

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

CRIMINAL APPEAL NO. 564 OF 2014

PAPPU @ SANTOSH S/O DINKAR SHETE,
age 28 yrs, Occ. Agriculture,
R/o Ramwadi, Sanvatsar, Tq. Kopargaon,
District Ahmednagar. ..Appellant..
(Orig. accused no.1)

VERSUS

THE STATE OF MAHARASHTRA,
Through, P.S.O. Police Station,
Kopargoan, Tq. Kopargaon,
District Ahmednagar. ..Respondent..

...

Advocate for Appellant : Mr. S J Salunke
APP for Respondents: Mr. S S Dande

...

WITH

CRIMINAL APPEAL NO.665 OF 2014

KIRAN APPASAHEB SHETE,
age 25 yrs, Occ. Agriculture,
R/o Ramwadi, Sanvatsar,
Tq. Kopargaon,
Dist. Ahmednagar. ..Appellant..
(Orig. accused no.2)

VERSUS

1. The State of Maharashtra,
Through Police Inspector
Kopargaon Police Station,
Tq. Kopargaon,
District Ahmednagar. ..Respondents..

...
Advocate for Appellant : Mr. Sachin Deshmukh
APP for Respondents: Mr. S S Dande

...
CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

...
Reserved on : February 09, 2022
Pronounced on : April 06, 2022

...
COMMON JUDGMENT :- (Per V. K. Jadhav, J.)

1. Both these criminal appeals are directed against the judgment and order of conviction dated 2.8.2014 passed by the learned Additional Sessions Judge, Kopergaon in Sessions Case No.64 of 2012.

2. Prosecution case, in brief, is as under :-

a] The incident had occurred on 15.3.2012. On that day, at about 7.30 p.m. PW 2 Babasaheb Murlidhar Thakre was chatting with his friends at Bhojde Chowki. At about 9.10 p.m. he has received a call from one Suresh Gire informing him that one Mukund Singar was stabbed and was admitted in Phadke Hospital, Kopergaon. Accordingly, PW 2 Babasaheb Thakre with deceased Viresh Singar on one motorcycle, PW 3 Suresh Gire and Satish Shete started on one motorcycle and PW 4 Sham Chavan and Ranjit Dhanad has started on another motorcycle towards the said hospital. PW 2

Babasaheb Thakre was driving the said motorcycle and deceased Viresh Singar was the pillion rider. They were proceeding from Sanvatsar to Kopargaon road from Bhojde Chowki. There is a bus stand at Sanvatsar. The appellants/accused and absconding accused Ravi Shete had tried to obstruct their motorcycle at the bus stand. However, they were proceeded further on their respective motorcycles. On way, before the Sanvatsar Choufuli (chowk), in front of the Government Hospital, Viresh Singar informed to PW 2 Babasaheb that absconding accused Ravi Shete and appellants/accused both were following them on one motorcycle. Accordingly, PW 2 Babasaheb had turned the motorcycle towards Mahanubhav Ashram instead of proceeding towards the Choufuli. However, while taking turn he saw behind by turning his head that absconding accused Ravi Shete and the appellant/accused Kiran Shete were holding Katti (big knife) and the appellant/accused Pappu was driving the said motorcycle. They were on one motorcycle. There is one Palkhi road before Mahanubhav Ashram which proceeds towards the Sanvatsar village. PW 2 Babasaheb took his motorcycle

from the said road. The said road was in ascending order and thus the speed of the motorcycle was reduced. Meanwhile, somebody from those three accused persons threw the Katti on the person of PW 2 Babasaheb and deceased Viresh. Said Katti hit to the backside wheel of their motorcycle. In consequence of which, motorcycle fallen down on the road. There are two roads at the said spot. One is proceeding towards the village and another is proceeding towards the river from Mahanubhav Ashram. PW 2 Babasaheb ran towards the river road and Viresh ran towards the village road. In the meantime, deceased Viresh was caught by the absconding accused Ravi Shete and both the appellants/accused. PW-2 Babasaheb has hidden himself in the bushes ahead of the road on height. He has witnessed the entire incident from the said place. The appellant/accused Kiran Shete and absconding accused Ravi Shete had extended the beating to deceased Viresh Singar with Katti. He was beaten behind his ear, back and below the arms with Katti. Thus, deceased Viresh Singar had fallen down. Then, absconding accused Ravi Shete had picked up a stone

and thrown it on the head of Viresh. On the basis of the complaint Exhibit 56 lodged by PW 2 Babasaheb Thakre, crime No.72 of 2012 for the offence punishable under section 302, 34 of the Indian Penal Code came to be registered in the police station, Kopergaon. Hence, these two appeals.

b] PW 10 P.I. Madhukar Aute had drawn the inquest panchnama Exhibit 41 of the deceased at Civil Hospital, Kopergaon in the morning in presence of two panchas. He had sent the dead body of the deceased Viresh @ Banti for postmortem examination. He has thereafter went to the spot and carried out the spot panchnama exhibit 47 in presence of two panchas. He had seized simple soil, blood mixed soil, motorcycle of deceased Viresh @ Banti, two stones having blood stains, scarf (Uparne) of deceased Banti, stick of Babhul tree with blood stains and iron big knife (Katti). He has also seized clothes of the deceased by drawing the panchnama exhibit 48. He has also recorded the statements of the persons near the spot of offence, relatives and friends of the deceased. He has effected

arrest of the appellant/accused Pappu @ Santosh Shete on 16.3.2012 and accused Kiran Shete on 18.3.2012. During the course of the investigation, under his directions, PSI Pawar has seized the wearing clothes of the appellant/accused Pappu @ Santosh Shete. Further, at the instance of the appellant/accused Kiran, motorcycle used in the commission of the crime and clothes on his person came to be seized by drawing the memorandum panchnama exhibit 64 and recovery panchnama exhibit 65. He has carried out further investigation in the crime and finally submitted the charge-sheet by showing the other accused persons as absconding.

