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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 473 OF 2000

Mahendra Chandrakant Jadhav] ...Appellant
] (Orig. Accused)

Versus

The State of Maharashtra] ...Respondent

Ms. S.D. Khot a/w Mr. Ameya Mahadik for the Appellant.
Ms. S.V. Sonawane, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : AUGUST 17, 2021
PRONOUNCED ON : FEBRUARY 01, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Gr. Mumbai in Sessions Case No. 310 of 1994 whereby the Appellant – Original Accused who was charged for commission of offences punishable under Sections 302 of the Indian Penal Code (for short 'IPC') convicted and awarded sentence for life imprisonment along with fine of Rs. 1,000/- in default to suffer SI for three months, filed the present Criminal Appeal.

2. To appreciate the challenge raised in the

present Appeal, it would be useful to refer to the case of prosecution. It is the case of prosecution that deceased Dattaram Morajkar the father of original accused no. 2 and grandfather of Appellant and other original accused Santosh Jadhav was residing in room no. 5 of Shiv-Bhuvan Chawl, Datta Mandir Road, Malad (E), Mumbai - 97. The accused persons were also residing along with deceased. For some period deceased was residing in his original place of residence i.e. in a decade of 70's subsequently, along with his son he again returned back to Mumbai in the decade of 80's. There was a dispute between the family members in regards to the room. The accused no. 2 who is the daughter of the deceased wanted the said room in the exclusive possession of her family whereas, the deceased and his son (brother of accused no. 2) were not in agreement with desire of accused no. 2. They used to be frequent quarrel between the family members on account of this issue.

3. Considering the material brought before the Court, the nature of offence and the relationship between the parties, we may only state that this is an

incident reminding us the words of father of nation Mahatma Gandhi and he said that for need of human being enough is available but then there are no limits to the greed of human being.

4. Be that as it may, coming back to the facts of the case, we state further that the unfortunate incident took place on 26.10.1993 at about 17.45 hours. As per the case of prosecution Ashwini Pawar (PW 4), the housewife and neighbour who was occupant of room no. 4 in the same chawl saw accused no. 1 assaulting the deceased on his head with hockey stick. After witnessing the incident, she immediately rushed to Dr. Ashok Naik (PW 1) the complainant who used to reside in a nearby society and was a medical practitioner. Ashwini Pawar (PW 4) immediately rushed to Satyawati Morajkar (PW 5) wife of deceased to call her and then returned back to the spot wherein the deceased was lying. Dr. Ashok Naik (PW 1) on reaching the spot found that Dattaram Morajkar lying in pool of blood and had received injuries. He found the pieces of hockey stick lying on the spot. On his preliminary examination, he found that Dattaram Morajkar was no more alive. Dr.

Ashok Naik (PW 1) then went to his home and gave a call to police. On receipt of information, police machinery immediately rushed to the spot. On receipt of information forwarded by Dr. Ashok Naik (PW 1) offence was registered. PI Rajaram Prabhu (PW 1) reached the spot with two panchas as person lying on the spot was declared dead by Dr. Ashok Naik (PW 1). The inquest and spot panchnamas were drawn. The investigating agency was already set in motion and Mr. Prabhu (PW 10) took necessary steps in the course of investigation such as, collecting material from the spot including the apparels worn by the deceased, earth samples from the spot were collected, blood samples were also collected. On the very day, Prabhu (PW 10) has proceeded towards the room no. 5 and found that accused no. 3 was sitting outside the room whereas accused no. 2 was sitting inside the room.

5. Perusal of record shows that both these accused were not arrested on that day and the accused no. 1 was arrested on next day i.e. on 27.10.1993. At the time of effecting arrest of accused no. 1 the other necessary formalities were also completed by the investigating

agency such as, seizure of the clothes worn by the accused, recovery of weapon knife was also effected. In further course of investigation the dead body of deceased was referred to autopsy and postmortem report was obtained.

