

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 492 OF 1997

The State of Maharashtra.
(Original Complainant).

..... **APPELLANT**

...V E R S U S...

- 1] Jaysing Vitthal Shetke,
Age 32 Years.
 - 2] Shivaji Tukaram Shingan,
Age 20 Years.
 - 3] Ananda Babu Basare,
Age 22 Years.
 - 4] Shamrao Vitthal Shetke,
Age 22 Years.
 - 5] Tanaji Tukaram Shingan,
Age 28 Years.
 - 6] Mohan Ramchandra Thorat,
Age 30 Years.
 - 7] Bhimrao Pandurang Patil,
Age 22 Years.
 - 8] Shivaji Vitthal Shetke,
Age 48 Years.
 - 9] Gunga Vitthal Shetke,
Age 27 Years.
 - 10] Sampat Shankar Shetke,
Age 33 Years.
 - 11] Bhimrao Ramchandra Thorat,
Age 23 Years.
 - 12] Ananda Bhiku Thorat,
Age 25 Years.
- Nos. 1 to 4 and 6 to 12 Occupation-
Agriculture, and No.5-Labour.
All r/o Wakurde-Budruk, Taluka-Shirala,
Dist. Sangli. (Original Accused)

..... **RESPONDENTS**

Mrs M.M. Deshmukh, APP for the Appellant/State.
Mr S.B. Shetye a/w Ms Priyanka Chavan, Advocate for respondent
Nos. 1,2,4 to 6, 8, 10 to 12.

CORAM : PRASANNA B. VARALE & S.M. MODAK, JJ.
DELIVERED ON : 09/02/2021

ORAL JUDGMENT (PER : S.M.MODAK,J)

1] The issue involved in this appeal is whether the trial Court was right in disbelieving the evidence of one injured witness and other witnesses. Whether trial Court was right in disbelieving the evidence of eyewitness/injured/first informant PW No.11 Ramesh on the point of incident ? Whether trial Court was right in disbelieving the evidence of eyewitness/injured PW No. 13 Anna ? Whether trial Court was right in disbelieving the evidence of 04 eyewitnesses on the point of assault on deceased ?

2] All these questions have arisen in present appeal which is preferred by the State against the judgment delivered by the Court of Additional District Judge, Sangali on 06.03.1997 in Sessions Case No. 139/1995. There were 12 accused persons. They were charged for committing an offence punishable under Sections 147, 148 and 302 read with Sections 149 and 326 read with Section 149 of the Indian Penal Code. There were 3 incidents committed in village-Wakurde and Padawalwadi of Tal-Shirala,

Dist- Sangali on 27.03.1995. The assault resulted into death of one Baban Tanaji Thorat. This incident took place in front of the house of PW No. 16 - Rajaram Bapu Padwal. Whereas PW No. 13 Anna Tanaji Thorat and his father Tanaji Sadhu Thorat were assaulted on the same day near Karamjayi Temple, village- Wakurde. Tanaji Thorat was not examined. Whereas PW No. 11 Ramesh Sakharam Thorat was assaulted near Wakeshwar Temple village - Wakurde at about 8.45 p.m.

3] There were two marriages on 27.03.1995 One at village Dhamwade. It was of Suresh Akaram Dargade (who is son of Vijayanta – who is daughter of Tanaji Thorat). Few members of the family of Tanaji Thorat went to attend that marriage. Another marriage is at village Mangale. Ramchandra son of Shyamrao Jadhav (PW No.15) married to daughter of Ramchandra Mahadev Patil. Shyamrao Jadhav PW No.15 hired band party of Tanaji Thorat. The marriage procession was to start from Wakeshwar Temple and was to reach upto village Padwalwadi. In all these incidents, several accused have participated, some of them were common.

