

ATU/RMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 823 OF 2011

1. **Mahadeo Rama Madhvi,**
Age : 41 years, R/at : House No.285
Ulva, Taluka – Panvel, Dist. Raigad.
2. **Jagdish Pandurang Madhvi,**
Age : 36 years, R/at : House No.259
Ulva, Taluka – Panvel, Dist. Raigad.
3. **Narayan Pandurang Madhvi,**
Age : 35 years, R/at : House No.307
Ulva, Taluka – Panvel, Dist. Raigad.
(At present in Central Prison at Kolhapur) .. **Appellants**
(Ori. Accused Nos. 1, 2
and 4 in Sessions Case
No. 81/2009 in C.R.

No.

45/2009)

Versus

The State of Maharashtra,
Through Police Station Officer,
NRI Sagari Police Station,
at the instance of Manohar Gopal Patil,
Resident of Ulva, Taluka Panvel,
District Raigad.

.. **Respondent**
(Ori.

Complainant)

WITH
CRIMINAL APPLICATION (APPA) NO. 781 OF 2018
IN
CRIMINAL APPEAL NO. 823 OF 2011

Jagdish Pandurang Madhvi
Versus

.. **Applicant**

The State of Maharashtra

.. **Respondent**

WITH
CRIMINAL APPLICATION (APPA) NO. 1893 OF 2018

IN
CRIMINAL APPEAL NO. 823 OF 2011

Mahadeo Rama Madhvi

Age : 43 years, R/at : House No.2850

Ulva, Taluka – Panvel, Dist. Raigad.

.. Applicant

Versus

The State of Maharashtra

(NRI Sagari Police Station

Raigad District C.R. No.45 of 09)

.. Respondent

WITH
CRIMINAL APPEAL NO. 824 OF 2011

1. **Bhalchandra Pandurang Madhvi**
Age : 55 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.
2. **Premnath Pandurangh Madhvi**
Age : 34 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.
3. **Jeevan Rama Madhvi**
Age : 51 years,
R/at : House No.233 (A)Ulva,
Tal.: Panvel, District : Raigad.
4. **Prafulla Bhau Madhvi**
Age : 24 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.
5. **Bhau Pandurang Madhvi**
Age : 51 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.
6. **Kamlakar Rama Madhvi**
Age : 37 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.
7. **Deepak Dattatray Patil**
Age : 30 years,
R/at : House No.135, Ulva,
Tal.: Panvel, District : Raigad.
8. **Raman Dattatray Patil**

Age : 35 years,
R/at : House No.135, Ulva,
Tal.: Panvel, District : Raigad.

9. Rohan Jeevan Madhvi

Age : 30 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.

10. Rajesh Kashinath Thakur

Age : 30 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.

11. Kanha Padya Gharat

Age : 42 years,
R/at : Ulva, Tal.: Panvel, District : Raigad.

(At present in Central Prison at Kolhapur) .. **Appellants**
(Ori. Accused Nos.3 & 5 to

14

in Sessions Case No.

81/2009

in C.R. No. 45/2009)

Versus

The State of Maharashtra,
Through Police Station Officer,
NRI Sagari Police Station,
at the instance of Manohar Gopal Patil,
Resident of Ulva, Taluka Panvel,
District Raigad.

.. **Respondent**
(Ori.

Complainant)

WITH

CRIMINAL APPLICATION (APPA) NO. 206 OF 2019

IN

CRIMINAL APPEAL NO. 824 OF 2011

Bhalchandra Pandurang Madhvi

Age : 45 years,
R/at : House No.307 Ulva,
Tal.: Panvel, District : Raigad.
(At present in Kolhapur Central Prison)

.. **Applicant**

Versus

The State of Maharashtra
(NRI Sagari Police Station
Raigad District C.R. No.45 of 2009).

.. **Respondent**

WITH
CRIMINAL APPEAL NO. 1567 OF 2018
WITH
INTERIM APPLICATION NO. 715 OF 2021
IN
CRIMINAL APPEAL NO. 1567 OF 2018

Narayan Pandurang Madhvi

Age : 60 years, R/o : Ulwa, Tal.: Panvel,

District : Raigad.

(At present at Kalamba Central Prison)

.. Appellant
(Ori. Accused

No.4)

Versus

The State of Maharashtra

(At the instance of NRI Sagari

Police Station, District : Raigad)

.. Respondent

WITH
CRIMINAL APPEAL NO. 831 OF 2019

1. Bhalchandra Pandurang Madhvi

Age : 45 years.

(Presently at Kalamba Central Prison Kolhapur)

2. Premnath Pandurang Madhvi

Age : 44 years.

3. Jeevan Rama Madhvi

Age : 61 years.

4. Prafulla Bhau Madhvi

Age : 34 years.

5. Bhau Pandurangh Madhvi

Age : 61 years.

6. Kamlakar Rama Madhvi

Age : 47 years.

R/o: Ulva, Tal. Panvel

District : Raigad.

