

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 592 OF 2012

Jafar Khijar Sheikh,
 Age – 27, Occu.- Nil,
 R/o. Gaothan Lonawala,
 Opp. Priyadarshini Sankul,
 Tal – Maval, Dist. - Pune.
 (At present in Yerawada Jail) } Appellant

Versus

The State of Maharashtra
 (Through Lonavala Police Station) } Respondent

WITH
CRIMINAL APPLICATION NO.1131 OF 2019
IN
CRIMINAL APPEAL NO. 728 OF 2012

Sumit Appa @ Prakash Gawali } Appellant
 Age-27, Occu-Nil, }
 R/o, Nira Niwas, Gaothan Lonavala }
 Opp. Priyadarshini Sankul, }
 Tal.Maval, District-Pune }
 (At present in Yerawada Jail) }

Versus

The State of Maharashtra } Respondent

Mr. Niteen Pradhan a/w. Mr. Chaitanya Pendse a/w. Ms. S.D. Khot a/w. Ms. Asavari Khandkar i.by Mr. Shailesh Chavan for the appellant in Appeal/592/2012.

Mr. Niteen Pradhan a/w. Mr. Chaitanya Pendse a/w. Mr. S.D. Khot a/w. Mr. Shailesh Chavan I/by Ms. Juanita Menezes for the appellant in Appeal/728/2012.

Ms. P.P. Shinde-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : MARCH 17, 2021.

PRONOUNCED ON : JUNE 8, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The appellants herein take exception to the judgment and order passed by District Judge- 10 and Additional Sessions Judge, Pune in Sessions Case No. 1085 of 2009 dated 27th of April 2012, thereby convicting the appellants for the offence punishable under section 302 and 307 read with 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs.5000 (Rs. Five Thousand only) each in default, to suffer rigorous imprisonment for six months as well as for the offence punishable under section 201 read with 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for 3 years and to pay fine of Rs.3000 (Rs. Three Thousand only) each in default, to suffer rigorous imprisonment for three years.

2. Such of the facts necessary for the decision of this appeal, are as follows:-

a. One Raju Choudhari was officiating as a President of Municipal Council, Lonavala since the year 2008. On 26th May 2009 at about 1.30 p.m. when Mr. Choudhari was in the office of Municipal Council Lonavala along with PW.6 Umesh Mudliyar two persons barged into his chamber. They were armed with deadly weapons and had mounted assault upon Raju Chaudhari. They had also assaulted Umesh Mudliyar and thereafter, they had fled from the office. Mr. Mudliyar was taken to Parmar Hospital. The statement of the injured was recorded in Parmar Hospital. The said statement is at 'Exhibit-92'. The injured PW.6 had stated that at about 2.30 p.m. the accused Sumit Prakash Gavali along with one unknown person had barged into the chamber of the Mayor, mounted assaulted with a dagger, slit his neck and had also assaulted PW.6 on his head and shoulder and he had just learnt that Raju Chaudhari had succumbed to the said injury. On the basis of station diary entry (Entry No. 23 of 2009, at about 2.45 p.m.) Crime No. 72 of 2009, was registered against Sumit Gavali and one unknown person for the offence punishable under section 302, 307 read

with 34 of Indian Penal Code. The investigation was set into motion.

b. On 24th August 2009, Charge-sheet was filed. The case was registered as Sessions Case No. 1085 of 2009. The prosecution examined 26 witnesses to bring home the guilt of the accused. The accused has examined two defence witnesses. There were 7 accused who faced the trial, however, accused no. 4 was discharged by the High Court, whereas accused no. 3, 5, 6 and 7 are acquitted. In the present case, PW.6 happens to be an injured eyewitness and the first informant in the present case.

In fact, it was Lonawala Municipal Council and not Lonawala Municipal Corporation. Further, inadvertently, the post of the deceased has been spelt by the witness and the presiding officers as Mayor and the same needs to be corrected as President.

3. The case needs to be appreciated under four categories :-

Eye witness account.	PW.6-Umesh Mudliyar, PW.14-Dashrath Chorage.
Motive	PW.6-Umesh Mudliyar, PW. 18-Shadan Choudhari

Circumstances	PW.15-Prakash Hajare, PW.21-Rajesh Chavhan, PW.14-Dashrath Chorage and PW.5-Ashok Panchmukh.
Investigation	PW.13-Dr. Rajendra Parmar, PW.19-Dr. Mamata Parade and PW.20-Dr. Balaji Gawade.

