

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO.449 OF 2016
WITH
CRIMINAL APPEAL NO.149 OF 2016
WITH
CRIMINAL APPEAL NO.331 OF 2016**

APPELLANT : Pradeep @ Shetty Shriniwas Regundawar
Aged 25 years, Occ-Painter
R/o Rajendra Prasad Ward,
Chandrapur.

V E R S U S

RESPONDENT : State of Maharashtra,
(Through P.S.O. PS Ballarpur,
Dist. Chandrapur).

**WITH
CRIMINAL APPEAL NO.149 OF 2016**

APPELLANTS : 1. Sagar S/o Pawan Bhasarkar,
Org.Accused Nos.2 & 3 Aged about 26 years, Occ-Labour.

2. Satish S/o Banayya Tandra,
Aged about 27 years, Occ-Labour,

Both R/o Rajendra Prasad Ward,
Ballarshah, Tahsil-Ballarshah,
District-Chandrapur.

V E R S U S

RESPONDENT : The State of Maharashtra through
Police Station Officer, Police Station,
Ballarpur, Tahsil-Ballarpur,
District-Chandrapur.

WITH
CRIMINAL APPEAL NO.331 OF 2016

APPELLANT :

Org. Accused No.4

Munna Sheikh Babbu Sheikh,
Aged about 52 years, Occ-Labour,
R/o Rajendra Prasad Ward,
Ballarshah, Tahsil-Ballarshah,
District-Chandrapur.

VERSUS

RESPONDENT :

The State of Maharashtra through
Police Station Officer, Police Station,
Ballarpur, Tahsil-Ballarpur,
District-Chandrapur.

Shri Mir Nagman Ali, Advocate for appellant/accused No.1 in Cri. Appeal No.449/2016.

Shri Rohit Joshi, Advocate for appellants/accused Nos.2,3 and 4 in Cri. Appeal Nos.149/2016 and 331/2016.

Shri I. J. Damle, Additional Public Prosecutor for respondent-State.

CORAM : SUNIL B. SHUKRE &
G. A. SANAP, JJ.

DATE OF RESERVING JUDGMENT : 17/06/2022

DATE OF PRONOUNCING JUDGMENT : 06/07/2022

JUDGMENT : (PER G. A. SANAP, J.)

1. All the three appeals arise out of the Judgment and order dated 12/04/2016 passed by the learned Additional Sessions Judge, Chandrapur in Sessions Case No.98/2014. The Criminal Appeal No.449/2016 is filed by Pradeep @

Shetty Shriniwas Regundawar, who was accused No.1 in the said trial against the order of his conviction and sentence for the offences punishable under Sections 302, 307, 34 read with Section 120-B of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure.

The Criminal Appeal No.331/2016 is filed by Munna Sheikh Babbu Sheikh, who was accused No.2 against the order of his conviction and sentence for the offences punishable under Sections 307, 34 read with Section 120-B of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure.

The Criminal Appeal No.149/2016 is filed by accused No.3 Sagar s/o Pawan Bhasarkar and accused No.4 Satish s/o Banayya Tandra against the order of their conviction and sentence for the offences punishable under Section 307, 34 read with Section 120-B of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure. The sentences awarded to the accused are as follows:-

i] Under Section 302 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure, the accused No.1 - Pradeep @ Shetty s/o Shriniwas Regundwar is convicted and sentenced to suffer life imprisonment and to pay fine of Rs.3,000/-, and in default, to suffer simple imprisonment for four months.

ii] Under Section 307, 34 r/w Section 120-B of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure, the accused No.1 - Pradeep @ Shetty s/o Shriniwas Regundwar is convicted and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/-, and in default, to suffer simple imprisonment for four months.

iii] Under Section 307, 34 r/w Section 120-B of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure, the accused No.2 - Munna Sheikh s/o Babbu Sheikh, the accused No.3 - Sagar s/o Pawan Bhasarkar and the accused No.4 - Satish s/o Banayya Tandra are convicted and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/- each, and in default, to suffer simple imprisonment for four months.

2. All the three appeals are being disposed of by common Judgment.

The facts are as follows :-

3. In the Judgment, the appellants would be referred by the nomenclature in the Sessions Trial as accused Nos.1, 2, 3 and 4. The incident occurred on 02/05/2014 at about 7.30 p.m. The informant Yaric Yafed Samial is the brother of the deceased. On the date of incident, there was marriage of the sister of one Ashok Chaple, R/o Rajendraprasad Ward, Ballarpur. The deceased and the injured witness PW-3 Vijaykumar Yellayya Komalla were present at the place of marriage at 2.00 p.m. The accused No.1 was also present in the marriage. At the time of lunch, one person in the marriage party insulted accused No.1 when he was taking lunch. He was asked to get up while taking the lunch. The accused No.1 hurled abuses to the said person. According to the prosecution, this was a trigger point for the commission of murder of the deceased. In the evening, there was marriage procession (Barat). The deceased and the PW-7 Deepak Ramesh Meghanwar were part of the marriage procession. It is stated

that when the procession (Barat) reached near the marriage venue, the accused No.1 Pradeep and accused No.2 Munna started pushing the deceased and PW-7 Deepak. There was some dispute on account of this in the marriage procession (Barat). The deceased tried to persuade accused No.1 Pradeep and accused No.2 Munna not to indulge in such behaviour and avoid quarrel. At this point of time, accused No.1 instructed accused No.4 to bring the sticks from nearby Panthela. The accused No.4 brought the sticks. The accused No.3 also came to the spot with accused No.4. It is the further case of the prosecution that the accused Nos.1 to 4 mercilessly beat the deceased and Deepak by means of sticks. They sustained injuries. The accused No.1 inflicted blows with an axe on the head of the deceased. The deceased fell down on the spot.