.. Appellants
(Ori. Accused Nos.3, 5 to 9 in
Sessions Case No. 81/2009

in

C.R. No. 45/2009)

Versus

The State of Maharashtra

(At the instance of NRI Sagari
Police Station, District : Raigad)

.. Respondent

WITH

CRIMINAL APPEAL NO. 248 OF 2021

- 1. Deepak Dattatray Patil**
Age : 48 years, Occ: Nil
R/a House No.135, Ulva,
Tal.: Panvel, District : Raigad.
- 2. Raman Dattatray Patil**
Age : 43 years, Occ: Nil
R/a House No.135, Ulva,
Tal.: Panvel, District : Raigad.
- 3. Rohan Jeevan Madhvi**
Age : 38 years, Occ: Nil
R/a House No.135, Ulva,
Tal: Panvel, District : Raigad.
- 4. Rajesh Kashinath Thakur**
Age : 38 years, Occ. Nil
R/a House No.135, Ulva,
Tal: Panvel, District : Raigad.
- 5. Kanha Padya Gharat**
Age : 50 years, Occ. Nil
R/a House No.135, Ulva,
Tal: Panvel, District : Raigad.

.. Appellant

(Ori. Accused Nos.10 to 14
in Sessions Case No.
81/2009 in C.R. No.
45/2009)

Versus

The State of Maharashtra

(Through NRI Sagari Police Station)

.. Respondent

WITH

CRIMINAL APPEAL NO.1349 OF 2011

Manohar Gopal Patil

Aged about 65 years,
Residing at Village Ulwa,
Taluka Panvel, District : Raigad.

.. Appellant
(Ori. Complainant)

Versus

1. **The State of Maharashtra**
(At the instance of Senior Inspector
of Police, N.R.I. Sagari Police Station
Vide C.R. No. I-45 of 2009)
2. **Kishor Kashinath Thakur**
Aged about 25 years,
Residing at Village Ulwa,
Taluka Panvel, District : Raigad.
3. **Rajendra Narayan Paringe**
Aged about 43 years,
Residing at Village Ulwa,
Taluka Panvel, District : Raigad.
4. **Balu Pandurang Bhoir**
Aged about 48 years,
Residing at Village Ulwa,
Taluka Panvel, District : Raigad.
5. **Balu Ananta Madhvi**
Aged about 23 years,
Residing at Village Ulwa,
Taluka Panvel, District : Raigad.

.. Respondents
Nos.2 to 5 – (Ori.
Accused Nos.15 to
18 in Sessions Case
No. 81/2009 in
C.R. No. 45/2009)

WITH
CRIMINAL APPEAL NO.535 OF 2011

1. **Sameer Damodar Madhvi**
Aged about 24 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.

2. **Nitin Kishor Madhvi,**
Aged about 31 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
3. **Vishal Kishor Madhvi**
Aged about 26 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
4. **Abhay Pandharinath Madhvi**
Aged about 26 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
5. **Jaydeep Manohar Patil**
Aged about 32 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
6. **Ramesh Dhavji Madhvi**
Aged about 23 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
7. **Ajay Damodar Madhvi**
Aged about 29 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
8. **Chetan Pandharinath Madhvi**
Aged about 20 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
9. **Amit Tukaram Pimputkar**
Aged about 25 years,
Residing at Ulwa, Taluka Panvel,
District : Raigad.
All are at present on bail.

.. Appellants.
(Ori. Accused Nos.1 to 9
in Sessions Case No.
136/2009 in C.R. No.
44/2009)

Versus

The State of Maharashtra

(At the instance of Senior

Inspector of Police, N.R.I. Sagari

Police Station Vide C.R. No.I-44 of 2009).

.. Respondent

.....

Mr. Shirish Gupte, Senior Advocate a/w. Gargi Joshi, Mr. Jitesh Mundhwa and Ms. Sakshi Kadam i/by Mr. Kedar Patil for Appellant in Appeal No.823 of 2011 and Applicant in APPA No.781 of 2018 and APPA No.1893 of 2018.

Mr. Kedar Patil a/w. Gargi Joshi, Mr. Jitesh Mundhwa and Ms. Sakshi Kadam for Appellant in Appeal No.1567 of 2018 and Applicant in IA No.715 of 2021.

Mr. Nitin Pradhan a/w Ms. Shubhada Khot and Mr. Ayaz Khan i/by Mr. Kedar Patil for Appellant in Appeal No.831 of 2019.

Mr. Nitin Sejpal a/w. Ms. Pooja Sejpal and Ms. Akshata Desai for Appellant in Appeal No.535 of 2011, Appeal No.1349 of 2011 and for Ori. Complainant in Appeal No.823 of 2011, Appeal No.824 of 2011 and for Applicant in APPA No.206 of 2019.

Mr. Aabad Ponda, Senior Advocate a/w Mr. Shailesh S. Kharat for Appellant in Appeal No.248 of 2021.

Mr. Nitin Pradhan i/by Mr. Ayaz Khan in Appeal No.824 of 2011 for Appellant.

Mr. Satyajeet H. Joshi a/w. Mr. Nachiket H. Joshi, for Respondent Nos.2 to 5 in Appeal No.1349 of 2011.

Mr. H.J. Dedhia, APP for the Respondent-State.

**CORAM : A. S. GADKARI &
MILIND N. JADHAV, JJ.**

**Reserved on : 23rd August, 2022.
Pronounced on : 06th September, 2022.**

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. This judgment shall dispose of following 7 Criminal Appeals. All Appeals arise out of the same incident dated 13.03.2009. For the sake of brevity, Appellants hereinafter will be referred as per

their original nomenclature before the Trial Court i.e. accused Nos. 1, 2, 3 etc.

