

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

CRIMINAL APPEAL NO. 679 OF 2018

Madhukar Anurath @ Aniruddha Bastapure ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

**WITH
CRIMINAL APPEAL NO. 680 OF 2018**

Santosh Venkatrao Panhale ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

....

Mr. Shirish Gupte, Senior Advocate i/b Mr. A.D. Ostwal, Advocate for applicants

Mr. S.P. Deshmukh, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.**

RESERVED ON : 20th DECEMBER, 2022

PRONOUNCED ON : 21st APRIL, 2023

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in these appeals is to a judgment and order of conviction and consequential sentence passed by the Court of Session at Latur in Sessions Case No. 22 of 2014 on 27th July, 2018. The appellants were Accused Nos.5 and 7 in the said case. Both have been convicted for

the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code ('I.P.C.') and therefore, sentenced to suffer imprisonment for life and fine of Rs.20,000/- each. Alongwith present appellants, seven others were also prosecuted for the said offence besides offences punishable under Sections 120-B, 143, 144, 147, 148, 149 and 109 read with Section 34 of the I.P.C. They have been acquitted thereof. State has not preferred appeal against their acquittal.

2. Facts giving rise to the present appeals are as follows :-

Venkat, Harishchandra and Yuvraj (deceased) were three brothers. Appellant - Santosh is the son of Venkat. Appellant - Madhukar is the maternal uncle of appellant - Santosh. Both, Yuvraj and Venkat alongwith their spouses would run a travels agency, "Pushkaraj Travels" in partnership at Latur. Venkat and Satish desired that Yuvraj and his wife shall retire from partnership. The things however, happened other way round. Venkat and his wife Chhaya agreed to retire from the partnership. On 29th April, 2011 a deed of retirement/dissolution of partnership was executed. Yuvraj paid Venkat and his wife Rs.5 lakhs each by cheque. A sum of Rs.15 lakhs was paid in cash. Both, Yuvraj and his wife and attesting witnesses signed the

deed of retirement/dissolution of partnership. Venkat and his wife however, refused to sign. Venkat torn the original document. Since then and even from prior thereto relationship between Venkat and Satish on one hand and Yuvraj and Harishchandra on the other were strained over family property as well. Crimes had been registered against the appellants herein for having assaulted Harishchandra. Both the appellants and even Venkat had threatened Yuvraj of eliminating him.

3. It was 09:45 p.m. on 04th December, 2012. Deceased - Yuvraj returned home in his car. He was about to enter his house. Both the appellants came on a motorbike. They picked up quarrel with deceased - Yuvraj. P.W. 14 - Rupali, widow of Yuvraj, heard quarrel. She came in the balcony of the house and asked appellant - Santosh not to assault Yuvraj. Yuvraj ran towards the house of Munna. Both the appellants followed him. Meanwhile, 4-5 persons on motorbikes came there. All of them assaulted deceased - Yuvraj. Both, Rupali and her mother P.W.10 - Meerabai had immediately come down and went to the spot. All the assailants fled. Neighbours gathered. P.W. 10 - Meerabai and 2-3 others rushed Yuvraj to the hospital. He was however, declared dead before admission. Motorbike of appellant - Santosh remained in front of the house of Yuvraj.

4. P.W.14 - Rupali informed P.W.6 - Harishchandra on cell phone. He was at his house at village Harangul. He came to Latur by 11:00 p.m. He first visited the crime scene and then met Ruapli, who related him about the incident and names of the culprits. P.W.6 - Harishchandra lodged F.I.R. (Exh.179) vide C.R. No.225 of 2012 at Shivajinagar Police Station, Dist. Latur against both the appellants and five others. P.W.16 – Ranjankar, Investigating Officer visited the scene of offence. Panchanama (Exh.191) of scene of offence was drawn. An iron pipe came to be seized from the scene of offence. Dead body of Yuvraj was subjected to postmortem. Report thereof (Exh.222) suggests he died of head injury. Multiple fractures of skull bone were present and brain matter was exposed out of the cranial cavity. Brain matter had come out of skull area. The appellants and others named in the F.I.R. were arrested. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation charge-sheet (Exh.1, 1/1) came to be filed. The case was committed to the Court of Session for trial in accordance with law.

5. Accused No.6 - Chayabai (wife of Venkat) was discharged. Sessions Court framed charge (Exh.111) against the appellants and rest of the accused. They pleaded not guilty.