6. At this stage, we may refer to the injuries found by the autopsy surgeon on the dead body and these injuries are : 2 contused lacerated wounds, three incised wounds. It was opined by the medical officer that the injuries caused to the deceased had pierced up to the internal organs of deceased and vital organs are damaged severely because of piercing wound. It was opined by the medical officer that the death of the deceased was result of hemorrhage and shock caused due to multiple injuries. Thus, medical officer further opined that the death of the deceased was not natural.

7. Meantime, the various samples collected in the course of investigation were referred to chemical analysis to forensic labs and the reports were obtained. Then the investigating officer recorded the statement of certain witnesses. On completion of

investigation, charge-sheet was filed before the competent Court. The offences reflected in the charge-sheet being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions and accused were put to the trial. The accused pleaded not guilty. The defense of the accused is of false implication and the accused also took a defence that the author of the crime is son of deceased as he wanted to grab the said room. The prosecution in support of its case examined as many as 12 witnesses.

8. On the basis of material submitted before the Court of Sessions, the learned Trial Judge framed following points for determination:

1. Does the prosecution prove that the accused Nos. 1 to 3 on or before 26th October 1993 at Mumbai had agreed to commit murder of the deceased Dattaram Morajkar?
2. Does the prosecution prove that the deceased died a homicidal death?
3. Does the prosecution prove that the accused No. 1 had inflicted hockey stick blow and knife blows on the deceased with an intention to cause his death?

OR

4. Does the prosecution prove that the accused No. 2 inflicted hockey stick blows and knife blows on the deceased Dattaram with an intention to cause such bodily injuries which were sufficient to cause death in the ordinary course of nature?

5. Does the prosecution prove that the act of accused No. 1 was in furtherance of common intention of accused No. 1 himself and accused No. 2 and 3?

9. On assessment of the evidence, learned Trial Judge found that the prosecution miserably failed to establish the case against accused nos. 2 and 3 for commission of offence under Section 302 read with Section 120B and 34 of IPC. It can broadly be stated that the learned Trial Judge found that there was no evidence against the accused nos. 2 and 3 either in furtherance of common intention or with pre meeting of minds the accused nos. 2 and 3 committed any offence charged against them. Learned Trial Judge found that the death of deceased was unnatural and homicidal one and the accused no. 1 is the author of the crime and passed the judgment and order of conviction.

10. Learned Counsel for the Appellant vehemently submitted that the learned Trial Judge failed to appreciate the evidence in its proper perspective. Learned Counsel for the Appellant further submitted that there were so many basic lacunae in the case of prosecution. Learned Counsel for Appellant further submitted that though the prosecution submits that the accused no. 1 by use of hockey stick and knife committed murder of deceased Dattaram Morajkar, there is a discrepancy in so far as the weapon being used by accused no. 1 is concerned. Learned Counsel for Appellant submitted that the witnesses gave different versions of finding the pieces of hockey stick on the spot. Learned Counsel for Appellant further submitted that the prosecution submitted before the Trial Court that the witnesses have seen three pieces of hockey stick lying on the ground but before the Court there were only two pieces of hockey stick as such, this discrepancy is not explained by the prosecution. Learned Counsel for Appellant further submitted that though the prosecution submitted that the accused no. 1 used the knife but the recovery of weapon knife is

doubtful on the ground that the accused was arrested on the next day and the recovery was shown on the next day. Learned Counsel for the Appellant further submitted that there is no consistency in so far as the nature of weapon i.e., either it was a single edged weapon or double edged weapon. Learned Counsel for Appellant further submitted that the so called eye witnesses reached on the spot after the incident was over and as such, the version of these witnesses cannot be accepted as ocular version about the incident. Thus, learned Counsel appearing for Appellant prayed for allowing the Appeal.