- (i) Criminal Appeal No. 823 of 2011 has been filed by original accused Nos. 1 and 2 to challenge legality and validity of Judgment and Order dated 01.06.2011 (for short “**impugned judgment**”) passed by learned Sessions Court Raigad at Alibag in Sessions Case No. 81 of 2009 arising out of FIR bearing C.R. No. 45 of 2009, convicting Appellants under Section 235(2) of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) of charges punishable under Sections 302 read with 149 of the Indian Penal Code, 1860 (for short “**IPC**”) and sentencing them to undergo rigorous imprisonment for life and pay fine of Rs. 2,000/- each and in default to suffer rigorous imprisonment for one month. Appellants have also been convicted under Sections 143, 144, 147, 148 and 149 IPC and sentenced to undergo rigorous imprisonment for various terms; all sentences to run concurrently and the sentence in default to run consequently.
- (ii) Criminal Appeal No. 824 of 2011 has been filed by original accused Nos. 3 and 5 to 14 to challenge the impugned judgment.
- (iii) Criminal Appeal No. 1567 of 2018 has been filed by

original accused No. 4 to challenge his conviction by the impugned order.

- (iv) Criminal Appeal No. 831 of 2019 has been filed by original accused Nos.3, 5 to 9 to challenge the impugned judgment.
- (v) Criminal Appeal No. 248 of 2021 has been filed by the original accused Nos. 10 to 14 to challenge the impugned judgment.
- (vi) Criminal Appeal No. 1349 of 2011 has been filed by first informant / original complainant Manohar Patil, father of deceased to challenge acquittal of Respondents (Original Accused No. 15 to 18) by the impugned judgment.
- (vii) Criminal Appeal No. 535 of 2011 has been filed by Appellants, original accused Nos. 1 to 9 against their conviction by the Judgment and Order dated 02.06.2011 in Sessions Case No. 136 of 2009 arising out of cross complaint/FIR bearing C.R. No. 44 of 2009. Accused Nos. 1 to 9 have been convicted under Sections 324 & 149 IPC and sentenced to undergo one year rigorous imprisonment and payment of fine of Rs. 1000/- each and in default thereof to suffer one month rigorous imprisonment.

2. Sessions Case No. 81 of 2009 was conducted against Original Accused Nos. 1 to 14 and Sessions Case No. 154 of 2010 was conduct separately against Original Accused Nos. 15 to 18 in

C.R. No. 45/2009. By a common Judgment and Order dated 01.06.2011, both sessions cases were disposed of convicting accused Nos. 1 to 14 and acquitting accused Nos. 15 to 18.

2.1. Sessions Case No. 136/2009 was conducted against 9 accused in the cross complaint / FIR in C.R. No. 44/2009 filed by the original accused No. 1 in Sessions Case No. 81/2009. By Judgment and Order dated 02.06.2011, this Sessions Case was disposed of convicting accused Nos. 1 to 9.

2.2. In so far as both the Sessions trials are concerned, in terms of the law laid down by the Apex court, since both the trials pertain to the incident which occurred one after the other, the learned Trial Court has conducted both the trials one after another and delivered the judgments dated 01.06.2011 and 02.06.2011 which are impugned in the present set of Appeals.

3. Facts which emerge for consideration from the prosecution case are as under:-

3.1. Incident took place at 10:45 p.m. on 13.03.2009. FIR being C.R. No. 45/2009 was lodged by first informant, Manohar Gopal Patil at 1:10 a.m. on 14.03.2009 against 18 accused.

3.2. According to prosecution, prelude to incident occurred on 11.03.2009, when there was quarrel between accused No. 2 - Jagdish Madhvi and Sameer Damodar Madhvi on the second day of Holi festival (dhulvad); in that quarrel Rajesh Manohar Patil (deceased)

intervened and supported Sameer Madhvi, as a result of which accused No. 1 -Mahadeo and accused No. 2 - Jagdish held a grudge against Rajesh.

3.3. On 13.03.2009, at about 10:45 p.m., first informant heard screams coming from the direction of house of one of his neighbour, Ramesh Mundhekar; he therefore came out of his house and reached the spot of incident and saw accused Nos. 1 to 15 assaulting his son Rajesh with sticks, swords and sickle. According to prosecution, first informant saw accused No. 1 assaulting Rajesh with sickle; accused Nos. 2 and 4 assaulting with swords on his hands, legs and back; that six others also intervened and witnessed all accused assaulting Rajesh; Rajesh was grievously injured; however in the meantime, police arrived at the spot of incident and removed Rajesh to Municipal Hospital in the police jeep; Rajesh was declared dead on admission by Medical Officer.

3.4. However immediately prior thereto, accused Nos. 1 to 3 lodged FIR bearing C.R. No. 44 of 2009 at 12:15 a.m. on 14.03.2009 in the same police station against Manohar Gopal Patil and 8 others (including Rajesh) under Sections 143,144, 147, 148 and 324 r/w 149 IPC. Criminal law was set into motion.

3.5. On duty Police officer on instructions from Investigating Officer (for short "I.O.") visited hospital alongwith first informant and prepared inquest panchanama of dead body of Rajesh; blood

stained clothes of Rajesh were recovered and seized in presence of pancha witnesses and dead body of Rajesh was sent for post-mortem. At the same time, I.O. took personal search of accused Nos. 1 to 3 who were present in police station and had lodged FIR No. 44 of 2009 in respect of the same crime; I.O. seized clothes of the three accused and referred them for medical examination. Medical examination revealed that they received simple injuries. Separate trial was conducted being Sessions Case No. 136 of 2009 and the Trial Court by judgment dated 02.06.2011 convicted Manohar Gopal Patil and 8 others under Section 324 & 149 IPC and sentenced them to suffer one year rigorous imprisonment and fine of Rs. 1000/- and in default to undergo rigorous imprisonment for one month. Criminal Appeal No. 535 of 2011 is filed to challenge this judgment.

