

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 492 OF 1998

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| 1. Shivaji Kedarji Ghorpade |] | |
| Age 34 years, Occ. Service |] | |
| 2. Suryaji Kedarji Ghorpade |] | |
| Age 28 years, Occ. Agriculturist |] | |
| 3. Madhukar Shankar Chougule |] | |
| Age 29 years, Occ. Tailoring |] | |
| 4. Bajarang Shankar Chougule |] | |
| Age 23 years, Occ. Agriculturist |] | |
| 5. Balu Babasaheb Ghorpade |] | |
| Age 21 years, Occ. Agriculturist |] | |
| 6. Maruti Namdeo Patil |] | |
| Age 27 years, Occ. Agriculturist |] | |
| All residents of village Madhyal, |] | |
| Tal. Kagal, Dist. Kolhapur |] | |
| (At present, lodged in Kalamba |] | |
| Central Prison, Kalamba, Kolhapur) |] | .. Appellants |
| | | (Orgi. Accused Nos. 2 to 7) |

V/s.

The State of Maharashtra	]	.. Respondent
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Mr. Shekhar A. Ingawale for the appellants
Mr. Arfan Sait, APP for the respondent State

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**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, J.J.**

**RESERVED ON : 23rd NOVEMBER, 2021
PRONOUNCED ON : 16th DECEMBER, 2021**

JUDGMENT :- *(Per Prithviraj K. Chavan, J.)*

1. By this appeal, the original accused nos. 2 to 7 – appellants herein, have impugned the judgment and order of conviction rendered by the Additional Sessions Judge, Kolhapur in Sessions Case No. 47 and 48 of 1997 dated 3rd April, 1998.
2. The appellants have been convicted of the offences punishable under Sections 148, 302 r/w 148 and 149 of the Indian Penal Code for having committed two murders and were sentenced to suffer life imprisonment on two counts along with fine of Rs.5,000/- each. Rest of the nine accused have been acquitted.
3. The prosecution story, in brief, can be stated as follows :-
4. Bhairu Dattatraya Morbale and Maruti Dattatraya Morbale were two brothers. They belonged to Vikramsing Ghatge group. The accused belonged to Sadashivrao Mandlik group. Both the accused and deceased were residents of village Madhyal, Taluka – Kagal, Dist. Kolhapur. Admittedly, between these two groups there was a political rivalry and a long standing enmity.

5. The incident in question occurred on 27.05.1996 at 8.30 p.m. Originally, there were 15 accused. According to the prosecution, sister of A-2 Shivaji Ghorpade viz. Nirmala was suspected of having illicit relations with deceased Maruti Morbale. She had committed suicide five years before the incident. The accused, therefore, had a grudge against deceased Maruti for the reason that because of his such illicit relations with Nirmala, she was driven to commit suicide.
6. The second reason, according to the prosecution, is that deceased Maruti contested Grampanchayat election against A-3 – Suryaji Ghorpade. A-2 – Shivaji Ghorpade and A-3 – Suryaji Ghorpade are real brothers. In the said Grampanchayat election, A-3 – Suryaji Ghorpade was defeated. He had, therefore, sought candidature of a political group headed by Sadashivrao Mandlik. Since the same was refused, he contested the election from the group of Amarsing Ghorpade. The latter was the member of the political group headed by Vikramsing Ghatge.
7. The third reason, according to the prosecution, is that deceased Maruti was the Chairman of Hanuman Milk Co-operative Society. He managed to pass a resolution in his favour, whereby he was entitled to vote in the election of Kolhapur District Central Co-op. Bank, Kolhapur. The accused no.1 – Maruti Chothe had brought a motion of no confidence against deceased Maruti. The same was passed and as such, deceased Maruti was removed from the

Chairmanship of the said milk society.

8. The fourth reason, according to the prosecution, is that since the deceased – Bhairu Morbale and Maruti Morbale were the members of the group headed by Vikramsing Ghatge, the accused had a political rivalry with both deceased brothers.
9. The fifth reason, according to the prosecution, for committing the murder of two brothers is that A-1 – Maruti Chothe had borrowed an amount of Rs.80,000/- from the deceased Bhairu for purchasing an Ambassador Car. Despite repeated demands by deceased Bhairu, A-1 Maruti failed to repay the amount, due to which there was a rivalry between A-1 Maruti and deceased Bhairu.
10. The sixth reason, according to the prosecution, is that the complainant – Pandurang Keshav Chougule had got his agricultural land measured through a Government Surveyor and during the said measurement, it was noticed that A-1 Maruti Chothe had encroached upon the land of the complainant to the extent of 3 Are. In order to get the encroachment removed, PW-1 Pandurang Chougule sought help of deceased Bhairu and, accordingly, deceased Bhairu had helped in taking possession of the encroached area of land. Later on, A-1 Maruti Chothe had removed the crop from 3 Are area of the land of complainant Pandurang Chougule. It is alleged that at that time, deceased Bhairu warned A-1 Maruti Chothe that he would face the

consequences.

