

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 242 OF 2003

The State of Maharashtra	}	Appellant (Orig. Complainant)
Versus		
1. Sharad @ Hanmant Kallappa Koruche, Age : 22, Occ. Education,	}	Respondents (Orig Accused)
2. Shardul Kallappa Koruche, Age : 19, Occ. Education,		
Both R/o. Kasbe Digraj, Tq. Miraj, Dist. Sangli		

Mr. V.B. Konde - Deshmukh, APP for Appellant – State.
Mr. Pratap Patil for Respondents.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : FEBRUARY 22, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Ist Adhoc Additional Sessions Judge, Sangli in Sessions Case No. 120/2001, dated 21.10.2002, whereby respondents herein (Original Accused) were acquitted of the charge for committing offences punishable under Sections 302 and 307 of Indian Penal Code (for short

“IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. It is the case of the prosecution that the Respondents who are the brothers *inter se* and the deceased were friends. On a petty incident of driving the motorcycle rashly a verbal altercations took place and by intervention of some persons the parties to the quarrel were separated. After sometime, again accused persons reached to the house of victims and assaulted them. Due to said assault one of the victim lost his life whereas another victim received severe injuries. Report was lodged to the police station. Necessary formalities of the investigation were conducted. On completion of the formalities, charge-sheet was filed before learned JMFC. As the case being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. Respondents – Accused pleaded not guilty. The defence raised by the respondents accused was of false implication and attack on the victims by group of unknown persons.

3. The prosecution brought before the Court evidence in the nature of oral testimony of witnesses, medical certificates and panchanamas. Important witness i.e. brother of victim failed to support

the case of prosecution. Learned Trial Judge on appreciation of evidence found that the prosecution failed to prove its case against the accused persons beyond reasonable doubt and the accused persons were entitled for benefit of doubt. Accordingly, learned Trial Judge recorded the judgment and order of acquittal.

4. Learned APP vehemently submitted that the Trial Court committed grave error in recording the judgment and order of acquittal by placing heavy and undue reliance on the version of the so called eye witnesses. Learned APP further submitted that apart from this witness there are another witnesses who have supported the prosecution case and who were eye witnesses. Learned APP submitted that learned Trial Judge ought to have appreciated the evidence of those witnesses and other evidence in the form of medical certificates and the version of the medical officers in proper perspective. Thus, learned APP prayed that appeal may be allowed.

5. Per contra, learned Counsel appearing for Respondents vehemently submitted that no error is committed by learned Trial Judge. Learned Counsel for Respondents submitted that the Trial Court

appreciated the evidence of witness Vijay Mulik (PW 5) on the backdrop of the facts that he had submitted in his testimony that the accused persons were not responsible for the attack on the victims but there was a group of unknown persons and he further admitted that other witnesses were insisting him to give statement to the police in a particular way, this witness denied the insistence of the other witnesses and statement of this witness being recorded belatedly. Learned Counsel for Respondents also submitted that the victims were initially referred Wanless Hospital but the prosecution for reasons best known to them failed to brought on record the material namely, the medical certificates issued by the medical officer when the victims were initially examined and were provided the medical treatment. Learned Counsel for Respondents also submitted that though the prosecution witnesses alleged that the attack was led by using a chisel, the medical officer clearly admits that the injuries to the victim are not possible by chisel. Thus, the medical evidence clearly negates the case of prosecution is the submission of learned Counsel for Respondents. Learned Counsel for Respondents also submitted that the case of prosecution that the weapon chisel was used is also falsified in view of a suspicious recovery alleged by the prosecution of weapon chisel.

There were serious lacuna in the so called recovery of weapon chisel and the learned Trial Court rightly discarded the evidence of so called recovery of weapon. It is also submitted by learned Counsel for Respondents that the prosecution itself admits that there was a friendly relationship between the victim and the accused persons and as such, it would not stand to reason or logic that on a petty incident the accused persons would carry a grudge against the victim and would take an extreme step of laying an attempt on the victims by a sharp weapons. Thus, learned Counsel for Respondents prayed that appeal may be dismissed.