11. *Per contra*, learned APP submitted that the prosecution has brought strong, reliable and cogent evidence in support of its case. It was submitted by learned APP that eye witnesses are the independent witnesses and on mere minor contradictions and omissions in the version of these witnesses, is not sufficient enough to discard their entire version which is otherwise truthful and reliable. Learned APP also submitted that the version of eye witnesses and particularly, the version of Ashwini Pawar (PW 4) is

consistent. Learned APP further submitted that the eye witnesses had seen the accused assaulting the deceased by way of hockey stick. The weapon was seized in the process of investigation and was referred to chemical analysis on the backdrop of the fact that there were blood stains on the weapon. The weapon and the apparels worn by the deceased and accused were also referred to chemical analysis. Merely because there is discrepancy as to whether there were three pieces or two pieces of hockey stick the version of witnesses that the accused gave the blows of hockey stick to the deceased cannot be thrown out of consideration. Learned APP further submitted that the suggestions given to the witnesses are not rational one. Learned APP further submitted that for example a suggestion was given to PW 4 that she herself committed the murder of the deceased when there was nothing on record to suggest that PW 4 had some enmity or ill-will against the deceased. Learned APP, thus, submitted that the evidence brought by the prosecution in the nature of ocular version of witnesses as well as in the nature of circumstantial evidence fully supports the case of prosecution.

Learned APP, thus, prayed for dismissal of Appeal.

12. With the assistance of both the learned Counsel appearing for respective parties, we have gone through the material placed on record.

13. The prosecution in support of its case examined as many as 12 witnesses. As the investigating agency was set in motion on an information received by them through Dr. Anil Naik (PW 1) the complainant, we may refer to the evidence of this witness firstly.

14. Dr. Ashok Naik (PW 1), is the medical practitioner and the neighbour of deceased. In examination-in-chief, this witness deposed before the Court that he was medical practitioner since 1972 and he has Dispensary at Shop No. 7, Shankar, Datta Mandir Road, Malad (E), Mumbai - 97. He knows the family of deceased Dattaram Morajkar, as he was staying in the same building in which the incident took place and his dispensary is also in the adjoining building. Accused no. 2 is the elder daughter of deceased and accused nos. 1 and 3 are her sons. He identify them as he knows

all of them. This witness further deposed that the incident took place on 26.10.1992, at 05.00 pm. He was in his house. One of the neighbours of the accused Smt. Ashwini Pawar came to his house and informed him that Dattaram was assaulted by his grandson accused Mahendra by hockey stick and knife. Within 5 minutes, he reached to that place i.e. outside the room of Salvi. He was in crouching position. Then he examined him and found him dead. He found multiple incised wounds on his body and he found pieces of hockey stick near the passage. There was nobody in the compound itself. He went to his house and informed Dindoshi Police Station on telephone. He lodged the complaint.

In the cross-examination, this witness stated that he did not personally go to the police but he informed the police on phone. Deceased was staying in one of the rooms of chawl and there are 6 tenants in that chawl and he was staying in the adjoining building of that chawl. Then this witness stated that he did not witness the incident. Ashwini who had come to call him was working as a nurse. After she came to inform him, he told her that he would be coming immediately. She

went away and he went alone on the spot. Deceased was found in a crouched position opposite to the staircase. The chawl consists of only ground floor tenements. Dattamandir is East-West road. There are two gates to the society. In front there are 11 shops. Both the gates are facing road and are at front side. The society building is "L" shape building. Then this witness stated that he identified the deceased. He had examined him. Lacerations were there on his forehead. He was wearing banian and half pant. He was in a reclining position. His banian was in a lifted up position, hence, I could see his some wounds. Dattaram was not breathing when he went there. His pulse was also not felt. He must have been died within half an hour. His pupils were dialeted. If he would have been alive he would have rushed him to the hospital.