11. The last reason, according to the prosecution, is that there was a quarrel between Annappa Gaikwad and Kerba Gaikwad. There was a scuffle between them, which was in respect of possession of an agricultural land. In that case, A-2 Suryaji Ghorpade and A-11 Dhanaji Dadu Patil were the accused. They suspected that deceased Maruti Morbale and Bhairu Morbale were supporting the prosecution case and had helped the complainant – Pandurang Chougule in securing the conviction.
12. Thus, the prosecution is based on the aforesaid seven reasons i.e. the motive behind commission of the offence by the accused. It is alleged that the accused belonged to a group known as “Anna Group” as A-2 Shivaji Ghorpade, being head of that group, was also known to be “Anna” in village Madhyal.
13. On 27.05.1996, there was a marriage at the house of one Mahadev Namdev Kesarkar. Several villagers had gathered for attending the marriage ceremony. Deceased Maruti was also amongst them. The feast was over and almost all the villagers were disbursing from the venue of marriage. At that time, deceased Bhairu was in search of a tractor for carrying manure to his field. He had, therefore, contacted one Maruti Ghatge, who assured deceased Bhairu that he would arrange for a tractor after two days. Deceased Bhairu,

PW-6 Rangrao Dhanukhe and PW-7 Yashwant Kesarkar were sitting near the door of office of the Society. It was about 7.30 p.m. At that time, A-4 – Madhukar Chougule was passing in front of deceased Bhairu, PW-6 Rangrao Dhanukhe and PW-7 Yashwant Kesarkar. PW-7 Yashwant Kesarkar suspected that A-4 Madhukar Chougule would pickup a quarrel with him. Deceased Bhairu, therefore, asked PW-6 Rangrao Dhanukhe to call deceased Maruti at that place. Accordingly, PW-6 Rangrao Dhanukhe left the spot to go to the house of deceased – Maruti. PW-6 Rangrao Dhanukhe informed deceased Maruti that there is a possibility of a quarrel near the society's office and, therefore, deceased Maruti rushed to the spot. While leaving the house, he told his daughter that he would return after some time and by that time, they should take their meals.

14. Here, on the spot, A-4 – Madhukar Chougule grabbed collar of Yashwant Kesarkar. A-2 – Shivaji Ghorpade caught hold of deceased Maruti while A-3 – Suryaji Ghorpade and other accused caught hold deceased Bhairu Morbale. A-4 – Madhukar Chougule asked A-5 – Bajarang Chougule, A-6 – Balu Ghorpade and A-7 – Maruti Patil to bring sticks and swords from the house of A-2 Shivaji Ghorpade. Accordingly, accused nos. 5, 6 and 7 left that place to bring weapons from the house of A-2 – Shivaji Ghorpade. In the meantime, A-4 – Madhukar Chougule started pushing PW-7 – Yashwant Kesarkar towards office of the Panchayat Samiti. Deceased Bhairu and Maruti were dragged by A-2 Shivaji

Ghorpade and A-3 – Suryaji Ghorpade in the opposite direction of PW-7 – Yashwant Kesarkar. PW-7 – Yashwant Kesarkar, however, managed to escape from the spot by giving jerk to A-4 Madhukar Chougule. PW-7 Yashwant Kesarkar fell down near the door of the house of one Pundlik Sonar. When he looked behind, nobody was found at the spot.

15. At about 9.30 p.m. complainant – Pandurang Chougule had returned from Kagal Sugar Mills. When he was proceeding towards his house from the bus stand, he noticed that people were running helter skelter on the road. On an inquiry, he came to know that Bhairu Morbale and Maruti Morbale have been murdered and that their dead bodies were lying near the office of the society. PW-1 – Pandurang Chougule, therefore, decided to go to the spot. On his way, he met Police Patil of the village Madhyal. Both of them went to the spot and noticed the dead bodies of deceased Bhairu and Maruti lying over there. They identified the dead bodies of deceased Bhairu and Maruti. There were several injuries on the person of both the deceased brothers, which were bleeding.
16. PW-1 – Pandurang Chougule immediately went to the house of Amarsing Ghorpade from where he contacted the police on telephone.
17. After effecting an entry into the station diary, PSI –

Mr. Mane proceeded to village Madhyal along with police staff. He noticed two dead bodies lying near Wadekar Tikti. The complainant – Pandurang Chougule was present over there, who again orally reported the matter to PSI - Mane, which was reduced into writing. The Investigating Officer drew an inquest panchanama of the dead bodies in the presence of panch witnesses. On the following day i.e. on 28.05.1996, at about 7.00 a.m., PSI - Mane drew a scene of offence panchanama. On 05.06.1996 he arrested accused nos. 3 to 11.