3] The learned Additional Sessions Judge, Kopergaon vide exhibit 18 has framed the charge against both the appellants/accused for the offence punishable under sections 302, 201 r/w 34 of the Indian Penal Code. Both the appellants/accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all 11 witnesses to substantiate the charges levelled against the appellants/accused. The defence of

both the appellants/accused is of total denial. According to them, deceased Banti was doing the sand business illegally at the instance of his associates Suresh Gire and Dhanad. PW 2 Babasaheb has lodged the false complaint against them. According to them, they are innocent and they have been falsely implicated in connection with the present crime. It further appears from their cross examination that deceased Viresh @ Banti had sustained the injuries due to fall from the motorcycle. Their motorcycle was slipped due to the sand at the spot. The accused persons have not examined any defence witness.

4] The learned Additional Sessions Judge, Kopergaon, by its judgment and order dated 2.8.2014 in Sessions Case No.64 of 2012 has convicted the appellant/accused no.1 Pappu @ Santosh Dinkar Shete and accused no.2 Kiran Appasaheb Shete for the offence punishable under section 302 of the Indian Penal Code and sentenced them to suffer life imprisonment and to pay fine of Rs.50,000/- each, in default to suffer two years simple imprisonment, however, acquitted both of

them for the offence punishable under section 201 of Indian Penal Code. Operative part of the order passed by the Additional Sessions Judge, Kopergaon is reproduced herein below :-

- 1) Accused no.1 Pappu @ Santosh Dinkar Shete and accused No.2 Kiran Appasaheb Shete are hereby convicted under section 235(1) of the Code of Criminal Procedure to suffer life imprisonment and to pay Rs.50,000/- each fine in default 2 years simple imprisonment under section 302 of Indian Penal Code.
- 2) Accused no.1 Pappu @ Santosh Dinkar Shete and accused No.2 Kiran Appasaheb Shete are hereby acquitted under section 235 (1) of the Code of Criminal Procedure from offence punishable under section 201 of the Indian Penal Code.
- 3) Amount of Rs.90,000/- out of the fine be paid to the wife of deceased Banti @ Viresh Punjahari Shingar as compensation under section 357 of the Code of Criminal Procedure.
- 4) Both accused persons are under trial prisoners.
- 5) Accused No.1 Pappu @ Santosh Dinkar Shete and accused No.2 Kiran Appasaheb Shete are entitled for set off of period of their pre-trial detention in jail under section 428 of Code of Criminal Procedure.
- 6) The muddemal property namely clothes, Katti, stones being worthless shall be disposed off after the period of appeal.
- 7) One mobile set be disposed off by handing over to its owner after the period of appeal.
- 8) Issue conviction warrant accordingly.

5. Being aggrieved by the same, the appellant/original accused no.1 Pappu Santosh Dinkar Shete has preferred Criminal appeal no.564 of 2014, whereas the appellant/accused Kiran Appasaheb Shete has preferred Criminal Appeal no.665 of 2014.

6. Mr. S.J.Salunke, the learned counsel appearing for the appellant/original accused no.1 in Criminal appeal No.564 of 2014 submits that, PW 2 Babasaheb, who is the sole eye witness to the incident, is highly interested witness. The learned counsel submits that, so far as the appellant/accused Pappu @ Santosh Shete is concerned, no overt act has been attributed to him. PW-2 Babasaheb, an eye witness, deposed that the appellant/accused Kiran and absconding accused Ravi Shete had extended the beating to deceased Viresh and inflicted blows on his person with the help of Katti and further absconding accused Ravi Shete had picked up a stone and thrown it on the head of deceased Viresh. Learned counsel submits that, PW 8 Dr. Ravikiran Chande, Medical Officer, has admitted in his cross-examination that there was blood and mud on the dead

body. He has further admitted in the cross-examination that, if the crushed stone is sufficiently sharp then injury no.1 mentioned in column no.17 of the postmortem report is possible if the person fell on such road from the motorcycle. He has also opined that injury nos.4 to 7 are simple injuries. He has also given admission that injury nos.4 and 5 mentioned in postmortem report are possible by fall due to accident subject to contact with sharp object and injury nos.6 and 7 are possible in accident. PW-8 Dr. Ravikiran Chandage also accepted that injury no.1 is possible if the person falls from the motorcycle on the sharp object. Further, the weapon allegedly used in the commission of the crime was not shown to him by the Investigating Officer. He has also accepted that Haematoma can be caused due to fall from running motorcycle on the crushed stone road. Subdural Haematoma can be caused by falling on hard substance. Learned counsel submits that, in view of the same, homicidal death is also in question. Learned counsel submits that the evidence of so-called eye witness PW 2 Babasaheb is full with omissions and contradictions. He is not a reliable