4. PW.6.- Umesh Mudliyar has deposed before the Court that he happens to be the member of Education Board of Lonavala Municipal Council and was elected from Graduate's Category. He and the deceased belonged to the same party. That, the accused Sumit Gavali happens to be the brother of Corporator, Amit Gavali. Amit Gavali and Sumit Gavali are the sons of Prakash Gavali who was running Ekvira Chinese Restaurant. That, upon directions of the High Court a demolition drive was undertaken for removing encroachments and in the said drive Ekvira Chinese, Ekvira Rasvanti Griha, Ekvira Malvani and Ekvira Café owned by Gavali family were demolished. The directions of the High Court were executed by the President. There was political rivalry in between Gavali family and the deceased Raju Choudhari. On 26th May 2009, he was in his own chamber, he had a meeting with his colleagues namely Mr. Kadam, Mr. Rakshe and Mr. Joshi. Thereafter, they all had proceeded to the chamber of the President to discuss administrative issues. After the discussion Mr. Rakshe, Mr. Joshi and Mr. Kadam had left the chamber and when he

was still in discussion with the President, the assailants had barged into the chamber and assaulted the President brutally. He continued to be in the chamber. He was also assaulted by the assailants. The door of the chamber was open. Sumit Gavali entered the cabin with dagger, he was accompanied by an unknown person. While leaving the office, the assailants had broken the glass-door of the cabin and thereafter the assailants had fled. He left the cabin in an injured state and disclosed to the office staff and others about the death of Raju Choudhari inside the cabin. He was taken to Parmar hospital where his statement was recorded in presence of doctor which is marked at 'Exhibit-92'. He was then shifted to Birla Hospital by his relatives and friends. On 30th May 2009, the police had disclosed the name of the second accused as Jafar Shaikh to him. According to him, FIR/ statement was recorded on 30th May 2009 is at 'Exhibit-92'. On 9th January 2010 he was summoned for test identification parade, more particularly, to identify the accused no.2 and he had accordingly, identified the accused no. 2 as the perpetrator who had accompanied Sumit Gavali.

5. PW.6 was subjected to cross-examination and his admissions are as follows:-

a) That, 3 members of the family of the deceased are the

office bearers of Lonavala Municipal Council i.e. President himself, his wife Shadan Choudhari (PW.18.) and Usha Choudhari, Sister-in-law of the deceased. That, Raju Choudhari was elected as a President for two and half years and that at the time of incident his term as a President was about to expire.

b) That, he was in the business of real estate and continued as one. That, the deceased had appointed him as Power of Attorney holder on 24th May 2002. He had entered into certain transactions on behalf of Raju Choudhari as a Power of Attorney holder. Exhibits-94, 95, 96 and 97' are the agreements between several persons and Raju Chaudhari, wherein he had signed on behalf of the deceased. He has denied to have signed the documents of the deceased as Power of Attorney, after his demise. It is admitted that he had sold the property of deceased Raju to Prakash Parmar as a Power of Attorney holder. The document of sale is at 'Exhibit-100'.

c) He has feigned ignorance about the criminal antecedents

of the deceased. He has also feigned ignorance about the criminal antecedents of the brother of the deceased namely Ashok Choudhari but has admitted that the Corporator Usha Choudhari happens to be the wife of Ashok Choudhari. He has also denied about the filing of several applications against the deceased and his family member by N.R. Shinde, the owner of hutment area which is known as Indira Nagar, Tungarli, the constituency of Shadan Chaudhari, the wife of the deceased. It is admitted that Prakash Gavali, the father of Sumit had challenged the election of Usha Chaudhari on the ground that she had filed a false caste certificate. Similar application was filed against the deceased. That accused no.6 Shashikant Jadhav and accused no.3 Prakash Gawali (acquitted) had also sought disqualification of Usha Chaudhari as a President on account of the irregularities during her tenure. There were several complaints against the Choudhari Family. One Nandu Aaurange had also challenged the President-ship of Raju Chaudhari. That, Suryakant Waghmare-the President of Republican Party, Mahindra Kharade-the Taluka President of Shivsena Party,

Jaiwant Kawul- the president of Congress-I Party had raised slogans against the President and Chief Officer of Lonavala Municipal Council after demolition of 750 constructions within two days. It is admitted that Prakash Gavali (i.e. acquitted accused no.3) the father of accused no.1. is a social worker, he is the main trustee of Bhairavnath Trust and has established Chhatrapati Shivaji Pratisthan Trust. PW.6 was confronted with the Map of the scene of offence drawn by the city survey office. The said Map is at 'Exhibit-98', the sketch drawn by the Circle Officer is admitted by PW.6.

d) That, the police station is diagonally opposite to the office of Municipal Council and is about 25 to 30 feet away from its compound. The Map is at 'Exhibit-98' and scene of offence is at 'Exhibit-107'.