18. During their police custody, the accused made voluntary statements to discover certain articles in the form of blood stained clothes and weapons. Certain incriminating articles came to be discovered at their instance. The dead bodies of deceased Bhairu and Maruti were sent for autopsy. There were as many as thirteen external injuries on the person of deceased Bhairu, which according to the prosecution, were due to sharp weapon. According to PW-12 Kiran Malu, Medical Officer, the cause of death of deceased Bhairu was due to cardiorespiratory arrest due to fracture of skull and intracranial haemorrhage.
19. Similarly, there were eight external injuries on the dead body of deceased Maruti. The skull bones were found fractured and the probable cause of death is also due to cardiorespiratory arrest as a result of shock due to laceration of brain and intracranial haemorrhage.

20. The Investigating Officer had forwarded the seized articles to the Forensic Science Laboratory, Pune. The blood samples of the accused were also forwarded to the Chemical Analyzer. After recording the statements and after completion of the investigation, a charge-sheet was filed in the Court of Judicial Magistrate, First Class, Kagal against all the accused, which ultimately came to be committed to the Sessions Court as the offences were triable by the Sessions Judge.
21. The learned Sessions Judge framed a charge under Sections 147, 148, 302 read with 149 of the Indian Penal Code and under Sections 37(1)(a to f) read with 134 of the Bombay Police Act. The charge was read over and explained to the accused in vernacular to which they pleaded not guilty and claimed a trial.
22. The defence of the accused, as emerged from the line of cross-examination as well as from their statements under Section 313 of the Code of Criminal Procedure is that they have been falsely implicated in the case and the Investigating Officer had deliberately changed the time and place of incident. According to the defence, the incident must have been occurred during mid-night. There was no sufficient light at the time of drawing of panchanama and even at the time of alleged incident. According to the defence, a false panchanama was drawn, so as to say, the dead bodies were

shown lying near a public lamp post. It is further contended on behalf of the defence that there were several enemies of the deceased in the village and the deceased too were facing a charge of murder of one Mr. Narvekar, to whom deceased Bhairu had shot dead. The case was then pending in the Court of J.M.F.C., Ichalkaranji.

23. In support of its case, the prosecution has examined as many as 18 witnesses. The learned Additional Sessions Judge after considering the over all evidence on record and after hearing the prosecution and the defence, by the impugned judgment and order convicted accused nos. 2 to 7 as under :-

“1. The accused nos. 2 – Shivaji Kedarji Ghorpade, No.3 – Suryaji Kedarji Ghorpade, No. 4 – Madhukar Shankar Chougule, No.5 – Bajarang Shankar Chougule, No. 6 – Balu Babasab Ghorpade, No.7 – Maruti Namdev Patil, all r/o Madhyal. Tal. Kagal, Dist. Kolhapur, are hereby convicted of the offence punishable u/s 148 of the Indian Penal Code and are sentenced to suffer R.I. for two (2) years each, and to pay a fine of Rs.3000/- each, I.D. to suffer R.I. for one year.

2. They are further convicted of the offence punishable u/s 302 r/w Sec. 148 and 149 of the Indian Penal Code for commission of murder of Bhairu Dattatraya Morbale and are sentenced to suffer life imprisonment and to pay a fine of Rs.5000/- each I.D. to suffer R.I. for two years.

3. They are also convicted of the offence punishable u/s 302 r/w Sec. 148 and 149 of I.P.C. for commission of murder of Maruti Dattatraya Morbale and are sentenced to suffer life imprisonment and to pay a fine of Rs.5000/- each,

I.D. to suffer R.I. for two years.

4. The substantive sentences shall run concurrently.

5. All these accused nos. 2 to 7 are however acquitted of the offence punishable u/s 37(1) r/w 135 of the Bombay Police Act.

6. The accused no. 1, 8 to 15 are also acquitted of all the offences for which they are charged. They are set at liberty and their bail bonds stands cancelled.

7. Although the accused nos. 2 to 7 are in jail custody still they are not for set of in view of the punishment of life imprisonment awarded to them.

8. Muddemal articles be destroyed, except the article no.18, 27 and 28.”

24. As such, accused no.1, 8 to 15 have been acquitted of the offence with which they were charged.
25. We heard Mr. Ingawale, the learned Counsel for the appellants and Mr. Sait, APP for the respondent.
26. Indubitably, deceased Bhairu and Maruti died homicidal deaths.
27. The evidence of the medical expert PW-12 – Dr. Kiran Malu, who had conducted autopsy on the dead bodies of both the deceased, observed the following external injuries on the person of deceased Bhairu, which were *ante mortem* :-