6. Prosecution, to bring home the charge, examined sixteen witnesses and produced in evidence certain documents. Appellants examined one witness in their defence. On appreciation of the evidence before it, the Sessions Court convicted the appellants as stated above and acquitted the others.

7. Details of the witnesses examined are as under :-

PW	NAME	PARTICULAR	PW	NAME	PARTICULAR
1	Shrimant	Seizure of clothes	11	Dr. Mahadeo	Postmortem Report
2	Dilip	Disclosure statement of appellant -Santosh	12	Sanjiv	R.T.O. Official
3	Hanumant	Seizure of DVD	13	Ujwala	Br. Manager, O'bad Janata Sahakari Bank
4	Vikas	Seizure of cell phone of accused – Sagar	14	Rupali	Wife of the deceased
5	Dnyanoba	Inquest Panchanama	15	Shivraj	Sales Manager of Rajyog Bajaj
6	Harishchandra	First Informant	16	Ranjankar	Investigating Officer
7	Sk. Maheboob	Seizure of cell phone of accused– Venkat	17	Vishal	Brother-in-law of appellant - Santosh
8	Deepak	Spot Panchanama	18	Sonwane	Investigating Officer
9	Sudhir	Attesting witness for dissolution of partnership	DW 1	Pandurang	Eye witness / Defence witness
10	Meera	Mother-in-law of the deceased			

8. Let us advert to the evidence produced in support of the prosecution. P.W. 1 - Shrimant is a witness to the seizure of clothes which

were on the person of the deceased at the time of assault on him. His blood stained clothes came to be seized in presence of P.W.1 - Srimant under panchanama (Exh.152). This piece of evidence is not subject to challenge. P.W.2 - Dilip is a witness to the disclosure statement made by appellant - Santosh pursuant to which his blood stained shirt came to be recovered from Kanheri Tanda T-Point under panchanama (Exh.155 and 156). This witness in cross-examination admitted that the place wherefrom the shirt was seized, was an open site. The trial Court has, therefore, rightly did not rely on this piece of evidence.

9. P.W.3 - Hanumant is a witness to seizure of DVD under panchanama (Exh.161). The said DVD was delivered by P.W.14 - Rupali, widow of the deceased, to the investigating officer. It is her case that threats given by appellant – Santosh and his father Venkat to the deceased – Yuvraj used to be recorded by the deceased in the pen camera. Said recordings were transferred in the said DVD. The trial Court rightly did not rely on the said DVD for the reason of want of Section 65B certificate under the Indian Evidence Act, 1872, leaving apart voice identification in the recorded conversation contained in the DVD.

10. P.W.4 – Vikas is a witness to the panchanama (Exh.167) relating to the seizure of a cell phone from acquitted accused – Sagar Todkari. This evidence is not relevant for deciding the present appeals. P.W.5 – Dnyanoba is a witness to inquest panchanama (Exh.170). P.W.7 – Shaikh Maheboob is a witness to the panchanama (Exh.188) relating to seizure of cell phone from acquitted accused – Venkat. Their evidence is also not relevant for deciding the present appeals.

11. P.W.6 – Harishchandra (informant) testified that deceased – Yuvraj was his brother. Venkat is his another brother. They have two sisters. Parents, at the relevant time, were very old. Partition of the family property took place in the year 1993. Some of the agricultural land was acquired for MIDC. One *acre* of land was reserved for parents. Said land was agreed to be cultivated by one of the three brothers, who would be taking care of the parents. It is further in his evidence that initially deceased – Yuvraj, Venkat and one Nilkanth Naik started travels business, “Pushkaraj Travels” in 1998. Nilkanth retired from the partnership. Wives of both, Yuvraj and Venkat were admitted as partners in the firm. Initially there were two buses plied from Latur to Mumbai and back. Two more buses were purchased later on by the firm. Yuvraj purchased eight buses on his own. The partnership firm got a

contract of local municipal transport. The firm, therefore, purchased eight more buses. All was well and smooth for initial some days. Differences/ disputes started erupting between Yuvraj and Venkat. Venkat wanted Yuvraj and his wife to retire from the partnership. It is further in his evidence that on the day of Diwali of 2009, deceased – Yuvraj called him to the office of Pushkaraj Travels at Patil Plaza. He informed Harishchandra about the threats given by Venkat and his son. It is further in his evidence that on 08th November, 2009 he had again been to the office of Pushkaraj Travels. Santosh and Venkat came there. They manhandled Yuvraj and asked him to give entire city bus business to them. It was he (P.W.6), who pacified the quarrel. Yuvraj lodged police report relating to the said incidence.