3.6. Spot panchanama was carried out by I.O. with the aid of pancha witnesses. Seizure of various articles was made. Accused Nos. 1 to 3 were arrested on 14.03.2009 at 5:00 a.m., accused Nos. 4 to 14 were arrested on 16.03.2009. Weapons viz; swords, sickles and sticks used in commission of offence were recovered and seized on 18.03.2009 under panchanama at the behest of accused No. 1. There was further seizure of sword and sickle on 20.03.2009 at the behest of Accused No. 4; seized articles and materials were sent to the Chemical Analyzer for Chemical Analysis. Chargesheet was filed against accused Nos. 4 to 14 on 25.06.2009 before the learned

Judicial Magistrate First Class who then committed the case to the learned Sessions Court, Raigad - Alibag for trial. Since original accused Nos. 16 to 18 were absconding at the then time supplementary chargesheet was filed against them on 11.05.2010 and on 02.06.2010, their case was committed to the learned Sessions Court, Alibag for trial. Chargesheet against these accused was filed on 19.04.2010. Chargesheet in Sessions Case No. 136/2009 was filed on 15.07.2009 before the J.M.F.C., Panvel. Thereafter common charge against accused Nos.1 to 18 was framed, read over and explained to them in vernacular language; all accused plead not guilty and claimed to be tried.

3.7. Accused No. 1 lodged FIR No. 44/2009 against the complainant group just before lodgment of FIR NO. 45/2009.

3.8. Prosecution examined in all 11 witnesses to bring home guilt of accused. Accused neither examined themselves nor any witnesses in their support. PW-1 and PW-3 are father and uncle of deceased Rajesh. PW-2 and PW-4 are cousin brothers of deceased Rajesh. Case of prosecution is entirely based on ocular evidence of PW-1 to PW-4. Trial Court after going through the evidence and assigning reasons disbelieved the evidence of PW-2 and PW-4; but the Trial Court based and concluded its conclusion after believing and accepting the ocular evidence of PW-1 and PW-3 and convicted the accused. Trial Court did not believe the evidence of PW-2 and

PW-4, because their statements were recorded after a delay of 15 days. It is therefore not necessary and relevant for us to revisit the same as case of prosecution is entirely based on evidence of PW-1 and PW-3.

3.9. PW-6 is the doctor who conducted autopsy on the dead body of Rajesh; post-mortem notes are marked as Exhibit-135. PW-5 and PW-7 are pancha witnesses whereas PW-8 to PW-11 are Police Officers who have deposed; PW-11 been the main Investigating Officer (I.O.).

4. We have heard Mr. Shirish Gupte, learned Senior Advocate, Mr. Nitin Pradhan and Mr. Kedar Patil, learned Advocates for Appellants in Criminal Appeal Nos. 823 of 2011, 824 of 2011, 831 of 2019 and 1567 of 2018; Mr. Nitin Sejpal, learned Advocate for Appellants in Criminal Appeal Nos. 535 of 2011 and 1349 of 2011; Mr. Aabad Ponda, learned Senior Advocate for Appellants in Criminal Appeal No. 248 of 2021; Mr. Satyajeet Joshi, learned Advocate for Respondents in Criminal Appeal No. 1349 of 2011 and Mr. H.J. Dedhia, learned APP for Respondent – State in all Criminal Appeals at length and with their able assistance perused entire record.

5. PW-1 is father of deceased Rajesh. In his evidence has deposed that two days before the incident, on 11.03.2009 Rajesh intervened in a quarrel between his relative Sameer Madhvi and accused No. 2; that on 13.03.2009 at about 10:45 p.m. he rushed to

the spot of incident on hearing screams and saw accused Nos. 1 to 18 assaulting Rajesh; accused No. 1 assaulted Rajesh on his head with sickle; accused No. 3 assaulted Rajesh with sticks; accused Nos. 2 and 4 assaulted Rajesh with swords on his hands, legs and back; whereas remaining accused assaulted Rajesh with swords, sticks and sickles. He deposed that apart from him six other persons namely his another son Jaideep, daughters in law Dakshata and Reshma, Nitin Madhvi, Abhay Madhvi and Sameer Madhvi were also present with him, they all intervened and witnessed the assault on Rajesh, but on seeing them all accused ran away.

5.1. In his cross-examination, PW-1 has stated that incident occurred in front of the house of his neighbour Ramesh Mundhekar which was at a distance of 150 feet from his house; that spot of incident (otta) was not visible from his house and there was no direct vision of the same. On being specifically asked about his blood stained clothes, since he had stated that he carried Rajesh to the hospital in the police jeep, PW-1 has deposed that his clothes were not seized by police and they did not ask or enquire with him about the same. However in paragraph 20 of his cross-examination, there is a contradiction about the presence of his two daughters-in-law at the spot of incident; further since it is PW-1's case that he carried Rajesh to the hospital, it is argued on the behalf of accused/Appellants that there is no entry in the E.P.R. register of the hospital police

chowki/police unit about PW-1 having brought Rajesh to the hospital. PW-1 in his cross-examination has further deposed that he met Sameer Madhvi and Abhay Madhvi for the first time at the funeral of Rajesh and this deposition directly contradicts the deposition in his examination-in-chief that Sameer Madhvi and Abhay Madhvi had both intervened in the incident and witnessed the same.