e) He was in Parmar hospital for 30 minutes. His wife and 22 to 25 friends were with him as he was treated as an O.PD patient. His injuries were sutured in Parmar Hospital. According to him, the doctor had not enquired with him

about the transaction in which he had sustained the injuries and neither he had voluntarily disclosed about it. He was then taken to Birla hospital which is 35 km away from Parmar hospital. The police had visited him in Birla hospital.

f) It is pertinent to note that according to PW.6 his statement was not recorded by the police during the period 26th May 2009 to 30th May 2009 and thereafter, on 30th May 2009 his statement was recorded in the police station for the first time.

g) That, in the cross-examination, it is admitted that at the time of incident i.e. at about 1.30 p.m. there was movement of staff members in and out of his chamber. That the chairs in the chamber of the President were 'light cream colour'. The chairs were not shifted after the departure of his colleagues Kadam, Joshi and Rakshe. That, he would be unable to say as to which of the accused had assaulted the President and which of the accused had assaulted him.

h) That, neither he nor the President had raised cries when they were assaulted. At the time of incident the door of the chamber was open. The whole incident was over within 4 to 5 minutes but he had hit the chair on the person of the assailants, when they were near the President and the chair was lying there itself. That, he had sustained four injuries. That, he had crossed the broken glass door and continued to stand there till he was taken to the hospital. Neither the employees of Municipal Council nor the citizens / visitors enquired with him. There is an admission in the statement before the police that he had not disclosed that he had told the people outside the chamber about the incident. He had walked his way to the hospital and was accompanied by the staff members of Municipal Council. The police had reached the scene of offence while he was still in the premises of Municipal Council. That he had learnt the name of accused no.2 from the police on 30th May 2009.

i) That, he had visited the police station before he left for

Yerwada Jail for the purpose of test identification parade. He was in Lonavala police station from 7.00 a.m. to 10.00a.m. and thereafter, they proceeded to Yerwada jail for test identification parade. That, there were 8 to 10 dummies along with Jafar who were placed for test identification parade. All the other dummies were having hair on their head, whereas Jafar had very small hair on his head.

6. PW.5- Ashok Panchmukh has deposed before the Court that he wanted to go to Pune, therefore, he was at Lonavala Railway Station on platform no.1 at about 2.45p.m. He met Sumit Gavali who handed over his wallet to him. He had asked PW.5 to hand over the said wallet to his family member. He took the wallet and went to Pune. He returned to Lonavala on the same day and the next day he again travelled to Pune. On 28th May 2009, he was called by Lonavala Police Station. He handed over the wallet to the police. In the cross-examination, it is admitted that there was a crowd on the railway station on that day and that he had found a wallet on the platform. He picked up the wallet and boarded the train to Pune. He had not seen the contents of the wallet. When he went to the police station, Sumit

Gavali and Jafer Shaikh were not present neither Ramzan Shaikh and Yogesh Shirke were present. He has not produced any ticket or pass to establish his presence on the railway station on 26th May 2009. On 28th May 2009 his statement was recorded in the police station.

7. It is a matter of record that PW.7 Vishwanath Aaurange who was working as a peon in Lonavala Municipal Council was the first person to report the said incident to the police station. The said witness PW.7 is declared hostile as he deposed before the court that on the day of incident at about 2.00 to 2.15p.m. when he returned from his lunch he saw from the glass door that Umesh Mudliyar was in the chamber of the President and that he had sustained bleeding injury on his head. That, Umesh Mudliyar had told him that quarrel took place inside the room. He, therefore, rushed to the police station and gave an information about the quarrel inside the cabin of the President and brought the police along with him. At the request of the prosecution he was declared hostile. He has admitted before the Court that Nandu Aaurange happens to be his paternal uncle and that the wife of Nandu Aaurange had filed nomination against the wife of Sumit Gavali but had withdrawn her nomination. It is pertinent to note, at this stage, that the remand yadi dated 28.05.2009 shows the name of Nandu

Aaurange as one of the suspect in the present case.

8. PW.10-Narayan Kambli, happens to be the panch who has proved panchnama of scene of offence which is at 'Exhibit-107'. The scene of offence was conducted on 26th May 2009 at about 3.00 p.m. i.e. soon after the incident. The scene of offence was shown by a peon, Vijay More. The spot was the cabin of the President which was admeasuring 15 x 12 feet. The glass on the table was stained with blood and one cover of knife was lying at the northern side of the wooden table. A cellphone was also lying on the table. There was a pool of blood under the chair of the President. Spectacles, wrists watch and shoes were lying on the table. The plastic chairs were 'red in colour' and they were scattered in the cabin. There were blood stains near the door of ante-chamber and also on the wall of the southern side and on the window of the northern side. The glass door next to the chamber of Deputy President was cracked. The blood samples were collected from the spot and the scene of offence. He has proved the contents of the spot panchnama and has stated that he was present at the time of conducting spot panchnama and has signed it there, the cellphone was also seized.