12. It is further in his evidence that after the said incidence, parents came to Latur and started residing with Yuvraj. A quarrel had even erupted over laying of a road through the agricultural land. That time also both, Venkat and Santosh had assaulted Yuvraj. He too was beaten up. Parents were pushed. It was the incident dated 08th November, 2010. A police report in that regard was lodged. It is further in his evidence that Venkat got executed power of attorney from his father in relation to the land acquired for MIDC. The father had to

revoke the power of attorney. A public notice regarding revocation of power of attorney was given in daily newspaper – *Lokmat*. Even a civil suit was filed. Yuvraj got injunction against Venkat and his son – Santosh to protect his possession over the agricultural land. It is further in his evidence that on 29th April, 2011 it was decided to dissolve the partnership. Deceased – Yuvraj paid Venkat and his wife Rs.5 lakhs each by cheque. Rs.15 lakhs were paid in cash. A document, titled as “Dissolution/ Retirement from Partnership” was executed. Except Venkat and his wife other partners and the attesting witnesses signed the same. Venkat torn the original document. A copy thereof was produced in evidence.

13. It is further in his evidence that on 11th June, 2011 he was returning to his village Harangul on motorbike. It was around 10:30 p.m. Six persons assaulted him. Two of them were present appellants. He registered a crime against them vide C.R. No. 98 of 2011 with MIDC Police Station. A copy of the said F.I.R. had been produced in evidence. It is further in his evidence that both the appellants would threaten deceased – Yuvraj.

14. Pertaining to the offence in question, P.W.6 – Harishchandra testified that it was about 10:30 p.m. of 04th Deceased, 2012. He was in

his house at Harangul. He received a phone call of P.W.14 – Rupali, widow of the deceased. She informed him Yuvraj to have been attacked. He, therefore, came to Latur. First he went to the scene of offence. Brain matter was lying at the scene besides an iron pipe. He rushed to the house of the deceased. It is further in his evidence that P.W.14 – Rupali told him that present appellants, Venkat and some other persons committed conspiracy. The appellants and Govind Kutwad, Venkat and Sagar (last three acquitted) committed murder of Yuvraj. It is in his further evidence that he learnt all these facts from Rupali. He then turned around to state that only names of the present appellants were learnt from Rupali. His evidence would further indicate that thereafter he visited Shivajinagar Police Station and lodged F.I.R. (Exh.179). His evidence would further indicate that a motorbike, no. MH-24-N-5351 was found in front of the house of the deceased. Same belongs to appellant – Santosh.

15. Evidence that came on record through his cross-examination suggests that P.W.14 – Rupali was well educated. When he visited crime scene, nobody was present there. He did not know who rushed Yuvraj to the hospital. He did not make enquiry with any of the persons residing in the neighbourhood of the scene of offence. He was

confronted with the F.I.R. (Exh.179). Certain omissions amounting to the material contradictions were brought on record. Those are referred to little later. He was then confronted with his evidence regarding the incident dated 11th June, 2011, wherein he was allegedly assaulted by the appellants and four others. His evidence would further indicate that he would run a beer shop. Venkat was the Deputy Sarpanch of village Harangul. He denied that Gram Panchayat had granted NOC to two others to open a beer bar at the village. He claimed ignorance as to whether Nitin Shete became a partner in “Yuvraj Tours and Logistics” post demise of Yuvraj. He had attended the opening ceremony of “Yuvraj Tours and Logistics”. Nithin Shete was present for the function.

16. P.W.8 – Deepak is a witness to the scene of offence panchanama (Exh.191). It is in his evidence that police officer drew scene of offence panchanama in his presence. Spot was pointed out by P.W.6–Harishchandra. A black Pulsar motorbike no. MH-24-N-5351 was seized from nearby the house of deceased – Yuvraj. This witness although suggested that he had some reason to give false evidence against the appellants herein, he stood the ground.

17. Evidence of P.W.9 – Sudhir is to the effect that he had acquaintance with both the families of deceased and appellant –

Santosh. He was a witness to the settlement of the partnership dispute between Venkat and his wife on one hand and Yuvraj and his wife on the other. The counter part of the document executed for retirement of Venkat and his wife from partnership was tendered in evidence at the instance of this witness. The original was said to have been torn by Venkat. According to this witness, deceased – Yuvraj paid Venkat Rs.15 lakhs in cash. Rs.10 lakhs were paid to Venkat and his wife by cheques on the same day i.e. on 29th April, 2011. The said fact was reinforced by evidence of P.W.13 – Ujwala, Branch Manager, Osmanabad Janata Sahakari Bank, Branch Latur. She placed on record statements of bank accounts of Yuvraj and both, Venkat and his wife. There are entries therein indicating a sum of Rs.5 lakhs each were transferred from the bank account of Yuvraj to the bank accounts of Venkat and his wife on the very day i.e. on 29th April, 2011. This Court, therefore, has no reason to doubt the prosecution case that it was decided between the partners of “Pushkaraj Travels” to dissolve the partnership by retiring Venkat and his wife. A reconstitution of partnership was to come into being. The partners thereof to be deceased – Yuvraj and his wife Rupali.