4. One Pinku Makre at 7.30 p.m. made a phone call to PW-1 Yaric and informed him about the quarrel. PW-1 rushed towards the spot. On the way, he received phone call from

Pinku Makre and Pinku Makre informed him to come to the Civil Hospital. He went to the Civil Hospital, Ballarshah. The body of the deceased was lying there with injuries on his head, ear and leg. He saw that one Javed and one Deepak had also sustained injuries. On enquiry with Javed and Dipak by PW-1 Yarik, they informed him about the above incident. He saw the dead body of his brother-in-law lying in the hospital.

5. He lodged report of incident. On the basis of his report, a crime bearing No.81/2014 came to be registered against the accused persons. PW-10 Ajit Totaram Rathod conducted the investigation. He drew the spot panchnama and collected the blood stained soil and plain soil from spot. He drew inquest panchnama of the dead body. PW-9 - Dr.Subhash Marotrao Kumbhare conducted post-mortem of the dead body. The weapons namely axe and sticks were recovered at the instance of the accused persons during the course of investigation. The blood samples of the accused Nos.1 to 4 were collected. The Investigating Officer forwarded

the samples to the Chemical Analyzer. He recorded the statements of the witnesses. On completion of investigation, he filed charge sheet in the Court of Judicial Magistrate, First Class, Ballarshah. The learned Additional Sessions Judge after committal of the case, framed charge against the accused Nos.1 to 4. The accused pleaded not guilty. The prosecution examined 10 witnesses to bring home the guilt against the accused persons. The prosecution relied upon number of documents. The learned Additional Sessions Judge, Chandrapur on consideration of the material on record found the appellants guilty of the above offences and sentenced them as above. Being aggrieved by the order of their conviction and sentence, they have preferred these appeals.

6. We have heard learned Advocate for the accused No.1, learned Advocate for the accused Nos.2, 3 and 4 and learned Additional Public Prosecutor for the State. We have gone through the record and proceedings.

7. The learned Advocate for the accused No.1 submitted that as per the case of the prosecution, the spot of incident was in Rajendraprasad Ward of Ballarshah, whereas the eye-witnesses have stated that the spot of incident was in Dindayal Ward, Ballarshah. In the submission of the learned Advocate for the accused No.1, this discrepancy of the place of occurrence is very vital inasmuch as it would reflect on the credibility of the oral and documentary evidence relied upon by the prosecution against the accused. Learned Advocate submitted that as per the case of the prosecution, one Javed had also sustained injuries at the hands of the accused in the said incident, however, he has not been examined. No plausible explanation has been placed on record. While commenting upon the evidence of PW-4 - Vishesh Mogali Gondawar, learned Advocate submitted that he was not eye-witness to the incident. His evidence to implicate the accused Nos.1 to 4 is not reliable. He has also acted as a panch on the inquest panchnama. It is submitted that this would further create doubt about the credibility of this witness. While

commenting upon the evidence of the injured eye-witness PW-7 - Deepak Ramesh Meghanwar, learned Advocate submitted that his evidence is full of omissions and inconsistencies and therefore, the same cannot be believed. It is submitted that this witness has stated about the incident which occurred in Dindayal Ward. Learned Advocate submitted that this evidence on the point of spot by this witness is contradictory to the case of the prosecution. It is further submitted that the injuries sustained by this witness were simple injuries.

8. Learned Advocate submitted that the memorandum and discovery panchnamas of the axe and the sticks cannot be believed. The panch witnesses PW-6 - Baban Gajanan Manusmare and PW-8 - Sunil Tirupati Simlawar are the habitual panchas. It is submitted that their evidence would show that they were not present at the time of so called memorandum and discovery panchnamas. Learned Advocate further submitted that there is no evidence to prove that all the

samples and articles were sealed by the Investigating Officer. It is therefore, submitted that on account of this major lacuna, the Chemical Analyzer Report cannot be used as a circumstantial evidence against the accused. It is further submitted that the evidence of PW-1 is contrary to the facts recorded in the memorandum and recovery panchnama.

9. Learned Advocate for the accused No.1 in order to substantiate his submissions, placed reliance on the following reported decisions :-

i] Syed Ibrahim Vrs. State of Andhra Pradesh, reported in AIR 2006 SC 2908.

ii] Sujit Gulab Sohatre and others Vrs. State of Maharashtra, reported in 1997(2) Mh. L.J. 142.

iii] State of Rajasthan Vrs. Teja Singh and others, reported in 2001 ALL MR (Cri) 994 (S.C.).

iv] Lalchand Cheddilal Yadav Vrs. State of Maharashtra, reported in 2000 ALL MR (Cri) 1485.

10. Shri Rohit Joshi, learned Advocate adopted the above submissions. Besides, Shri Joshi submitted that the evidence of PW-6 panch witness is contrary to the facts recorded in the memorandum and discovery panchnamas with regard to the timings. It is pointed out that the evidence of PW-1 and PW-6 show that the recoveries at the instance of both the accused were made simultaneously, which is contrary to the facts recorded in the panchnama. Learned Advocate submitted that the accused Nos.2, 3 and 4 have been acquitted for the offence of murder and convicted for the offence of attempt to murder of PW-7 - Deepak Meghanwar.

11. Learned Advocate took us through the evidence of Medical Officer and submitted that the injuries sustained by PW-7 - Deepak Meghanwar were simple injuries. In the submission of the learned Advocate, therefore, the offence under Section 307 of the Indian Penal Code was not made out against the accused Nos.2, 3 and 4. Learned Advocate submitted that there is no evidence against the accused Nos.2,

3 and 4 and therefore, they ought to have been acquitted. In the alternative, learned Advocate submitted that at the highest based on the evidence, they could have been convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code.