9. That, the peon Vijay More used to work in the chamber of the President. At the time of conducting scene of offence panchnama a dog squad had arrived, the dog was going towards the glass door and returning to the chamber again. That, the dog squad did not go beyond the broken glass. The incident had taken place at 2.30 p.m. In the cross-examination, he had stated that he learnt about the incident only because the police came running to the spot. There was no conversation between PW.6 and PW.10 but he had heard PW.6 telling the police that somebody assaulted him. The spot panchnama was conducted between 3.55 to 5.10 p.m.

10. PW.11- Rickshaw Driver -Sagar Gavali has been examined by the prosecution to prove the conspiracy hatched between Prakash Gavali and his two sons Amit and Sumit and one another person. That, according to him, 15 days prior to the incident at 8.00 to 8.30 p.m. he had been to Ekvira Chinese for taking parcel and had over heard them talking against Raju Choudhari but when they saw him, they had changed the topic. According to him, his statement was recorded on 29th May 2009 i.e. prior to recording the statement of PW.6. In any case, the accused appellants are acquitted of the charge under section 120-B of Indian Penal Code.

11. The case mainly rests on the evidence of PW.6, who is an eyewitness.

12. PW.13. Dr. Rajendra Parmar had examined PW.6 on 26th May 2009 at about 2.45 p.m. PW.6 had given history of assault. He had sustained one injury on left temporal parietal region, another on left shoulder and two incised wounds over right axilla. The Police had arrived in his hospital and recorded the statement of the injured in the presence of PW.13. He has proved his endorsement on the statement dated 26th May 2009. His endorsement is at 'Exhibit-111' but he could not recollect the contents of the disclosure made to the police by PW.6 in his presence. The medical certificate was in the handwriting of Dr. Manoj Mopgar. The patient was in the hospital for 20 to 30 minutes and was transferred to Aditya Birla Hospital as per his advise by the relatives of the patient. That the statement of PW.13, was recorded on 10th August 2009. There is an admission that the injuries mentioned in the certificate which is at 'Exhibit-112' were not mentioned in the statement. No internal organs were damaged. The certificate only depicts as "alleged history of assault on 26th May 2009 at about 2.30 p.m."

13. The prosecution has examined PW.14 Dashrath Chorage, a Rickshaw driver who knew Jafar Shaikh and the other accused. His statement was recorded on 18th June 2009 i.e. practically after 22 days of the alleged incident and according to him on 26th May 2009 at about 2.15 p.m. he along with Vilas More had been to hotel Trupti, when they were on the road they saw Sumit Gavali and Jafar Shaikh who came from Lonavala Municipal Council. They were brandishing their weapons and were abusing. He saw them proceeding towards railway station through a small lane. He also claims to have seen all the acquitted accused at that time. He had left for his village on 27th May 2009. The police had summoned him on 18th June 2009 and his statement was recorded. The said witness was confronted with a video recording. He has identified his presence in the said video but had feigned ignorance about the identity of two other persons. He has denied the conversation and has reiterated that he had not disclosed the said incident to any one till 18th June 2009. In any case this witness is unreliable as his statement is recorded after 22 days, moreover, the contents of the video would show that he was a got up witness.

14. PW.18.-Shadan Choudhari is wife of deceased Raju Choudhari. According to her, since Ekvira Chinese and other structure

raised by the accused were demolished within two days, the accused had a grudge against Raju Choudhari and being encouraged by original accused nos.3 and 5, the accused- Sumit Gavali has caused the homicidal death of Raju Choudhari. On 25th May 2009, at about 12.00 noon they had appeared before the Collector, in response to an application filed by Shashikant Jadhav, Prakash Gavali and Nandu Aaurange seeking to disqualify her and her husband. While they were descending the staircase, they came across Prakash Gavali who challenged them and threatened them that he would put an end to everything. She had responded. Her husband warned her not to argue with Prakash Gavali. On their way, back home they saw Shashikant Jadhav passing in his car and staring at them angrily, her husband asked her to see the face of Shashikant Jadhav. He had threat perception from all the accused persons and therefore, asked her to remember their names and faces. That on 26.05.2009 at about 2.45p.m. Pradeep Agarwal informed her that her husband was serious and therefore she had rushed to the chamber of Raju Choudhari. According to her, the original accused no.3 Prakash Gavali and his sons had suffered economic loss due to the demolition of structure and also that the Gavali family had political rivalry with them and that was their motive to eliminate Raju Choudhari.