18. Evidence of P.W.12 – Sanjiv, an Officer from R.T.O., Latur and P.W.15 - Shivraj, Sales Manager “Rajyog Bajaj, Latur” undoubtedly

indicate that the black Pulsar motorbike bearing no. MH-24-N-5451 belongs to appellant – Santosh. There is however, nothing in prosecution evidence to indicate that appellant – Santosh has intentionally changed the motorbike number so as to mislead the investigating agency. It appears that by mistake figure ‘3’ in the motorbike number appeared in place of figure ‘4’. Same appears to have continued from day one he purchased the bike. When the witness identified the very motorbike as one belongs to appellant – Santosh from the very number, it is reiterated that number bearing on the number plate was wrongly printed.

19. P.W.10–Meerabai, mother-in-law of the deceased testified that in those days she had come to the house of her daughter (Rupali). At the material time i.e. by 10:00 p.m. on 04th December, 2012, she heard loud talking of Yuvraj. She opened the door of the house to find both the appellants and deceased–Yuvraj standing in front of the gate of the house. Appellant – Santosh was armed with an iron pipe. He was talking loudly with Yuvraj. Yuvraj asked Rupali not to open the door. He (Yuvraj) ran towards the house of Munna. Both the appellants followed him. Rupali and herself came out of the house. By that time 4-5 other persons came on two motorbikes. They followed the appellants. She

and Rupali followed them. It was in front of house of one Hake. Both the appellants and others were assaulting Yuvraj. Appellant-Santosh assaulted with an iron pipe. There were street lights glowing. On having seen them, the assailants took to their heels. It is further in her evidence that with the assistance of 3-4 persons from the neighbourhood she rushed Yuvraj to hospital of Dr.Kawthale. Yuvraj was declared dead. It is further in her evidence that both, herself and Rupali were well educated. She and her husband attended funeral of Yuvraj. To others questions put to her during cross-examination, she did not give in.

20. On the lines of evidence of P.W.10 – Meerabai, there is evidence of P.W.14 – Rupali. In her evidence she gave history of disputes over partnership business. She also stated that Venkat and his wife were paid Rs.25 lakhs, Rs.15 lakhs in cash and Rs.10 by cheques. A document of reconstitution of partnership was executed on 29th April, 2011. It is further in her evidence that both the appellants and Venkat would threaten her husband, deceased – Yuvraj. The deceased would record the threats in his pen camera. The said recordings were transferred in one DVD. She handed over the same to the investigating officer under a letter (Exh.256).

21. Turning to the incident of murder, she would relate that it was 09:45 p.m. of 04th December, 2012. She was in the bedroom of her house. She heard sound of arrival of her husband in his car. She came out in the balcony of the bedroom. Yuvraj got down from the car. Two persons came on a motorbike. They were the present appellants. There was loud talks inter se the trio. Yuvraj asked her not to open the door. He rushed towards the house of Munna. Both the appellants followed him. They were armed with iron pipe. She requested appellant – Santosh not to beat up Yuvraj. She came down of her house. 4-5 other persons came on two motorbikes. All of them assaulted Yuvraj in front of the house of Hake. Appellant – Santosh assaulted with an iron pipe. She witnessed the incident in the street lights. On having seen her, the assailants ran away. The motorbike of appellant – Santosh remained in front of her house. She called P.W.6 – Harishchandra on phone. He came. He enquired with her. Since she was not in mental frame, she asked him to lodge a report to the police. It is further in her evidence that appellant – Santosh, his parents, appellant – Madhukar and their associates conspired and pursuant thereto committed murder of her husband – Yuvraj.

22. She admitted to have been well educated. She attained funeral of her husband. It is in her evidence that she related the incident to the police on the date of the incident itself. She volunteered to state to have informed to the police on 06th December, 2012. She claimed to have not ascertained from P.W.6 – Harishchandra as against whom he lodged the F.I.R. She denied to have known Nitin Shete. She was confronted with her statement to the police so as to bring on record omissions relating to previous incidents and threat perceptions to her husband.