12. Learned Advocate for the accused Nos.2 to 4 in support of his submissions placed reliance on the following reported decisions :-

i] Harjit Singh and others Vrs. State of Punjab, reported in (2002) 6 SCC 739.

ii] Sujit Gulab Sohatre and others Vrs. State of Maharashtra, reported in 1997(2) Mh. L.J. 142.

13. Learned Additional Public Prosecutor submitted that the evidence adduced by the prosecution is credible. Learned APP submitted that on the basis of the evidence, the prosecution has proved its case against the accused Nos.1 and 2. Learned APP submitted that the learned Additional Sessions

Judge has recorded a finding that there is no discrepancy as to the place of occurrence inasmuch as the incident continued from one place to another. Learned APP submitted that the evidence of PW-7, who was injured in the incident is reliable and as such deserves acceptance. In short, learned APP supported the Judgment and order passed by the learned Additional Sessions Judge.

14. Learned Additional Sessions Judge on the basis of the evidence of the Medical Officer and other corroborative evidence, recorded a finding that the deceased died a homicidal death. Learned Additional Sessions Judge also recorded a finding that the intention of the accused Nos.2, 3 and 4 was to commit the murder of PW-7 - Deepak Meghanwar. This finding has been challenged. It would, therefore, be necessary to appreciate the evidence of PW-9 - Dr. Subhash Kumbhare, Medical Officer. PW-9 had conducted the post-mortem of the dead body. PW-9 had examined and treated PW-7 - Deepak Meghanwar and Javed.

He has stated that on 03/05/2014, he conducted the post-mortem on the dead body. On external examination, he found following injuries on the dead body.

1. Lacerated wound with clotted blood on left head parietal region of size 4 x 1 x 1 cm vertical in direction with sharp edges.
2. Lacerated wound behind left ear of size 3 x 2 x 1 cm.
3. Incised wound over left ear 2 cm about earlobe size 1 cm long.
4. Lacerated wound over great toe and second and third toe of right foot.
5. Abrasion on abdomen right side near illiac crest size 4 x 2 cm.
6. Abrasion left on shoulder size 3 x 2 cm and 3 x 1 cm.

He has stated that on examination of dead body, he found the following internal injuries :-

1. Subdural haematoma seen below scalp.

2. Skull vault was fractured, and fracture was sutured lined fracture which extends from left temporal bone to right parietal bone crossing mid line of skull (horizontal), second fracture line seen behind left ear over temporal bone extending to occipital bone left side.

3. Intracranial bleeding seen over brain surface & intracranial cavity.

Brain was congested.

15. He has stated that all the external injuries were corresponding to the internal injuries. He has opined that the cause of death was intracranial haemorrhage due to head injuries. Postmortem Report is at Exh.105. He has further stated that all the injuries were ante-mortem. He was cross-examined on behalf of the accused. In his cross-examination, he has specifically stated, as to which injuries could be caused by axe and which injuries could be caused by stick. His cross-examination is consistent with the facts recorded in the post-mortem. The Medical Officer has stated that during the course of investigation, the weapons of crime with the relevant

queries were received by him. He has answered those queries. His opinion is at Exh.107.

16. The Medical Officer has categorically stated that Injury Nos.1 and 3 could be caused by hard and sharp object. Injury Nos.2, 4, 5 and 6 could be caused by hard and blunt object. The injuries according to the Medical Officer were grievous in nature and sufficient to cause death of a person in the ordinary course of nature.

17. While appreciating the evidence of PW-9 - Dr. Subhash Kumbhare on the above aspect, it would be necessary to see the contents of Para No.21 of the postmortem report at Exh.105. The last part of Para No.21 shows that the PW-9 had preserved the clothes on the body and the blood of the deceased. The clothes and the bottle of blood was handed over to PC Vijaykumar. The submission is that the blood of deceased might have been sprinkled on the clothes of the accused to implicate them in this case. The police constable carried the clothes of the deceased and the blood sample bottle

to the police station. In the police station, in presence of the panchas, the same were seized. The description of the seized property is at Clause No.13 of Exh.82. The description of the property would show that the blood sample bottle was in a sealed condition. It is also not suggested to the Medical Officer in the cross-examination that the blood sample bottle was not packed and sealed by him. It is further pertinent to note that the CA report is consistent with this fact. The blood sample bottle of the deceased was received by Chemical Analyzer in a sealed condition. Perusal of evidence of Medical Officer, post-mortem and the answers given in his cross-examination clearly indicate that the evidence of PW-9 Medical Officer deserves acceptance.

18. PW-9 - Dr. Subhash Kumbhare had examined injured PW-7 Deepak Meghanwar. It is the case of the prosecution that Deepak was seriously injured on the spot and he was carried to the hospital in an injured condition by his friend. PW-9 has deposed that Deepak was brought to the

hospital in an injured condition. Exh.103 is the MLC report of Deepak. It would show that on 02/05/2014 at 10.30 p.m., he was brought to the hospital by one Munes. On examination of Deepak, he found following external injuries on his person.

1. Abrasion on left hand little finger of size $1 \times \frac{1}{2}$ cm.
2. Abrasion on left hand middle finger of size $1 \times \frac{1}{2}$ cm.
3. Abrasion on left hand index finger of size $1 \times \frac{1}{2}$ cm.
4. Abrasion on right hand index finger of size $2 \times \frac{1}{2}$ cm.
5. Abrasion on left forearm of size $1 \times \frac{1}{2}$ cm, $2 \times \frac{1}{2}$ cm x $2 \times \frac{1}{2}$ cm.
6. Lacerated wound on left parietal region of size $2 \times \frac{1}{2}$ x $\frac{1}{2}$ cm.