witness. There are mark inconsistencies between the evidence of PW 2 Babasaheb Thakare, PW 3 Suresh Gire and PW 4 Shyam Chavan. Learned counsel submits that, there is no apparent motive for the appellant Pappu @ Santosh to commit the murder of the deceased Viresh. Learned counsel submits that there is no incriminating evidence against the appellant/accused Pappu @ Santosh. No blood is detected on his clothes. Learned counsel submits that, it appears from the map drawn on the spot panchnama that there is no hilly portion and bushes where PW 2 Babasaheb has hidden himself. Learned counsel submits that, the appellant/accused is entitled for the benefit of doubt.

7. Learned counsel Mr. Salunke in order to substantiate his contentions placed reliance on the following judgments :-

1. Daya Shankar Vs. State of M.P. reported in AIR 2009 SC 1426.
2. Ram Lal Singh and others Vs. State of Haryana reported in AIR 1992 SC 59.
3. Mohanan Nair and others Vs. State of Kerala reported in 1989 Cri.L.J. 2106 (Kerala High Court)
4. Balu @ Bala Subramaniam and anr Vs. State (U.T. of Pondicherry) reported in 2016 Cri.L.J. 176.

5. Karupanna Gounder Vs. State reported in 2020 Cri.L.J. 111.

8. Mr. Sachin Deshmukh, the learned counsel appearing for the appellant/original accused no.2 in criminal appeal no.665 of 2014 has almost argued in the same line. Learned counsel submits that as per the postmortem report exhibit 67 there were 8 injuries on the person of the deceased. Injury nos.1 to 5 and 8 are the incised wound, whereas injury nos.6 and 7 are abrasions. Learned counsel submits that in absence of the corresponding injuries due to smashing of the stone on the facial part, predominantly, when body of the deceased was found facing sky and the stone allegedly used for smashing was found lying on the face of the deceased, falsifies the case of the prosecution. Learned counsel submits that, so far as the expression 'incised looking wound' is also possible due to fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones such as scalp, eye brow, iliac crest, skin and perineum or by fall on the knee or elbow when the limb is flexed. The same has been observed in Modi's Medical Jurisprudence and

Toxicology. Learned counsel submits that, presence of alcohol in the viscera of the deceased established the fact that deceased was under the influence of liquor, which has resulted into his accidental death. Learned counsel submits that, C.A. report in relation to the blood of the deceased on the recovered articles falsifies the case of the prosecution in its entirety. Learned counsel submits that, the evidence of PW 3 Suresh Gire, PW 4 Shyam Chavan is hear-say evidence and they have no first hand knowledge about the main incident. Learned counsel submits that, PW 2 Babasaheb is not a reliable witness, is a highly interested witness.

i]. Learned counsel for the appellant/accused submits that PW 1 Balu Kisan Dhanad, panch witness, has deposed about the normal condition of both the wheels of the motorcycle, which falsifies the version of PW 2 Babasaheb about throwing of Katti towards the wheels of running motorcycle, owing to which the motorcycle got skidded. PW 2 Babasaheb has deposed about the presence of PW 7 Yadav More, PW 3 Suresh Gire and Ajit Dhanad alongwith himself. PW 4 Shyam Chavan has deposed about arrival of himself, Suresh

Gire, Ajit Dhanad, Sudhakar Wade in the Scorpio Jeep belonging to said Sudhakar Wade, where already Babasaheb Thakre and Yadav More present. Learned counsel submits that, as per the evidence of PW 2 Babasaheb, PW 3 Suresh Gire, Ajit Dhanad, Yadav More came to the spot from Jagtap Vasti, whereas PW 4 Shyam Chavan has testified that he himself, Suresh Gire, Ajit Dhanad and Sudhakar Wade came in the Scorpio Jeep and met at Mahanubhav Ashram to Babasaheb and Yadav More. PW 7 Yadav More has testified in his cross-examination that PW 2 Babasaheb did not disclose anything about the incident. Learned counsel submits that, PW-1, 2, 3, 4 and PW-7 are related to each other and the prosecution has not examined any independent witness. Prosecution has also failed to examine PHC Anbule, who all the while accompanied these prosecution witnesses in the hospital and also failed to examine Sudhakar Wade, whose Scorpio Jeep was used to bring the deceased from the spot of the incident to hospital. PW 8 Dr. Ravikiran Chandge has referred only one individual in his cross-examination, who had brought the dead body

in the hospital and said person also did not inform how the death was caused. Learned counsel submits that, it is doubtful that PW 2 Babasaheb is an eye witness to the alleged incident. Learned counsel for the appellant submits that even the learned Additional Sessions Judge, Kopergaon himself has recorded in the judgment that the case of the prosecution has travelled from probability to possibility and more than 50% of the certainty. It thus appears that the learned Additional Sessions Judge, Kopergaon has accepted that prosecution has not succeeded in proving the case beyond all reasonable doubts.

9. Learned counsel Mr. Deshmukh in order to substantiate his contentions placed reliance on the following judgments :-

Jagannath Dagadu Shirgaonkar Vs. The State of Maharashtra in Criminal Appeal No.860 of 2014.