15. Anil Dattaram Morajekar (PW 2) is the son of deceased. This witness deposed before the Court that accused no. 2 who is sitting in the deck of the Court is his real sister. In the year 1993 his father, his mother Satyavati, he himself and his wife were staying in the said room. He has two sisters including accused

no. 2 and he is the only son of Dattaram. Both the sisters are married. Elder sister is Sumita Jadhav accused no. 2. She stays along with her husband and children at Kurai Village, Malad (E). Accused no. 2 has three sons namely, Mahendra accused no. 1, Santosh accused no. 3, and Swaroop. His another sister is Ratnaprabha @ Sima Ramesh Kolge. This witness further deposed that accused no. 2 used to always quarrel with his father over the said room saying that she wanted to transfer the said room on her name. His father was not ready to transfer the said room on her name. Accused no. 2 and her husband had beaten his father over the transfer of the room on her name in the year 1988. The suit in Small Causes Court is pending since 1988. Accused no. 2 and her husband had assaulted his father and mother by sickle. The complaint was filed by his mother in Dindoshi Police Station against accused no. 2 and her husband.

16. This witness further deposed that in the year 1993 he used to ply the Rickshaw on highway from 06.00 am to 12.00 pm and he used to work as computer operator at St. Anns School, Borivali from 2.00 pm to 08.00 pm.

Accused no. 1 was jobless in the year 1993 and accused no. 3 was working in some factory in 1993. On 26.10.1993, he left home by 01.30 pm for job and went to the school for his job. His mother and father were present in the house. His wife had gone to Bhandup. At about 07.30 pm his friend Anil Munj came at his job place and informed him that quarrel has taken place at his house between his parents and accused no. 2 and that he should immediately reach home. Hence, he went home immediately and reached at about 08.00 pm. His mother told him that accused no. 1 has assaulted his father with knife, and he had succumbed to the injuries. His mother further told him that the dead body of his father was taken to Kooper Hospital by police. He did not go to Kooper Hospital immediately. Then this witness stated about lodgment of reports at the instance of his mother and father at police stations.

17. In the cross-examination, this witness stated that his another name is Bhargavram. His father was working in fire brigade and had retired. Then certain suggestions were given to this witness that he is

working as a peon in the school, he is not working as a computer operator, his father used to quarrel with his neighbouring ladies, he said to accused no. 2 that "tumhi mara" you kill him or he will kill him, these suggestions were denied. Another suggestion was given that his father was receiving monthly amount from Sumitra i.e., accused no. 2 and her husband Chandrakant for monthly expenses, this suggestion was denied.

18. Ramesh Narayan Bhatt (PW 3), is the panch witness. This witness deposed before the Court that on 26.10.1993 at about 05.50 pm, he was called to act as a panch, at Shiva Bhuvan, Datta Mandir Road, Malad (E), Bombay. At that time, he was staying opposite to that building. After hearing some commotion, he came down. 2-3 police officers, one lady were present there. The neighbours gathered on the spot. He noticed the trail of blood stains had fallen on the spot from the door of the WC upto the distance of 5 ft. One pair of sleepers were lying at the distance of 2-3 feet from the WC and the trail of blood was noticed at the distance of 5-6 feet from the steps of the WC. Three pieces of hockey stick were lying near about the dead body. There is a

slope near the WC. The first room of the chawl is facing towards east side and other five room in the said chawl are facing northern side. The dead body was found resting on the wall of room no. 1. The dead body was of about 78 years old male person. There was banian on the dead body and there were blood stains on that banian. There was night piajama of blue and white stripes on the dead body and it was also blood stained. There were about 16 injuries on the abdomen. One injury was also noticed on the his chest. All these injuries were bleeding. The police made the panchnama and took charge of three pieces of hockey stick, one pair of sleeper and clothes of the deceased. They were separately packed and sealed and label of his signature was affixed on each bundle. The dead body was also taken charge of under the panchnama. Then this witness put his signature at Serial no. 1 at three places. Then this witness further deposed that police produced another long bundle small bundle packed in brown paper. Three seals appeared tied with coir strings. Three seals appear on it. One seal at one end is seen little broken and the wrapper paper is seen torn at that end.

Other two seals are intact. The bundle is allowed to open in the open Court, after the inspection of advocate of the accused. It is found to contain two pieces of hockey stick.