19. He has stated that the injuries were simple and age of them was within 0 to 4 hours. The injuries could be caused by hard and blunt object. PW-9 - Dr. Subhash Kumbhare has stated in his examination-in-chief that the injuries on the person of Deepak were simple injury. It is seen that in his cross-examination, he was asked certain questions on the

nature of injuries. He has stated that out of six injuries, injury Nos.4 and 6 were simple and injury No.5 was grievous. Be that as it may, the same could not change the tenor of his evidence and the contents of the MLC report. The fact, therefore, remains that the injuries were simple in nature. He has opined that the injuries could be caused by sticks sent to him for his opinion. The evidence of PW-9 - Dr. Subhash Kumbhare, Medical Officer would be of great help and assistance to the case of the prosecution. The evidence if corroborates the other evidence, then in that event, it could form the sound basis for rejecting the submission advanced on behalf of the accused persons. On appreciation of the evidence of the Medical Officer with other evidence like Inquest Panchnama coupled with the evidence of the eye-witness, it is proved beyond doubt that the deceased died homicidal death.

20. It would now be necessary to appreciate the evidence of witnesses to the actual occurrence of the incident. Javed has not been examined. PW-7-Deepak Meghanwar in

his evidence has placed on record the firsthand account of the incident. PW-4 - Vishes Gondawar had not witnessed the actual occurrence. He had reached the spot and saw the accused persons on the spot with the weapons in their hand. He saw deceased and Deepak lying on the ground. While appreciating the evidence of PW-7 - Deepak Meghanwar on the aspect of the actual occurrence of the incident, it would be necessary to mention that the marriage of the daughter of Ashok Chaple was at a venue situated in Rajendraprasad Ward, Ballarshah. The FIR as well as spot panchnama indicate that the place of occurrence is in Rajendraprasad Ward. PW-7-Deepak Meghanwar and PW-4 - Vishesh Gondawar have stated that the quarrel took place in Dindayal Ward. The first incident which according to the case of the prosecution is motive for commission of crime occurred at the marriage venue in Rajendraprasad Ward. The incident of the assault occurred in the evening when the dispute arose between the deceased and Deepak on one hand and the accused Nos.1 to 4 on the other hand on the issue of doing dance in the marriage

procession (Barat). It has come on record that Dindayal Ward and Rajendraprasad Ward are adjacent to each other. It is common knowledge that in Hindus of Maharashtra there is a custom which is followed in every marriage. As per the custom before marriage bridegroom is taken in procession to Bajrangbali (Hanumanji) temple. In the procession family, friends and relatives participate and perform dance etc. The procession starts at marriage venue and comes back to marriage venue after performing rituals at Bajrangbali Temple. The procession, therefore, obviously passes through different localities. It has come on record in the cross-examination of PW-7 albeit in the form of enquiry that the distance between Dindayal Ward and Rajendraprasad Ward is half kilometer. It is, therefore, apparent on the face of record that the deceased and his friend and the accused persons proceeded with the marriage procession (Barat). The dispute arose during the marriage procession and culminated into the incident in question near the marriage venue. The possibility of marriage procession proceeding from both the wards is quite possible.

Therefore, in our view, this discrepancy as to the spot cannot be given undue weightage.

21. PW-7 - Deepak Meghanwar was seriously injured. He was not present at the time of drawing of this spot panchnama. The spot was pointed out by somebody else which was situated in Rajendraprasad Ward. The blood was found splattered on the spot. The blood samples and the blood soil samples were collected. In our opinion, this discrepancy would have come to the rescue of the accused, provided there had been no blood on any spot pointed out by the witness and the recovery of the samples. Therefore, in our view, this discrepancy cannot be of such a nature as to discard the evidence of eye-witness on the actual occurrence. It is further pertinent to mention that if the accused on one hand and PW-7 and deceased on the other hand, had not been part of the marriage procession (Barat) at the time of the incident, then in that event, such discrepancy would have hit at the core of the case of the prosecution.

22. This would take us to the evidence of PW-7 - Deepak Meghanwar an eye-witness to the occurrence. It is submitted that other eye-witness Javed has not been examined and therefore, much weightage cannot be given to the evidence of PW-7 - Deepak Meghanwar. In our opinion, this could not be the ground to discard the evidence of PW-7. In the facts and circumstances, a great care and caution would be required to be taken while appreciating the evidence of PW-7. The evidence on appreciation must satisfy that the evidence is of sterling quality. PW-7 has stated that he knew the deceased. He has stated that he attended the marriage of sister of his friend Ashok Chaple. He has narrated the incident occurred at 2.00 p.m. He has stated that someone insulted the accused No.1 while he was taking lunch. He was made to get up from the place of lunch. He has stated that in the evening, he along with the deceased joined the marriage procession. The accused also joined the same. He has stated that at 6.30 p.m., accused No.1 and accused No.2 started pushing him and the deceased. The deceased told them to behave properly and not to indulge

in objectionable behaviour. At that time, accused No.1 told accused No.4 to bring the sticks from nearby Panthela. He came along with Sagar and brought the sticks. All the accused started assaulting him and the deceased by sticks. He has stated that he sustained injury on his head as well as on backside of his right hand. He fell down. The deceased also sustained injuries. They both tried to run away from the spot. He took shelter in the crowd. The deceased tried to run away. The accused Nos.1 and 2 chased him. The deceased fell on the cement road. The accused No.1 inflicted blows with axe on head of deceased and seriously injured him. He has stated that his friends carried him to the hospital at Ballarshah.

23. Perusal of his cross-examination would show that apart from the discrepancy of the spot, no other material has been brought on record to discard and disbelieve his testimony on the point of involvement of the accused Nos.1 to 4, in the assault, the weapon was carried by them and the injuries sustained by him. No material has been brought on record in

his cross-examination to indicate that this witness was on inimical terms with the accused persons. In the Court, he identified all the accused. The accused were knowing him prior to the incident. He has identified the sticks and axe in the Court. Certain omissions have been brought on record. Perusal of those proved omissions would indicate that those are not material to discard the core of his evidence on the actual occurrence and the involvement of the accused persons in the occurrence.

24. There is contemporaneous documentary evidence to corroborate his oral evidence. The MLC report is on record. PW-9 - Dr. Subhash Kumbhare has deposed about the same. PW-7 - Deepak Meghanwar is injured witness. The evidence of PW-7 would deserve weightage inasmuch as he is proved to have sustained injuries in the incident. No material has been brought on record to suggest that this witness had one reason or the other to falsely implicate the accused in the crime. On minute scrutiny of his evidence, we are convinced that the

evidence of this witness is of sterling quality. His oral evidence has been corroborated by other evidence as well as contemporaneous documentary evidence. We do not see any reason to discard and disbelieve his evidence. His evidence is sufficient to prove the incident. It is sufficient to prove the involvement of the accused in the commission of crime. His evidence is sufficient to prove the use of weapon by the respective accused at the time of the incident. The firsthand account of actual occurrence narrated by him has not been shaken in any manner in the cross-examination. This witness stood the test of the credibility and truthfulness. The prosecution has not examined Javed. Failure to examine Javed for the reasons best known to the In-charge P.P. of the case could not be a ground to reject the evidence of PW-7 which on appreciation has been found to be of sterling quality. It is necessary to mention at this stage that the Court has to see the quality of the evidence rather than the quantity of the evidence. The quality evidence of sole witness can be sufficient to prove the incident. Therefore, we are not prepared to accept

the submissions advanced by the learned Advocates for the accused to discard and disbelieve the evidence of PW-7.

25. PW-4 - Vishesh Mogali Gondawar is another eye-witness. His evidence is not on actual occurrence of the incident. It is his case that when he was chitchatting with his friend Mangesh at Dadabhai Nauroji Ward, Pintu Makhre came there at 7.30 p.m. and informed them about the assault on the deceased at Dindayal Ward. He immediately rushed to the spot on motor cycle. He has categorically stated that when he went there, he found accused Nos.1, 2, 3 and 4 on the spot and they were about to leave the spot. He saw that the accused No.1 - Pradeep Regundwar was holding axe and remaining accused were holding wooden sticks. He has stated that all the accused fled from the spot. He found that the deceased had succumbed to the injuries. He has stated that he carried the deceased to the Rural Hospital, Ballarpur.

26. The evidence of this witness is assailed on the ground that he was not knowing the accused Nos.1, 2 and 3

prior to the incident. The test identification parade was not conducted. Similarly, it is pointed out that the accused No.1 was not produced before the Court on the date of his evidence. He has not identified the accused No.1 in the Court. This witness was subjected to searching cross-examination. Besides being witness to the part of the incident, he had acted as a punch witness to the Inquest Panchnama. The Inquest Panchnama is at Exh.79. The contents of the Inquest Panchnama have been proved on the basis of evidence of this witness as well as on the basis of evidence of Investigating Officer.

27. On appreciation of his evidence, we are convinced that the witness is not got up or tutored witness. If the police wanted to plant him as a witness to the incident, the same could have been easily done. The witness being friend of the deceased would have attempted to exaggerate the facts. He has not done it. This, in our view, reflects upon the credibility of his witness. There is ring of truth to his testimony. However,

there is basic flaw in the evidence of this witness. The learned Additional Sessions Judge recorded his evidence in the absence of accused No.1, who was facing the charge for the offence of murder. The reasons for non-production of the accused No.1 have not been recorded while recording the evidence. It seems that the learned Additional Sessions Judge in a hurry and haste to complete the trial recorded the evidence of this witness without complying with the mandate of Section 273 of the Code of Criminal Procedure. In this case, this witness was not knowing the accused Nos.1, 2 and 3 prior to the incident. He was knowing only accused No.4. Perusal of his examination-in-chief would further show that he was not even granted an opportunity to identify the remaining accused present in the Court. In our opinion, this is very casual and mechanical approach. Such approach cannot subserve the cause of justice. The criminal trial must be fair, both for the victim and the society on one hand and the accused facing the trial, on the other hand. If the provisions of substantive and procedural law meant to ensure fair trial are not observed, the same could

cause miscarriage of justice. In this case, the evidence of PW-4 Vishesh Gondawar which is otherwise found to have a ring of truth on the identification of the accused Nos.1, 2 and 3 and part of the occurrence stated to have occurred in his presence, would be required to be eschewed from consideration. The evidence of this witness *vis-a-vis* the contents of the Inquest Panchnama, however, cannot be discarded.

28. In this case, therefore, there is evidence of solitary eye-witness PW-7 Deepak Ramesh Meghanwar. The said evidence has been found to be of sterling quality. In order to seek corroboration to his evidence, prosecution has examined other witness to prove the relevant facts and circumstances. PW-5 Sampat Ghurkuji Korde is panch witness to the spot panchnama. His evidence is consistent with the recording of the panchnama. We do not see any reason to discard and disbelieve the evidence of this witness. Similarly, in his presence, the clothes on the body of the deceased and his blood sample was seized. The blood sample was properly

sealed. The other evidence is consistent on the point of sealing of the blood sample of the deceased by Medical Officer.

29. The next witness is PW-6 Baban Gajanan Manusmare. He has acted as a panch witness to the memorandum and discovery of the sticks at the instance of the accused Nos.3 and 4. In his evidence, he has stated that the accused Nos.3 and 4 confessed before the police that they would point out the place where the sticks were concealed by them. The memorandum was drawn. The accused Nos.3 and 4 led them to the said place and took out the sticks. Perusal of his examination-in-chief would show that the accused Nos.3 and 4 together made the discovery statement and both the accused together took them to the place where the sticks were kept by them. Learned Advocate for the accused submitted that his oral evidence is contrary to the contents of the panchnama. We see substance in the submission. The memorandum and the discovery panchnamas of the accused Nos.3 and 4 would indicate that first, the memorandum and actual discovery at

the instance of accused No.3 was effected and after coming back to the police station, memorandum, discovery and actual recovery at the instance of accused No.4 was completed. The question is whether this itself would be sufficient to discard his evidence. In his cross-examination, he has admitted that since last 5 to 6 years, he has been acting as a panch witness for Ballarshah Police Station. He has admitted that he has disposed in near about 50 to 100 cases of Ballarshah Police Station. This would indicate that he is stock witness of police. On perusal of his evidence, we are at a loss to understand the logic of the Investigating Officer to select such person as a panch witness for such important work. His evidence, therefore, loses credibility. Be that as it may, the fact remains that this witness could not be said to be author of the panchnama. The author of the panchnama would be the Investigating Officer. If Investigating Officer's evidence is found trustworthy, then the aspect of recovery can be taken into consideration.

30. PW-8 Sunil Tirupati Simlawar is another panch

witness examined to prove the memorandum by accused Nos.1 and 2 and the recovery of their respective weapons at their instance. He has stated that one more panch Vinod Kondawar was with him. In their presence, accused No.1 confessed to point out the place where he had concealed the axe. He has stated that they went to the house of Pradip accused No.1 and house of accused No.2. In his examination-in-chief, he has stated that at the instance of the accused No.2, the axe was recovered. This is contrary to the case of the prosecution. He has further stated that at the instance of the accused No.1, wooden stick was recovered. He has identified the accused Nos.1 and 2 in the Court. In his cross-examination, he has stated that accused Nos.1 and 2 have handed over the clothes to the police at the time of search of their respective houses. He has admitted that the police had not packed and sealed the seized articles. He has admitted that the police had wrapped the seized articles in the Police Station. His cross-examination would show that he was summoned to act as a panch on given date and time. However, on the point

of recovery of articles at the instance of the accused, his evidence is contradictory. He has stated that the stick was recovered at the instance of accused No.1 and the axe was recovered at the instance of accused No.2. In fact, the case is other way round. This, in our view, is the material discrepancy in his evidence. Perusal of his cross-examination does not indicate that he is a stock witness of the police. In order to consider the trustworthiness of the evidence of this witness, it would be necessary to appreciate his evidence in the context of the evidence of the eye-witness, the evidence of the Investigating Officer and other documentary evidence including the CA reports.

31. It is seen on perusal of panchnamas that there is no specific mention about the actual sealing of the articles recovered and seized during the course of investigation. In this context, we can consider the evidence of the Investigating Officer. He has identified the accused Nos.1 to 4 in the Court. His evidence is consistent with the facts recorded in the

memorandum and recovery panchnamas of accused Nos.1 to 4. As far as accused No.1 is concerned, he has categorically deposed that the axe was recovered at the instance of accused No.1 pursuant to his confession. Exh.94 is a recovery panchnama. He has stated that the stick was recovered at the instance of accused No.2. The recovery panchnama is at Exh.97. His version is consistent with the facts recorded in the panchnama. While appreciating his evidence, the answers given by him in the cross-examination would be required to be appreciated. He had not fully covered all the weapons after seizure. He has further stated that he had not affixed wax seal of his office on the same. It seems that he did not understand the purport of the question. The weapons like axe and sticks are not generally wrapped in clothes or paper. It is a common knowledge that label with the signature of the panchas is pasted on such articles and it is sealed with the wax seal. In our opinion, much importance, therefore, cannot be given to the admission in his cross-examination. He has stated that accused Nos.1, 2, 3 and 4 handed over the clothes worn by them, on

the date of incident.

32. It has been proved that the investigation in the crime commenced after 8.30 p.m. on registration of the FIR. It is seen that consistent with the defence, there was no cross-examination of the Medical Officer, who had conducted post-mortem of the dead body. It was not suggested to the Medical Officer that after one or two hours of the incident, blood was oozing from injuries and the same could have been collected. In the absence of such case being put to the Doctor, it seems that the suggestion has been put to find the ways and means to come out of the clutches of the CA reports.

33. It seems that the Investigating Officer was also oblivious of the actual work done and precaution taken by him. This can be made out from perusal of Exh.127. Exh.127 is the requisition to the Chemical Analyzer, Forensic Science Laboratory, Nagpur to examine the articles seized in the crime and submit the report. The description of the articles has been mentioned in the document. The description of the articles

would show that all the articles were properly packed and sealed. As far as the sticks and axe is concerned, it is not mentioned that the same were packed and sealed. It is, therefore, seen that the Investigating Officer did not bother to look into his own documents before giving any answer. Therefore, it would be necessary to see the CA reports. The CA report is at Exh.128. Exh.129 is the CA report of the blood group of the deceased. His blood group as per the report of Chemical Analyzer is 'AB'. Exh.130 is the CA report of the blood group of accused No.1 - Pradeep Regundwar. His blood group is 'O'. Exh.131 is the CA report of blood group of accused No.2 - Munna Babbu Sheikh. His blood group is 'O'. Exh.132 is the CA report of blood group of accused No.3 - Sagar Bhasarkar. His blood group is 'B'. Exh.133 is the CA report of blood group of accused No.4 - Satish Tandra. His blood group is 'B'.

34. Before appreciating the CA report at Exh.128, it would be necessary to mention that the weapons and clothes of

the accused Nos.3 and 4 were recovered on 04/05/2014. The clothes and the weapons of accused Nos.1 and 2 were recovered on 07/05/2014. It is mentioned in the recovery panchanams at Exh Nos.87 and 88 in respect of accused Nos.3 and 4 and Exh.Nos.96 and 97 in respect of accused Nos.1 and 2 that at the time of recovery, the clothes were stained with blood. Perusal of the CA reports would show that the Chemical Analyzer had received 7 sealed parcels and 5 sealed clothe parcels. The seals were found intact and as per copy sent. This fact would indicate that the articles reached the CA, Nagpur, in a sealed condition. In other words, the Chemical Analyzer was satisfied that there was no tampering with the seal. It would, therefore, be necessary to mention that the argument on the point of lack of evidence, on the point of packing and sealing of the important article may not help the accused. The CA report proves beyond doubt that on the clothes of the deceased and the sample of the blood mixed earth, the blood of 'AB' group was found. The blood of 'AB' group was found on the clothes of the accused persons, which

were seized during the course of investigation. The Chemical Analyzer has further opined that the blood found on the axe and on one bamboo stick was human blood. The result with regard to the remaining two bamboo sticks was inclusive. In our opinion, this is very important piece of evidence. In our opinion, even if the evidence of some of the witnesses is kept out of consideration, the oral and documentary evidence on record proved beyond doubt that the accused Nos.1 to 4 were involved in the incident of assault. The scientific evidence, therefore, corroborates the other oral and documentary evidence. The accused Nos.1 and 4 had not sustained any injury in the incident. The explanation put forth by accused Nos.1 to 4 with regard to the blood found on their clothes is not satisfactory. In the result, we conclude that there is no reason to discard and disbelieve this evidence.

35. The defence witness Sau Nisha Nandvanshi has been examined by accused No. 3 Sagar in support of his defence that on the date of the incident he was not present on

the spot. It has come on record that during the course of investigation the statement of this witness was recorded by the Investigating Officer. The prosecution did not examine her. In her evidence, she has stated that she had witnessed a fight between two persons on the road. She has stated that when the police came to her during the course of investigation, she came to know that the name of the victim was Mady. She has categorically stated that she did not know the assailants of the deceased Mady. In her examination-in-chief, she has not disclosed either the name of the assailant or the name of the victim. She has also not stated positively that the accused No. 3 was not present on the spot. It is seen that the very purpose of examining this witness by the accused No. 3 was to probablize his defence that he was not present on the spot at the time of the incident. The perusal of her evidence would show that this purpose has not been fructified on the basis of her evidence. Minute perusal of her evidence would show that the same is not sufficient to probablize the defence of the accused No. 3. On appreciation of her evidence it is seen that

her version has come on record mere as an afterthought than a reality or even reasonable probability for more than one reason. Firstly, no foundation for the story of the assailants other than the accused is not brought on record by giving appropriate suggestions to prosecution witnesses. Secondly, she has not explained as to why she did not immediately report the incident which she saw to police. Thirdly, her evidence does not belie, the evidence of PW-7 who is an injured eye witness and the forensic evidence, implicating the accused, which we have just discussed.

36. The above conclusion is fortified from the evasive answers given by her to the relevant questions put to her in her cross examination. The evidence of the defence witness in our view falls short to probablize the defence of the accused No. 3. We are therefore, not prepared to accept the evidence of the defence witness. The learned Additional Sessions Judge has recorded the reasons for discarding the evidence of defence witness. We fully agree with the same.

37. It would be necessary to consider the decision relied upon by the learned Advocate for accused No.1 in the case of Syed Ibrahim Vrs. State of Andhra Pradesh (supra). In this case, the evidence of eye-witness to the incident was not accepted because there was variance in his statement with regard to the place of occurrence. In the case in hand, there is no variance in the statement made by PW-7 - Deepak Meghanwar as to the place of occurrence. It is true that the place of occurrence mentioned in the panchnama is different from the place of occurrence stated by this witness. While appreciating the evidence, we have held that the incident continued from the commencement of the marriage procession and ended near the place of marriage which is in Rajendraprasad Ward. Therefore, relying on the observations made in this judgment, the evidence of PW-7 cannot be discarded.

38. Reliance on the decision in the case of Mohd. Iqbal @ Munna s/o Abdul Sattar and another Vrs. State of

Maharashtra, reported in 2016 ALL MR (Cri) 4530 is placed to substantiate the contention that the place of occurrence has not been established and therefore, the conviction cannot be maintained. In the case in hand, the place of occurrence has been established. The situation prevailing at the place of occurrence has been recorded in panchnama. The blood samples and the blood soaked soil was collected from spot. The CA report corroborates that the blood found on the spot was of deceased. Therefore, reliance on this judgment by the learned Advocate is misplaced.

39. Reliance on the decision in the case of State of Rajasthan Vrs. Teja Singh and others (supra) is placed to substantiate the submissions that in the absence of examination of the remaining eye-witnesses, the evidence of the eye-witness PW-7 - Deepak Meghanwar examined by the prosecution ought to have been rejected without any independent corroboration. In our view, the observation made in this case is of no help to the case of the accused No.1. The

evidence of PW-7 - Deepak Meghanwar on appreciation has been found to be of sterling quality. PW-7 had sustained injuries in the incident. The injuries have been proved.

40. The reliance on the decision in the case of Lalchand Cheddilal Yadav Vrs. State of Maharashtra (supra) is placed to substantiate the submissions that the evidence of recovery of the weapons and the clothes cannot be accepted inasmuch as the same were not sealed. In the case of Lalchand, the panch was not examined. The Police Officer gave evasive answer on the point. The police constable who had carried the weapon to the Chemical Analyzer was not examined. It was, therefore, held that in the backdrop of the doubtful evidence, it was extremely difficult to rely on recovery evidence. On appreciation of the evidence in the case in hand, we have accepted the said evidence. The reasons have been recorded in the earlier part of the judgment.

41. We may now consider the decision relied upon by the learned Advocate for accused Nos.2, 3 and 4. Relying on

the decision in the case of Harjit Singh and others Vrs. State of Punjab (supra), learned Advocate for the accused Nos.2, 3 and 4 submitted that considering the fact that the injuries alleged to have been caused by the accused were simple injuries and therefore, the conviction under Section 307 of the Indian Penal Code would not be justified.

42. Relying on the decision in the case of Sujit Gulab Sohatre and others Vrs. State of Maharashtra (supra), it is submitted that the evidence of recovery from place accessible to all and sundry cannot be accepted as a conclusive proof, that the accused was in possession of discovered articles. In the case in hand, the recovery of the weapons and the clothes on the person of the accused Nos.1 and 2 were recovered from their respective houses. The weapons at the instance of accused Nos.3 and 4 were discovered from bushy forest land. The clothes were recovered from their respective houses. There is no material in the cross-examination of the relevant witnesses to make the defence probable that place where the clothes and

weapons were kept concealed by accused Nos.1 and 4 were accessible to all and sundry. The evidence has been found to be reliable. The reasons have also been recorded for placing the reliance on the said evidence. Therefore, this judgment will not be applicable in this case.

43. It would now be necessary to consider the submissions on the point of sentence. As far as accused No.1 is concerned, he has been convicted under Sections 302, 307, 34 r/w Section 120-B of the Indian Penal Code. The separate sentence has been awarded to him on 3 counts. The remaining three accused have been acquitted of the charge for the offence punishable under Section 302 of the Indian Penal Code. In the facts and circumstances, there was no justification for convicting the accused No.1 for the offence punishable under Section 307, 34 r/w Section 120-B of the Indian Penal Code. It has come on record in the evidence that the accused No.1 inflicted blows with axe on the head of the deceased and the deceased succumbed to those injuries. The injuries sustained

by PW-7 - Deepak Meghanwar were caused by means of sticks. Therefore, his conviction under Section 307, 34 and r/w Section 120-B of the Indian Penal Code is required to be set aside.

44. The accused Nos.2, 3 and 4 have been convicted for the offence punishable under Section 307, 34 r/w Section 120-B of the Indian Penal Code. The Medical Officer has deposed that the injuries inflicted on the person of the PW-7-Deepak Meghanwar were simple injuries. It has also come on record that the injuries were not bleeding injuries. The intention of the accused Nos.2, 3 and 4 has to be gathered keeping in mind the evidence of PW-7 and the injuries sustained by him. If the accused Nos.2, 3 and 4 wanted to kill PW-7-Deepak Meghanwar, then they would have carried merciless attack on him with the weapons carried by them. The nature of the injuries found on the person of PW-7-Deepak Meghanwar would, therefore, be sufficient to gather their intention. The intention was not to kill him. Besides,

there is no evidence about any conspiracy. The prosecution has proved that the injuries on the person of the PW-7-Deepak Meghanwar were caused by the wooden stick. The wooden stick can be categorized as a dangerous weapon. Considering the nature of injuries caused by these accused Nos.2, 3 and 4 to the PW-7-Deepak Meghanwar and the nature of the weapon namely; sticks, the offence made out against these accused would be under Section 324 r/w Section 34 of the Indian Penal Code. The evidence on record does not permit us to attribute any intention or knowledge to the accused Nos.2, 3 and 4 to cause the death of PW-7-Deepak Meghanwar. The offence of attempt to murder against these accused has not been proved. Therefore, the order of the learned Trial Judge on this count is required to be set aside. Section 324 of the Indian Penal Code provides the punishment which may extend to 3 years or with fine or with both for causing hurt by dangerous weapon. In our opinion, considering the role attributed to accused Nos.2, 3 and 4 and the injury sustained by PW-7-Deepak Meghanwar, the interest of justice would be

met, if they are sentenced to suffer imprisonment for one year and to pay fine of Rs.3,000/- each. Their sentence under Section 307 and 120-B of the Indian Penal Code is required to be set aside. Hence the following order :-

ORDER

i] The Criminal Appeal No.449/2016 filed by accused No.1 Pradeep @ Shetty Shriniwas Regundawar is partly allowed. The conviction and sentence awarded to accused No.1 - Pradeep @ Shetty Shriniwas Regundawar for the offences punishable under Section 307, 34 r/w Section 120-B of the Indian Penal Code is set aside and he is acquitted of these offences. His conviction and sentence for the offence punishable under Section 302 of the Indian Penal Code awarded by learned Additional Sessions Judge, Chandrapur is maintained. With this modification, his appeal stands disposed of.

ii] The Criminal Appeal Nos.149/2016 and 331/2016 filed by the accused Nos.2, 3 and 4 are partly allowed.

iii] The accused Nos.2, 3 and 4 are convicted of the offence punishable under Section 324 r/w

Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.3,000/- each, and in default of payment of fine to further undergo simple imprisonment for four months.

iv] The period of detention undergone by the accused Nos.2, 3 and 4 during the pendency of trial and appeal be given set off against the term of imprisonment imposed on them.

v] The conviction and sentence of the accused Nos.2, 3 and 4 for the offences punishable under Section 307 r/w Section 120-B of the Indian Penal Code is set aside.

vi] With these modifications, their appeals are also disposed of.

vii] Copy of this order be sent to the Court of learned Additional Sessions Judge, Chandrapur for information and further required action according to law.

[G. A. SANAP, J.]

(SUNIL B. SHUKRE, J.)