6. Mr. Gupte, learned Senior Advocate has meticulously taken us through the evidence of PW-1 and contended that the omissions qua paragraph 5 of his examination-in-chief about the presence of seven persons being present at the spot of incident at the time of incident are glaring and contradictory; that answers given by PW-1 in cross-examination do not stand or are worthy of credibility; that in view of the deposition in his cross-examination, it is doubtful whether PW-1 was indeed present at the spot of incident when the incident occurred; that there is no documentary, cogent or material evidence produced by prosecution, except the testimony of PW-1 himself, to prove his presence at the spot at the time of incident; that non recovery and seizure of PW-1's bloodstained clothes create a grave suspicion about his presence at the time of incident. In this context, Mr. Gupte has drawn our attention to paragraph Nos. 23 and 24 of the cross-examination of PW-11, I.O. which reads thus:-

"23. It is not true to say that the statements of any of the eye

witnesses and which are recorded by me on 14.3.2009 did not reveal that complainant Manohar Patil was present at the spot of incident when the incident occurred. I again say that statements of the eye witnesses and which are recorded by me on 14.03.2009 do not disclose or speak that complainant Manohar Patil was present at the spot of incident when the incident occurred. (The Investigating Officer has given this answer after going through statements of these witnesses recorded on 14.3.2009).

24. Statements of eye witnesses and which are recorded by me on 8.4.2009 also do not disclose that the complainant Manohar Patil was present at the spot of incident when the incident occurred. (Investigating Officer has given this answer after going through the statements of the concerned witnesses).

6.1. Mr. Gupte has submitted that from the above, it is discernible that prosecution has failed to prove presence of PW-1 on the spot at the time of occurrence of the incident and therefore, no credibility can be attached to his evidence.

7. Prosecution has next relied on the evidence of PW-3, Mayur Madhvi, cousin brother of deceased Rajesh. It is pertinent to note that PW-3's statement was recorded on 15.03.2009. He has deposed that he saw all accused assaulting Rajesh; that accused No.1 assaulted Rajesh on his head with sickle; accused Nos. 2 and 4 assaulted Rajesh with swords on his hands, legs and back and at the same time, first informant and four others namely Jaideep Patil, Sameer Madhvi, Abhay Madhvi, and Nitin Madhvi were trying to intervene in the assault. He stated that he got frightened and ran away to his house and came to know the following morning that Rajesh had died. In his cross-examination, he has deposed that he did not try to intervene and was standing away from the spot of the

incident; further he did not feel necessary to see what happened to Rajesh after the incident had occurred. Another notable deposition by PW-3 in his cross-examination is that, there were no streetlights when the incident occurred, however he has stated that Jaideep Patil, Sameer Madhvi, Abhay Madhvi, and Nitin Madhvi pleaded with accused not to assault Rajesh. In his entire deposition PW-3 has not stated whether PW-1 was present at the spot of incident at the time of incident, but he has stated that his two daughters-in-law were present and intervened at the time of incident. In view thereof, certain credence needs to ascribed to this evidence, namely presence of PW-1 at the time of incident. It is pertinent to note that incident took place at about 10:45 p.m. during night time and this witness has stated that there were no streetlights, which implies that there was darkness. Entire case of the prosecution is centered on the ocular evidence of PW-1 and PW-3.

8. In addition to the above evidence, evidence given by PW-6, Dr. Bhushan Jain, doctor who conducted the autopsy, is relevant as his evidence corroborates with the evidence of PW-1 and PW-3 to the extent of proving the description of weapons used and injuries caused by the weapons on the body of deceased Rajesh. Post-mortem notes are marked as Exhibit 135. On external examination of the dead body of Rajesh, PW- 6 has noted and found the following 17 injuries:

- (1) Incised wound seen over left fronto parietal region situated at the distance of 7 cm. From glabella and 3 cm lateral to midline 8 cm x 1 cm, bone deep, reddish;
- (2) Incised wound over right face involving pinna of the external year 2 cm x 0.3 cm skin deep, reddish;
- (3) Linear abrasion over right deltoid reigon of length 7 cm, reddish;
- (4) Linear abrasion over right arm posteriorly of length 15 cm, reddish in color;
- (5) Chopped wound seen over left shoulder superiorly, 8 cm x 2 cm, bone deep, along with cut fracture. Infiltration staining of blood seen at the fracture margin 2 cm, tailing seen anteriorly, reddish;
- (6) Incised wound over left arm-lower (1/2) posteriorly 9 cm x 4 cm bone deep along with 5 cm tailing laterally;
- (7) Aberaded contusion over dorsum of left hand 6 cm x 4 cm, reddish bluish in color;
- (8) Abrasion over left thigh upper part anteriorly 5 cm x 2 cm, reddish;
- (9) Abrasion over left thigh, antero laterally 15 cm x 2 cm, reddish;
- (10) Abrasion over left knee anteriorly 5 cm x 1 cm, reddish;
- (11) Chopped wound over left leg anteo laterally, 10 cm x 3 cm, bone deep along with cut fracture of tibia. Infiltration stinning of blood seen at the fracture margin, reddish;
- (12) Contusion over right thigh, anterioraly 15 cm x 5 cm, reddish bluish;
- (13) Abrasion over nape of neck 6 cm x 4 cm, reddish;
- (14) Three linear abrasion over right scapular region of length, 6 cm each, reddish;
- (15) Linear abrasion over back in a middle region,

obliquely place of length of 20 cm, reddish;

(16) Abrasion over right back-lower part, 12 cm x 6 cm, reddish,

(17) Stab injuries over right back lumber region situated at the distance of 36 cm from C7 spine and 3 cm lateral to middle of size 4 x 1 cm cavity deep, reddish in color.