4] Prosecution in all examined 21 witnesses. There were 10 Panch witnesses. Whereas, two of them PW No.20 - Shri Arjune

(who recorded FIR on PW No.11-Ramesh) and PW No. 21 - Ramrao Patil (who carried out investigation) though could not file chargesheet as he was transferred. Prosecution got proved Post Mortem and Medical Certificate through PW No.17 Dr. Vilas Raval (defence also admitted them). Whereas there were 8 eyewitnesses. ---

a) **ON THE POINT OF ASSAULT ON PW NO. 11 RAMESH (INJURED)**

- i) PW No. 18 – Jagannath Krishna Kamble.
- ii) PW No. 19 – Shivaji Aba Thorat. (Apart from PW 11)

b) **ASSAULT ON DECEASED BABAN.**

- i) PW No. 12 Dinkar Tanaji Thorat.
- ii) PW No.14 Balu Tanaji Thorat.
- iii) PW No.15 Shyamrao Ramchandra Jadhav.
- iv) PW No.16 Rajaram Bapu Padwal.

c) **ASSAULT ON PW NO.13 - ANNA (INJURED)**

He was the sole witness.

5] On this background, we have heard learned APP Smt Deshmukh and learned defence advocate Shri S.B. Shetye and Ms Priyanka Chavan for respondents. They assisted us by pointing

out the record. Trial Court disbelieved the first informant injured PW No.11 Ramesh for the reason that there are material improvements in his evidence and independent witnesses. PW No. 18 and PW No. 19 have not supported assault on PW No. 11. Whereas evidence of 4 eyewitnesses PW Nos. 12, 14, 15 and 16 is also not believed considering possibility of not witnessing the assault on Baban by PWs 12, 13 and due to difference in the spot of assault on deceased Baban and the spot where his dead body was found. Trial Court emphasised on conspicuous silence by PWs. 15, 16 when spot was shown by Shankar Thorat. Injured/eyewitness PW No.13 - Anna was also not believed due to material improvement in his evidence and exaggeration made by him. On this background, the evidence need to be appreciated with all the limitation on power of Appellate Court in dealing with an appeal against acquittal.

6] Trial Court held homicidal death of deceased Baban and also held grievous hurts caused to PW No.12-Anna, PW No. 11 Ramesh and Tanaji, but when it comes to the author of these injuries being the accused, all were acquitted. Hence, following points arise for our determination:-

POINTS

- 1] Whether trial Court was right in discarding the evidence of eyewitnesses ?
- 2] Whether trial Court has rightly appreciated the evidence ?
- 3] Whether impugned judgment requires interference ?
- 4] What order ?

REASONS

POINT NOS. 1 TO 4.

7] We need not dwell much on the law about appreciation of evidence by the Appellate Court while dealing with correctness of judgment of acquittal. Appellate Court should be slow in interfering the decision. Reason is judgment of acquittal puts a seal of approval on the presumption of innocence of the accused. It does not mean that there should be no interference.

POWER OF APPELLATE COURT

8] Both the sides relied upon few of the judgments on the point of power of the Appellate Court while dealing with an appeal against judgment of acquittal.

Learned APP relied upon judgment of **MANJIT SINGH V/S STATE OF PUNJAB** reported in **(2019) 8 SCC 529** and

judgment in case of ***RAMESH HARLIAN V/S STATE OF UTTAR PRADESH*** reported in ***(2012) 5 SCC 777***.

Whereas learned advocate Shri Shetye relied upon judgments in case of :-

- a] ***RAMESH BABULAL JOSHI V/S STATE OF GUJRAT***
reported in ***(1996) 9 SCC***.
- b] ***GHURELY LAL V/S STATE OF UTTAR PRADESH***
reported in ***(2008) 10 SCC 450***.
- c] ***MURALIDHAR alias GIDDA AND ANOTHER V/S***
STATE OF KARNATAKA reported in ***(2014) 5 SCC 730***
- d] ***CHAMAN LAL V/S STATE OF HIMACHAL PRADESH***
reported in ***(2020) SCC ONLINE 988***.

9] The Hon'ble Supreme Court observed in case of ***MANJIT SINGH*** (supra), there is no rule that in very criminal case, the testimony of an injured eyewitness needs corroboration from the so called eye witnesses. When the statement of an injured eyewitness is found trustworthy and reliable, the conviction on that basis could always be regarded having regard to the facts and circumstances. Whereas in case of ***RAMESH HARLIAN*** (supra), the Hon'ble Supreme Court dealt with what is the importance of inconsistencies. The Court has to unravel the truth under all the

circumstances. If inconsistencies are minor and which do not shake basic version of the prosecution case, then the Court has to separate the grain from the chaff. If Court find some portion of the evidence is insufficient, it does not mean that the entire evidence must be disregarded in all respects.

10] In the above referred judgments, relied upon by the defense basic principles are –

- [a] Presumption of innocence being strengthened due to judgment of acquittal.
- [b] Accused being entitled to reasonable benefit of doubt when it deals with merit of the appeal.
- [c] Appellate Court is generally loath in disturbing the findings of the trial Court. If the trial Court takes reasonable view, interference is not warranted unless the conclusions are palpably wrong.
- [d] Merely because the Appellate Court is inclined to take different view interference is not warranted.

11] The above principles will be borne in mind while dealing with this appeal. If the judgment of the trial Court is perverse, it can certainly interfered. Perverse means materials on record are not at all considered or considered erroneously by

neglecting the accepted principles of appreciation of evidence. It is true that in a case involving more witnesses, there is bound to be variations amongst the witnesses. So also there are bound to be improvements in the evidence given before the Court and facts stated before the police. Law do recognise improvements which are minor in nature or which do not relate to material particulars or which are bound to occur by passage of time.

12] So while dealing with this appeal, we need to check whether improvements are in material particulars, whether the areas on which emphasis is made by the trial Court affect, the edifice of the prosecution case and whether the witnesses are wholly unreliable?

13] It is true that there are 3 incidents taken place at 3 different places on 3 different occasions. It is difficult to definitely state which of them took place first. But with certainty we can say that assault on PW – Anna took place first and it is followed by assault on deceased Baban. Assault on PW No. 11 – Ramesh took place at different place but trial Court observed that *“it is difficult to believe that assault on Ramesh took place in separate incident”*.

EVIDENCE ON THE POINT OF PANCHANAMAS

14] There are 10 Panchas who are examined but none of them have supported. Trial Court believed the evidence of I.O. PW No.21 to conclude about proof of these Panchanamas. The details are as follows :-

ON THE POINT OF SPOT PANCHANAMA

a] PW-1 Namdev Dnyanu Dafale.

b] PW-2 Vasant Dnyanu Jadhav.

As stated above, we cannot gather anything from the evidence of above two panch witnesses. If we read evidence of Investigating Officer – PW No. 21 and Spot Panchanama at Exhibit No. 68, we can find that spot is shown by Shankar Tanaji Thorat [who is also eyewitness to the incident of assault of deceased Baban though not examined]. In all four spots have been described in the Panchanama. They are –

A] The place where body of deceased Baban was found.

It is near Public Well in the sugarcane land of one Baburao Narayan Dafle at village Padwalwadi.

B] The place where Tanaji Sadhu Thorat (not examined)

was assaulted and it is near the land of Ganpati Pandurang Patil near by road passes to Padwalwadi to Wakurde – Budruk.

- C] The place where deceased Baban threw his Dolaki. The spot is near the land at Jambaira–Padwalwadi.
- D] Is the spot where PW-Ramesh was assaulted near Wakeshwar Temple.

In order to have the idea about the situation at the spot, Circle Officer as also drawn up map and the notings about highlights of the map. It is at Exhibit 42. It was admitted by the defence.

ON THE POINT OF SEIZURE AT THE INSTANCE OF ACCUSED NO.1 AND ACCUSED NO. 9.

- a] Dinkar Maroti Nikam – PW No. 4 .*
- b] Rajaram Ganpati Bhuikar PW -5.*

At the instance of both these accused sticks, steel bar, wooden plank [Accused No-1] and thenegade and pipe [Accused No.9] were recovered.

ON THE POINT OF SEIZURE AT THE INSTANCE OF ACCUSED**NO.6 :-**

a] Bhimrao Bayaji Satpute, PW No.6.

b] Shivaji Krushna Jadhav, PW No.7.

At his instance pipes, steal bar, wooden plank were seized.

ON THE POINT OF SEIZURE OF CLOTHES :-

a] Shamrao Dadu Dhokle PW No.9.

b] Uttam Bhau Khoat PW No.10.

The clothes of accused Nos. 6, 11 and 12 were seized.

15] The trial Court has disbelieved the evidence on the point of seizure of clothes from the person of accused. It is for the reason that the clothes were seized in between the period from 05.04.1995 to 09.04.1995. It is after a gap of one week from the date of incident on 27.03.1995. The reason given by the trial Court appeals us to logic. It is but natural as to how the accused persons will roam with the clothes, having bloodstains. We agree to this reasoning. [Para-48]

16] The evidence on the point of seizure of weapons is also not believed by the trial Court. It is for the reason that “*these*

weapons were seized from the open ground and there is no evidence about proper sealing of these weapons". Places of concealment of these weapons are places accessible to all and hence cannot be said to be in the exclusive custody of the concerned accused persons. At the same time, proper care should be taken by sealing those weapons so that there should not be any room for tampering. There was no evidence of proper sealing and the trial Court has rightly disbelieved the said evidence. [Para-49]

EVIDENCE ON THE POINT OF ASSAULT ON FIRST INFORMANT/

PW NO.11- RAMESH:-

17] The medical certificate of Ramesh is at Exhibit No.56. The concerned medical officer is examined as PW No. 17 – Dr. Vilas Vishnu Raval attached to Rural Hospital - Shirala. On the basis of the injuries, the trial Court has held that the injuries fall within the domain of grievous hurt. As said above apart from PW No. 11, two eye witnesses PW Nos.17 and 18 were examined. They have not supported the prosecution case. So, we have got only the evidence of PW No.11 and on that basis, we have to see whether the reasoning given by the trial Court is proper or not. Ramesh is also nephew of Tanaji Thorat. He was not the member of Band Party. He had gone to attend the marriage of his nephew Suresh

Akaram Dargade at village Dhamwade on 27.03.1995. The marriage was at 6.00 p.m. He was returning to village Wakurde Budruk. He was accompanied by Jaggu Taral, Shivaji Thorat and Kashinath Tanaji.

18] In his evidence, there is a reference of two places. One is Karamjayi Temple and second is Wakeshwar Temple. They reached Karamjayi Temple at 7.45 PM. Accused No.2 - Shivaji joined them. At 8.45 p.m., they reached near Wakeshwar Temple, there he was assaulted by two sets of accused persons. All came on two motorcycles. Accused No.3 Ananda, Accused No.4 Ramrao and Accused No.5 Tanaji came on one motorcycle. They were having weapons. Whereas, accused No.6 Mohan, Accused No.7 Pandurang and Accused No. 1 Jaysingh came on another motorcycle. They were also possessing weapons.

19] On seeing them, witness Ramesh started running. At that juncture, he fell down due to intervention by accused No.8 Shjivaji. First accused No.8 Shivaji beat him and then followed by other accused persons. It is surprising to note that after this incident he went home and remained in the house till 5.00 a.m. On 28.3.1995 he was taken to Police Station in a police jeep, when Police came to his house along with PW No.12 Dinkar.

ABOUT FIRST INFORMATION REPORT.

20] PW No. 20 Shivaji Namdeo Arjune, is the head constable attached to Shirala Police Station who recorded the FIR of PW No.11 Ramesh. It will be material to see the background, in which this FIR at Exhibit No. 45 came to be recorded. There are two aspects. One is PW No.11 Ramesh has never said about recording of his statement at the police station. Second is PW No.12 Dinkar and his brother Shankar reached police station first in time. However, except taking an entry in a station diary, their statements were not recorded by head constable Shivaji Namdeo Arjune. The trial Court has emphasized on both these aspects. The FIR came to be registered at 5.20 a.m. of 28.3.1995 (at Exhibit 45). This is the timing as per the FIR. Whereas the first informant Ramesh had given a different story. When he reached police station in a police jeep, he insisted on the police to take him to hospital. He was compelled to went to hospital on his own, when police have not listened to him. His statement was recorded at the General Hospital, Sangali.