- “1. Incised wound over rt. parietal region.
Size 3” x ½” x bone deep.*
- 2. Incised wound over lt. occipital parietal area
size 2” x 1” x bone deep.*
- 3. Incised wound over rt. temporomaxillary region
L.Type size 2½” x 1½” x ½”
1½” x ½” x ½”*
- 4. Incised wound over rt.ear pina horizontally ½”
length and cartilage deep*
- 5. Cut injury over left hand starting from the base
of little finger cutting carpal bones underneath
from dorsal as well as palmer aspect injuries
extending obliquely towards wrist joint.*
- 6. palternel abrasion over left deiterid region
2” x ½”*
- 7. patlernel contusion over scapular and
interscapular region horizontally.
Size 6½” x ½”. No fracture, redness plus.*
- 8. patterned contusion over back interscapular
region vertically. Size 8” x 1”, redness + No
fracture*
- 9. patterned contusion over back, horizontally
below scapular region. 8” x 1”, redness +*
- 10. Multiple contusions over back, 4 in no. over
scapular region*
- 11. patterned contusion vertically over post fold of
axilla. Size 5” x 1” redness + Rt. Side.*
- 12. patterned contusion, multiple 3 inch no over
left lumbar region of back. Size 5” x 6” with 1”
width each Redness +*
- 13. patterned contusion, obliquely over post fold
of axilla. Size 4½” x 1”. Redness +. – Rt. Side”*

28. PW-12 Dr. Kiran Malu observed the following external injuries on the person of deceased – Maruti, which were *ante-mortem* :-

- “1. curved incised wound directing upwards over it. tempor parietal region. size 3” x ½” x bone deep. Fracture underneath, bone present. Brain is coming out.*
- 2. Multiple depressed fracture of skull extending over frontal, temporal, parietal, occipital bones.*
- 3. Depressed fracture of maxillary and temporal bone. Rt. Side of face involving ear.*
- 4. Incised wound lt. upper eyelid. ½” x ¼” x muscle dep. No injury to eye.*
- 5. Incised wound over rt.elbow medially exposing epicondyl of humerus. Bleeding plus.*
- 6. Incised wound over base of lt.thumb medially. Exposing carpal bones.*
- 7. Dislocation of rt.shoulder joint.*
- 8. Abrasion over medial maleolus of rt. Leg. Bleeding +.”*

29. Certain important aspects revealed during cross-examination of PW-2 Dr. Kiran Malu, which would definitely have a bearing on the case of the prosecution as regards time of death of deceased Bhairu and Maruti. The prosecution case rests on the premise that both were done to death brutally by a mob comprising of the present accused, by use of deadly weapons, meaning thereby both deaths had occurred

simultaneously. However, if the cross-examination of PW-12 Dr. Kiran Malu is seen, he candidly admits that death of Bhairu and Maruti could have been taken place at different times on the basis of the *rigor mortis* as well as nature of the injuries sustained by them. PW-12 Dr. Kiran Malu admits that injuries sustained by Bhairu were of such nature that his instantaneous death was quite probable.

30. However, the injuries on the person of deceased Maruti, more particularly, injury nos. 5, 6, 7 and 8 were not on the vital part of the body. As per the Modi's "Medical Jurisprudence and Toxicology", *rigor mortis* generally occurs whilst the body is cooling. It is not in any way connected with the nervous system and the time of onset of *rigor mortis* varies greatly in different cases. However, average period of its onset may be recorded as 3 to 6 hours after the death in a temperate climate and it may take 2 to 3 hours to develop. PW-12 Dr. Kiran Malu has rightly admitted in his cross that *rigor mortis* commences within 2 to 3 hours of death and may extend upto 12 hours. As per Modi's Jurisprudence, duration of *rigor mortis* could extend upto 24 to 48 hours in winter and 18 to 36 hours in summer.
31. The incident in question occurred in the month of May during summer and, therefore, the duration must have been for a period of 18 to 36 hours. However, in view of the said admission about the difference in time of death, a doubt arises whether the incident in question had occurred around

8.30 p.m. or around mid-night ?

32. As already stated hereinabove, the prosecution has based its case on seven grounds, which according to it, was the motive to commit the crime.
33. The first reason given by the prosecution is that sister of A-2 Shivaji Ghorpade and A-3 Suryaji Ghorpade viz. Nirmala had an illicit relations with deceased Maruti. There was a public talk in respect of the affair of Nirmala and deceased Maruti. Nirmala committed suicide and died in the hospital.
34. In order to substantiate this fact, the prosecution has relied upon the evidence of complainant – Pandurang Chougule and PW-6 Rangrao Dhanukhe. PW-6 Rangrao Dhanukhe turned hostile and, therefore, his evidence is not at all useful for the prosecution in substantiating any fact. Except PW-7 Yashwant Kesarkar and PW-8 Bharat Morbale, no witness has testified about the said aspect as none of the witnesses had any direct knowledge in respect of the alleged illicit relations between Nirmala and deceased Maruti. Even PW-7 Yashwant Kesarkar and PW-8 Bharat had no direct knowledge.
35. In such situation, normally there are gossips and rumors, that too, in a village and there can hardly be any substantive evidence in that regard. The prosecution has not tendered any medical evidence *qua* the suicidal death of Nirmala, as it is the case of the prosecution that she died in the hospital.