6. With the assistance of learned Counsels appearing for the respective parties, we have gone through the material evidence brought on record by the prosecution in support of its case.

7. As the case of prosecution unfolds through the complaints lodged at the instance of Narayan Kamerikar (PW 4), we may refer to the testimony of Narayan (PW 4) firstly.

Narayan (PW 4) stated before the Court that he is the resident of Kasbe Digraj and knows the Kallappa Koruche. Kallappa

Koruche having two sons namely, Hanumanta @ Sharad and Shardul. He further stated that they are studying in college. Then he stated about Prakash Mulik and Sampat Mulik whose house are situated near his house. He stated that Prakash is having brother by name Vijay. He further stated that Prakash was no more, as he was murdered on 25.04.2001. Then he stated that on 25.04.2001 at about 08.00 pm he was sitting in front of his house on the platform (कट्टा). At that time Prakash and one Lavathe were in front of the house of Kallappa Kruche and they were chit-chatting, at that time Shardul came there in a fast speed on Honda motorcycle and brushed the motorcycle to the person of Prakash and stopped motorcycle by applying brakes. Prakash asked Shardul as to whether he drives the motorcycle in slow speed. Verbal altercations started between them. Accused Hanumanta @ Sharad gave a slap to Prakash. This witness and some other person intervened and send Prakash, Shardul and Sharad to their respective houses. He further stated that after 10-15 minutes Vijay and Prakash proceeded towards the house of Koruche. At that time, accused Hanumanta @ Sharad and Shardul were in front of their house, again verbal altercation between Shardul and Prakash started. Accused Hanumanta @ Sharad caught-hold Prakash and

told accused Sharad to stab him. Accused Shardul gives the blow of weapon which was in his possession on the neck and hands of Prakash. Then he described weapon was of 1 feet in length and it was an iron weapon. Vijay by rushing intervened. Accused Sharad caught-hold Vijay and accused Shardul gave blows by same weapon on the ear and head of Vijay. Then they started running towards their houses. This witness further submits that at that time along with him one Barjerao Attigre, Sampat Mulik, Vithal Lavathe and some other persons were present. Vijay and Prakash who have received the blows of weapon were immediately put in a jeep of one Mohite and they were taken to Civil Hospital, Sangli. The doctor at Civil Hospital, Sangli told them to shift Vijay and Prakash to Mission Hospital, Miraj. As such, they were shifted to Mission Hospital and they were admitted there. Then this witness proceeded to the police station and lodged the complaint.

8. In the cross-examination it was suggested to this witness that the day earlier to the incident was “चैत्र अमावस्या”, it was also suggested that on that day there was no moon in the sky and as it was अमावस्या there was darkness and there was no visibility, these suggestions are

denied. Then he admitted that his statement was recorded by the Judicial Magistrate, Sangli on 26.05.2001. He further admitted that his house is not adjacent to the house of Kallappa Koruche. He also admitted that there is a lane towards the northern side of the house of Kallappa Koruche and beyond that lane house of this witness is situated. He further admitted that after proceeding from lane one has to cross road so as to reach to the house of Prakash and Vijay. Then he admitted that deceased Prakash as well as accused were college students. He further admitted in the cross-examination that he was with Prakash and Vijay when they were injured. Then the suggestions were given to this witness that injured Prakash and Vijay were initially referred to one Dr. Tamobil of Kasbe Digraj who gave a preliminary medical treatment to the injures, the witness denied the suggestions. Then he has shown ignorance as to who brought jeep of Mohite on the spot. He further admitted that there is a police patil in village Kasbe Digran but the said incident was not informed to the police patil. Then he denied the suggestion that Sarjerao, Sampat Mulik and Vithal Lavathe are his friends. Then in the cross-examination of this witness for accused no. 2 he stated that he went to the police station to lodge complaint alone and thereafter he went to