23. P.W.17 - Vishal is brother-in-law of appellant – Santosh. He did not stand by the prosecution. It was the prosecution case that conspiracy to eliminate Yuvraj was hatched at the hosue of P.W.17 – Vishal in Pune. P.W.16 – Ranjankar and P.W.18 - Sonwane are the police officials, who did investigation of the crime.

24. Mr. Gupte, learned Senior Counsel and Mr Ostawal, learned counsel appearing for appellants first took us through the entire evidence on record. They would submit that the F.I.R. was based on hearsay. So called eye witnesses are the relations of the deceased. They are the interested witnesses. Their statements were recorded two days after the

incident. Hake had telephonically informed the concerned police station about the incident. A station diary entry was effected in that regard. The said information in fact amounts to F.I.R. Even a delay of two hours would in the facts and circumstances of the case proves fatal for the prosecution. No statement of the persons from the neighbourhood of the scene of offence were recorded. One, whose statement was recorded by the investigating officer was not examined as prosecution witness. He was examined as defence witness. According to learned senior counsel, the prosecution evidence fell short to make out the charge beyond reasonable doubt. He, therefore, urged for allowing the appeals.

25. Learned A.P.P. would, on the other hand, submit that there was evidence to indicate appellant – Santosh to have every reason to eliminate Yuvraj. Past incidents indicate that appellant – Santosh and his family members were determined to commit murder of Yuvraj. The motorbike of appellant – Santosh was found nearby the scene of offence. He had offered no explanation in that regard. Although widow of the deceased and her mother may be said to be the interested witnesses, their evidence cannot be brushed aside. Both these witnesses gave eye witness account of the incident. Being females and one of them being

widow of the deceased, were bound to take sometime to make their statements to police. The witness examined in the defence of the appellants was the got up witness. The trial Court has rightly disbelieved him. According to learned A.P.P. evidence on record established charge against the appellants beyond reasonable doubt. He reiterated the reasons given by trial Court in support of the judgment impugned herein.

26. Admittedly, Yuvraj met with homicidal death. His postmortem report (Exh.222) indicates he died of head injury. The postmortem report suggests there were number of injuries on the person of the deceased. It appears to have not been a case of involvement of only one or two assailants. Venkat, Harishchandra and Yuvraj were three brothers. They had inherited family silver. Agricultural land was partitioned amongst them. One *acre* of land was reserved for parents. It was agreed that the land reserved for the parents would be cultivated by one of them, who would take care of the parents. Some of the ancestral land was acquired for MIDC. Compensation was to be received. The parents would shift their stay from one son to another. There is also evidence to indicate that Venkat got executed power of attorney from his father. The father had to revoke the same by issuing a public notice.

Admittedly, initially Yuvraj, Venkat and one Nilkanth Naik had started travels business in partnership. Nilkanth Naik soon retired. Wives of both, Yuvraj and Venkat were admitted as partners. Initially, there were two buses. Two more buses came to be added. Yuvraj was said to have purchased eight more buses of his own. The firm was assigned a contract of local municipal transport. The firm, therefore, purchased eight more buses. All was well in the beginning. As usual, disputes started taking place amongst the partners of the firm. There is evidence to indicate that both, the deceased and Venkat wanted other one to retire from the partnership. There is also evidence to suggest that on 29th April, 2011 the parties agreed to reconstitute the partnership firm. Both, Venkat and his wife were to retire from the partnership. A draft of reconstitution of partnership was prepared. It is in the evidence of both, Harishchandra and Rupali that Venkat was paid Rs.15 lakhs in cash. He and his wife were paid Rs.10 lakhs by cheques on the same day. Extract of bank accounts of the trio have been produced in evidence to indicate transfer of Rs.5 lakhs each from the account of Yuvraj to the account of Venkat and his wife on the same day. It is however the case of the prosecution that Venkat refused to sign the deed. He torn the original document. A counter part thereof has been admitted in the evidence.