15. PW.19.- Dr. Mamata Parade had examined Sumit Gavali on 29th May 2009 in Rural Hospital Vadgaon-Maval, Pune and she noticed one incised wound 4 x 1 x 1 cm. over right hand between first and second finger. Age of injury was more than 24 hours. The injury was simple in nature and was caused by sharp edged weapon. The medical certificate is at 'Exhibit-143'.

16. PW.20-Dr. Balaji Gawade performed autopsy on the dead body of Raju Choudhari and found in all 42 injuries which were in the nature of lacerated wound, incised wound and chopped wound. All injuries collectively were sufficient to cause death in ordinary course of nature. The postmortem notes are at 'Exhibit-146'. In the cross examination, it is admitted that out of 42 injuries 26 were lacerated, 8 were incised, 6 were stabbed wound and 2 were chopped wounds. That, lacerated wound could be caused by any blunt or rough edge weapon and chopped wound may be caused by any heavy cutting weapon.

17. PW.21-Rajesh Chavhan, Nayab Tahsildar had conducted the test identification parade on 9th January 2010 for the identification of Jafar Shaikh. The persons who were called for test identification

parade was PW.6, Umesh Mudliyar. That PW.6 identified the accused, Jafar Shaikh, whereas the witnesses Sudam Adsul, Wilson John Jadhav, Deepraj Ashok Choudhari and Shekhar Choudhari identified all the accused. However, Vishwanath Aaurange, Vijay More, Bhogoji Malve could not identify the accused persons.

18. It is admitted in the cross-examination that except the family members of Raju Choudhari and Umesh Mudliyar other four witnesses could not identify the accused.

19. PW.23-Rajendra Pawar was A.S.I at Lonavala Police Station. On 26th May 2009, he had received the complaint lodged by Umesh Mudliyar from Police Constable Khan, on the basis of which he registered Crime No. 72 of 2009.

20. The admissions in the cross-examination are as follows:-

a) On 26th May 2009 at about 2.35 p.m. two persons from Lonavala Municipal Council i.e. Bhagoji Malve and Vishal Aaurange reached the police station and informed that a quarrel had taken place in the cabin of the President. He deputed police head constable Suryawanshi to Municipal Council immediately as Municipal Council is

opposite to the police station. Head constable returned to the police station and informed that the President is lying in a pool of blood on his table, whereas Umesh Mudliyar is injured, the entries were taken accordingly in the station diary. It is admitted that the original First Information Report does not depict the time of lodging the First Information Report. Neither it shows the date and time of sending the First Information Report to the Court of Judicial Magistrate First Class. That, Vadgaon Maval is the nearest Judicial Magistrate First Class Court for Lonavala. The witness was confronted with the original station diary dated 26th May 2009 and he has admitted the contents mentioned in the station diary are in black ink but the date 26th May 2009 and Section 34 are added subsequently. He had no knowledge as to who made the said entry in station diary entries at “Exhibits- 167, 168 and 170”.

21. PW.24-Sudam Darekar, P.I., was on duty at Lonavala Police Station. At about 2.45 p.m. P.S.O. Pawar had informed him about the assault on President-Raju Choudhari. He, accordingly, went to Lonavala Municipal Council and saw Raju Choudhari was lying in his

chamber and one injured was admitted in Parmar Hospital. He, therefore, went to Parmar Hospital to meet injured Umesh Mudliyar and recorded his statement in writing, which is at Exhibit-92. He had obtained the endorsement of Dr. Parmar on the said complaint and thereafter he sent the complaint to P.S.O, Pawar for registration of Crime. Accordingly, Crime No. 72 of 2009 was registered for offence punishable under section 302 and 307 read with 34 of Indian Penal Code. He has proved the omissions and contradictions in the evidence of Vishwanath Aaurange and Wilson John Jadhav as well as Sudam Harsole.