19. In the cross-examination, this witness stated that on the date of panchnama, he was at home from 02.00 pm to 05.30 pm. He had heard the commotion. He saw from the window as to what had happened on the ground floor. He did not witness the incident. The slippers which were seized were blue. He found three pieces of hockey stick, lying at the distance of 5 ft from the deceased. Then this witness admitted that only two pieces of hockey stick were produced before the Court. Then certain suggestions were given to this witness that, the pajama produced before the Court is not the same, slippers produced before the Court, are not that of deceased, dead body was not found sitting near the wall of room no. 1, dead body was found on the steps of the WC, these suggestions were denied.

20. Now we may refer to the most important witness of prosecution is, Mrs. Ashwini Pawar (PW 4), the eye

witness of prosecution story. This witness deposed before the Court that his husband is doing embroidery business and she is a housewife. Her husband leaves home at 09.00 am and sometime at 10.00 am and returns home at about 10.30 – 11.00 pm. Her room number is 4. To the left of her house one Jadhav family was staying. There was WC three rooms away from her room. Near the WC one Salvi family was staying and still that family stays there. She knows Dattaram Morajkar. He used to stay in room no. 5. He was staying along with his wife, son and daughter-in-law. Then this witness deposed that she does not know the connection of all the accused with room no. 5 but, she knows that there used to be quarrel between accused no. 2 and her father, over the room. Then this witness deposed that on 26.10.1993, at about 05.00 pm, she was standing near the WC near room no. 1. Morajkar had gone inside the WC to answer the call of nature. He has wearing Paijama and Banian. He came out of the WC and climbed down the steps of WC. Then she saw that accused no. 1 assaulted Morajkar, with hockey stick on his head. Hence, she went to call his wife. When she returned to the spot, again, she

found that Mr. Morajkar was lying on the ground. She does not know what happened to the hockey stick. Then she rushed to call the doctor Naik (PW. 1). In her presence, he telephoned to police requesting her to wait for sometime, as he wanted to telephone to the police. Thereafter, he came alongwith her to the spot, where Morajkar was lying. Doctor was staying in the building near their chawl. Then doctor examined Morajkar and declared him as dead. Then this witness deposed that she will be able to identify pajama, banian and hockey stick, if shown to her. Then this witness deposed that she had seen the stab injuries on the person of deceased, caused by knife, but she did not see who caused these injuries by knife to the deceased.

21. In the cross-examination, this witness stated that she came out of the house on the date of incident, to see as the workers were cleaning drainage pipe. There were 5-6 workers, working there. They had come about 04.30 pm. Then this witness stated that due to the frequent quarrels between deceased and accused no.2, all the neighbours had made a police complaint

against him. This witness further stated that she had personally seen accused no. 1 assaulting him. She got frightened after the incident and shouted. Then this witness stated that she had only seen accused no. 1 assaulting deceased with hockey stick, and she did not see the rest of the incident. Then certain suggestions were put to this witness to suggest that hockey stick belongs to her, she did not go to the police station, because she wanted to see Mr. Morajkar dead, she went to call doctor, to create false evidence and false witness, all these suggestions were denied.

22. Smt. Satyawati Dattaram Morajkar (PW 5), is the wife of deceased Dattaram Morajkar and mother of accused no. 2. This witness deposed before the Court that at the time of incident she was not present at home. That incident had taken place near the common toilet for the chawl dwellers. She had gone to the house of one Shah where she was working as maid servant. She was informed by one Suhasini that her husband was being assaulted by means of knife by accused no. 1 – Mahendra. She, therefore, immediately rushed back to their chawl and found that Mahendra was

assaulting her husband by means of knife. He had inflicted at least two blows on her husband in her presence. Her husband fell down. Doctor Naik reached on the spot after getting message from one of their neighbours. Dr. Naik told them that her husband was dead. Dr. Naik gave telephonic message to the police station. Within five to ten minutes police van had reached on the spot. The dead body was taken charge by the police. She had also gone to the police station to give her statement.