10. The learned APP submits that the prosecution has proved the homicidal death in this case. The learned APP submits that prosecution case rests upon the direct evidence and in view of the same motive hardly plays

any role. Prosecution has proved homicidal death beyond doubts. Learned APP submits that PW 8 Dr. Ravikiran Chandge, who has conducted the postmortem examination on the dead body of the deceased Viresh has noted incised wound nos.1 to 5 and 8 on various parts of the body and also noted abrasions vide injury nos.6 and 7 respectively. On internal examination, he found subdural haematoma in occipital area 4x4 cm. Fracture of Basal plate of cribriform fossa present. In his opinion, death was due to head injury. Learned APP submits that, PW 8 Dr. Ravikiran Chandge has specifically described the injuries as 'incised wounds' and not as 'wounds like incised.' Learned APP submits that so far as injury nos.1 to 5 and 8 as recorded in column no.17 of the postmortem report exhibit 68 is concerned, are possible only by smash and not possible by fall on the road. PW 8 Dr. Ravikiran Chandge has mentioned in postmortem report exhibit 68 the probable cause of death is "head injury". Learned APP submits that PW 2 Babasaheb is a reliable eye witness to the incident. He has narrated the entire incident. Deceased Viresh was the pillion rider on the motorcycle

being driven by PW 2 Babasaheb. PW 2 Babasaheb had hidden himself in the bushes and witnessed the entire incident. Deceased Viresh was not only subjected to assault with the help of Katti, but PW 2 Babasaheb has also witnessed that co-accused Ravi Shete has thrown the stone on the head of deceased Viresh. Learned APP submits that, the prosecution has proved the case beyond reasonable doubts. There is no substance in both the criminal appeals. Both the appeals are liable to be dismissed.

11. The learned APP, in order to substantiate his contentions placed reliance on following judgments :-

Balwant Singh and ors. Vs. State of Punjab
reported in 2008 ALL MR (Cri) 1748 (SC).

12. We have carefully perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the statement of the appellant/accused recorded under section 313 of the Cr.P.C. and the impugned judgment.

13. So far as the homicidal death of the deceased Viresh @ Banti is concerned, the prosecution has

examined PW 8 Dr. Ravikiran Vilas Chandge. He has carried out the postmortem examination on 16.3.2012. PW 8 Dr. Ravikiran Chandage has noted following external injuries on the person of the dead body of deceased Viresh @ Banti.

- 1] Incised wound over occipital area 6x1x1 cm bone depth.
- 2] Incised wound left parietal area of head 4x1x1 cm. Bone depth.
- 3] Incised wound left axilla 3x1 cm and depth 6 cm.
- 4] Incised wound over back two in numbers of same size 1x1/2x1 cm.
- 5] Incised wound over right forearm 4 in numbers each of 1/2 x 1/2 x 1/2 cm.
- 6] Abrasion on left elbow two in numbers 3x1/2 cm and 2 1/2 cm.
- 7] Abrasion on left hand fingers 2nd, 3rd, 4th- 1/2 x 1/2 cm.
- 8] Incised wound right side of chest mid axillary line in both 5th and 6th intercostal space 2x1x1 cm.

14. On internal examination, he has found subdural haematoma in occipital area 4 x 4 cm and also fracture of basal plate of cribriform fossa present. In his opinion, the cause of death was due to 'head injury.'

i]. Learned counsel for the appellants in both the criminal appeals have vehemently made submissions on

the basis of the admissions given by PW 8 Dr. Ravikiran Chandage. So far as the external injury no.1 is concerned, PW 8 Dr. Ravikiran Chandage has admitted in his cross-examination that, if the crushed stone is sufficiently sharp, then injury no.1 mentioned in column no.17 of the postmortem report is possible if the person fell on such road from the motorcycle and the same is the case with injury no.2 in column no.17. He has also admitted that injury nos.4 and 5 of the postmortem notes are possible by falling due to accident subject to contact with sharp object and injury nos.6 and 7 are possible in accident. He has also admitted that injury no.8 is possible by any sharp object, however, he cannot say that it can be caused by kick of the motorcycle. He has also accepted that injury no.1 is possible, if a person falls from the motorcycle on a sharp object. He has accepted that injury no.1 mentioned in column no.17 is related with the injury mentioned in column no.18 (1).

ii]. According to the learned counsel appearing for both the parties, Doctor has given the opinion after considering the nature of the wound as 'incised looking.'

Learned counsel Mr. Sachin Deshmukh has placed his reliance on the observations of the Modi's Medical Jurisprudence and Toxicology (page 700) Twenty Third Edition.

iii]. Abrasions are injuries involving loss of superficial epithelial layer of the skin, and they do not leave a scar on healing. For an abrasion to occur, there must be pressure of an object and it should move on the skin to form an abrasion. Abrasions resulting from friction against a rough surface during a fall are mostly found on bony parts, and are usually associated with contusions or lacerated wounds and sometimes with very serious injuries and they also found covered with mud, straw and their shape and pattern may indicate the type of surface on which the victim may have been impacted or dragged. In the instant case, injury nos.6 and 7 are the abrasions on the left hand elbow two in numbers and abrasions on left hand fingers 2nd, 3rd and 4th not associated with any contusion or laceration.