22. On 28th May 2005, he received a report about arrest of Jafar Shaikh and Sumit Gavali from Local Crime Branch, Pune. It is admitted in the cross-examination that at the time of conducting the spot panchnama, which is at 'Exhibit-107', the investigation team had noticed two black colour covers of knife in the chamber of President but there was no enquiry about it. The cellphone of the deceased was seized. It is also admitted that on the same day a dog squad was also called. It is reiterated that the dog squad was called because the identity of the perpetrators was not known. That, the statements of A.K. Joshi, Pravin Kadam and Rakshe who accompanied PW.6 to the

chamber of the deceased a few minutes before the incident is not recorded in the course of investigation. He has admitted the remand report dated 28th May 2009 in which Nandkumar Aaurange was shown as an accused, as Choudhari family was complaining against him. That, the deceased and his family had criminal antecedents. The accused no. 1 was arrested on 28th May 2009 in the evening at 6.10 p.m. at Chandni Chowk Pune by local Crime Branch while they were patrolling. On 29th May 2005 they were shifted to the lock-up at Vadgaon Maval Police Station at about 10.00 a.m.

23. PW.25, P.S.I, Ashok Kadam was also posted at Lonavala Police Station. On 26th May 2009, PI. Darekar instructed him to conduct spot panchnama. The spot was shown by Vijay More an employee of Lonavala Municipal Council. They had noticed the following:-

- a) Bloodstains on door, glass door, chair, table cloth, wall and on the floor. One spectacles, a pair of shoes of Adidas Company, a wrist watch, two covers of knives – one was all leather and another one was of cotton, all articles were stained with blood. They were seized, sealed and

wrapped in paper with wax. Finger prints on glass table, door table, chairs and executive chair etc. were taken. The cellphone of the deceased was lying on the table and was taken into custody for investigation. The chamber of Chief Officer and Deputy President were adjacent to the Chamber of President but he had not recorded their statements.

b) Splinters of glass were lying outside the chamber of the President and Deputy President.

24. On 31st May 2009, the accused nos. 1 and 2 were taken in custody again. There was recovery of the clothes produced by accused Sumit Gavali. He had also led the police to the places where they had burnt their clothes and the places where they threw the knife. The memorandum is at 'Exhibit-127'. The memorandum of Jafar is at 'Exhibit-128'. Pursuant to the memorandum the knife was seized at the behest of Sumit Gavali in a drainage. The blade of knife was having blood stains. The accused Jafar Shaikh had led the police from Pen road towards Pali and the knife was recovered from a river. The blade was having blood stains. The police had taken the accused to a shop named Roshan Cloth Emporium where the accused had purchased new

clothes. The accused had allegedly shown the spot where they had burnt their clothes which they were wearing at the time of incident and the police had collected the ash.

25. On 31st May 2009 the accused no. 1 and 2 were produced before him in Lonavala Police Station. It is admitted that investigating officer had directed PW.25 to investigate in Raigarh District, more particularly, the place of Amba River and Roshan Cloth Emporium and the places where the clothes and shoes were burnt.

26. PW.26.-Balraj Lanjire was PI. posted at Lonavala Police Station. He filed the final charge-sheet on the basis of the investigation papers which he received from PI. Darekar.

27. The learned counsel for the appellant submits that there are several lacunas in the investigation. That PW.6 has admitted that his statement was recorded for the first time on 30th May 2009 and in the same breath admits his statement recorded in Parmar Hospital, which is at Exhibit-92. It is therefore, submitted that the statement at Exhibit-92 in fact is an ante-dated statement recorded by the police officer. It is also admitted by PW.6 in his deposition to the extent that he had not disclosed to the office staff and others about the incident in

the cabin. If the identity of one of the accused was known, the question would remain as to why a dog squad was called by the police. The contention of PW.6 that neither he nor the deceased had raised any cry for help when they were being assaulted seems to be an unnatural conduct.

28. The learned counsel further submits that the office of the Deputy President and the Chief Officer is adjacent to the chamber of the President and yet they had not realized that the President is being assaulted. The learned counsel has also drawn the attention of the Court to the discrepancy in colour of the chair in the Chamber of the President. According to PW.6 the chairs were of light cream colour whereas the scene of offence panchnama shows that the chairs were of red colour.

29. The learned counsel has further drawn the attention of this Court to the admission of PW.6 that the whole incident was over within 4 to 5 minutes and that he had crossed the broken glass door and continued to stand there till he was taken to the hospital and yet neither the employees of Municipal Council nor the citizens / visitors had enquired with him. That, before going to Yerwada Jail for test

identification parade he had visited the police station and remained at the police station from 7.00 a.m.to 10 a.m. and therefore the identification of accused Jafar Shaikh does not appear voluntary and hence not reliable.

30. The learned counsel submits that although the statement of the injured was recorded in the presence of the doctor. The doctor has feigned ignorance about the contents of the statement and claims that he could not recollect as to whether the injured had named the accused / appellants.

31. The learned counsel submits that in view of the inconsistencies in the deposition of eye witness (P.W.6) the conviction on the basis of his statement deserves to be quashed. The learned counsel has also submitted that, in any case, although canine inference cannot be relied upon but at the same time it cannot be ignored that the dog had not gone beyond the broken glass which ought to have naturally raised a suspicion against none other than PW.6.