In the cross-examination, this witness admitted that her both the sons i.e. Anant and Anil had come to Bombay in the year 1985 in search of jobs. Then suggestions were given to witness that her husband used to assault accused no. 2 and her children as he wanted to grab the said room no. 5, her husband has threatened the accused no. 2 that he would commit rape on her and that she was present at that time, she was not present at the time of incident, accused no. 1 did not inflict knife blows on her husband, her husband had been killed by somebody else and not by accused, all these suggestions were flatly denied. Then witness stated

that she had stated before the police that the accused no. 1 had assaulted her husband by means of a knife. She had also stated before the police that accused no.1 had inflicted at least two knife blows on her husband in her presence, these statements came on record by way of an omission.

23. Mrs. Avani Kamal Bhatt (PW 6). This witness deposed before the Court that the relations of accused no. 2 and her sons were not cordial with the deceased Dattaram Morajkar. They used to quarrel with the deceased frequently. Dattaram also used to quarrel with the accused no. 2 and her sons. There was a dispute regarding the possession of the room in which the deceased and his family members and Sumitra and her family members were staying. This witness further deposed that Dattaram Morajkar was killed by her grandson accused no. 1 Mahendra. It was around 04.30 to 05.00 pm that she had seen the deceased Dattaram in an injured state lying near the staircase of Shiv Bhuvan Chawl. He had many bleeding injuries on his person. The accused no. 1 standing near Dattaram Morajkar. The accused no. 1 was holding an knife in his hand. She had

also seen that one piece of hockey stick was lying near Dattaram Morajkar. One chappal was also lying near him. Then this witness scolded accused no. 1 and enquired from him as to why he was beating his grandfather Dattaram. She also advised him to leave the spot and not to assault. The accused no. 1 said that she should not interfere in the matter and that she should leave the spot. Immediately thereafter accused no. 1 Mahendra left the spot and went out of the premises. Then this witness deposed that some residents of the chawl went to call doctor Naik who was staying in the same chawl. Doctor Naik reached there within five minutes. He declared that Dattaram Morajkar was dead. One Mrs. Ashwini Pawar who was also known as Nanda had gone to call doctor Naik.

24. In the cross-examination, this witness stated that she was watching hindi movie at her residence. She came out after hearing the noise. Then certain suggestions were given that Dattaram died because of the water poured by his wife in his mouth, she had not seen the accused no. 1 Mahendra near the injured Dattaram, she had not seen accused no. 1 while holding

a knife in his hand, Dattaram's son Anil was there and that she identified him to be Mahendra by mistake, she was not present when Dattaram was examined by the doctor Naik, her statement was not recorded, all these suggestions were denied by this witness.

25. Rajendra Rampratap Thakur (PW 7) is the PI attached to Dindoshi Police Station at the relevant time. This witness deposed that he was specially appointed to head the team of officers and police men who were attached to Anti Gunda Squad. At about 06.00 pm on 26th October, 1993 he learnt that one man by name Dattaram Morajkar had been murdered near Sangita Talkies. He, therefore, went to the spot of incident. When he went to the spot he found that PSI Prabhu had already reached there. He told him that Dattaram Morajkar had been killed by his grandson Mahendra. After taking more details from PSI Prabhu he went to search the accused Mahendra. Then this witness arrested the accused no. 2 and 3 and drew the necessary panchnama.

26. Chootmal Madhavprasad Sharma (PW 8) is panch

witness. This witness deposed before the Court that on 27th October, 1993 he had gone to Dindoshi police station for submitting one application for grant of permission to use loud speaker in the marriage of his friend. One of the police constable requested him that he should assist the police in preparing a panchnama. The accused no. 1 had made the statement before the police that he would show the place where he had kept one weapon. The police prepared a memorandum of his statement. Thereafter they went to Mal Dongri, Andheri, Mumbai in a private vehicle. From that place they walked down to a chawl led by accused no. 1. Accused no. 1 entered one of the rooms and took out a polythene bag from below the cot. The polythene bag was opened in his presence. It contains one pant, one shirt and a knife. Then those articles were seized in his presence.