15. PW 8 Dr. Ravikiran Chandage has not specifically mentioned in column no.17 of the postmortem notes

that the injuries no.1 to 5 and 8 are the 'incised looking wounds'. So far as the 'incised wounds' are concerned, the edges are always smooth, even, clean-cut, well defined and usually everted. However, all wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, and perineum or by a fall on the knee or elbow when the limb is flexed. But the edges of such wounds will be found irregular with a certain amount of bruising. In the case of incised looking wound on the scalp, hair bulbs will be found crushed, if they are inflicted with a blunt weapon.

i]. In the instant case, it is not clear as to on what basis PW 8 Dr. Chandage has admitted in his cross-examination that injury nos.1 and 2 are possible if a person falls from the motorcycle on a sharp object. Injury nos.1 and 2 are not possible by one fall and considering the internal injury i.e. subdural haematoma which corresponds to injury no.1. Further, as stated by PW 8 Dr. Ravikiran Chandage, if injury no.1 is possible if the person falls on the crushed stone, if they are

sufficiently sharp on the road from the motorcycle. However, those wounds are not accompanied by the bruises, abrasions or contusions.

ii]. PW 2 Babasaheb has deposed that he has turned the motorcycle towards Mahanubhav Ashram instead of proceeding towards Choufuli. He has also accepted in his cross-examination that the road running from S.T. Stand to Mahanubhav Ashram is not in good condition, however, there is no suggestion that there were sharp stones lying on the road leading towards Mahanubhav Ashram. PW 2 Babasaheb has deposed that due to throwing of Katti on their person and said Katti hit backside of their motorcycle, their motorcycle fell down. He ran towards the river road and deceased Viresh ran towards the village road and, in the meantime, deceased Viresh was caught by the assailants. The spot panchnama exhibit 47 indicates the spot at a different place and blood was found on the said spot. So far as the spot where motorcycle was slipped, the same is shown at a distance of 20 feet from the main spot and the motorcycle was found lying. There is sand on the

said road. One big knife (Katti) was also found lying near the said motorcycle.

16. Thus, considering the entire evidence, in our considered opinion, deceased Viresh had sustained incised wounds on his person due to the blow of the sharp weapon and certainly not due to fall. In the instant case, we give importance to the ocular evidence rather than some ridiculous admissions given by PW 8 Dr. Chandage. In our opinion, prosecution has proved the homicidal death in this case.

17. The prosecution case entirely rests upon the sole eye witness PW 2 Babasaheb Thakare. On 15.3.2012 at about 7.30 p.m. he was chatting with his 5-6 friends at Bhojade Cowky. At about 9.10 p.m. PW 3 Suresh Gire had received a call on his cell phone informing him that Mukund Singar was stabbed and admitted in Phadke Hospital, Kopargaon. PW 3 Suresh Gire and Satish Shete started on one motor cycle. Ajit Dhanad and Shyam Chavan had started on another motorcycle. However, PW 2 Babasaheb and deceased Viresh were not having any vehicle. Thus, deceased Viresh Singar had

brought motorcycle of one Somnath Manchare and accordingly, both of them have started towards the hospital. Deceased Viresh Singar must have taken some time to bring the motorcycle from said Somnath Manchare and thus they were lagging behind other two motorcycles.

i]. PW 3 Suresh Gire has deposed that he was at Bhojde Chowki and at about 10.00 pm to 10.30 pm he had received a call of Mukund Singar, who told him that he was beaten by Ravi Shete. He has further deposed that he himself and Ajit Dhanad started proceeding towards the hospital where Mukund Singar was admitted on the motorcycle of PW 3 Suresh Gire. Shyam Chavan and Satish Shete were on the another motorcycle. They were started to Kopargaon via Ramwadi, Bhimwadi, Sanvatsar and Kopargaon.

ii]. PW 2 Babasaheb has further deposed that he was driving the said motorcycle and deceased Viresh was the pillion rider. They were proceeding from Sanvatsar to Kopargaon road from Bhojde Chowki. There is a bus stand at Sanvatsar. He has further deposed that absconding accused Ravi Shete, appellant/accused

Pappu Shete and appellant/accused Kiran Shete had tried to obstruct their motorcycle at the bus stand.

iii]. PW 3 Suresh Gire and PW 4 Shyam Chavan have deposed that they saw at the S.T. Bus stop of village Sanvatsar absconding accused Ravi Shete, appellant/accused Pappu @ Santosh Shete and Kiran Shete sitting on the motorcycle. Appellant/accused Pappu @ Santosh Shete was sitting on the motorcycle and the absconding accused Ravi Shete and appellant/accused Kiran Shete were present there.