It appears that even the dying declaration of Nirmala was recorded after her admission in the hospital. However, no such evidence has been brought on record. It, therefore, follows that in the absence of any satisfactory evidence on record, it would be difficult to accept that A-2 – Shivaji Ghorpade was suspecting that his sister had committed suicide due to the alleged illicit relations with deceased Maruti. As such, it is difficult to infer that it could have been one of the motives for eliminating the brothers.

36. Secondly, according to the prosecution, deceased Maruti had contested the election against A-3 Suryaji Ghorpade. This is an undisputed fact. Deceased Maruti had sought candidature from the political group belonged to Sadashivrao Mandlik and when it was refused to him, he had contested the election against A-3 Suryaji Ghorpade, who was defeated. The question is whether defeat of A-3 Suryaji Ghorpade in the election against deceased Maruti could be a political rivalry between them to such an extent that they would kill not only the deceased Maruti but his brother Bhairu, is something which does not appeal to once mind. Contesting an election and win and defeat of either of the parties is a common phenomenon of any political party. That in itself cannot be said to be sufficient to accept that the motive to commit the murders was the defeat in the election.
37. The third reason put forth by the prosecution is that deceased Maruti was a Chairman of Hanuman Co-operative

Milk Society and A-1 Shivaji Ghorpade had brought no confidence motion against deceased Maruti due to which he was dismissed from the Chairmanship. This again is a kind of political rivalry as it has been brought on record that deceased Maruti had got a Resolution passed whereby he was even empowered to vote in the election of Kolhapur District Central Co-operative Bank. The trial Court has, though reasoned that because of such rivalry, the relations between the two groups were strained, which perhaps might have been resulted into an incident in question, cannot be accepted as the conclusive proof in a criminal trial where it is incumbent upon the prosecution to prove the charges beyond all reasonable doubts. The evidence is quite short and shaky in that regard.

38. The fifth reason, according to the prosecution, was that A-1 Maruti Chothe had borrowed some amount from deceased Bhairu for purchasing an Ambassador Car as has been testified by PW-9 – Manisha Morbale – daughter of deceased Maruti. Deceased Bhairu was insisting upon A-1 Maruti Chothe to repay the said amount. However, A-1 Maruti Chouthe used to ignore the same. There used to be a quarrel between deceased Bhairu and A-1 – Maruti Chothe on that count. However, except the bare words of PW-9 Manisha Morbale, there is no acceptable and satisfactory evidence to prove this fact. Even, rest of the witnesses had no personal knowledge in respect of the payment of such amount by deceased Bhairu to A-1 – Maruti Chothe and the alleged

demand made by deceased Bhairu. This cannot be the sufficient reason to have a motive to eliminate the deceased. Rather, deceased Bhairu would have some motive to kill A-1 Maruti Chothe as he was not returning the amount of deceased Bhairu.

39. The sixth ground raised by the prosecution is about the quarrel between PW-1 Pandurang Chougule and A-1 – Maruti Chothe on account of encroachment in the field of PW-1 Pandurang Chougule. PW-1 Pandurang Chougule had got his land measured through a Government Surveyor. It is noticed that A-1 Maruti Chothe had encroached to the extent of 3 Are of land of PW-1 Pandurang Chougule. It is not disputed that for taking possession of the encroached portion of land, deceased Bhairu had helped PW-1 Pandurang Chougule and had also threatened A-1 Maruti Chothe when he had taken away the standing crop from the field of PW-1 Pandurang Chougule.
40. The seventh and last reason put forth by the prosecution is that there was a quarrel between Annappa Gaikwad and Kerba Gaikwad. The dispute was in respect of the agricultural land between those two persons. A case was registered against A-2 Shivaji Ghorpade and A-11 Dhanaji Patil, in which both of them were convicted and sentenced to suffer imprisonment for 3 years. It is the contention of the prosecution that A-2 Shivaji Ghorpade and A-11 Dhanaji Patil were under the impression that deceased Bhairu and

deceased Maruti had helped PW-1 Pandurang Chougule in that case in securing the conviction and, therefore, had a grudge against deceased Maruti and Bhairu.

41. This is nothing but a figment of imagination, for, there is no satisfactory material or evidence on record in that respect. Conviction and sentence in a criminal case is awarded on the basis of evidence of the prosecution witnesses, who are cross-examined by the defence. It is ridiculous to presume that deceased had helped the complainant PW-1 Pandurang Chougule and, therefore, A-2 Shivaji Ghorpade and A-11 Dhanaji Patil had been convicted. This is something which no sane man would believe and accept.
42. Even in the cross-examination, PW-1 Pandurang Chougule admitted that he had no personal knowledge as to how A-2 Shivaji Ghorpade and A-11 Dhanaji Patil were of the view that deceased Bhairu and Maruti had helped in securing their conviction.
43. Thus, none of the seven reasons enumerated above are sufficient in the given case to construe that the real motive behind the commission of offence was as stated hereinabove. None of the seven grounds have been shown to be convincing and satisfactory to attribute motive. It is significant to note that the deceased themselves had several enemies in the village.