27. There is further evidence to indicate that all was not well between the three brothers, Harishchandra and Yuvraj on one side and Venkat on the other. There were disputes, quarrels and even fights amongst them over a right of way and possession of agricultural land. A civil suit was also filed wherein an injunction order was passed in favour of deceased – Yuvraj. There is also a copy of F.I.R. (Exh.183) on record to indicate that P.W.6 – Harishchandra claimed to have been assaulted by six persons including the present appellants on 11th June, 2011. The said crime is said to have been pending trial. P.W.6 – Harishchandra was confronted with the F.I.R. therein to bring on record omissions therein as to his case that the appellant had said him that it was his turn to be eliminated first on that day and thereafter of Yuvraj. It is true that the F.I.R. of the present crime does not contain history of disputes amongst family members. It needs no mention that a F.I.R. cannot be an encyclopedia. What has been deposed to by P.W.6 – Harishchandra and P.W.14 – Rupali and evidence of some other witnesses indicate that there were disputes between Venkat and Harishchandra over the partnership of travels business.

28. It can, therefore, be said that appellant – Santosh and his father had an axe to grind against deceased – Yuvraj. It needs no

mention that the prosecution has to establish the charge beyond reasonable doubt. Admittedly, Yuvraj was assaulted by 09:45 p.m. in a populated area. It is true those were wintry days. The incident took place in front of the house of Hake. Admittedly, Hake informed the concerned police station about murderous assault on Yuvraj. Based on information given by him, a station diary entry (Exh.293) came into being. Same reads thus :-

पो.स्टे.—शिवाजी नगर लातूर

उपविभाग — लातूर

वार — मंगळवार

स्टेशन डायरी नं.339/12

दिनांक 04/12/12

अ.क्र.	वेळ	नॅद	विवरण
49	22:10	नॉंद रवाना	यावेळी पो.स्टे. हजर असताना माहिती मिळाली, हाके नावाचे इसमाकडून फोनवर माहिती मिळाली की आदर्श कॉलनी मागे ट्रॅव्हल्सवाले युवराज पन्हाळे यांचेवर जिवघेणा हल्ला झाला आहे. त्यावरून आम्ही घटनास्थळाकडे रवाना होवून पो.ना. 641, 963, 557 यांना घटनास्थळी येणे बाबत कळवले. सही. पो.नि. यांची

29. Aforesaid station diary entry indicates that P.W.16 – Ranjankar, Police Inspector recorded therein to have been leaving police station for the scene of offence. He also instructed three Police Naiks to rush to the scene of offence. The same suggests P.W.16 – Ranjankar, Police Inspector ought to have reached the scene of offence by 10:20 p.m. Admittedly, the deceased was a known personality in Latur city/town. When P.W.16 – Ranjankar, Police Inspector records in the

station diary to have reached scene of offence immediately, it is not known as to why did he prepare scene of offence panchanama about eight hours thereafter i.e by 06:00 in the morning. Admittedly, house of the deceased was at a distance of 125 feet from the scene of offence. He did not pay visit to the house of the deceased nor did he make any enquiry with Hake, in front of whose house the deceased was murdered. Admittedly, the neighbours had gathered at the scene of offence after the incident. The names of persons, who had gathered, have all been disclosed. For the reasons best known to him, P.W.16 did not record statement of any of these persons. It is further in his evidence that he then rushed to the hospital and prepared the inquest (Exh.170).

30. P.W.6 – Harishchandra lodged the written F.I.R. He did not give oral account of incident. He admits the contents of the F.I.R. are not in his handwriting. Based on the F.I.R. (Exh.179) lodged by him a crime came to be registered by 12:30, mid-night. Admittedly, the F.I.R. (Exh.179) is based on hearsay. P.W.6 in his evidence before the Court and in the F.I.R. as well specifically stated to have made enquiry with P.W.14 – Rupali. He learnt names of seven assailants including the appellants herein. He, therefore, lodged the F.I.R. against those seven

persons. It also appears that during investigation, mother of appellant – Santosh was also charge-sheeted. The trial Court discharged her. There is also evidence to indicate that Venkat (acquitted) was away at Tirupati during relevant time. As such, whose names figure in the F.I.R. as assailants of the deceased appears to be afterthought, more so, when P.W.14 – Rupali and P.W.10 – Merrabai, so called eye witnesses of the incident, claim to have not named them to be the assailants nor did they identify them as assailants. Both, Rupali and Meerabai are the interested witnesses. Although their evidence is consistent with each other to state that they had seen the appellants to have quarreled with Yuvraj and then followed him and meanwhile 4-5 persons came on motorbikes and all of them assaulted Yuvraj, appears to be an afterthought version. Admittedly, both, Rupali and Meerabai were educated. Meerabai had even accompanied the deceased to the hospital. It is not known as to what had prevented both of them to lodge the report of the incident promptly, i.e. within an hour of the incident when they claim to have even rushed to the scene of offence and persons in the nearby gathered there. Both these witnesses took two days to give their statements. This fact materially distracts them from veracity of their case or testimony before the Court.

