would, therefore, be liable for punishment u/s 304 Part II of the IPC.

83. In so far as the acts proved to have been committed by accused Nos.3 Ramchandra, No.4 Tukaram, No.5 Natha, No.7 Shivaji and No.9 Shobhabai, these offences would attract Section 324 r/w 34 of the IPC. We accordingly hold them guilty under the said provision.

84. After this judgment was pronounced today, the learned advocate for the accused sought a pass-over to address the Court as regards the quantum of sentence. The learned prosecutor also sought a pass-over to collect instructions as regards the time spent by these accused in jail while they were undergoing trial.

85. This matter was taken up after the lunch recess. The learned advocate for the accused submits that accused No.2/ Baburao is about 58 years of age. He has spent three months and 03 days behind the bars as an under-trial. He prays for the minimum punishment. With regard to accused No.3/Ramchandra, accused No.5/ Natha and accused No.7/ Shivaji, he submits that as they have been convicted under Section 324 r/w Section 34 of the Indian Penal Code and they have also spent three months and 03 days behind the bars as under-trials, a lenient view may be taken. Insofar as accused No.4/Tukaram and accused No.9/ Shobhabai are concerned, he submits that accused No.4/ Tukaram is about 86 years of age and he already had a fracture on his hand. Accused No.9/ Shobhabai

is about 80 years of age. Considering their state of health, this Court had exempted their appearance for the pronouncement of this judgment today.

86. The learned prosecutor submits that accused No.9/ Shobhabai has spent only one month and 04 days behind the bars as an under-trial. Accused No.2/ Baburao was the person who had, unprovoked, thrown a large stone on the head of Mohan, which caused the crushing injury on his skull and compressed the brain. He deserves no leniency.

87. Having considered the submissions of the learned counsel to the extent of the sentence, we find that the deceased Mohan had entered into a verbal altercation with accused No.1/ Bhaskar, who is no more. He had a grudge against accused No.1/ Bhaskar considering the malpractices in distribution of food grains. Accused No.1/ Bhaskar also had a grudge against the deceased Mohan since Mohan and others are said to have complained against accused No.1/ Bhaskar to the Tahasildar. We find that accused No.2/ Baburao had no provocation. Accused No.1/ Bhaskar abused Mohan and flung him on the ground. Accused No.2/ Baburao lifted a large stone, which he threw on the skull of Mohan. This was a fatal injury. Though we have concluded that accused No.2/ Baburao may not have an intention to kill Mohan, we do find that there was no provocation for him to lift a large stone and smash the skull of Mohan. We are, therefore, sentencing accused No.2/ Baburao to suffer rigorous

imprisonment for a period of 10 (ten) years for the offence punishable under Section 304 part II of the Indian Penal Code.

88. Insofar as accused No.3/ Ramchandra, accused No.5/ Natha and accused No.7/ Shivaji are concerned, they shall suffer rigorous imprisonment for three years with fine of Rs.1000/- each and in default, to suffer rigorous imprisonment for one month.

89. Insofar as accused No.4/Tukaram and accused No.9/ Shobhabai are concerned, we are considering their cases differently as accused No.4/ Tukaram is about 86 years of age and has suffered a fracture. Accused No.9/ Shobhabai is more than 80 years of age and has ailments. We are, therefore, sentencing them to suffer imprisonment for the term already undergone by them while they were under-trials and with fine of Rs.10,000/- (Rupees Ten Thousand) each, in default of which, they shall suffer simple imprisonment for six months.

90. In view of Section 427 of the Code of Criminal Procedure, the time spent by accused Nos.2, 3, 5 and 7 in jail as under-trials, shall be set off against their substantive sentences.

91. In view of the above, these four convicted accused, who are present in the Court today, shall be taken in custody by the Court duty constable and shall be produced before the Trial Court at Hingoli by 03:00 PM tomorrow i.e. 05.03.2021. So also, other two accused, namely, accused No.4/ Tukaram and accused No.9/ Shobhabai, who were

exempted from remaining present today, shall also be produced by the concerned police before the Trial Court by 03:00 PM tomorrow, for undergoing the sentence.

92. Considering that Shri Salgar, learned advocate, was appointed by this Court through the High Court Legal Services Sub-Committee, Aurangabad, to represent the respondents/ accused, we quantify his fees at Rs.20,000/- (Rupees Twenty Thousand) to be paid by the said sub-committee.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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