44. PW-6 Rangrao Dhanukhe has turned hostile and, therefore, his evidence would be of no use to the prosecution. As a matter of fact, he was the witness who had narrated the entire incident to the police and subsequently to the Special Judicial Magistrate, Kolhapur. He contradicted his own versions in both of his statements during his cross-examination. Perhaps, he might have been won over by the accused persons.
45. So far as the evidence of PW-1 Pandurang Chougule is concerned, he admits that even after the death of Nirmala, deceased Bhairu and Maruti were on visiting terms with A-2 Shivaji Ghorpade. That being so, how it can be a motive for the accused to eliminate deceased Bhairu and Maruti on that ground?
46. PW-7 Yashwant Kesarkar was the eye-witness of the incident. According to this witness, on 27.05.1996 there was a marriage at the house of one Mahadev Namdev Kesarkar. Deceased Maruti had attended the marriage and thereafter was proceeding towards the office of the society. At that time, deceased Maruti asked A-4 – Madhukar Chougule as to why he was looking at him, upon which, he replied that he may do as he likes.
47. PW-7 Yashwant, PW-6 Rangrao Dhanukhe and deceased Bhairu were in search of a tractor of Maruti Ghatge at the relevant time. Maruti Ghatge assured that he will send his

tractor after two days. At that time, this witness along with deceased Bhairu and PW-6 Rangrao Dhanukhe were sitting near the door of the office of society. It was about 7.00 p.m. to 7.30 p.m. While passing in front of them, this witness suspected that A-4 Madhukar Chougule would pick up a quarrel and, accordingly, he appraised deceased Bhairu. Deceased Bhairu, therefore, asked PW-6 Rangrao Dhanukhe to immediately call deceased Maruti over there. PW-6 Rangrao Dhanukhe left the place to call deceased Maruti. By that time, A-4 Madhukar Chougule caught hold the collar of this witness. A-2 Shivaji Ghorpade caught hold deceased Maruti while A-3 Suryaji Ghorpade and other accused persons caught hold deceased Bhairu.

48. Thereafter, A-4 Madhukar Chougule asked A-5 Bajarang Chougule, A-6 Balu Ghorpade and A-7 Maruti Patil to bring sticks and swords from the house of A-2 Shivaji Ghorpade. Accordingly, they left the spot to bring the weapons from the house of A-2 Shivaji Ghorpade. In the meantime, A-4 Madhukar Chougule started pushing this witness towards the office of Panchayat Samiti. Deceased Bhairu and Maruti were dragged by A-2 Shivaji Ghorpade and A-3 Suryaji Ghorpade in the opposite direction of PW-7 Yashwant Kesarkar. This witness managed to escape from the spot by giving jerk to A-4 Madhukar Chougule. He fell down near the door of the house of one Pundlik Sonar. When he looked back, he noticed that nobody was there. He, therefore, proceeded to the house of one Vasant Davare, postman, who

is his relative. He asked Vasant Davare to go to the spot of incident and to see what had happened. Vasant Davare went to the spot and returned by saying that dead bodies of deceased Maruti and Bhairu were lying over there.

49. Thereafter, this witness went to the house of his sister, who resides in the village known as 'Kamat'. On the next day morning, this witness went to the field known as 'Rawanachi Bari'. He was in the field in the day and for the entire night. He appeared only before the police on the following day and gave his statement.
50. It is apparent from the evidence that he had no occasion to witness the actual assault upon the deceased by any of the accused, that too, by means of any deadly weapons. What he noticed is simply dragging of the deceased by A-2 Shivaji Ghorpade, A-3 Suryaji Ghorpade and other accused in opposite direction. The moment he fell down near the door of the house of one Pundlik Sonar and looked back, he did not notice anything, even deceased Bhairu and Maruti. What he heard from the postman Vasant Davare that dead bodies of the deceased were lying on the spot, is the only evidence of this witness which does not inspire confidence as there is nothing in his evidence to indicate as to who was the author of the injuries or even for that matter, which accused held which weapon? This is significant in view of number of injuries found on the person of deceased Bhairu and Maruti. He even did not notice dead bodies of

Bhairu and Maruti.

51. When he was cross-examined, several factors have been surfaced rendering his testimony unworthy of credit. He admits that A-1 Maruti Chothe and deceased Bhairu were erstwhile friends and were helping each other financially. This witness was not aware about any financial dealings amongst themselves. He feign innocence as regards the habit of deceased Bhairu and Maruti to pick up quarrels in the village. However, he admits and it is a matter of record that deceased Bhairu and Maruti were arrested in respect of a murder case.
52. It has come in his cross-examination that there were about 400 people gathered for attending the marriage and that he was busy for the whole day in celebration of marriage. This witness is from the village Kesarkarwadi, which is at a distance of 2 k.m. from village Madhyal. He further admits that at the relevant time, when he heard commotion from Wadekar Tikti, he asked Vasant Davare to go to the place of commotion and to see what was going on. Vasant Davare returned there and informed him within 5 minutes that dead bodies of Bhairu and Maruti were lying near Wadekar Tikti. This witness totally changed his version in cross than what has been stated by him in examination-in-chief. He is an interested witness, for the reason which we find in his further admission, where he had stated that he belongs to Vikramsing Ghatge group, of which the deceased belonged.

53. Admittedly, as already stated, there were two rival groups in the village – one is headed by Amarsing Ghorpade and another by A-2 Shivaji Ghorpade. The witness admits that about 7 years ago, he was prosecuted in a criminal case for allegedly beating one Nivruttin Kamble. He was also prosecuted for beating one Krishna Dhondi Dhanukhe and also prosecuted for pelting stones on the houses of others during the election period.
54. Thus, it is difficult to believe this witness, who himself had a criminal record. His cross-examination indicates that when quarrel was going on, he asked A-4 Madhukar Chougule as to why he had caught hold of his collar. At that time, deceased Maruti intervened. The distance from the spot of quarrel and the marriage pandal was 10 to 15 meters. Some persons who had gathered for the marriage rushed to the spot and intervened. Some of them pushed A-4 Madhukar Chougule aside while others pushed deceased Bhairu and Maruti.
55. The over all conduct of this witness renders his evidence untrustworthy, for, even after noticing the the incident he did not immediately approached the police to lodge a report. Rather, he himself escaped and concealed himself in the field for a day and full night. He even admits that he did not speak to anyone else about the incident on Thursday and Wednesday till he was interrogated by the police. As such,

the evidence of this witness cannot be considered to be a truthful version of the incident.

56. PW-8 Bharat Morbale is the cousin of the deceased and also belonged to the group of Vikramsing Ghatge. His evidence is also of no use to the prosecution as he testified that at the time of incident, he was at the distance of 200 feet and did not see as to who was pushing whom. He testified that the accused were also pushing Bhairu, who were the members of Anna Group and were armed with the weapons like sticks and swords. According to this witness, he could witness the incident because there was a tube-light of Grampanchayat. In cross, he denied to have been tutored by the police to depose against the accused.
57. However, his evidence smacks suspicion because on the day of incident, perhaps he was not in his senses in view of his admission that there is a Diety in the house of Datta Hodge, known as '*pirache devastan*'. On that particular day, people used to walk over the fire and that this witness was *possessed* by the *pir*. He testified that around 10.00 p.m. the fire was kept ablaze. It is difficult to believe his evidence in view of the aforesaid fact, which perhaps could have been the case of some psychological disorder.
58. His further admission also makes his evidence unbelievable when he admits that he was at such a distance from the spot that he could not identify the assailants and even could not

see any weapons in their hands, who were in front of the door of the society. What he could hear is only the quarreling noises. He even did not notice the persons having a scuffle. Rather, he admits that he got frightened after noticing the quarrel and then noticed Bhairu and Maruti had fallen down. He too, had contacted the police after 5 to 6 days from the incident. He preferred to keep mum from the day of incident, till his statement was recorded by the police.

59. PW-9 Manisha Morbale is the daughter of deceased Maruti. She was not the eye-witness. However, she admits in cross that her father and deceased Bhairu were prosecuted for an offence of commission of murder and the case was pending in the Court at Ichalkaranji. She did not know whether her father and uncle i.e. deceased Maruti and Bhairu had beaten the tenants in the house at Ichalkaranji and a criminal case to that effect was pending against them. She did not know whether an amount of Rs.80,000/- was paid by deceased Bhairu to A-1 Maruti Chothe. Rather, she testified that all the accused were on visiting terms to their house. She admits that neither deceased Bhairu nor her father deceased Maruti had taken meals on the day of incident. However, semi-digested food was found in the stomach of both the deceased, which creates doubts as to the exact time of their deaths.
60. On the aspect of discovery under Section 27 of the Indian Evidence Act, the evidence of PW-10 Bandu Morbale would

be relevant. He is a close relative of deceased Maruti and Bhairu. He had also acted as a witness of the inquest panchanama. Interestingly, all the memorandum statements under Section 27 of the Indian Evidence Act came to be recorded one after another in respect of same place from where the accused alleged to have concealed the clothes and weapons and were jointly discovered. This is something quite strange as to how all the accused at a given point of time would give voluntary statements and would discover everything from one place simultaneously. Evidence in that regard needs to be discarded at the threshold. The question of finding blood stained clothes and weapons and consequent chemical analyzer's reports are inconsequential in view of the fact that the alleged discovery itself is in total contravention of the spirit of Section 27 of the Evidence Act. In cross-examination, this witness admits that within 3 days, 11 panchanamas were drawn by the police and on 11 occasions, he put his signatures on 11 panchanamas.