32. The credibility of PW.5 is also challenged on the ground that there is inconsistency as to whether he had picked up the wallet from the platform or it was handed over to him by the accused. Besides

the said fact of PW.5 travelling to Pune is unreliable since he had not placed on record any ticket or pass to show that he had travelled to Pune on that day.

33. Per contra, the learned APP supports the judgment of the trial Court and submits that the evidence of eye witness cannot be discarded on the ground that there are minor discrepancies in the eye witness account. That there was no reason for PW.6 to implicate the accused persons. That, PW.6 was himself injured and on the very day of the incident he has disclosed the names of the accused persons. Hence, the learned APP prays for upholding the conviction of the accused/appellants.

34. The account of the incident as disclosed by the eye witness needs to be appreciated to sift the grain from the chaff. The eye witness was none other than the Power of Attorney Holder of the deceased. He had executed several agreements of sale on behalf of the deceased which are at "Exhibits-34, 95, 96, 97 and 100". That, he had also sold a property of the deceased to Prakash Parmar, who happens to be the brother of Dr. Rajesh Parmar in his capacity of Power of Attorney of the deceased.

35. The admission that the door of the chamber of the President was open when the accused persons barged into the room with deadly weapons and had mounted assault directly upon the President, without there being any prelude cannot be believed. Neither the deceased nor the accused cried aloud calling for help. PW.6 would have simply come outside the chamber and called the office staff. However, he continued to remain in the chamber and left the chamber on his own and walked upto to the broken glass door only after the President was murdered. The office staff including the peon attached to the Chamber of the President had neither seen the ingress or egress of the accused in the Chamber of President. That, PW.6 has admitted in the cross-examination that he had not disclosed to the staff or visitors the name of the accused appellant -Sumit Gavali while he was being taken to Parmar Hospital.

36. For the reasons best known to the investigating officer the statements of Rakshe, Kadam and Joshi were not recorded by the investigating officer. Neither the statements of Deputy President and Chief Officer are recorded.

37. At 2.35 p.m. Vishwanath Aaurange and Malave, the peons had informed to the police that a quarrel has taken place in the chamber of the President and therefore, the police had rushed to the spot. This is substantiated by the station diary at 'Exhibit-167'. At 2.45 p.m. there is further station diary entry that PW.6 is also injured in the same incident. It is clear that PW.6 had not disclosed the names of the accused to the police on the spot or even when he was taken to Parmar Hospital and therefore the investigating agency had called for the dog squad. At this stage, the submission of the learned counsel for the appellants has to be taken into consideration.

38. It is categorically admitted by PW.6 that his statement was recorded for the first time in the police station on 30th May 2009. In fact, he has deposed before the Court as follows:-

a. "The police came to Birla Hospital and inquired about my health. My statement was not recorded during this period till 30th May 2009. My statement was recorded in police station on 30th May 2009". In view of this, the recording of the statement of PW.6 in Parmar Hospital is shrouded with mystery.

39. The prosecution has failed to prove that the statement of PW.6 was recorded on 26th May 2009 while he was in Parmar Hospital. What is exhibited is the statement purportedly recorded on 26th May 2009 and therefore, the printed proforma of first information report does not indicate the date on which the First Information Report was sent to the Court of the Judicial Magistrate First Class. This makes it clear that there is no compliance of mandate of Section 157 of Cr.P.C.

40. The conduct of PW.6 post incident also does not inspire confidence. The fact that he did not rush out of the Chamber to call the staff, when the President was being assaulted and non-disclosure of the names of the perpetrators of crime till he reached Parmar Hospital, and then admitting that his statement was not recorded till 30th May 2009 although the police visited him in Birla Hospital clearly indicates that there is suppression of genesis, suppression of facts and an attempt to mislead the investigation as well as the Court of law.

41. It is pertinent to note that Vishwanath Aaurange-PW.7, the first person who reported the said incident to the police has been declared hostile by the prosecution. Moreover, his paternal uncle Nandu Aaurange was suspected as an accused and taken into custody.

The statement of Vishwanath Aaurange that a quarrel had taken place in the chamber of President establishes his presence near the chamber of President.