8.1. Out of the above, six are grievous injuries namely injury Nos.1, 2, 5, 6, 11 and 17 whereas remaining eleven injuries appear to be simple injuries. PW-6 has given a detailed description of causation of injury No. 17, a grievous stab injury on the walls and peritoneum of abdomen puncturing the right kidney. PW-6 has recorded in his opinion final cause of death of Rajesh due to hemorrhage and shock because of stab injury over back with multiple chopped injuries. Obviously, reference to multiple chopped injuries are in context with the other grievous injuries.

9. Apart from medical and ocular evidence, prosecution's case is based on recovery evidence viz. recovery of materials and articles (weapons) used by accused. For proving recovery evidence, prosecution has relied on the evidence of PW-7 pancha witness who has witnessed recovery of blood stained clothes of accused No. 1 and deceased and weapons used, which were recovered at the behest of accused Nos.1 and 4. However since PW-7 has deposed that he was not a witness to the discovery of weapons and was kept away from its

discovery by the police, he has been declared as hostile.

10. PW-8 is concerned with recovery and seizure Panchanamas produced at Exh. 138 to 140. Exh. 138 pertains to recover of blood stained clothes i.e. one white half shirt, baniyan and full pant of accused No. 1 Mahadeo; one blood stained T-shirt and full pant of accused No. 3 vide Exh. 139 and blood stained baniyan and full pant of accused No. 2 vide Exh. 140. Seized clothes have been marked as Article Nos. 10 to 15. However, in cross-examination PW-8 has deposed that after seizure of clothes of accused there is no reference in the panchanama to show that accused were provided with fresh clothes. He has also admitted that though there is no reference in the panchnamas that clothes were sealed and labelled.

11. P.W. 9 is the Police Officer who has recovered and seized the blood stained clothes of deceased Rajesh vide Exh. 141, these clothes were one baniyan, bermuda pant, underwear and a blanket all stained with blood. These were marked as Article Nos. 6 to 9; this witness however has deposed that seized clothes were not sealed and labelled by him. The Appellants has therefore argued that if they were the actual assailants, they would not have gone to the police station to lodge a complaint against the family members of the deceased; that prosecution has failed to prove that Appellants were the assailants and authors of the crime and most importantly the blood stained clothes of accused though claimed to be recovered and

were not seized, sealed, labelled and produced in evidence by prosecution.

12. On behalf of Appellants it is submitted that in the facts and circumstances of the present case, since they were not treated medically and no investigation was carried out in that prescriptive, investigation in the crime was highly questionable; that apart, it was argued that evidence of PW-10, I.O. has fallen short on many counts. It is submitted that though there were several eye witnesses as claimed by PW-1 and PW-3, those eye witnesses, namely the two daughters-in-law of PW-1 i.e. Dakshata and Reshma, Nitin Madhvi, Abhay Madhvi and Sameer Madhvi who intervened and witnessed the incident were not examined by prosecution. It has also come in evidence that though wife of deceased Rajesh was present at the scene of crime, prosecution has not examined her, further the lady in the neighbourhood who provided the bedsheet to carry Rajesh to the police jeep and hospital was also not examined by prosecution. It is stated in cross-examination of the I.O. that PW-1 did not state while recording FIR that his two daughters-in-law were also with him, hence I.O. should have been examined the two daughters-in-law who had allegedly witnessed the incident as per PW-1's substantive deposition and were also present with him in the hospital.

13. In this case recovery evidence is based on evidence of pancha witnesses, PW-7 and PW-8 along with panchnamas prepared

and marked as Exhibits '130' and '140'. It is not disputed that PW-8 recovered and seized the half sleeve shirt of white color, baniyan and full pant which were worn by accused No.1, the t-shirt and full pant which were worn by accused No.3 and the baniyan and full pant which were worn by accused No. 2 under panchnamas (Exh. 138 to 140) respectively; and that, all these clothes were stained with blood. Blood of deceased Rajesh Manohar Patil is blood group 'B'. Result of his blood group is stated in Examination Report marked as Exh. 174. Blood stains which were on the half sleeve shirt seized from accused No. 1 Mahadeo Madhvi, and the full pant seized from accused No. 3 Balachandra Madhvi are of blood group 'B' which corresponds to the blood group of deceased Rajesh; this fact becomes clear from the blood examination report (Exh. 172). It is established in evidence that blood stains found on clothes which were seized from possession of accused Nos. 1 to 3 are of human blood. Further blood group of accused No.1 Mahadeo Madhvi is 'O', blood group of accused No. 2 Jagdish is 'A' and blood group of accused No. 3 Bhalchandra Madhvi is also 'A'. This fact is discernible from result of analysis stated in examination reports produced as Exhibits 175 to 177. Hence it is conclusively established that clothes worn by accused Nos. 1 to 3 were stained with the blood of deceased Rajesh.