61. Even at the time of drawing the discovery panchanama, he admits that police had summoned him to make signatures over the panchanamas at the police station. All the signatures were made in a hut of one Mr. Gurav. Within 15 minutes, all the signatures were obtained in the hut of said Mr. Gurav. He was not in a position to narrate in sequence as to which panchanamas were signed by him and which were drawn. He was unable to testify which of the clothes were produced by which of the accused as well as the sticks

and swords. Nothing more is required to be stated about the alleged discoveries.

62. There is neither any reference of street light in the spot panchanama (**Exh.47**) nor there is any mention in the panchanama as to who had shown the spot of incident. PW-2 Suresh Patil as well as PW-3 Bacharam Dhunshe both have turned hostile, who were the witnesses to the spot panchanama. It is a matter of record that there was a huge delay in recording the statements of the witnesses by the Investigating Officer.
 - (a) Statement of PW-6 – Rangrao Dhanukhe was recorded after 5 days i.e. on 31.05.1996.
 - (b) Statement of PW-7 – Yashwant Kesarkar was recorded after 2 days i.e. on 28.05.1996; and
 - (c) Statement of PW-8 – Bharat Morbale was recorded after 15 days i.e. on 11.06.1996.

63. All the witnesses are either related or closely associated with the deceased. Their conduct, as discussed hereinabove, is unnatural. Interestingly, none of the eye-witnesses are the residents of the same village and, therefore, their presence on the spot of incident itself appears to be unnatural and doubtful. There is no evidence on record to show that they were invited for the marriage. PW-6 Rangrao Dhanukhe is a resident of village Dhunnksheewadi, which is about 2 to 2½ k.m. from village Madhyal. Similarly, PW-7 Yeshwant Kesarkar is a resident of Kesarkarwadi, which is at a distance

of 2 k.m. from village Madhyal and PW-8 – Bharat Morbale was residing in the field, which is about $\frac{1}{2}$ to $\frac{3}{4}$ k.m. from the spot of incident. Delay in recording their statements itself, therefore, creates a doubt as regards their presence at the time of incident.

64. PW-1 Pandurang Chougule was not an eye-witness. However, his over all conduct and in view of the admitted fact of his enmity with A-2 Shivaji Ghorpade and A-3 – Suryaji Ghorpade, there is every reason for him to implicate the accused falsely. The prosecution has failed to bring on record imminent reason for the accused to commit murder of the deceased Maruti and Bhairu in such a brutal manner.

65. Looking to the criminal background of the deceased, the possibility of someone else's involvement cannot be totally ruled out. The prosecution has not clarified as to how there was change of time in the occurrence of the alleged incident? According to the prosecution, the incident occurred around 8.30 p.m. while according to PW-1 Pandurang Chougule, while returning at about 9.30 p.m. from Kagal Sugar Mills, he noticed people running helter-skelter on the road and informed him about the murder of deceased Bhairu and Maruti. The police was informed on telephone at 9.45 p.m. They arrived at the scene around 11.00 p.m. However, station diary entries indicate that the police were informed around 00.30 hours and the police reached around 1.00 a.m. FIR came to be registered at 3.05 a.m. The possibility of

change of time of occurrence of incident appears to have been deliberately changed to suit the prosecution story. This also goes to the root of the prosecution case and affects its credibility.

66. If there was a marriage ceremony in the village and around 400 persons were assembled, why not a single independent eye-witness has been examined by the prosecution? It is incredible as to how none from 400 persons had informed the police immediately after noticing the scuffle? This is significant in view of the evidence of PW-12 Dr. Kiran Malu, who admits that perhaps death of both the deceased might have occurred at different times.
67. The learned Additional Sessions Judge misdirected himself in placing reliance upon the testimony of PW-7 Yashwant Kesarkar as a star witness by accepting his evidence despite several other discrepancies surfaced during the course of cross-examination of other prosecution witnesses. The learned Additional Sessions Judge failed to appreciate the over all evidence of the prosecution in its correct perspective by ignoring not only the long standing enmity between two groups but also the material inconsistencies and lacunae in the prosecution case. The over all evidence adduced by the prosecution is neither acceptable nor believable.
68. Having considered the entire circumstances, evidence and facts on record, we are of the considered view that the

impugned judgment of conviction warrants interference in appeal as the prosecution has failed to establish its case beyond all reasonable doubts.

69. Now, to the order :-

ORDER

(i) The impugned judgment, conviction and sentence passed by the learned Additional Sessions Judge in Sessions Case No. 47 and 48 of 1997 on 3rd April, 1998 is quashed and set aside.

(ii) Accused no.2 – Shivaji Kedarji Ghorpade, A-3 – Suryaji Kedarji Ghorpade, A-4 – Madhukar Shankar Chougule, A-5 – Bajarang Shankar Chougule, A-6 – Balu Babasab Ghorpade and A-7 – Maruti Namdev Patil are acquitted of the offences with which they were charged.

(iii) Their bail bond stands cancelled.

(iv) Fine amount, if paid, be refunded.

(v) They be released forthwith, if not required in any other case.

(PRITVIRAJ K. CHAVAN, J.)

(SMT. SADHANA S. JADHAV, J.)