42. Secondly, when PW.6 claims to have disclosed the names of the accused on the date of incident there was no reason for the investigating agency to arrest Prakash Gavali, Amit Gavali, Shashikant Jadhav or Girish Kambli and Vaibhav Gavali. Exhibit-166 is proved by PW.23 which shows that the accused were apprehended by the Crime Branch of Pune at Chandni Chowk and were handed over to PW.23. Whereas, the arrest panchnama of accused Sumit Gavli and Jafar Shaikh shows 'place of arrest – Lonavala City Police Station on 28th May 2009 at 6.10 p.m. The identity of Jafar Shaikh was disclosed to PW.6 by the police on 30th May 2009, however, it is to be noted that PW.6 had not given the description of Jafar Shaikh nor a sketch was drawn. Whereas the details are missing in Exhibit-166. The prosecution has not examined P.I., D.S. Patil who had received the report from Crime Branch of Lonavala Police Station. The report was outwardsed on 28th May 2009 by Crime Branch, Pune. The recovery of the weapons at the hands of the accused does not inspire confidence as the weapons were purportedly recovered at the behest of the accused

from a flowing river and a drainage on 30st May 2009. It would be difficult to hold that the alleged recovery would establish the use of the said weapon by the accused to kill the deceased.

43. The admission of PW.5 that he had found the wallet on the platform falsifies that Sumit Gavali personally gave him the wallet. Although, the cellphone of the deceased was seized at the time of spot panchnama and the CDR was available, the Nodal Officer has not been examined even to ascertain as to who had made the last call to the deceased, instead he is examined as a defence witness.

44. All the witnesses are consistent about the motive of the accused to eliminate the deceased.

45. *Prima facie*, it is the case of prosecution that Nandu Aaurange, Shashikant Pawar, Prakash Gavali and many others had challenged the Presidentship of the deceased. They were political rivals. Besides they had also sought disqualification of PW.18, Shadan Choudhari, as a corporator. Similarly, there were charges of misappropriation and irregularities against Usha Choudhari, the sister-in-law of the deceased, when she was a President. Moreover, the witnesses and the investigation officers have admitted that the

deceased had criminal antecedents and in one case he was also convicted for an offence under section 302 of Indian Penal Code and was acquitted by the High Court. Whereas according to the prosecution, the motive for the accused to eliminate the deceased is said to be demolition of the structures, and Hotels owned by him. However, the said demolition was pursuant to the orders passed by the High Court and that incident had taken place more than a year prior to the incident and hence it cannot be said that the said motive was sufficient to cause the homicidal death of the President in broad daylight and that too in his office without having the fear of being arrested on the spot. All witnesses are consistent on motive of the accused to kill the deceased.

46. It is a settled law that the account of an incident by an eye-witness has to be necessarily a sterling testimony. It is further clear that the investigating agency has got-up witnesses in order to substantiate and fortify their investigation.

47. The same maxim is followed by the Supreme Court in the case of **Anil Phukan v/s State Of Assam**¹, where it has been held as follows :-

¹ AIR (1993) 1462

“ This case primarily hinges on the testimony of a single eye witness Ajoy PW3. Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then, the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of PW3 Ajoy”.

48. It would be apt to refer to the judgment of the Supreme Court in the case of **Jagdish Prasad And Others v/s State Of Madhya Pradesh**² has held as follows:-

“As a general rule, a court can and may act on the testimony of a single witness though uncorroborated provided the testimony of that single witness is found out entirely reliable. In that case, there will be no legal impediment for

² AIR (1994) SC 1251

recording a conviction. But if the evidence is open to doubt or suspicion, the court will require sufficient corroboration”.

49. In criminal jurisprudence it is well-settled that witnesses are eyes and ears of the Court. Therefore, the testimony of the witnesses has to be supported by corroborative material. Moreover the testimony must be truthful and must inspire the confidence of the Court. The evidence has to be appreciated with logic by applying the Rule of ‘Deductive reasoning’.

“Deductive reasoning is the process of reasoning from one or more statements (premises) to reach a logical conclusion. If all premises are true, the terms are clear, and the rules of deductive logic are followed, then the conclusion reached is necessarily true”.

50. In the present case, upon appreciating the evidence by deductive logic the only conclusion that can be drawn is that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the following order:-

ORDER

- i) Criminal Appeal No. 592 of 2012 and Criminal Appeal No. 728 of 2012 are allowed.

- ii) The judgment and order dated 27th April 2012 passed by District Judge-10 and Additional Sessions Judge, Pune thereby, convicting the appellant for the offence punishable under section 302, 307 and 201 read with 34 of Indian Penal Code is quashed and set aside.
- iii) The appellants be released forthwith, if not required in any other offence.
- iv) The appellants are acquitted of the offence punishable under section 302, 307 and 201 read with 34 of Indian Penal Code.
- v) Criminal Application No.1131 of 2019 stands disposed off accordingly.
- vi) The appeals are accordingly disposed of.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)