14. Evidence of complainant (PW-1) and that of the eyewitness (PW-3) narrates in a detail manner the incident that unfolded. There

is no conflict in the version of complainant and of PW-3 as regards who caused the injuries to deceased Rajesh.

15. Evidence of I.O. and that of pancha witness (PW-7) read with the discovery statement (Exh. 142) and panchanama (Exh. 168) show that the I.O. recovered and seized the sword, sickle and stick at the instance of accused No. 1 Mahadeo from the place situated at a distance of 70 feet away towards the southern side of burial ground at village Ulva on 18.03.2009. Evidence of I.O. and that of panch witness (PW-7) read with the discovery statement (Exhibit 143) and panchanama (Exhibit 144) further shows that I.O. recovered and seized sword, sickle and stick at the instance of accused No. 4 from near the M.S.E.B. Box at village Ulva on 25.03.2009. All incriminating weapons which are alleged to have been seized at the instance of accused No. 1 and accused No. 4 were stained with blood. In this context the Directorate of Forensic Science Laboratories in the forensic examination report (Exh. 172) stated that blood stains found on swords, sickle (koyata) are of blood group 'B', whereas ABO grouping of blood stains found on bamboo stick is inconclusive. In short, on basis of his report, it can be said that the two swords and sickle which were sent by the I.O. to Directorate of Forensic Science Laboratories are found with blood stains of the blood group of deceased. In the light of argument advanced by learned APP and also by learned Advocates, it is therefore well

established that the recovery evidence relied upon by the prosecution is reliable and trustworthy.

16. From the evidence on record alluded to hereinabove, it is concluded that the testimony of PW-3 is reliable. In so far as the testimony of PW-1 is concerned, for the reasons and discussion hereinabove it is held that this testimony cannot be taken into account as prosecution has failed to establish his presence at the spot of the incident.

17. In the facts of Criminal Appeal No. 535 of 2011, we may refer to the testimony and evidence of PW-3 - Balchandra Madhvi, according to us the correct version of the entire incident as it unfolded is narrated and deposed by this witness. Paragraph No.2 of his examination-in-chief is the correct version of the incident in question and is reproduced below:-

“On 13/03/2009 painting work was going in my house during night. My brother Jagdish received phone call from Mahadeo at about 10:15 pm. Mahadeo told my brother Jagdish that the accused No. 1 Sameer and others are assaulting him. Therefore Mahadeo called Jagdish for help. We saw that the accused no. 1 to 9 were armed with stickes, swords and sickles and that they were assaulting Mahadeo by means of these weapons. I tried to intervene. Accused no. 2 Nitin Madhvi assaulted by means of sickle on left hand and of little finger of right hand of Jagdish. Somebody hit stone on the head of Jagdish. Accused No. 4 Abhay hit stone on my forehead. The accused after extending abuses and pelting stones on house went away”.

18. It is pertinent to note that as per the testimony of PW-3, the assault on Mahadeo Madhvi family is the prelude to the incident. It

is seen that there was an assault on Mahadeo (PW-1 in the connected appeal), thereafter intervention of family members and the incident thereafter, *inter alia*, leading to death of Rajesh. That apart, we may also usefully refer to the medical certificate issued in respect of injuries caused to Mahadeo, Jagdish and Bhalchandra which have been marked in evidence as Exh. Nos. 51, 52 and 53 respectively. Injuries mentioned in the three medical certificate corroborate with the evidence given by Mahadeo, Jagdish and Balchandra as PW-1, PW-2 and PW-3 in the trial.

19. In view of the above, we find the evidence of PW-3 – Bhalchandra highly reliable and acceptable. Mr. Sejpal, learned Advocate appearing for Appellants in this criminal Appeal submitted that injuries sustained by Mahadeo, Jagdish and Bhalchandra are simple injuries and only abrasions caused by the blunt side of weapons used by them against Rajesh and his family members while assaulting. He has referred to and relied upon the decision of the Apex Court in case of **Laxmi Singh & Ors. Vs. State of Bihar**¹ and contended that prosecution need not prove the simple injuries and they stand proven by the medical certificate on record; he has further argued that in the present case, recovery evidence of clothes of accused with blood stains of blood group 'B' has been established and that blood group of deceased Rajesh Manohar Patil was group

¹ AIR 1976 SC 2263

‘B’. He submitted that accused No.1 - Mahadeo being the sarpanch of the village was a very influential person and that is the probable reason as to why the I.O. could not find independent and non-related eye witnesses to depose in the trial. He submitted that though in the present case, prosecution witnesses are related to the deceased, it cannot be held against the prosecution because substantive evidence of PW-1 and PW-3 in the connected Appeals reposes confidence and non-examination of independent witnesses cannot be treated as fatal to the prosecution’s case. He submitted in the present case considering the aforementioned facts, it is quite likely that no independent witnesses would step forward to give evidence; In support, he has also referred to and relied on paragraph No. 22 of the judgment of the co-ordinate Bench of this Court delivered at Nagpur in the case of ***Deepak Joshi and Ors. Vs. State of Maharashtra***², and which read as under:-

“22. On the second argument as to failure to independent witnesses raises doubt, it may be mentioned that it is a question of appreciation of evidence of the witnesses examined and always it may not be possible that the person from the mob would come forward for giving statement to the police. Otherwise also, in order to take advantage of circumstance of failure to examine independent witnesses, reasonable opportunity must always be given to the Investigating Officer as to why such witnesses were not questioned. It may not be lost sight of the situation that presence of witnesses on the spot is one thing and anybody coming forward to give statement to the police is another thing. Whenever a circumstance arises, as in the present case, as to brutal attack on the deceased by six persons armed with different weapons is witnessed by persons in the mob, all

2 2011 (1) ABR (NOC)42 (BOM.)

or any of them, may not come forward for many reasons including reason of the terror created by the assailants and the impact of the situation. Always in such type of cases, it can be seen that apart from close relatives of the victim, nobody comes forward to approach the police. If otherwise, the substantive evidence of other witnesses who are examined repose confidence, then non-examination of other independent witnesses cannot be treated as fatal to the prosecution. In our considered opinion, it is so in the present matter.”

20. The Supreme Court in the case of ***Vadivelu Thevar Vs. The State of Madras***³ has in paragraph Nos. 14 and 15 held as under:-

“14.The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in

3 AIR 1957 SC 614

insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses.”

20.1. A minute perusal of evidence on record clearly indicates that Manohar Patil (PW-1) is not a reliable witness. Even his presence is not observed at the spot of incident in the deposition of Mayur Patil (PW-3). Hence, according to us Mayur Patil (PW-3) is a wholly reliable witness and his evidence is trustworthy and reliable.

21. From the above discussion and findings, it is therefore held as under:-

21.1. PW-11 in his cross-examination has admitted that statements of the eye witnesses which were recorded by him on 14.03.2009 did not disclose that the complainant / informant Manohar Patil (PW-1) was present at the spot of incident when the incident in question occurred. The Trial Court has observed in paragraph No. 23 of its judgment that the Investigating Officer had given the said answer after going through the statements of witnesses recorded on 14.03.2009.

22. Perusal of entire evidence on record indicates that the genesis of both the crimes can be discerned from the testimony of PW-3 (in Criminal Appeal No. 535 of 2011) Bhalchandra; that on 13.03.2009 at 10:15 p.m. Sameer Madhvi assaulted Mahadeo Madhvi. Therefore, Mahadeo called Jagdish Madhvi at 10:30 p.m.

and informed him about the assault and thereafter the incident unfolded.

23. The Trial Court has disbelieved the evidence of Jaideep (PW-2) and Abhay (PW-4) and therefore we refrain from re-appreciating the same in an Appeal preferred by the accused. The testimony of Manohar Patil that Bhalchandra Madhvi (accused No. 3) assaulted Rajesh (deceased) with stick is an uncorroborated testimony. Mayur Patil (PW-3) in his evidence has nowhere stated about the presence of Bhalchandra Madhvi (accused No. 3). In view thereof, Bhalchandra Madhvi (accused No. 3) is entitled for benefit of doubt and it is accordingly given to him.

24. As far as accused No. 5 to 14 are concerned viz; Premnath Madhvi (accused No. 5), Jeevan Madhvi (accused No. 6), Prafulla Madhvi (accused No. 7), Bhau Madhvi (accused No. 8) Kamlakar Madhvi (accused No. 9), Deepak Patil (accused No. 10), Raman Patil (accused No. 11), Rohan Madhvi (accused No. 12), Rajesh Thakur (accused No.13) and Kanha Gharat (accused No. 14), both the material witnesses i.e. Manohar Patil (PW-1) and Mayur Patil (PW-3) are silent about any specific role played by them in the said crime. Manohar Patil (PW-1) in his testimony has made passing reference about the presence of accused Nos. 5 to 14. Mayur Patil in his testimony is silent about the presence of accused Nos. 5 to 14. It appears to us that with a view to implicate all family members of

Mahadeo Madhvi and Jagdish Madhvi, PW-1 has named them in the present crime. According to us therefore, accused Nos. 5 to 14 deserve clean acquittal and it is accordingly given to them.

25. As far as conviction and sentence of Mahadeo Madhvi (accused No.1), Jagdish Madhvi (accused No. 2) and Narayan Madhvi (accused No. 4) are concerned, after perusal of the impugned Judgment and Order, we find that there is no error committed by the learned Trial Court in appreciating the entire evidence on record. In view thereof, conviction and sentence passed by the impugned Judgment and Order as far as accused Nos. 1, 2 and 4 are concerned is upheld.

26. In view of the above discussion and findings, we pass the following order:-

- (i) Criminal Appeal No. 823 of 2011 stands dismissed. In view thereof, Criminal Application Nos. 781 of 2018 and 1893 of 2018 are also dismissed;
- (ii) Criminal Appeal No. 824 of 2011 is allowed in the above terms. In view thereof, Criminal Application No. 206 of 2019 accordingly stands disposed of;
- (iii) Criminal Appeal No. 1567 of 2018 is allowed in the above terms. In view thereof, Interim Application No. 715 of 2021 stands disposed of;
- (iv) Criminal Appeal No. 831 of 2019 stands disposed of in

view of the Order in Criminal Appeal No. 824 of 2011;

(v) Criminal Appeal No. 248 of 2021 stands allowed in the above terms;

(vi) Criminal Appeal No. 1349 of 2011 stands dismissed;

(vii) Criminal Appeal No 535 of 2011 stands dismissed.

Appellants in Criminal Appeal No. 535 of 2011 are directed to surrender within a period of four weeks before the Trial Court from the date of uploading of the present order.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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