18. PW 2 Babasaheb has further deposed that inspite of their obstruction, they proceeded further on the motorcycle. Before Sanvatsar Choufuli (Chowk) in front of the Government Hospital, deceased Viresh Singar told him that absconding accused Ravi Shete, accused Kiran Shete and accused Pappu @ Santosh Shete were following them on one motorcycle. He had asked to turn the motorcycle towards Mahanubhav Ashram instead of proceeding towards Choufuli. Accordingly, PW-2 Babasaheb turned the motorcycle towards the said direction and while taking turn, he saw said absconding

accused Ravi Shete alongwith two appellants/accused on the motorcycle. The appellant/accused Pappu @ Santosh Shete was driving the said motorcycle and absconding accused Ravi Shete and appellant/accused Kiran Shete were holding a Katti (big Knife). He has further deposed that in the meantime, somebody from these three persons threw the Katti on their person. Said Katti hit to the back side wheel of their motorcycle, and thus their motorcycle fell down. There are two ways at the said spot. One is proceedings towards the village and another is proceedings towards river from Mahanubhav Ashram. PW 2 Babasaheb ran towards the river road and deceased Viresh ran towards the village road. However, deceased Viresh was caught by them. There are bushes ahead of the road on the height. PW 2 Babasaheb had hidden himself in those bushes. He has witnessed the incident from the said place. He has further deposed that appellant/accused Kiran Shete and absconding accused Ravi Shete started beating deceased Viresh with Katti. Deceased Viresh was asking for mercy with them and was requesting them to leave him. Deceased Viresh was beaten behind

his ear, back and below the arms with Katti. Thus, he had fallen down. PW 2 Babasaheb further deposed that absconding accused Ravi Shete had picked up a stone and thrown the said stone on the head of deceased Viresh and then went away from the said spot.

ij. PW 3 Suresh Gire and PW 4 Shyam Chavan have admittedly not witnessed the main incident. They had gone to the hospital to meet Mukund Singar.

19. We have carefully perused the contents of the spot panchnama exhibit 47. Prosecution has examined PW 1 Balu Dhanad to prove the contents of the spot panchnama exhibit 47. It appears that three spots almost adjacent to each other came to be noticed therein during the course of the drawing of the panchnama. So far as main spot of the incident is concerned, (i) it has been mentioned that three kaccha roads met at the spot of the incident. On the said spot, at the middle place, large quantity of blood was found. By the side of the said blood, 1 feet towards western side one big stone was found having blood stains on it. Further, towards eastern side at a distance of 2 feet, one cloth of saffron/

orange colour having blood stains on it was found. Investigating officer has seized the samples of articles plain soil and blood mixed soil from the main spot. ii] So far as second spot is concerned, it is at a distance of 20 feet from the main spot towards northern side, where the motorcycle bearing registration No.MH-15/BP-6092 of TVS Star Suzuki Company was found lying on the sand of the road. One iron Katti was found near the backside wheel of the motorcycle. Investigating officer has also seized all those articles including the motorcycle. iii] Third incident is shown at a distance of 10 feet towards the southern side from the main spot. Said spot is on the small hilly portion surrounded by the bushes. PW 2 Babasaheb had witnessed the incident from hidden place in the said bushes.

[I]. The evidence of PW 2 Babasaheb is well corroborated by the contents of the spot panchnama exhibit 47. Further, considering the distance between the main spot and small hilly portion (Tekadi) where PW 2 Babasaheb had hidden himself in the bushes, PW 2 Babasaheb had a overall view of the surrounding area, which is below the level of said small hilly portion.

Furthermore, at the spot of the incident one electric pole is also shown in the map.

[II]. PW 2 Babasaheb has deposed about throwing of the Katti and the same hit to the backside wheel of the motorcycle and, therefore, their motorcycle fell down. The contents of the spot panchnama exhibit 47 fully corroborates the same. PW 2 Babasaheb has taken the shelter and hidden himself behind the bushes. He has deposed that there are bushes ahead on the road on height and thus he has suppressed. The contents of the spot panchnama also corroborates about the bushes and heightened portion of the land. PW 2 Babasaheb has deposed that absconding accused Ravi Shete and appellant/accused Kiran Shete had extended the beating to deceased Viresh with Katti and deceased Viresh was beaten behind his ear, back and below the arms with Katti. The incised wounds on the person of the deceased Viresh as per the column no.17 of the postmortem report exhibit 67 also corroborates the same. There were incised wounds on the various parts of the body. i] One incised wound over occipital area 6x1x1 cm bone depth, ii] incised wound left parietal

area of head 4x1x1 cm bone depth, iii] incised wound left axilla 3x1 cm and depth 6 cm, iv] incised wound over back two in numbers of same size 1x1/2 cm, v] incised wound over right forearm 4 in numbers each of 1/2x1/2x1/2 cm and incised wound right side of the chest. During internal examination, PW 8 Dr. Chandage has also noticed sub dural haematoma in occipital area 4x4 cm. Fracture of basal plate of cribriform fossa present.

[III]. Though, there are some minor contradictions, omissions in the evidence of PW 2 Babasaheb Thakare, PW 3 Suresh Gire, PW 4 Shyam Chavan, however, the same are not fatal to the prosecution evidence. As discussed above, the prosecution case mainly rests upon the evidence of PW 2 Babasaheb, who is the only eye witness to the incident, and evidence of PW 3 Suresh Gire and PW 4 Shyam Chavan is to the extent of corroboration to pre-incident and post incident activities.

[IV]. Prosecution has examined PW 5 Mukund Singar. He has supported the prosecution case to the effect that on the day of the incident, he was beaten by absconding

accused Ravi Shete and 2-3 persons and, accordingly, he came to be admitted in Phadke Hospital, Kopergaon. Prosecution has examined PW 6 Shivaji Bhad. Though, he has not supported the prosecution case initially, however, he has supported the contents of the spot panchnama exhibit 47. The blood stained clothes of the accused Kiran Shete came to be seized at his instance by drawing Memorandum Panchnama exh.64 and recovery panchnama exh.65. PSI Pawar has seized the wearing clothes of the accused Pappu @ Santosh. PW 10 Investigating Officer Madhukar Aute has deposed about the contents of the memorandum panchnama exh.64 and exhibit 65, respectively.

[V]. In all 21 articles have been sent for CA analysis. The earth, stone, wooden stick of Babhul tree, Uparne (piece of cloth) are concerned, human blood was detected on the exhibit 1-blood mixed soil, exh-3 stone wrapped in cloth, 5-wooden stick of Babhul tree wrapped in cloth parcel, exhibit 6 Uparne (piece of cloth) human blood was detected on exhibit 7 Katti. Blood stained clothes at exhibit 8 to 12, Kardoda and pair of shoes found stained with human blood and so far as

clothes of deceased exhibits 8 to 11 i.e. full shirt, sandow baniyan, full pant were found blood group "A". Articles exhibit 15, 16, 17 and 18 those are the jerkin, full shirt, full pant and white Sandow Baniyan belonging to the the appellant/accused Kiran Shete detected with the human blood. So far as the clothes on the person of the accused Pappu @ Santosh Shete exhibit 20 and 21 i.e. full shirt and full pant are concerned, no blood was detected on it.

20. Learned counsel for the appellant/accused Pappu @ Santosh submits that the appellant/accused Pappu @ Santosh was merely seen in the company of the main accused persons, who were armed with the deadly weapon. It has been merely deposed by the eye witness to the incident PW 2 Babasaheb that the appellant Pappu @ Santosh was driving the motorcycle and absconding accused Ravi Shete, appellant/accused Kiran Shete were the pillion riders holding the Katti in their hands. Learned counsel submits that mere fact that he was in the company of those two accused persons armed with the weapon would not be sufficient

to attract section 34 of the Indian Penal Code. It is undisputed that he was not armed and he had no animosity with the deceased.

i]. Learned counsel for the appellant/accused Pappu @ Santosh in criminal appeal no.564 of 2014 has placed his reliance on a judgment in a case **Daya Shankar Vs. State of M.P. Reported in AIR 2009 SC 1426**. In paragraph no.9 of the judgment, the Supreme Court has made following observations :-

“9. The evidence of PWs 2 and 3 did not attribute any overt act to the appellant. The mere fact that he was in the company of the accused who were armed would not be sufficient to attract [Section 34](#) IPC. It is undisputed that appellant was not armed and he had no animosity with the deceased. This position is also accepted by the prosecution. Additionally, the stand that he pulled the leg of the deceased has not been established.”

In a case of **Ram Lal Singh and others Vs. State of Haryana reported in AIR 1992 SC 59**, relied upon by the learned counsel for the appellant Pappu @ Santosh, in paragraph no.5, the Supreme Court has made following observations :-

“5. Admittedly, there was a dispute regarding the claim over the land between the parties. On account of this dispute, there was a long standing and deep rooted animosity between them. Therefore, we have to approach the evidence in the background of such hostility that existed between them.

Except a general statement that all the appellants dragged the deceased from the railway compartment, it is not the case of the prosecution that anyone of the appellants 1, 3 and 4 either was armed with any weapon or assaulted the deceased. Had these three appellants (appellants 1, 3 and 4) shared the common intention on account of any prior concert and pre-arranged plan each of the appellants would have carried some weapon and attacked her or at least fisted or kicked her. But in the present case, there is absolutely no evidence that except the appellant No. 2, none of the other appellants assaulted the deceased nor any of these three appellants exhorted the second appellant to attack the deceased. The evidence let in by the prosecution and the circumstances attending the case do not unfold any prior concert or meeting of minds of the appellants in sharing the intention of the second appellant, the perpetrator of the murderous assault on the victim.”

In a case of **Mohanan Nair and others Vs. State of Kerala reported in 1989 Cri.L.J.2106** relied upon by the learned counsel for the appellant in criminal appeal no.564 of 2016 in paragraph no.12, the Kerala High Court has made following observations :-

“12. The only remaining question is whether murder was also in furtherance of the common intention of all. It can happen that when some persons act in concert to commit a minor offence, they may during the commission come to an understanding to commit a major offence as well. But development of such an understanding must appear from their conduct or from some other incriminating evidence. The-conduct or other evidence must be such as not to leave any room for doubt regarding the developed common intention. Before fastening vicarious liability, the criminal court must satisfy itself as to the prior meeting of minds of the principal culprit and his companions who are sought to be constructively made liable in respect of every act committed by the former. Mere accompanying

cannot infer common intention. Existence or otherwise of common intention depends upon facts and circumstances of each case. The intention of the principal offender and his companions to deal with any person who might intervene to stop the quarrel must be apparent from the conduct of the persons accompanying the principal culprit. Otherwise, there must be some other clear and cogent incriminating piece of evidence. When such materials are absent, the companions cannot be justifiably held guilty of every offence committed by the principal offender. Evidence regarding development of the common intention to commit an offence graver than the one originally designed, during execution of the original plan, should be clear and cogent [Dharam Pal v. State of Haryana](#).”

In a case **Balu @ Bala Subramaniam and anr Vs. State of (U.T. of Pondicherry)** reported in 2016 **Cri.L.J. 176** relied upon by the learned counsel for the appellant Pappu @ Santosh in Criminal appeal no.564 of 2016, the Supreme Court in paragraph nos. 14 and 18 has made following observations :-

“14. Under [Section 34](#) IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proving facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted.

18. For attacking the witnesses PW2-Kannan, PW4-Muruganathan and PW5-Suresh, the appellants were convicted by the trial court under [Section 326](#) read with [Section 149](#) IPC and under [Section 324](#) read with [Section 149](#) IPC which was modified by the High Court. No specific overt act is attributed to the appellants in attacking the prosecution witnesses 2, 4 and 5. As the appellants have not shared or acted in furtherance of common intention in the attack of the witnesses and therefore the conviction of the appellants as modified by the High Court under [Section 326](#) read with [Section 34](#) IPC and under [Section 324](#) read with [Section 34](#) IPC cannot be sustained and the same is liable to be set aside.”

21. In the instant case, except the appellant Pappu @ Santosh was driving the motorcycle as deposed by PW 2 Babasaheb, no overtact has been attributed to the appellant Pappu @ Santosh. Though, the absconding accused Ravi Shete and appellant/accused Kiran Shete were the pillion riders on the motorcycle being driven by the appellant/accused Pappu @ Santosh holding dangerous weapon Katti in their hands, no overt-act came to be attributed to the appellant/accused Pappu @ Santosh. Further, as deposed by PW 2 Babasaheb, deceased Viresh and PW 2 Babasaheb were chased by absconding accused Ravi Shete and the appellant/accused Kiran Shete when they ran by two

different roads, and finally, they caught hold off the deceased Viresh, however, PW 2 Babasaheb has not deposed anything as to the role played by the appellant/accused Pappu @ Santosh. So far as the incident allegedly taken place before the S.T.Bus stand Sanvatsar, no specific role has been attributed to the appellant/accused Pappu @ Santosh Shete. The appellant/accused Pappu @ Santosh had not participated in the actual commission of the crime and the same is reflected from his clothes seized during the course of investigation, as no human blood was detected on it. Thus, in our considered opinion, the appellant/accused Pappu @ Santosh Dinkar Shete is entitled for the benefit of the doubt.

22. Prosecution has however, proved the case beyond reasonable doubt against the appellant/accused Kiran Appasaheb Shete. The learned counsel for the appellant/accused Kiran Shete in criminal appeal No.665 of 2014 has placed his reliance on a judgment in the case of **Jagannath Dagadu Shirgaonkar Vs. State of Maharashtra in Criminal Appeal no.860 of 2014,**

however, in the facts of the said case, certain observations have been made.

23. In view of the above discussion, the appeal preferred by the appellant Pappu @ Santosh Dinkar Shete deserves to be allowed, whereas the appeal preferred by the appellant Kiran Appasaheb Shete is liable to be dismissed. Hence, we proceed to pass the following order :-

ORDER

- i. Criminal appeal no.564 of 2014 (Pappu @ Santosh s/o Dinkar Shete Vs. The State of Maharashtra) is hereby allowed.
- ii. The judgment and order of conviction passed by the Additional Sessions Judge, Kopergaon dated 2.8.2014 in Sessions Case No.64 of 2012, convicting thereby the appellant/original accused no.1 Pappu @ Santosh Dinkar Shete for the offence punishable under section 302 of Indian Penal Code and sentencing him to suffer life imprisonment and to pay a fine of Rs.50,000/-(Rs. Fifty thousand), in default to suffer simple imprisonment for 2 years, is hereby quashed and set aside to the extent of the appellant/accused Pappu @ Santosh

Dinkar Shete in Criminal Appeal No.564 of 2014.

- iii. Appellant/accused Pappu @ Santosh Dinkar Shete is hereby acquitted for all the charges levelled against him.
- iv. Fine amount, if any, deposited by the appellant/accused Pappu @ Santosh Dinkar Shete shall be refunded to him.
- v. The appellant/Accused Pappu @ Santosh Dinkar Shete shall be set at free, forthwith, if not required in any other crime.
- vi. The accused Pappu @ Santosh Dinkar Shete in Criminal appeal no.564 of 2014 shall execute a P.B. of Rs.15,000/- (Rs.Fifteen thousand) with one surety of the like amount to appear before the Higher Court as and when such Court issues notice in respect of any appeal or petition filed against this judgment, as per section 437-(A) of the Criminal Procedure Code.
- vii. Criminal Appeal No.665 of 2014 (Kiran Appasaheb Shete Vs. The State of Maharashtra) is hereby dismissed.

viii. The judgment and order of conviction passed by the Additional Sessions Judge, Kopargaon dated 2.8.2014 in Sessions Case No.64 of 2012 convicting thereby the appellant/original accused no.2 Kiran Appasaheb Shete for the offence punishable under section 302 of Indian Penal Code and sentencing him to suffer life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand), in default to suffer 2 years simple imprisonment stands confirmed to the extent of the appellant/accused Kiran Appasaheb Shete in Criminal Appeal No.665 of 2014.

ix. Both the Criminal appeals are accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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aaa/-