27. Dr. Rajendra Narayanrao Marathe (PW 9), is the autopsy surgeon. This witness deposed before the Court that in the year 1993 he was attached to Additional Coronor's Court, Juhu, Mumbai. On 26th October, 1993 a dead body was received from Dindoshi police station for postmortem examination. The dead body was of one

Dattaram Anant Morajkar. The postmortem examination was done by him on 27th October, 1993 in between 03.00 pm to 04.00 pm. At the time of external examination of body, he found following injuries:

1. C.L.W. 4cm x 1/5 cm x by bone deep on left forehead, oblique.
2. C.L.W. 3 x 4 cm bone deep on left frontal region, horizontal.
3. Incised wound 2.5 cm x 0.8 cm x Cavity deep horizontal above right nipple.
4. Incised wounds :
 - A. 3.5 x 2 cm x cavity x oblique.
 - B. 3.5 cm x 1 cm x Cavity x Horizontal.
 - C. 3 x 1 cm x Cavity x Horizontal.
 - D. 3.5 x 1 x Cavity x Horizontal. All these injuries were found on pigastrium.
5. Incised wound 3.5 cm x 1.5 cm x Cavity x Horizontal (H) on right hypochondrium.
6. Incised wound (I.W.) 3 x 1 x Cavity x Oblique on left side of umbilicus.
7. I.W. 3 x 1 x Cavity x H on Supruapubic region.
8. I.W. 4 x 1 x Cavity x H on Right iliac region.

9. I.W. 3 x 1 x Cavity x Vertical on left hypochondrium.

10. I.W. 3 x 1 x Cavity x Vertical on left axilla.

11. I.W. 3.5 x 1 x bone deep x on left hand exterior aspect.

12. I.W. 3 x 1 x Muscle deep x oblique in left thenar eminence.

All those injuries stated hereinabove were found to be double edged.

On internal examination of body, he found the following injuries:

1. Right 4th and left 5th intercostal space was found pierced.

2. External injury no. 3 was found pierced to 4th intercostal space piercing upper and lower lobes of right lung through and through 2 cm. Hemothorax 500 cc clots.

3. Injury no. 10 (External) was found pierced through 5th intercostal space piercing in lower lobe of left lung 3cm x 5 cm leading to hemothorax 500cc clots and blood.

4. Stomach was found pierced by external injury no. 4 through abdominal wall.

5. Injury nos. 5,6,7,8 and 9 were found

piercing intestine at many places.

6. Injury no. 3 was found piercing through diaphragm, liver 2 cm x 3 cm.

Peritonium contained 500 cc blood and clotes.

In his opinion, after internal and external examination of dead body, he had come to the conclusion that the Dattaram Morajkar died due to haemorrhage shock due to multiple injuries. (Unnatural).

He opined that, the injuries found on the person of deceased Morajkar were sufficient to cause death in ordinary course of nature. The external injury nos. 3 to 12 could be caused by sharp edged weapon.

28. Rajaram Prabhu (PW 10), is the investigating officer. This witness deposed before the Court that in the year 1993 he was attached to Dindoshi police station. On 26th October, 1993 he was on duty as station house offier at Dindoshi Police Station during the period between 08.00 am to 08.00 pm. At about 05.15 pm, he received a phone call from Dr. Naik (PW 1) that one Dattaram Morajkar had sustained stab injuries and that he had succumbed to the injuries. He further informed

him that his dead body was lying in front of Room no. 1 Shiv Bhuvan chawl. When he visited the spot he found that one dead body was lying at the distance of 4 to 5' from the common toilet of Shiv Bhuvan chawl. Dr. Naik was present on the spot. The wife of the deceased and one Ashwini Pawar were also present on the spot. Then this witness stated about the steps taken by him in the process of investigation such as, recording the statement of witnesses, drawing various panchnamas, registration of offence, seizure of clothes worn by deceased, effecting arrest of accused no. 1, forwarding various samples to laboratory for chemical analysis, obtaining report of PM, etc. Omissions in the statement of witnesses are proved through this witness.