31. In case of *Jafarudheen and Ors. Vs. State of Kerala, (2022) 8 SCC 440*, it has been observed thus :-

“33. The investigating officer is expected to kick start his investigation immediately after registration of a cognizable offence. An inordinate and unexplained delay may be fatal to the prosecution’s case but only to be considered by the court, on the fact of each case. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the investigating officer. It only causes doubt in the mind of the court, which is required to be cleared.

35. Shahid Khan v. State of Rajasthan, (2016) 4 SCC 96 as hereunder : (SCC pp. 100-101, para 20)

20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced.”

36. *Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371 as hereunder: (SCC pp.376, 380 & 384, paras 15, 29 & 47)*

15. As noted by the trial court, one unusual feature which projects its shadow on the evidence of Pws Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 CrPC were recorded on the following day. Welji (PW 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. Delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced.”

32. It is all along the case of the defence that one Nitin Shete was the friend of the deceased. He would do cable business in partnership with the deceased. True, the prosecution witnesses have denied this defence version. There is however, evidence to indicate Nitin Shete to have played some role in the investigation. He is a panch witness to at

least two of the panchnamas. When P.W.6 – Harishchandra admitted Nitin Shete to have been present at the opening ceremony of “Yuvraj Travels and Logistics” post incident, it is not known as to why P.W.14 – Rupali claimed to have not even known a person by name Nitin Shete. We do not propose to dwell on this issue. Suffice it to say that it is a case of the defence that Nitin Shete frequently visited the house of the deceased, was a reason of differences between the couple.

33. It is true that past incidents of disputes and quarrels between the two brothers may lead to infer appellant – Santosh to have a reason to be after deceased – Yuvraj. The fact is however that post 29th April, 2011 i.e. on the day on which so called dissolution of partnership took place and admittedly Venkat and his wife were paid Rs.10 lakhs by cheques, there is nothing to indicate that post 30th April, 2011 to the date of the present incident there was flare-up or quarrel between the two families over the partnership business or even ancestral property. If the deceased had threat perceptions from appellant – Santosh and his father, he would have lodged complaint with police in that regard. Nothing of that sort is coming forward. True, P.W.14 – Rupali tendered one DVD to the investigating officer. The said DVD allegedly contained threatening calls/talks made by appellant – Santosh and/or Venkat. The same was

said to have been recorded by the deceased in his pen camera. The trial Court has rightly did not read the same in evidence for want of Section 65B certificate. The said DVD was tendered to the investigating officer about two months after the incident alongwith a forwarding letter (Exh.256). The said letter was under the signature of P.W.14 – Rupali. She has stated therein that appellant–Santosh and his four associates killed her husband. Name of appellant – Madhukar is conspicuously absent therein. Both the so called eye witnesses even did not attribute appellant – Madhukar any overt act in the nature of assault with an iron pipe.

34. It is true that motorbike belonging to appellant – Santosh was said to have been found in front of the house of deceased. It was seized under the panchanama (Exh.191) that was drawn in the early morning. Appellant – Santosh denied the said fact. It was specifically suggested to the investigating officer that just to make out an evidence, a motorbike was planted. When the investigating officer had really visited the crime scene after the station diary entry was made, he would have noticed existence of the motorbike in the nearby.

35. The trial Court has rightly disbelieved the evidence of recovery of blood stained shirt from an open place on the disclosure statement of appellant – Santosh.

36. One witness was examined in defence. He was D.W.1 – Pandurang. It is in his evidence that he would run electric shop. After closure of the shop for the day, he was returning home on his motorbike. He was required to pass-by the house of the deceased and even the scene of offence. It is in his evidence that he knew deceased – Yuvraj and his family members. His evidence would further suggest that while he was returning his home, he saw deceased – Yuvraj got down from his car. Two unknown persons were after him. He, therefore, ran towards Pashupatinath Nagar. One of the two was armed with an iron pipe. He, therefore, parked his motorbike and went towards Pashupatinath Nagar. It is further in his evidence that nearby the house of Pandurang Shinde that one of the two assaulted Yuvraj with an iron pipe. The other one did nothing. On hearing hue and cry, Shri. Hake came out of his house. Family members of Pandurang Shinde also came there. His evidence would further suggest that Sandhikar Guruji, his son, Adv. Shashikant Mane, Rajkumar Shinde had also gathered there. Thereafter both,

Rupali and her mother came at the scene of offence. Yuvraj rushed to the hospital in his car. His mother-in-law accompanied him alongwith others.