Mission Hospital. He further stated in the cross-examination that when he proceeded to Mission Hospital police were not accompanying him. He further admitted in the cross-examination that the father or mother of the patients i.e. victims do not go to the hospital till he was in the hospital. He stated that he was in the hospital till 06.00 am and injured Vijay was conscious throughout. He further admitted in the cross-examination that Vijay did not tell either him or any other person to call his family member. Then he stated that Prakash died on 26.04.2001 at 02.30 am. He further admitted that though Prakash died on 26.04.2001 at 02.30 am the information of his death was not forwarded to his father, mother or any other family members. He further admitted that Sampat Mulik is educated and is serving at Kasabe Digraj in Grampanchayat and he did not tell either this witness or any other person to inform the police authorities when Prakash died. Then he stated that according to him he was with the injured persons throughout from Civil Hospital till dead body of Prakash was brought to Kasabe Digraj except the time consumed for lodging the complaint.

9. He stated that along with him Sarjerao, Sampat Mulik and Vithal Lavathe were the only persons in the Hospital. It is brought on

record in the cross-examination that in a statement before the Magistrate this witness mentioned that while lodging the complaint at police station Sampat Mulik was with him. He further admitted that one Samhaji Kamerikar and Bajirao Kamerikar are the panch witnesses to the spot panchanama and are his cousin brothers. Then another omission is brought on record in respect of the place of incident. This witness stated before the Court in the cross-examination that while lodging the complaint he has stated that the incident of assault on both Vijay and Prakash took place on the road whereas in the statement before the Magistrate it is stated that Vijay was assaulted inner side of the door. Then there is another omission in respect of one blow given to the Vijay is brought on record. Then another omission is brought on record in respect of shirt of this witness being stained with blood while lodging the complaint. Then he admitted in the cross-examination that he did not read over the complaint. Then he admitted that nothing is visible of his house from the house of accused. It is then stated the first incident took place at about 08.30 pm whereas the second incident took place at about 09.00 – 09.30 pm. It is also brought on record that this witness gave different timing of the first incident in his two statements namely,

complaint to the police and statement recorded by the Magistrate. Though, this witness stated before the Court that first incident took place at 08.30 pm in his complaint it is mentioned that incident took place at 08.00 pm (रात्री). He further stated in the cross-examination that at the time of second incident apart from himself, Sarjerao, Vithal Lavathe and Sampat Mulik and another 10-12 persons present there. An omission is brought on record in respect of presence of Sarjerao and other persons at the time of first incident. Then it is stated by the witness that when first incident took place there were no Maramari. Then an omission in respect of Hanumanta @ Sharad Koruche coming out of his house is also brought on record. Then there were other omissions brought on record and though they are not in respect of any act being played by the accused but these omissions are in respect of sequence of events, it may not be necessary for us to refer each and every omission to that effect. Suffice it to say that these omissions certainly supports the doubts and suspicion and as such, no implicit reliance can be played on the version of this so called eye witnesses. In the cross-examination this witness stated that there was a blow on the neck and hand of Prakash. It is also brought on record that this witness made statements contrary to each other before

police and before learned Magistrate. There is also an omission in respect of jeep brought on the spot was of one Prakash Mohite. Then another omission is brought on record in respect of providing preliminary treatment i.e. dressing on the injuries by Dr. Tamboli. A suggestion was given to this witness that Vijay was asking time and again to this witness as to why he had lodged false complaint, this suggestion was denied.

10. Now we may refer to the evidence of Ajay Ambole (PW 1) a panch witness to Exhibit 22 memorandum panchnama and Exhibit 25 recovery panchnama of weapon. This witness stated that the weapon was under the tile and by removing the tile weapon was produced.

In the cross-examination he admitted that before proceeding for panchnama he was knowing the house of accused Shardul Koruche. Panchnama was prepared in presence of Sampatrao Mulik, Sarjerao Atgre, Vithal Lavathe, Narayan Kamerikar and Mohan Sutar. Then an omission was brought on record in respect of washing of the weapon chisel and keeping the same in the house by accused. The witness in clear terms admitted that the place where the weapon was found is the open place accessible to any person. This witness also admits that the weapon was not sealed in presence of the panchas. Thus, it can safely be state here

that recovery of weapon chisel is shrouded in doubt and suspicion.

11. Subhash Pawar (PW 3) is the panch witness to the clothes of accused persons. It is interesting to note that this witness stated before the Court that he was not called by the police to act as panch but as he had accompanied one Sambhaji who had some work in the police station the police asked him to stand as the panch witness. He further stated that in his presence accused Shardul handed over the clothes namely, shirt worn by him which was blue colour chex shirt and there were blood stains. Then accused Shardul handed over one blue colour pant having faint blood stains to the police persons. Then he stated that another accused Hanumant @ Sharad also handed over his ash colour full pand having blood stains on the lower portion. The police had drawn the panchnama of these articles.

In the cross-examination and in the next breath itself this witness had shown ignorance about accused Hanumant @ Sharad. He again takes the somersault and stated that he was knowing both the accused since beginning. Then it was suggested to this witness that on 28.04.2001 there was no special reason for this witness for not attending the work and on asking by Sambhaji he remained absent from his work

and went to the police station along with Sambhaji.

12. Then the next important witness is Vijay Mulik (PW 5) who is an injured witness and brother of deceased Prakash. He stated that he is residing at Kasabe Digraj along with his parents and deceased brother Prakash. He further stated that Prakash was murdered on 25.04.2001 at place Kasbe Digraj. In his testimony before the Court he stated that he came from the field at about 06.30 pm, then he had been to the village and returned back to his house at about 07.30 – 07.45 pm. At that time Prakash came to him and told that 10-12 college students assaulted him and he should accompany him. They he along with Prakash went to the house of Shardul and made inquiry with Shardul about the assault on Prakash and Shardul had shown ignorance. He further stated that when he and Prakash came out of house of Shardul 10-12 unknown boys came there and assaulted him as well as Prakash in the darkness and fled away from the spot. He stated that he himself and Prakash received bleeding injuries and they became unconscious due to loss of blood. Then he denied the suggestion of earlier incident of verbal altercations between him and his friends and the accused. A suggestion was given to this witness that there was a discussion between the witness, his father and

father of accused and it was decided to compromise the case, this suggestion is denied. Then he admitted in the cross-examination that accused Shardul and deceased Prakash were taking education in the same college and they were friends and they were on visiting terms. He further stated in the cross-examination that Sarjerao, Vithal Lavathe, Sampath Mulik and Narayan Kamerikar are his relatives and these people were telling him that complaint is lodged through Narayan Kamerikar after having discussion and he should give his statement accordingly. He further stated that he was not ready to give such statement. He further stated that after the incident he became unconscious, after regaining consciousness he was able to speak on 26.04.2001 and though the police visited him on 26th and 27th April, 2001 and made inquiry to him but police did not recorded his statement. He further admitted in the cross-examination that he has stated before the police that 10-12 college boys attacked him and his brother Prakash and due to darkness he was unable to recognize those college boys.

13. Sampat Mulik (PW 6) is the clerk serving in Kasabe Digraj Grampanchayat. Though, this witness in examination-in-chief supports the case of prosecution in respect of first incident the presence of

accused, the second incident and active involvement of the accused persons in commission of offence but in the cross-examination it is brought on record that Prakash and Vijay were provided the preliminary medical treatment through Dr. Desai in the village itself. Dr. Desai made dressing on the injuries at about 08.30 – 08.45 pm. Then he stated that his statement was recorded before Judicial Magistrate also and certain omissions were brought on record. This witness admitted that after the first incident Prakash and Vijay went to their houses and again they went to the house of accused. Then he stated that Vijay and Prakash were admitted in the Mission Hospital and also met him in the Mission Hospital. He stated that he and Narayan had not approached the police station to lodge the complaint. In the cross-examination this witness admitted that he had no personal knowledge as to how the first incident took place. Then there are various omissions brought on record including the material omission in respect of Vijay about particular part of body i.e. head sustaining injury. There is also an omission is brought in respect of the place where the second incident took place i.e. either the tar road or near the door of the house. This witness also admits that he did not feel it necessary to inform parents of Prakash after the death of Prakash.

14. Sameer Mujawar (PW 7) is the panch witness to the arrest panchnama of accused Shardul. He is the dhaba owner.

In the cross-examination he admits that accused was not arrested in his presence and the accused was already arrested by the police when police approached him for drawing panchnama. Then he took somersault and denies the suggestion that the accused was not arrested in his presence and he has signed the panchnama at the police station. He admitted in the cross-examination that police used to visit his dhaba occasionally.

15. Dadasaheb Kshirsagar (PW 8) is another panch to the arrest panchnama who turned hostile.

16. Dr. Deepali Sangar (PW 9) who is attached to Wanless Hospital, Miraj as Resident in Surgery. In her testimony she stated that on 25.04.2001 patient Vijay was admitted in the hospital as indoor patient and he was discharged from hospital on 09.05.2001. Then she stated about the injuries found on the person of Vijay and those injuries are :

1. C.L.W. 5x3 cm over left side of face.

2. C.L.W. 1x0.5 cm over left arm lateral aspect.

It is interesting to note here that Dr. Dipali admitted before the Court that on the basis of the case papers she is referring to the injuries and in the cross-examination she clearly admitted that she did not examine patient Vijay nor she saw him. She further stated that there is no reference in the certificate as to the nature of weapon i.e. either sharp or blunt. Then she admitted that the injuries mentioned in the certificate can be possible by hard and blunt object and injuries can be caused if person falls.

17. Dr. Ishwar Shinde (PW 10) who had conducted autopsy on the dead body of Prakash Mulik. Dr. Ishwar refers to the injuries found on the dead body as follows :

1. Incised wound on right occipito parietal region 4 cm x 1.5 cm x scalp deep red in colour.
2. Incised wound just above right clavicle horizontal 12 cm x 3 cm. Tailing right lateral side, depth of medial end 1 cm at lateral end 0.3 cm, muscle out at medial end.
3. Performed stab wound on left armantero medially near axially left wound of entry measures 5 cm x 2.5 cm both edges sharp bevelled medially – red in colour wound of

exit in left axilla 4 cm x 2 cm. Track depth 8 cm cutting muscles and vessels – Axillary artery and vein and nerve, bruising of soft tissue along track seen.

4. Incised wound over posterior lateral aspect of right shoulder 3 cm x 1 cm x 0.3 cm red in colour.

Then he stated that in his opinion cause of death was hemorrhagic shock due to stab injury on left axilla associated with incised wound over neck and scalp.

In the cross-examination this witness admitted that deceased was treated in Mission Hospital, Miraj before his death and in the admission papers certain details are mentioned such as, history of assault, time of assault, timing of injuries, nature of injuries and these papers were not provided to this witness before postmortem. He further admits that only papers were supplied to him namely, the death certificate and summary notes. In the summary notes a reference was made that the patient was admitted in the Wanless Hospital on 25.04.2001 on 10 pm having history of profuse bleeding. As per summary of the patient there was four contused lacerated wounds on the body. This witness further admitted in the cross-examination that in column no. 17 of the postmortem notes injury no. 1 was not mentioned. He further admitted

that the incised wounds were not sutured. It is necessary to suture the incised wounds so as to stop bleeding. He further admitted that in case of hemorrhagic shock suturing and giving blood is necessary to come out of the shock. He further stated that the patient died due to severe hemorrhagic shock and it was the prime reason for death. It is admitted by the witness that in case of damage to artery and veins it is necessary to reconstruct vessels. In the present case, there is nothing on record to show that vessels and artery were reconstructed. He further admitted that in the present case there was no damage to no vital organ such as heart, brain, lungs, liver and kidneys. He further admitted that patient having hemorrhagic shock if brought in the hospital and if he is treated immediately and properly he will survive and there was nothing on record to show that no medical treatment was provided to the patient prior to his admission in Mission Hospital. He further admitted that there was nothing on record to show that injury no. 3 was treated immediately and he further admitted that in the present case if the patient would have been brought within ½ an hour to the hospital then there is chances of survival. He further admitted that in respect of injury no. 2 there was no damage to vital internal organ in the body and there

cannot be death of a person only because of injury no. 2 mentioned in column no. 17 in postmortem notes. Then he stated that the weapon was not shown to him before performing postmortem. He further admitted that while performing postmortem it is obligatory to mention age of injuries and in the present case though it was possible to mention age of injury the same was not mentioned instead colour of injuries was mentioned in the postmortem report. He further admitted that in the present case injury no. 3 is the only major injury.

18. J.M. Shaikh (PW 11) is the police constable and at the relevant time he was attached to Sangli Rural Police Station and was discharging his duty as writer to PI Shri B. S. Jadhav. He stated that on 05.05.2001 he had recorded the statement of Vijay Mulik. Omissions from the version of witness Vijay are brought on record through this witness. Though a suggestion was given to the witness that he had not visited the witness Vijay nor recorded his statement, this suggestion is denied.

19. Chintamani Utpat (PW 12) is the another police personnel who was attached to Sangli Rural Police Station at the relevant time. He

stated that on 25.04.2001 he was attached to Sangli Rural Police Station and reduced in writing the complaint of one Narayan Kamerikar.

In the cross-examination this witness admitted that when Narayan Kamerikar attended the police station for lodging his complaint he was accompanied by another person. Then the omission in the version of Narayan Kamerikar (PW 4) – Complainant are brought on record through this witness.

20. Bajrang Patil (PW 13). He stated that on 25.04.2001 he was attached to Sangli Rural Police Station and received the complaint from Narayan Kamerikar. Accordingly, he had registered Crime No. 41/2001 under Section 307, 323, 326, 04, 506 read with Section 34 of IPC. An entry in the station diary was made accordingly.

21. Sucheta Takalikar (PW 14) at the relevant time she was working as Judicial Magistrate First Class at Sangli. This witness recorded the statement of four witness under Section 164 of Cr.P.C. In her testimony, she stated that before recording the statement of witnesses she had removed the police personnel from the Court hall and by calling the witnesses one by one she recorded their statements. Then statements

were read over to them and the witnesses then signed the statement.

The omission in the statements recorded by this witness under Section 164 were brought on record through this witness.

22. On going through the version of above referred witnesses, we are of the opinion, that the learned Trial Court has arrived at just and proper conclusion. We also find considerable merit in the submissions of learned Counsel appearing for Respondents. Learned APP made an attempt to submit before the Court that even though the injured witness turned hostile the testimony of other witnesses supports the case of prosecution, we are unable to accept the submissions of learned APP more that one reason. We have also observed that there are many inconsistencies, omissions and contradictions in the versions of witnesses. On one hand, Narayan Kamerikar (PW 4) stated that he alone approached the police station for lodging the report / complaint whereas there is contra evidence in the version of the police constable Chintamani Uptat (PW 12) who has stated before the Court that Narayan approached the police station along with another person.

23. Perusal of evidence show that there was serious doubt raised

in so far as the visibility of the incident as the day when the incident took place was Chaitrya Amavasya (no moon night) and non availability of any other source like electrical lamp, raised a serious doubt as to whether the witnesses were really in a position to see the incident. Then by bringing on record the distance between the place of incident and the house of witnesses, the topography of location also raised a serious doubt as to whether the witnesses were in a position to see the incident. The injures witness Vijay categorically stated before the Court that other witnesses were insisting that he should give statement before the Court as stated in the complaint and as like version of witnesses another statement.

24. It also reveled from perusal of the record that investigating agency was unable to place on record the medical certificates about the immediate treatment provided to the injures and the deceased before they were admitted in the Mission Hospital. In the detailed cross-examination of Dr. Ishwar (PW 10) who had conducted the postmortem it was brought on record that the cause of death was hemorrhagic shock and it was also brought on record that no immediate and proper treatment was provided to the deceased, wounds were not immediately

attended and sutured so as to stop loss of blood. It is admitted by Dr. Ishawar (PW 10) that if an immediate treatment could have been provided to the deceased within ½ an hour he could have survived. Thus, death of deceased was not an instantaneous death due to the assault by weapon chisel.

25. In so far as recovery of weapon is concerned, it is admitted position that weapon was recovered from an open place and it was not sealed. It also revealed from the perusal of record that the statement of injured witness Vijay was recorded on 05.05.2001 though alleged incident was took place on 25.04.2001 thus, there is more than 10-12 days delay in recording the statement of witness Vijay and no explanation was provided by the prosecution. Learned Trial Judge rightly observed thus:

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It may be noted that evidence discloses that when the alleged incident took place both injured persons were medically treated by Dr. Tambole and Dr. Desai at Kasabe Digraj. However, prosecution did not examine both the doctors. The prosecution failed to bring on

record history of assault narrated to those doctors. It may be noted that, there is police out post at Kasabe Digraj having telephone facility and also the police patil at Kasabe Digraj. However, this incident was not informed either to police out post or to the police patil which is quite unnatural. The evidence also discloses that, both the injured persons were initially taken to Civil Hospital, Sangli and they were admitted in the said hospital. There must be some history given by those patients in the hospital but same is also not brought on record. All those facts clearly indicate that, complainant and other witnesses are trying to conceal some material facts and this conduct of witnesses would certainly give benefit of doubt to both the accused.

26. We have stated that there is serious doubt is raised in so far as visibility aspect is concerned, learned Trial Judge made his observations to that effect as follows:

25.

Bajirao Kamerikar (PW 2) admitted in cross examination that, there was no provision of electricity at the door-frame of the house of accused. Police did not switch on

the light in the house of accused and did not verify that light from the house of accused comes on the road. However, police have mentioned in the panchanama (exh. 23) that sufficient light comes from the house of accused. It may be noted that panchanama (exh. 25) was prepared between 7.00 a.m. to 8.00 on 26-4-2001. I fail to understand how police can verify visibility of light during day hours as stated in the panchanama. It may be noted that place of incident stated by this witness and mentioned in the panchanama are not identical.

27. The recovery of blood stained cloths is also doubtful and learned Trial Judge observed thus:

26.

The seizure of clothes at 4.00 p.m. from the person of complainant Narayan Kamerikar and witness Sampat Mulik is also doubtful because it is highly unbelievable that they kept blood stained clothes on their person till 4.00 p.m. on the next day of the incident. It seems that, the panchanamas are signed by this witness at once at the instance of investigating officer.

28. Learned Trial Judge also made observations on the aspect of

omissions reflected in the version of panchas and even on the aspect as to calling panchas of Kasbe Digraj, the observations are thus:

27.

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It may be noted that, alleged incident is re-produced in the panchnamas (exh. 31 and 32). According to this witness, he never stated such incident to police and he is unable to give any reason as to why police mentioned the incident in panchnama. It may be noted that both the panch witnesses had been to police station but in the panchnamas, it is mentioned that they were called. I fail to understand how the panch witnesses from Kasbe Digraj were called at Sangli for those panchnamas when the police station is located in Sangli City. It was very well possible for the investigating officer to take the help of panch witnesses from Sangli., and this fact creates doubt in respect of panchnamas.

29. It is also interesting to note that when a serious incident of assault on person took place the natural conduct of the witness would have been to inform the parents of victim about the incident as early as possible but in the present case the witnesses though were having

acquaintance with the injured witness and the deceased, failed to forward the information to parents i.e. father and mother of victims.

30. One also fails to know as to why the investigating agency has not recorded the statement of parents of the victim. Perusal of evidence and particularly the sequence of events show that though the police authorities could have recorded the dying declaration of the deceased, for the reasons best known to them said attempt is not made by the investing agency. There is also serious doubt raised in respect of the place where the second incident took place, there is also inconsistencies in the version of witnesses as such, even this aspect is not proved by the prosecution with reliable evidence.

31. Considering all these aspects, we are of the opinion, that learned Trial Judge committed no error in observing that the prosecution has failed to prove its case beyond reasonable doubt and the accused are entitled for benefit of doubt. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)