29. Balkrushna Kalkhamkar (PW 11) is the PI attached to Dindoshi police station at the relevant time. This witness conducted part investigation. This witness recorded the statement of some witnesses, drew some panchnamas, forwarding of blood samples of deceased, blood stained earth, a knife and clothes of accused no. 1 to CA for examination and his opinion, etc. was done by this witness.

30. Abdul Mommin (PW 12) is the HC attached to Dindoshi police station at the relevant time. This witness was the store keeper of Dindoshi Police Station. On 26th October, 1993 and on 27th October, 1993, nine packets were handed over to him by the IO for being kept in the property room. Those nine packets were in sealed condition. They were carried to forensic science laboratory by him on 2nd November, 1993. A letter was given to the laboratory office which was signed by PI Mr. Kalkhamkar.

31. Firstly, we consider the issue that the death of Dattaram Morajkar being natural or unnatural i.e. homicidal one or not ? It is not in dispute that there are three eye witness to the alleged incident and the overtact of the accused no. 1 was seen by these three witnesses. The autopsy surgeon, after internal and external examination of dead body, he had come to the conclusion that the Dattaram Morajkar died due to hemorrhage shock due to multiple injuries. (Unnatural). He further opined that, the injuries found on the person of deceased Morajkar were sufficient to cause death in ordinary course of nature. The external injury

nos. 3 to 12 could be caused by sharp edged weapon.

Considering the above referred evidence, we are of the opinion that deceased Dattaram Morajkar died homicidal death.

32. The another issue is, whether the prosecution proves that present accused had committed murder of deceased Dattaram Morajkar?. To consider this issue, we have to refer to evidence of certain witnesses.

33. At the cost of repetition, we may state that Mrs. Ashwini Ashok Pawar (PW 4), who is the neighbour of deceased and the star witness of prosecution. This witness clearly stated before the Court that the accused no. 1 assaulted the deceased by means of hockey stick, and after seeing the incident she got frightened and left the spot immediately and rushed to Dr. Naik (PW 1). Then there is another witness is, Smt. Satyawati D. Morajkar, who is the wife of deceased. This witness admitted before the Court that when the incident was happening she was not present on the spot. But, she was informed by one Suhasini that her husband was being assaulted by means of knife by accused no. 1.

Therefore, this witness immediately rushed to the chawl. After reaching on the spot, this witness found that accused no. 1 – Mahendra was assaulting her husband my beans of a knife and had inflicted at least two blows of knife on her husband. Now the last eye witness is, Mrs. Avani Bhatt (PW 6), who is also the neighbour of deceased. This witness stated before the Court that at the time of incident she was sitting in her house. After hearing commotion she came out of her house. When she came out, she saw deceased Dattaram in an injured condition, lying near the staircase of Shiv Bhuvan Chawl. He had bleeding injuries on his person. The accused no. 1 Mahendra was standing near Dattaram Morajkar and was holding a knife in his hand.

34. Considering the above referred evidence, we are of the considered opinion, that it was the solitary act of the accused only and accused – Mahendra is the only author of the crime. The version of the above referred eye witnesses are consistent, reliable, trustworthy and unshaken. Even for the sake of moment, if we consider the submission of learned Counsel for Appellant that there are omissions in the version of

these eye witnesses, in our opinion, these omissions are minor in nature and are not fatal to the case of prosecution. Learned Trial Court was justified in holding the present Appellant guilty for the offence punishable under Section 302 of IPC.

35. Considering the evidence brought on record, we are unable to accept the submissions of learned Counsel for the Appellant and we find considerable merit in the submissions of learned APP. Thus, Appeal is devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)