21] So there were two version about the place of recording of FIR. One is at the Police Station and second is at the

hospital. No doubt, the FIR Register cannot be taken out of police station. When the statement of an injured is recorded in the hospital, there is a practice to forward that statement to the police station. And then to enter the details in the FIR Register and to obtain the signature. Even if, the story put up by head constable Shivaji Namdeo Arjune may be right, still question remains why the first informant Ramesh is saying otherwise. He was not hostile to the prosecution. The trial Court has considered the FIR as anti-dated.

22] There is one more reason why the trial Court has raised suspicion about the timing of FIR. Though it was recorded on 28.3.1995, police took two days to forward its copy to nearest Magistrate. It was forwarded on 30.3.1995. It has also transpired in the evidence of PW-12 Dinkar that he reached Shirala police station along with Shankar first in time. It is also admitted fact that his information was not recorded by head constable Shivaji Namdeo Arjune in the FIR Register. Dinkar and Shankar both are the eye witnesses. The information given by them certainly has got importance. There was no need to insist on presence of injured. There is no explanation offered for not recording their information as FIR. Filing of earliest FIR has got its own significance. The police lost that opportunity.

23] We agree to the trial Court about suspicion raised in the timing of FIR and also for not lodging earliest FIR. (Para-33). We find it as natural conclusion.

24] It is expected from the witness to tell the same facts before the Court, which he has stated before the police. However, no mathematical accuracy is expected. The involvement of the accused is one of the subject on which consistency is expected. Before the Court, the first informant has described the role played by the accused No.8 – Shivaji. But in the FIR he has not taken the name of accused Shivaji. Further more, there is variance in between which accused had beaten him with steal bar. In the FIR, he has given this role to accused No.1 Jaysing, whereas before the Court he had given this role to accused No.8 Shivaji. This cannot be said to be a minor improvement.

25] There is one more reason for the trial Court to disbelieve the first informant. In two statements, PW No. 3 Anna and Tanaji [not examined] [recorded on 29.3.1995 at General Hospital, Sangali] have stated presence of PW No.11 Ramesh at a different place. According to Ramesh he had never participated in the marriage procession. Whereas these two witnesses have

described the presence of Ramesh in the marriage procession. Further more, these two witnesses have said about beating by 20 to 22 persons. The attention of the PW No.13 was brought to these particulars from his statement. Naturally, those particulars could not be proved because the writer was not examined. The trial Court had considered this reference because it was given in earliest point of time.

26] So if the story given by PW-11 Ramesh about his arrival at the spot on one hand and the story stated by PW No.13 Anna on the other hand is considered, it is difficult to reconcile them. For all these reasons, trial Court has not believed PW No.11 [para-37]. If the Ramesh was not present in the procession, how could PW No.13 Anna have said about his presence. It means either of them were telling false things.

27] We do not find the conclusion drawn by the Court as erroneous. There are material improvements in his evidence. So also there are materials which creates doubt as to when his FIR was recorded.

ASSAULT ON PW NO.13 ANNA TANAJI THORAT

28] It has come in the evidence that deceased Baban was the member of band party in the procession of marriage of son of Shyamrao Jadhav and daughter of Ramchandra Patil. PW No. 15 Shyamrao Jadhav is the resident of village Padwalwadi. Whereas, marriage is organised at village Mangale. The marriage procession was organised from Wakeshwar Temple, village Wakurde and it was to reach at village Padwalvadi via Karamjai Temple.

29] Apart from deceased Baban, PW No.13 Anna Tanaji , PW No. 14 Balu, their father Tanaji, Prakash Sitaram Thorat were other band party members. PW No. 12 Dinkar and Shankar Thorat were also the band party members. They were expected to join the party after the marriage of their relative Suresh at village Dhamwade will be over. The assault on PW No.13- Anna took place after the procession had left Wakeshwar Temple and reached near Shetkewadi. There was a saw mill of accused No.8 Shivaji. Even though PW No. 14 - Balu, deceased Baban and Prakash were in the party, all of them ran when Accused No.4 Shyamrao, accused No.9 Gunga and Accused No.10 Sampat came there and started assaulting PW No.14 and Tanaji. To this incident prosecution has examined only the injured PW No.13 Anna and

PW No. 14 Balu. Tanaji was not examined. The trial Court has not believed PW No. 14 (Para-40).

30] It will be material to consider evidence of these two witnesses and the findings of the Court. When the evidence of the injured PW No. 13 - Anna is perused, we find certain material improvements. While deposing before the Court he has ascribed steal pipe in the hand of accused No.4, club in the hand of Accused No.9 and some sharp weapon in the hand of Accused No.10. However, when his statement was recorded by the Police, he has not described which weapons were possessed by which accused. He admits this omission. There is one more improvement. Before the police, he has taken the name of Accused Nos.4 and 9. And he has not taken the name of Accused No.10. Trial Court has rightly inferred about presence of Accused No.10 as doubtful (Para-39).

31] There is one more area wherein trial Court has disbelieved PW No.13. After the assault, he became unconscious. He regained consciousness 10 to 12 days after admission in the private hospital. Even he went to the extent of denying recording of statement by the police. He has narrated the incident for the first time in the Court. Trial Court also noticed lack of

corroboration in the evidence of PW No.13 on one hand and medical officer PW No.17 on the other. When the injured says that he fell unconscious at the spot, how come can he tell the history to the medical officer on 28.03.1995 at 01.00 p.m. ? He himself told the history as deposed by the medical officer. For all these reasons trial Court felt it unreliable to believe him without corroboration.

32] In order to ascertain whether there is corroboration, trial Court has assessed the evidence of PW No.14 Balu. Trial Court noticed variance in the evidence of PW No.13 on one hand and PW No.14 on the other hand on the aspect of number of accused persons. PW No. 13 gave the names of Accused Nos. 4,5, 9 and 10, whereas PW No.14 has added the name of Accused No.6 – Mohan and many other persons along with abovenamed 4 accused persons. Trial Court also noticed variance in between these two eyewitnesses. It is Accused Nos. 4,9 and 10 who have assaulted PW No.13 (as deposed by him). Whereas, as per the version PW No. 14, 10 to 11 persons have beaten Anna and Tanaji. Trial Court thus noticed lack of unanimity in between these two witnesses regarding who are the assailants and their number.

33] Even the spot of assault could not be confirmed for want of noticing blood stains on the spot. Trial Court has drawn

an inference that PW No.13 and 14 were interested in securing the conviction. What we find is that the edifice of the evidence of PW No.13 stands on weak foundation. Apart from the material improvements, there are certain areas wherein the evidence of PW No. 13 cannot be believed. We find the inferences drawn by the trial Court are supported by reasoning. We agree to the said conclusion.

ASSAULT ON DECEASED BABAN

34] The assault on Baban took place in front of the house of PW No. 16 Rajaram Bapu Padval at Padwalwadi. Whereas, the dead body was found in the sugarcane field of Baburao Narayan Dafle at Padwalwadi. Panchanama was done of the place where dead body was found and not of the place where the actual assault took place. As said above, there are four eye witnesses PW No.12 Dinkar and his brother PW No.14 Balu are relatives. PW No.15 Shyamrao Jadhav and PW No.16 Rajaram Padwal are the other two witnesses.

35] Deceased Baban was member of the band party along with PW No. 14 – Balu. When PW No.13 Anna and his father Tanaji were assaulted. Baban and Balu ran towards Padwalwadi.

Whereas, PW No.12 Dinkar, his brother, sister-in-law were going to their village Wakurde Budruk, they came near Karamjai Temple. They saw PW No.14 Balu and deceased Baban running. On seeing Dinkar and others, PW No.14 Balu informed them about assault on PW No.13 Anna and Tanaji. Feeling apprehensive all ran towards village Padwalwadi and went to the house of PW No.16 Rajram.

36] Thereafter, the assault on Baban took place. Amongst these four eyewitnesses there are two sets. One set comprises of the relatives of PW No.12 Dinkar and his brother PW No.14 Balu. Whereas, other set consists of PW Nos. 15 and 16. Trial Court found the evidence of PW Nos. 15 and 16 cryptic. Whereas, trial Court found the evidence of PW Nos. 12 and 14 being suffering from material improvements. According to PW No.12 Dinkar, PW Nos. 15 and 16 were present at the beginning of the incident only. Whereas, the version of PW No.16 suggests that he was present at the spot at the beginning, thereafter he went to his house and his mother closed the door of the house. Whereas, the evidence of PW No. 15 Shyamrao suggests that PW No.16 was not present at the spot. There is one more area wherein trial Court noticed inconsistency in between the oral evidence and documentary evidence. It is in respect of the place of occurrence and place

where dead body was found. Trial Court has also emphasised on conspicuous silence on the part of PW Nos. 15 and 16 in not showing the place of assault in front of the house of PW No.16 Rajaram (when witness Shankar had shown the place where dead body was found).

37] Trial Court has considered the situation in and around the spot, where dead body was found in the sugarcane field of Shri Daphale. Blood was noticed on the leaves of maize crop and wooden plank was also found with bloodstains near the dead body. Whereas, there is no evidence forthcoming about blood found in front of the house PW No.16 Rajaram. The deceased has suffered 22 external injuries. On this background, it was expected to have some blood falling near the house of PW No.16 Rajaram. Whereas, this was found in the sugarcane field of Shri Daphale. These circumstances are self explanatory and it does not require someone to explain them. That is why the trial Court has rightly disbelieved PW Nos. 15 and 16 as an eyewitnesses.

38] There is one more reason for the trial Court to disbelieve PW Nos. 12, 14, 15 and 16. PW Nos. 12, 15 and 16 deposed that Accused Nos. 5,9 and 10 were present. There is no consistency about their overt acts. Some of them said that it is

accused No.9 who beat whereas others have said that rest of the two accused have beaten. Whereas, PW No.16 Rajaram has added stone in the hands of Accused No.10. PW No.14 went one step ahead. He is the only witness, who has added Accused No.6 Mohan as the 4th assailant. We find above variances material in nature.

39] So, for the above discussion we are also not inclined to believe these four witnesses. We agree with the trial Court.

CONCLUSION

40] After above discussion, we feel that the conclusions drawn by the trial Court are reasonable conclusions. Trial Court found certain material improvements. In some areas trial Court found that evidence of individual witness is itself weak. He himself has stated certain facts which itself damages the prosecution case. If PW No.11 first informant says that his FIR is not recorded in the police station (but in the hospital), what can be said further except the inference that the witness is not reliable. Similarly, when the circumstances on record itself creates a suspicion about place of assault on deceased Baban such lacuna can not be filled in. Similarly, when statement of witness says some thing different about presence of PW No.11 Ramesh which is inconsistent with

own version of PW No.11 Ramesh, certainly Court can not remedy such inconsistent versions.

41] So the circumstances on record itself weakens the testimony of the witness. The defence has tried to take advantage of these lacunaes to the fullest extent. After all, defence is always interested to pin point such lacunaes. Even though the incident is serious and one murder and three person were injured, the prosecution witnesses themselves have given chance to the defence to lay emphasis on few of the weaknesses. So what the trial Court did was to give benefit to the accused. We do not find the conclusions drawn are without reasoning, wrong appreciation of evidence against the principles laid down in the above mentioned judgment. So we do not think that any interference is warranted. Hence, we have no alternative but to dismiss the appeal of the State.

Hence, the appeal is **dismissed**.

We appreciate the assistance given by both the sides in assessing the evidence involving innumerable facts.

[S.M.MODAK,J.]

[P.B.VARALE,J.]