37. True, this witness neither made a call to the police station nor did he assist in taking the deceased to the hospital. It is further in his evidence that he met P.W.16 – Ranjankar, Police Inspector at the scene of offence. He offered to give his statement. For next three days he continuously visited the police station. The investigating officer recorded his statement only on 07th Deceased, 2012.

38. P.W.16 – Ranjankar, Investigating Officer, admitted in his cross-examination that this defence witness was an eye witness to the incident. As such, presence of this witness at the scene of offence at the material time is undisputed. It is not known as to why learned A.P.P. in-charge of the case did not examine him as prosecution witness. Same would raise an adverse inference. To top it, this witness took a defence side. According to him, assailants were two in number. They were unknown.

39. The Apex Court in case of ***Dudh Nath Pandey Vs. State of Uttar Pradesh, (1981) 2 SCC 166*** has observed thus :-

“Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often they tell lies but so do the prosecution witnesses.”

40. From the cross-examination of this witness nothing has come on record to suggest that he was not present at the scene of offence. It is reiterated that the investigating agency admits his presence at the scene of offence at the material time. The trial Court refused to rely on the evidence of this witness merely on the ground that he made construction of his house during the period of 6-7 months next before he gave his evidence in the Court. According to the trial Court he was a got-up and bought-up witness. This Court is not at one with the observations of the trial Court when the investigating officer admits his presence at the crime scene. It appears that investigation of the crime has been made in a nasty manner. True, for the lapse of investigating officer, the real culprits shall not go scot free. Reading of the prosecution case/evidence would indicate that although all was not well between the families of the deceased and his brother – Venkat., there is nothing to indicate that post 29th April, 2011 to the date of incident i.e. 04th Deceased, 2012 there

were embers or flare-up between the two over the issue of partnership. DVD containing threats has rightly not been admitted in evidence. Had the deceased really threat perceptions, he would have either asked for police protection or at least lodged a report to the police, alleging the appellants and Venkat to have extended threats to his life many a times. The F.I.R. is hearsay. It was lodged against seven persons. Most of them admittedly known to P.W.14 – Rupali. The informant stated in his statement that those were incorporated in the F.I.R. only on the say of widow of the deceased, Rupali. She disowned the same. When the station diary entry of the incident was made by 10:10 p.m., and P.W.16 – Ranjankar, Police Inspector reached the scene of offence immediately, the same indicates the investigation to have commenced. Both, Rupali and her mother – Meerabai are well educated. What made them keep quite for two days and then disclose to the police to have witnessed the incident is not forthcoming. Merely saying that “I was not in the mental frame” cannot be said to be a reasonable ground to keep mum for two days. P.W.10 - Meerabai, who claim to have known the appellants well since before the incident, had admittedly rushed the deceased to the hospital. She could have reported the incident to the police at the earliest. It is reiterated that when Shri.Hake, in front of whose house the

deceased was killed, had admittedly reported the police about the murderous assault, a station diary entry was made based on his information, he was not been examined. Admittedly, some persons in the neighbourhood had gathered. Their identity was disclosed. Investigating officer still did not make any enquiry with anyone of them. When admittedly there was an independent witness (D.W.1), he was also not examined as prosecution witness. True, he might not have supported the prosecution. When the investigating officer visited the crime scene by little past 10:00 p.m., it is not known as to why did he draw the scene of offence panchanama (Exh.191) by 06:00 in the morning. D.W.1 – Pandurang in his evidence stated to have not seen anything in front of house of the deceased. He meant to say that there was no motorbike stationed, as has been alleged by the prosecution. The appellants have, therefore, every reason to contend the motorbike has been planted. As such, it is a case based on evidence of interested witnesses, who gave their statements to the police two days after the incident. Necessarily, a doubt creeps in the mind as to whether the prosecution case is true. More so, some of the persons, who were in fact not involved in the incident, were implicated in the serious offence of murder.

41. For all the aforesaid reasons, the Court is not in agreement with the findings recorded by the trial Court. Interference with the impugned judgment and order of conviction and consequential sentence is, therefore, warranted.

42. In view of above, we pass following order :-

ORDER

- (I) Criminal appeals are allowed.
- (II) Impugned judgment and order dated 27th July, 2018 passed by Sessions Court, Latur in Sessions Case No. 22 of 2014 thereby by convicting the appellants is hereby set aside.
- (III) The appellants are acquitted of the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code.
- (IV) Fine amount deposited by the appellants, if any, be refunded to them.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD