

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 122 OF 2013

1. Vishal @ Sagar Haribhau Nanaware @]
Gurav, Age : 19 years,]
Address : Somanthali,]
Tal-Phaltan, Dist-Satara.]
[Orig. Accused no.1.]] ..Appellant.

Versus

State of Maharashtra.
[Through Phaltan Police Station, Satara]. ..Respondent.

ALON GWITH
CRIMINAL APPEAL NO. 1144 OF 2019

1. Pravin alias Sonya Sanjay Algude,]
Aged about 26 years,]
R/o : Somanthali, Tal :Phaltan,]
District – Satara.]
Presently incarcerated at]
Kolhapur Central Prison,]
Kalamba Kolhapur.]
[Orig. Accused no.2.]]
]
2. Amol Vitthal Algude,]
Aged about 33 years,]
R/o : Somanthali, Tal :Phaltan,]
District – Satara.]
Presently incarcerated at]
Kolhapur Central Prison,]
Kalamba Kolhapur.]
[Orig. Accused no.3.]]

3. Sanjay Jaysing Algude,
Aged about 46 years,
R/o : Somanthali, Tal :Phaltan,
District – Satara.
Presently incarcerated at
Kolhapur Central Prison,
Kalamba Kolhapur.
[Orig. Accused no.4.]] ..Appellants.

Versus

State of Maharashtra.
[Through Phaltan Rural P. S.]. ..Respondent.

Mr. Swaraj Jadhav appointed for appellant in Appeal No. 122 of 2013.
Dr. Yug Mohit Chaudhary with Mr. Anush Shetty for appellant in Appeal
No. 1144 of 2019.
Mrs. P. P. Shinde, APP for the respondent-State.
Ms. Sonali Chavan i/b Dr. Uday P. Warunjikar for the original
complainant.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**

RESERVED ON : APRIL 13, 2023.

PRONOUNCED ON : JUNE 19, 2023.

Judgment [Per Sharmila U. Deshmukh, J] :

1. Since, both the aforesaid appeals arise out of a common

judgment and order and hence are taken up for hearing together and are being disposed of by this common judgment.

2. By these appeals, the appellants challenge the impugned judgment and order dated 31st December 2012 passed by the Additional Sessions Judge, Satara in Sessions Case No.71 of 2012. By the impugned judgment and order, the appellants were convicted and sentenced as under :

“Accused Nos. 1 to 4 are hereby convicted for the offence punishable under section 302 r. w. 34 of the Indian Penal Code u/section 235(2) of Criminal Procedure Code and sentenced to suffer Life Imprisonment and to pay a fine of Rs.1,000/- (Rs. One Thousand only) each and in default to suffer S.I. for 3 months each.”

3. The case of the prosecution, as gathered from the material placed on record is that on 12th March, 2012 at about 7.45 a.m., the deceased – Shantaram was sitting on the “lap” (katta) of Anganwadi. At that time, accused no.1–Vishal @ Sagar Haribhau Nanaware @ Gurav, and accused No.2–Pravin @ Sonya Sanjay Algude came to the spot by motorcycle; the motorcycle being driven by accused no.2; that the accused no.2 gave a dash of the motorcycle to the left leg of deceased, as a result of

which the deceased sustained injury to his left leg; that when the deceased bent down, accused no.3–Amol Vitthal Algude and accused no.4 – Sanjay Jaysing Algude came running and exhorted accused Nos.1 and 2 not to leave Shantaram and to kill him; pursuant to which, accused no.1 stabbed Shantaram twice with a knife in the ribs. At that time, Shantaram shouted and the witnesses ran towards Shantaram. The accused fled from the spot. Shantaram was taken to the hospital where he expired and, as such, the FIR bearing C.R. No. 35 of 2012 came to be registered with the Phaltan Police Station by the brother of deceased i.e. Dattatrya Trimbak Sodmise for the offences punishable under Section 302 read with 34 of the Indian Penal Code, 1860.

4. On the basis of the FIR, investigation was conducted and after conclusion of investigation, charge-sheet came to be filed against the four accused before the JMFC, Phaltan. As the case was exclusively triable by the Court of Sessions, the JMFC, Phaltan committed the case to the Principal District and Sessions Judge, Satara, where the case came to be registered as Sessions Case No.71 of 2012. Charge was framed on 10th August, 2012 for the offence punishable under section 302 of the IPC, to which the appellants pleaded not guilty.

5. The prosecution in support of its case examined 10 witnesses. PW1-Dattatrya Trimbak Sodmise–the first informant and eye witness; PW2-Shrikant Chandrakant Kadam – panch to the seizure panchnama of the motorcycle; PW3–Vijay Balu Tare – panch to the seizure panchnama of the deceased’s clothes and the clothes of Accused No 1 and also seizure of motor cycle and arrest panchnama of accused nos.1 to 4; PW4–Kondiram Baba Sodmise – eye witness and panch to the inquest panchnama; PW5–Manisha Shantaram Sodmise – the wife of deceased and eye witness; PW6–Kapil Somnath Karche – the jeep driver who was called to bring the jeep to take the deceased to the hospital; PW7–Pralhad Appa Sodmise – eye witness and uncle of the deceased; PW8–Ajinath Nivrutti Karche – panch to the spot panchnama; PW9–Dr. Yasmin Abdul Rehaman Patel – Autopsy Surgeon; PW10 – Ramesh Shivaji Pharande – the Police Naik who had scribed the spot panchnama.

6. In the statement under Section 313 of Cr.P.C, the case of the Accused was of denial and false implication. The Accused No.1 had also taken the plea of *alibi*. No defence witness was examined.

7. Heard Mr. Swaraj Jadhav, learned counsel appointed for the appellant in Appeal No.122 of 2013, Dr. Yug Mohit Chaudhary for appellants in Appeal No.1144 of 2019 and Mrs. P. P. Shinde, APP for the respondent-State. Perused the papers with the assistance of learned counsel appearing for the parties.

SUBMISSIONS:

8. Mr. Chaudhary, learned counsel for the appellants i.e. Accused Nos.2 to 4 in Appeal No.1144 of 2019 submits that there are no independent witnesses examined; that there are omissions and contradictions; that the alleged motive is a dispute which had taken place prior to 1 and ½ months; that the inquest panchnama was conducted before the FIR was lodged; that the inquest panchnama narrated by PW-7 an eyewitness, records that Accused No.1 had come on a motorcycle with unknown person; that there is no recovery at the instance of accused Nos.2 to 4; that there are no blood stained clothes of the witnesses who had put the deceased in jeep; that the medical certificate shows abrasions on the left feet of the deceased; that the spot panchnama records that the

accused no.4 was driving the motorcycle; and that the conduct of PW-5 Manisha shows that her presence at the spot of incident was improbable.

9. In support of his submissions, Mr. Chaudhary relied upon the following decisions :

[a] Jainul Haque v. State of Bihar [(1974) 3 SCC 543];

[b] Balwantbhai B Patel v. State of Gujarat [(2009) 10 SCC 684];

[c] Hem Raj v. Raja Ram [(2004) 9 SCC 18];

[d] Nand Lal v. State of Chhattisgarh [2023 SCC Online SC 262];

[e] Balaka Singh v. State of Punjab [1975 SCC (Cri) 601]; and

[f] Jalpat Rai v. State of Haryana [(2011) 14 SCC 208]

10. Mr. Jadhav, learned counsel for the accused No.1 submits that the spot of incident has not been clearly identified; that no independent witnesses were examined; that there are no blood stained clothes of witnesses who allegedly shifted the deceased in jeep and carried him to the hospital; that PW-1 did not immediately call the police and in fact made a call to the wife of deceased to inform her that Shantaram was dead; that no motive has been established; that the motorcycle has not

been identified; that the report of chemical analysis is inconclusive as regards the blood on the clothes of Accused No.1; that the jeep in which the deceased was alleged to have been taken to the hospital was not seized and the seat covers were not sent for chemical analysis; that the knife produced in the Court is different from the knife allegedly recovered from the spot; that the spot panchnama records blood stains on the earth and sand, whereas the report of chemical analysis shows no blood stains detected; that the Accused No.1 in his statement under Section 313 of Cr.P.C has taken the plea of *alibi* and has explained the motive for his false implication; that the report of chemical analysis was obtained after the statement under Section 313 was recorded and no questions as regards the report were put to the accused. In support of his submissions, Mr. Jadhav relies upon the decision in ***Ganesh Bhavan Patel v. State of Maharashtra [(1978) 4 SCC 371]***.

12. Mrs. P. P. Shinde, learned APP submits that there is nothing to disbelieve the eye witnesses – PW-1, PW-4, PW-5 and PW-7. She would further submit that the motive is the dispute between the deceased and accused Nos.2 to 4 as regards taking of tractor by the deceased through

their land and as regards accused no.1, one day prior to the incident about the parking of vehicle. She would further submit that the FIR was lodged prior to the inquest panchnama inasmuch as the C.R. number is noted in the inquest panchnama, which is at page 54 of the appeal. She would submit that the inquest panchnama is prepared for the purpose of ascertaining whether the death was suicidal or homicidal. She would further submit that all the eye-witnesses are natural witnesses. She would further submit that the plea of *alibi* has not been proved and as regards the land dispute, the same has been denied by all the eye-witnesses. She would submit that the ocular evidence supports the injury and the evidence of PW-9 has not been contradicted. She would further submit that immediately after the incident the deceased was taken to the civil hospital, which is at a distance of 20 minutes and there was no time gap to falsely implicate the accused persons. As regards the delay of two days in recording the statement of PW-5 Manisha, learned APP submits that PW-5 was the grieving widow and was not in a proper state of mind to give her statement. In support of her submission, learned APP relied upon the decisions of the Apex Court in ***Rajesh Yadhav v State of UP [AIR Online 2022 SC 207]*** and ***Sambhu Das v. State of Assam [AIR 2010***

SC 3300].

13. In rejoinder, learned counsel Mr. Swaraj Jadhav submits that there was a land dispute between the parties, which is evident from the cross-examination of the witnesses and that is the reason for the false implication of accused. He would further submit that accused no.1 was 19 years of age at the time of incident and has already undergone 11 years of incarceration.

EVIDENCE :

14. Dattatrya Trimbak Sodmise, PW-1, the brother of deceased and the first informant as also the eye witness has deposed that about 1 and ½ months prior to the incident in question, accused Nos.2 and 4 along with one Nitin and Popat had assaulted the deceased for the reason that the deceased was transporting sand through their land; that the quarrel had to be settled at the village level; that a day prior to the incident, i.e., on 11th March, 2012 at about 10.30 a.m., there was a quarrel between Satish and Laxman on one hand and Haribhau and accused No.1 and the other, on the issue of parking of motorcycle which led to the filing of a complaint by Haribhau i.e., father of Vitthal, in Phaltan Police Station.

15. He has further deposed that on 12th March, 2012 at about 7.00 a.m. he had gone to the Maruti Temple for praying; that at that time his brother – deceased Shantaram was sitting on the lap (katta) of Anganwadi facing towards the river; that after praying in the temple, he came outside the temple; that at that time his uncle–Pralhad had come there for prayer; that Pralhad and Haribhau were discussing about the quarrel which had taken place on 11th March, 2012; that at about 7.45 a.m., accused Nos. 1 and 2 came by motorcycle which was being driven by accused no.2; that accused no.2 gave a dash of motorcycle to the left leg of Shantaram, as a result of which Shantaram sustained injury to his left leg; that Shantaram bent and at that time accused Nos.3 and 4 came there running and exhorted accused Nos.1 and 2 not to leave Shantaram and to kill him; that accused no.1 stabbed Shantaram twice in the ribs; that Shantaram shouted and at that time PW-7 Pralhad and Haribhau were at a distance of 30 to 40 feet; that they saw that Shantaram fell unconscious; that at that time Manisha – the wife of deceased, Kondiram, Sambhaji, Nana, Dattatraya had also come near the spot because they had come to pray at the temple.

16. He further deposed that there was blood oozing from the injury sustained by Shantaram; that they called the jeep of Kapil Karche and brought Shantaram to the Government Hospital of Phaltan, where the medical officer examined Shantaram and declared him dead. He further deposed that he and PW-7 Pralhad went to Phaltan Police Station and lodged the FIR. He has identified the knife used in the commission of offence. He further deposed that the spot of incident was shown by him to the police; that the panchnama was prepared and that the funeral of the deceased had taken place at about 4.00 p.m.

17. In the cross-examination, PW-1 stated he had stated before the police that Manisha, Kondiram and Sambhaji had come there at the spot and that he, Pralhad and Haribhau were present at a distance of 30-40 feet from the spot of incident, which facts are missing from the statement; that River Nira is flowing from the backside of Maruti Temple; that the spot of incident which was shown by him to the police was at a distance of 6 feet to the east side of Umbar tree, which is seen in photograph no.5 and that the spot where Shantaram was lying was at a distance of 30 to 40 feet from the spot shown previously; that the "lap" is situated at the east

side of Anganwadi school and is part of the Anganwadi school and has identified the lap at the portion marked "A" in the photograph at Exhibit-49; that Umbar tree is situated in front of that lap; that the lap was 1 foot in height and 5 to 10 feet in length and some blood was lying near the lap; that the lap was shown to the police when the panchnama was drawn and the blood was also shown; that Shantaram was lying in a pond of blood and was conscious for about 5 minutes; that he went to the Police Station from the hospital by motorcycle belonging to Kondiram and Kondiram did not come with them by jeep; that he and Pralhad went to the police station by the motorcycle of Kondiram..

18. Suggestion was given to PW-1 that the accused were falsely implicated; that there was competition of transporting bags, sand, bricks, etc., and due to the competition, the quarrel had taken place between Shantaram and other persons; that it was the desire of villagers to take over the land of Haribhau and oust the Gurav community from the village; that the temple is a crowded place and therefore benches are installed there; that the blood had spread on their clothes, which suggestions have been denied by PW-1.

19. In the cross-examination, PW-1 has admitted that there was no concern of accused Nos.2 to 4 with the quarrel which had taken place one day prior to the incident; that they have no concern with the house or land of Haribhau; that there are houses of Popat, Subahash Algude and Balasaheb near Mari Mata temple and there is a Boudha wasti and 7 to 8 houses of Matang community near the spot of incident; that there is a stall of Balasaheb Yadav and he was selling the articles of pooja from that stall and people used to visit the said temple; that in the photographs of the school shown to him "lap" is not seen; that quarrel had taken place between Shantaram and Algude on account of carrying of sand; that he did not find the marks of tyre on the said lap and there were no marks of the impact of tyre to the lap; that they did not try to catch the accused; that the blood had spread on the seat of jeep; that while taking the deceased to the hospital, he was having a mobile handset with him, however, he did not contact the Police Station. PW-1 voluntarily stated that he made a phone call to the wife of Shantaram to inform her that Shantaram is dead.

20. PW-2 Shrikant Chandrakant Kadam is panch witness to the seizure of motorcycle. He has deposed that on 15th March 2012, at the time of drawing of panchnama, one Maruti Yashwant Jadhav was present, who told the panch witnesses that his Splendor motorcycle was taken by Vikram on 12th March 2012 for taking Vikram's father to the hospital; that his motorcycle was lying below Babul tree at a distance of 5 to 6 meters from his house; and that he brought the motorcycle to the Police Station. PW-2 has deposed that he saw the motorcycle and has identified its colour and registration number and that one indicator of the motorcycle was broken and the front side mudguard was also damaged.

21. In the cross-examination, PW-2 has admitted that the motorcycle was not brought to the Police Station in his presence.

22. PW-3- Vijay Tare, is panch witness for the seizure of clothes of deceased and Accused No.1 and the seizure of motorcycle and panch witness to the arrest panchnamas of accused nos.1 to 4. He has deposed that on 12th March 2012 he was called to Phaltan Police Station; that when they went to the Police Station, Kotwal HC produced the clothes of deceased having blood stains and were sealed; that on 14th March 2012, he

was called to the Police Station when accused no.1 – Sagar was present there; that police arrested Accused No 1- Sagar and seized his clothes – one orange colour half T-shirt and one blueish colour pant and one half baniyan from his person; that the clothes were stained with blood. He has further deposed that on 15th March 2012 he was called to the Police Station and in his presence, one black colour Splendor motorcycle was seized under the panchnama, Exhibit-51; that on 17th March 2012 the police arrested accused Nos.2 to 4, i.e., Pravin @ Sonya, Amol and Sanjay by three separate arrest panchnamas.

23. In the cross-examination, PW-3 has stated that the indicator, head lamp and mudguard of the motorcycle were damaged.

24. PW-4 Kondiram, an eye witness and panch for the inquest panchnama has deposed that 1 and ½ month prior to the incident, all the accused, Popat and Nitin Algude had assaulted Shantaram on the bank of river on the count not to take tractor from that land; that he came to know this fact from the villagers; that on 11th March 2012 he had returned from the sugar factory to his house; that Laxman Appa Sodmise

told accused no.1 Sagar to remove the motorcycle which was parked on the way, which led to the dispute and Sagar abused and threatened Laxman; that he came to know of this fact from the villagers and they decided to settle the dispute at the village level by holding meeting. He has further deposed that on the day of incident, i.e., on 12th March 2012, he went to the temple of God Maruti at about 7.30 a.m. and after praying there, he came out of the temple; that at that time, he saw Haribhau Gurav and Pralhad Appa talking to each other; that there is a temple of Goddess Mari-Aai near the temple of Maruti; that he came near the temple of Goddess Mari-Aai, and, at that time Sambhaji was with him; that Dattatraya was standing near the temple of Maruti; that he looked towards Anganwadi and saw Shantaram sitting in front of veranda of Anganwadi at about 7.45 a.m. He has further deposed that accused Nos. 1 and 2 came there by motorcycle; that accused no.2 was driving the motorcycle and accused no.1 was sitting behind him; that at the same time, accused Nos.3 and 4 came there and shouted by saying to kill Santosh; that accused No.2 dashed his motorcycle on the leg of Santosh; that accused no.1 took out the knife and gave two knife blows on the left ribs of Santosh. He deposed that he has seen the above incident; that he,

Pralhad, Dattatraya Sodmise, Dattu Sodmise, Sambhaji Sodmise, Nana Baban Karche and Manisha started running towards Santosh and upon seeing them, all the accused ran towards the temple; that when they reached the spot, he saw that Santosh had sustained injury and blood was oozing from it; that he had sustained injury to the joint of right hand, thumb and three adjoining fingers to left leg. He further deposed that Pralhad called Scorpio jeep of Kapil Karche; that they kept Santosh in the jeep and took him to the Rural Hospital, Phaltan. He further deposed that he went there by his motorcycle; that upon examination, the medical officer declared him dead; that Dattatray and Pralhad went to the Police Station for filing FIR; that he remained in the hospital. He has identified all four accused in the Court and the knife by which accused no.1 had assaulted Shantaram. He has identified his signature on the inquest panchnama and admitted the contents as true and correct.

25. In the cross-examination, PW-4 has admitted that he is unable to tell on the basis of photograph-Exhibit 48 shown to him, where the deceased was sitting; that he had stated to the police that there is another temple of Goddess Mari Aai near the temple of Maruti and he came near

the temple of Goddess Mari Aai which is missing from his statement; that he was standing at a distance of 10 feet from the arch towards the north side and that the lap was at a distance of 30 to 40 feet where he had stopped with Sambhaji and Pandurang; that they did not go to the house of accused or tried to catch accused Nos.2 to 4.

26. PW-4 has further admitted that PW-7 has narrated the contents of panchnama; that the portion marked "A" in the inquest panchnama Exhibit-59, was not narrated by him to the police; that he had not stated to the police at the time of inquest panchnama that the deceased was kept on the middle bench of jeep; that the clothes of Santosh were stained with blood and their hands were also stained; that he did not state to the police that he went to the hospital by following the jeep by his motorcycle; that he cannot tell the number of the motorcycle; that he saw the motorcycle which was lying at a distance of 6 to 7 feet from the flower tree.

27. PW-4 has stated that the contents of the portion marked "B" in the inquest panchnama are true and correct, i.e., the nails of the left leg

were seen to have come out and there were scratches; that he was present at the time of incident; that when Shantaram fell down, there was big hue and cry and apart from these 5-6 persons, nobody was there; that he was just behind the jeep; that he had not met PI Kale on 12th March 2012 and on 14th March 2012 he went to meet PI Kale after receiving message and thereafter his statement was recorded.

28. PW-5 has deposed that her in-laws, her children, her brother-in-law-Dattatraya, his wife Ujwala etc are residing jointly in their house; that the murder of her husband took place on 12th March 2012; that she knows all four accused sitting before the Court as they are from her village; that 1 and ½ month prior to the incident, her husband had gone to the river side by tractor and at that time there was quarrel between him and accused Nos.2 to 4 and one Nitin Sanjay and Popat and her husband was assaulted by kicks and fists and was also abused and that this incident was narrated to her by her husband. She has further deposed that a day prior to the incident, dispute had taken place between the accused no.1 and her cousin father-in-law Laxman on the issue of parking of motorcycle resulting in accused no 1 assaulting Laxman; that on 12th March 2012, her

husband had woken up and after taking bath and performing pooja in the house, went to the temple of God Maruti at 7.15 p.m; that thereafter immediately, she went to the flour mill, which is situated in front of that temple to bring flour; that she saw her husband was sitting on the lap of Anganwadi facing towards the river; that she was standing in front of the flour mill; that at about 7.45 a.m. , Haribahu and Pralhad were talking in front of the temple. She has further deposed that accused Nos.1 and 2, Sagar and Sonya, came there by motorcycle, which was driven by accused no.2; that they gave dash to the foot of her husband; that her husband shouted “aai” and bent ; that at that time, accused Nos.3 and 4 shouted loudly not to leave Shantaram and to kill him.; that accused no.1-Sagar gave two knife blows in the ribs of her husband; that her husband kept his hands on his chest and went running at some distance and fell down. She has further deposed that thereafter Pralhad Anna Sodmise, her brother in law- Dattatraya, Kondiram , Sambhaji, Nana and Dattatraya Popat Sodmise went there by running and all the four accused ran away by the left side of that temple; that thereafter Scorpio jeep of Kapil Karche was brought there and her husband was taken to the Government Hospital, Phaltan; that she returned home in frightened condition; that at about

10.00 a.m., she received a phone call from her brother in law informing her that Shantaram is dead.

29. In the cross-examination PW-5 has stated that the temple is facing South and Anganwadi school is facing North; that there is a veranda in front of anganwadi school and thereafter there is ground ; that the deceased was sitting at a distance of 5 to 6 feet from the veranda in front of anganwadi school; that the flour mill was facing towards West; that the motorcycle passed in front of her; that the distance in between herself and her husband was 40 to 50 feet and when the motorcycle gave dash to her husband, she proceeded towards him.

30. PW-5 has stated that the portion marked “B”, “C” and “D” of her statement is correct; that she had stated before the police that Pralhad made a phone call to Kapil Karche and called his jeep; that after jeep came Pralhad, her brother in law Datratraya, Sambhaji, Nana, Dattatraya Popat Sodmise kept her husband in the jeep and took him to the hospital; that the flour mill is adjacent to anganwadi school; that wife of Popat Mane is running the said flour mill; that his wife was sweeping the court

yard and therefore PW-5 was standing on the road; that the distance between her and her husband was near about 40 to 50 feet; that the motorcycle had not entered in the veranda but had gone in front of the veranda; that at that time Pralhad, her brother in law Datratraya, Dattu, Nana Karche, Haribhau, Kondiba Sodmise had stood at a distance of about 60 feet from her in an oblique manner; that her husband, she and said persons were standing in triangular position; that Haribhau and Pralhad were present at a distance of 25 to 30 feet from the place where Nana, Sambhaji, Datratraya, Kondiba had stood.

31. She stated that she had stated before the police that she was standing in front of the flour mill and her husband shouted the word “aai go”, and, by holding his stomach by both hands fell at some distance; that as regards the portion marked “A” in her statement one or two persons might be present there excluding the above persons; that she felt that she should accompany her husband when he was taken to the hospital; that she did not go as she was not feeling well and after one and half hour, she regained her previous condition and even then she did not go to the hospital; that she directly came to know that her husband is dead

as he had sustained serious injuries..

32. PW-5 has admitted that she did not go near her husband; that she did not try to bring water for her husband because there were no houses nearby; that after some time, the neighbors gathered there, she did not state anything to them; that neither she nor any other person tried to catch the accused; that there were no blood stains where the deceased was sitting and she did not see tyre marks of the motorcycle; that Tai Mane did not come to the spot of incident; that next day when the police came to the village she did not state before the police that she had witnessed the said incident; that she did not make any complaint to the police on that day.

33. PW-6 Kapil Karche has deposed that he is the owner of the Scorpio jeep MH-11 AW-9925; that on 12th March 2012 at about 8.00 a.m. he received a phone call from Pralhad who informed him that Vishal Gurav has assaulted Shantaram and Shantaram has to be moved to the hospital and asked him to come to the spot by taking his Scorpio car; that within 2 to 3 minutes he rushed near Anganwadi where deceased was

lying, by taking his Scorpio jeep; that Pralhad, Dattatraya Trimbak Sodmise, Dattatraya Popat Sodmise, Nana Baban Karche and Kondiram Baba Sodmise, Sambbhaji Pandurang Holkar put Shantaram in the Scorpio jeep and they took him to the Government Hospital at Phaltan within 5 to 7 minutes; that when they were in transit, Pralhad and Datta told about the alleged incident; that upon reaching the hospital the medical officer examined Shantaram and declared him dead.

34. In the cross-examination PW-6 has stated that when he took the jeep, he saw the deceased lying on the ground of anganwadi school; that he did not see heavy blood on the body of the deceased; that he saw that the deceased was lying at a distance of 10 to 15 feet in front of veranda of anganwadi school; that when he went to the spot the wife of the deceased was weeping; that no persons gathered there after seeing his jeep; that when he took the jeep to the spot 7 to 8 persons were present there; that he did not see whether blood had stained his jeep; that he had not inspected his jeep; that deceased was kept in the middle seat of the jeep; that he saw blood on the clothes of deceased when he was taken out of the jeep.

35. PW-6 has admitted that he did not take his jeep to the police station after he left the hospital; that the police did not prepare panchnama of the jeep; that on that day he did not narrate the incident to the police and that his statement was recorded after four days.

36. PW-7 Pralhad has deposed that the deceased was his cousin nephew; that on 12th March 2012 at about 7.45 a.m. he had visited the Maruti temple for prayers; that after he came out of the temple, he was talking with Haribhau in front of the temple about the incident which had taken place on 11th March 2012 as regards the dispute between Laxman and Accused No 1; that at that time, Shantaram was sitting on the lap of the veranda of Anganwadi; that he had seen him enter the temple; that he had also seen Dattatraya Trimbak Sodmise at the temple. He has further deposed that at about 7.45 a.m. accused Nos.1 and 2 came there by motorcycle which was being driven by accused no.2; that accused no.2 gave a dash to the deceased by motorcycle; that the deceased sustained injury to his left leg and he bent ; that at that time, accused nos.3 and 4 came there by running and said to kill Shantya; that at the

same time accused no.1 Sagar gave two knife blows to the left ribs of deceased; that the deceased shouted “Aai go” and bent; that he immediately went there running and Dattu Sodmise also came there and seeing them, all the accused ran away towards the left side of the temple. He further deposed that Shantaram fell unconscious; that his wife Manisha came there shouting and running; that he called the jeep of Kapil Karche by phone and immediately within 2 minutes he came there; that Kondiba, Sambhaji, Nana, Dattu Popat and he kept the deceased in the middle seat of jeep of Kapil Karche and brought him to the government hospital, Phaltan where the medical officer examined him and declared him dead; that thereafter he and Dattatraya Sodmise went to the Police Station by the motorcycle of Koandiram ; that Kondiram had come to the hospital by following the jeep; that they reached the Police Station at 8.30 a.m. ; that Dattatraya stopped in the Police Station and he returned to hospital along with police where he showed the dead body of Shantaram to police and police prepared the inquest panchnama. PW-7 has identified all the four accused before the Court. He has further deposed that prior to one and half month of the said incident, Sanjay and others had assaulted the deceased on the count of using of road; that he came to

know this fact through the deceased and that the quarrel was settled at village level and that Sanjay-accused no.4 was upset with the deceased on that count.

37. In the cross-examination, as regards the portion marked “A” of inquest panchnama, PW-7 stated that he had stated before police that Accused No 1 came there by taking Sonya, but police has written as “one person”; that he had stated before the police that at the time of the incident the deceased was sitting on the lap of the veranda and Shantaram had shouted as “Aai go” and bent.

38. PW-7 has admitted that he did not state before the police from what distance he saw the incident of giving dash or stabbing the deceased by the motorcycle or by the accused no.1; that he did not try to catch any of the accused; that he did not see when Kondiram came there and that when he came outside the temple, he did not see Kondiram; that Sambhaji came after 15 minutes; that he did not see Datrataya while entering in temple; that when he was talking with Haribhau he did not see Nana and that he had not seen where Nana had stopped; that he did

not see any blood on the spot and that deceased fell at a distance of 10 to 15 ft in oblique manner towards north side; that he did not see whether blood was stained at that spot; that he did not inform the incident to the police when he went to the Police Station.

39. He has stated that Dattu Popat Sodmise is residing near the spot; that Dattu was collecting the dung and the spot was within 100 ft from spot of incident; that Nana and Sambaji were sitting in front of Goddess Mari Mata; that Kondiram had come there by motorcycle; that Haribhau and he were chit-chatting about earlier day's incident; that Manisha was standing in front of the flour mill; that he saw Dattatraya coming to the temple and he was at a distance of 10 ft while coming; that the motorcycle came from the front side of flour mill; that the distance between the flour mill and the spot where the deceased was sitting is 40 to 50 ft; that the deceased was sitting by facing north side; that veranda is situated at upper level and ground is at lower level and there is difference in level of near about 1 ft.; that the deceased was sitting to the corner of north side of that veranda in the middle portion of veranda; that he and Satish Sodmise had gone to the Police Station; that he narrated the

incident and the police typed it; that statement of Satish was not recorded; that the motorcycle was lying at a distance of 10 ft from the spot of incident; that he cannot tell in which direction it was lying; but it was lying towards the Anganwadi and his bicycle was there; that nobody had moved it; that he took it in the evening.

40. PW-8 Aajinath- panch to the spot panchnama has deposed that on 12th March 2012 the police had called him to act as a panch and Vijay Tare was the other panch; that PW-1 Dattatraya was present there, PI Kale and other two police were also present there; that PW-1 Dattatraya showed the alleged spot of incident; that they saw two spots, which are situated in front of the school; that the first spot, which was situated near the school at pillar is adjacent to the school; that they saw glasses of indicator of motorcycle lying there; that they saw blood stained soil; that the police collected the said pieces of broken glasses as well as the blood stained soil; that they went at the distance of 20 ft from that spot; that they saw some stones having dry stains of blood lying there; that they also found one knife near the temple Goddess Mari Aai; that they seized the broken pieces of indicator, small stones stained with blood; the blood

stained soil and the knife under the panchnama. He has identified the broken pieces of glass indicator, the small stones, the knife produced in the Court as the same articles which were seized under the panchnama Exhibit-65.

41. In the cross-examination, PW-8 has stated that there is open space in front of the school and in front of the school there is a veranda and in front of it there is open space; that the veranda is at an upper level from the ground with a height of about 6 inches to 9 inches; that he saw that at two to three spots there was blood.

42. PW-8 has admitted that Dattatraya had narrated the incident and that Dattatraya did not state that Sanjay Algude was driving the motorcycle; that he cannot assign any reason as to why this fact is mentioned in the panchnama Exhibit-65; that the length of the handle of the knife produced in the Court is 4.1/2 inches; its width is 1.1/4 inch; the length of blade of that knife is 7.1/2 inches; its width is 1 inch; that the description mentioned in the panchnama does not tally with the knife produced in the Court; that he did not see the blood stains in the veranda;

that he did not see any step near the said veranda; that he did not remember whether blood stained the ground adjacent to the veranda; that the police did not seize the big stone having dimensions of 2 ft; that the police has not noted the tyre marks in the panchnama and not obtained the impressions of the tyre marks; that no tyre marks were observed near the spot where the broken pieces of glass were found, nor police took the samples; that he did not find blood stains on the earth where they found the knife; that he did not see any bicycle near the spot during the one hour; he also did not see it near the temple; that Dattatraya was narrating the contents of panchnama and that the police were recording it and he was hearing it.

43. PW-9 Dr. Yasmin Abdul Raheman Patel was examined to prove the *post mortem* report- Exhibit-68. She has deposed that on external examination she found following injuries :

- 1] There were multiple abrasions over right elbow laterally measuring 8 Cm. in size reddish in colour and over area of 6 cm. over the elbow region.
- 2] There was a cut and incised wound over the anterior side of left side of chest below nipple near laternal axillary line. Oblique elliptical measuring 5 cm. X 2 cm. and extending in to peritoneal

cavity when traced with handle of blade.

- 3] There was a cut and incised wound over lateral side of left chest wall below second injury. 6 cm. apart measuring 3 cm. X 2 cm. Elliptical and if traced also extending into peritoneal cavity. Through 2nd puncture wound omentum protruding out forming a mass about 10 cm. in diameter.
- 4] Abrasions over the left foot toes, skin appeared avulsed and also nail of left great toe avulsed. Reddish in colour.”

44. In the cross-examination, she has stated that injury no.4 mentioned in column No.17 of the post mortem report can be possible by dragging by a hard and blunt substance; that injury No.4 can also be possible if the leg is brushed and goes ahead along with the motorcycle; that the nail can be removed by stumbling to the stone and she did not observe any injury to the toe.

45. PW-10 Ramesh Shivaji Pharande- police naik has deposed that PI Kale who was investigating officer in the case has expired and that during the investigation he was with Mr. Kale; that on 12th March 2012, Mr. Kale had prepared the spot panchnama in the presence of two witnesses; that he was the scribe of the panchnama; that as per the panchnama, they seized one knife and its description is written in it; that

the knife produced in the Court was seized under the panchnama. He has further deposed that they had noted the dimensions of knife in “inches” but in fact those dimensions are in “centimeters”; that Mr. Kale had dictated him the dimensions in “centimeters” but due to inadvertence he had noted it in “inches”.

46. In the cross-examination, he has admitted that in the spot panchnama-Exhibit-65 it is not mentioned that in front of Anganwadi there is a lap; that they did not see any blood just adjacent to the lap of veranda near pole no.3; that he did not find any lap on the east side of that veranda; that he did not find any blood stains to the east side of veranda; that he did not find any tyre marks near pole no.3 so also he did not find tyre marks to the east side of Anganwadi; that he did not see motorcycle there; that he cannot tell the distance where the said pieces were lying and pole no.3; that he cannot tell the distance where the knife was found and the temple where the knife was lying.

ANALYSIS AND CONCLUSIONS :

47. We have minutely scrutinized the evidence on record. It is not

disputed that the death of deceased was homicidal. The events which unfold, as gathered from the evidence on record, is that on 12th March, 2012 at about 7:45 a.m., the deceased – Shantaram was sitting on the lap (katta) of Anganwadi and at that time the accused Nos.1 and 2 came there by motorcycle driven by the accused No.2, which dashed the left leg of the deceased injuring the left leg. The deceased after sustaining the injury bent and at that time, accused Nos.3 and 4 came there running and exhorted accused Nos.1 and 2 not to leave Shantaram and to kill him and Accused No.1 gave two knife blows in the ribs of Shantaram. Upon hearing the shouts of Shantaram, PW-1-Dattatraya, PW-4-Kondiram, PW-5-Manisha, PW-7-Pralhad, Sambhaji, Nana and Dattatraya came near the spot and the jeep of PW-6-Kapil Karache was called for. The deceased was taken to the Government Hospital, Phaltan where he was declared dead.

48. The spot of incident is near the Anganwadi school. The geographical location of the area, where the incident occurred, as emerging from the evidence on record, is that the temple of God Maruti is facing south and the Anganwadi school is facing north and as such the

Maruti temple and Anganwadi school are facing each other. There is a river flowing behind the temple. There is a veranda in front of the Anganwadi school having a tin roof and supported by five angles. The flour mill is facing towards the west and is adjacent to Anganwadi school. At the time of the incident, the deceased was sitting on a “lap” (katta) of Anganwadi facing the river. The evidence of Datratraya- PW-1, Kondiram-PW-4, Manisha PW-5 and Pralhad-PW-7 reveals that at the time of incident Pralhad and Haribhau were discussing in front of the temple and Datratraya was standing near them, Pralhad was standing near the temple of Goddess Marti Aai which is near to the temple of Maruti and Manisha was standing outside the flour mill. Considering the position of the eye-witnesses as aforesaid vis-a-vis the location of Anganwadi, the incident could have been witnessed by PW-1, PW-4, PW-5 and PW-7. The evidence on record establishes the presence of eye-witnesses at the location as deposed by them and considering their location, the incident in question could very well have been witnessed by them.

49. In the FIR recorded by Datratraya there is no mention of

presence of Kondiram, Sambhaji and Manisha and it is stated that Pralhad Appa Sodmise, Dattu Popat Sodmise, Nana Baban Karche and Kapil Somnath Kharche placed the deceased in the jeep. It is trite that FIR is not an encyclopedia and as long as the FIR narrates the material aspects of the incident in question, omissions on trivial matters do not assist the case of the accused. The incident in question is the stabbing of the brother of the first informant and the first informant being under an emotional turmoil, mere omission to mention the presence of one or two persons cannot falsify the presence of those persons at the spot of incident.

50. PW-1-Dattatraya has deposed about the presence of PW-7 Pralhad near the temple and has deposed that after the incident PW-5 Manisha, PW-4 Kondiram, Sambhaji, Nana and Dattatraya came near the spot. PW-4 Kondiram has deposed about the presence of PW-7 and PW-1 near the temple; that Sambhaji was with him near the temple and has deposed that after the incident he, PW-7-Pralhad, PW-1-Dattatraya, Dattu, Sambhaji, Nana and PW-5- Manisha came near the spot. PW-5- Manisha has deposed about the presence of PW-7 Pralhad near the temple

and has deposed that after the incident PW-7-Pralhad, PW-1- Dattatraya, PW-4 Kondiram, Sambhaji, Nana and Dattatraya Popat Sodmise came to the spot. PW-7 Pralhad has deposed about the presence of PW-1-Dattatraya near the temple and has deposed that after the incident Dattu Sodmise and PW-5 Manisha came running to the spot. He has deposed that after the jeep was called for, PW-4 Kondiba, Sambhaji, Nana and Dattu Popat Sodmise and he kept the deceased in the middle seat of jeep. The evidence of these eye-witnesses establishes the presence of each other at the spot. The presence of PW-1, PW-4 and PW-7 near the spot of incident cannot be said to be unnatural for the reason that near the Anganwadi school there was temple of Maruti and it is but natural for them to go to the temple to pray. As regards PW-5-Manisha, she has deposed that she had gone to buy flour from the flour mill and as the flour mill is situated adjacent to Anganwadi school, even her presence at the spot is justified. The eye-witnesses are natural witnesses.

51. Learned Counsel for the Appellants have disputed the presence of PW-5 Manisha and pointed out that the conduct of PW-5 Manisha in not touching her husband; not bringing water for her husband and not

going to the hospital with her injured husband is improbable. The conduct of Manisha has to be viewed against her rural background inasmuch as in the villages it is common for the men folk to take charge of the situation and take decisions. Manisha had stated in her cross examination that her husband and her brother-in-law Datratraya were the active and working members in the family and, as such, the men folk having taken the deceased to the hospital without Manisha cannot be termed as improbable. It also needs to be noted that different persons react differently to the same situation. Being the wife of deceased and having witnessed her husband being stabbed, the possibility of Manisha being in a state of shock cannot be ruled out. Mr. Jadhav relies upon the decision of the Apex Court in the case of ***Ganesh Bhavan Patel*** (supra) as there was delay in recording the statement of PW-5 Manisha. The Apex Court considered the inordinate delay in recording the statements of witnesses along with the various infirmities and flaws which assumed importance. In the present case, there has been no delay in lodging the FIR. As stated above, we have already indicated the reasons for the delay in recording PW-5's statement and as such the decision of the Apex Court does not assist the case of the Appellants. Even if the evidence of PW-5

Manisha is eschewed, the evidence of other eye-witnesses proves the guilt of the Accused beyond reasonable doubt.

52. PW-1, PW-4, PW-5 and PW-7 have deposed about the incident, i.e., that the deceased was sitting on the lap (katta) of Anganwadi school; that the accused Nos.1 and 2 came there by motorcycle and gave a dash to the left leg of deceased; that accused Nos.3 and 4 came there running and exhorting accused Nos.1 and 2 not to leave Shantaram and to kill him; that the accused No.1 gave two knife blows in the ribs of deceased. The eye-witnesses have been subjected to lengthy cross-examination. In the cross-examination, the testimony of eye-witnesses as regards the incident in question has not been shaken as regards the main incident. The evidence of the eye-witnesses corroborate each other's testimonies as regards the main incident. This ocular evidence is consistent with the post-mortem report which is at Exhibit-68 which records the injuries to the left foot of the deceased, as well as the incised wounds on the left chest.

53. The contradictions and omissions pointed out by Mr.

Choudhary do not go to the root of the main incident. Mr. Choudhary has disputed the presence of the accused Nos.2 to 4 at the spot of incident by relying upon the inquest panchnama and spot panchnama. We find that the reliance placed by the learned Counsel for Accused Nos.2 to 4 on the inquest panchnama and the spot panchnama to dispute the presence of Accused Nos.2 to 4 at the spot of incident is misplaced. In the spot panchnama, it has been stated that at 7:45 a.m., the son of Haribhau Gurav, Sagar alias Vishal and Sonya Sanjay Algude had come on the motorcycle, and at that time, the motorcycle was being driven by Sanjay Algude. It is nobody's case that the motorcycle had three riders. The spot panchnama records the presence of the accused No.2 and 4 at the incident. Moreover, PW-1 Dattatraya, who is the narrator of the spot panchnama, has not been confronted with this particular circumstance.

54. The reliance on the inquest panchnama to question the presence of Accused No.2 deserves to be rejected in view of the decision of the Apex Court in the case of *Sambu Das (supra)*, which has been relied upon by learned APP. The Apex Court in *Sambu Das (supra)* was dealing with the submission that as the FIR is lodged after the inquest was held, the

FIR was not reliable. The Apex Court while dealing with the said submission has considered the object of the inquest report and has held in paragraph 17 as under :

“The Inquest Report is prepared under Section 174, Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. Inquest report and post mortem report cannot be termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer incharge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under Section 157 of Cr.P.C. and the information is recorded under Section 174 of Cr.P.C. and, thereafter, the inquest is held under Section 174, Cr.P.C. This Court, in the case of Podda Narayana Vs. State of Andhra Pradesh [AIR 1975 SC 1252], has indicated that the proceedings under Section 174 Cr.P.C. have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the

death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope of proceeding under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George Vs. State of Kerala AIR 1998 SC 1376, it has been held that the Investigating Officer is not obliged to investigate, at the stage of Inquest, or to ascertain as to who were the assailants. In Suresh Rai Vs. State of Bihar AIR 2000 SC 2207, it has been held that under Section 174 read with Section 178 of Cr. P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also possible cause of death.”

55. Applying the law laid down by the Apex Court to the facts of the present case, failure to state in the inquest panchnama that Accused No.2 was driving the motorcycle is not fatal to the case of prosecution. The reliance of Mr. Chaudhary on the decision in the case of ***Nandlal and others (supra)*** is misplaced as the Apex Court in that case took into consideration the totality of the circumstances, i.e., the delay in lodging the FIR with the circumstance of the names not being mentioned in the contemporaneous documents to arrive at a finding of possibility of false implication. In the case of ***Balaka Singh (supra)***, it was observed by this Court that the names of four accused out of nine were missing in the body of the Inquest Report and this omission was not explained and, therefore,

it lead to the probability that FIR must have been prepared after the preparation of Inquest Report. The A.S.I. had no valid explanation for the same. It was also found by the Court that FIR was registered subsequently. The observation of this Court is to be understood in that background. The decision does not assist the case of the Appellants for the reason that the Inquest Panchnama records the crime register number and as such proves that the FIR was registered prior to the inquest.

56. The omissions relied upon by the learned counsel for the appellants as regards whether the deceased shouted after being stabbed or whether Kondiram PW-4 was in the jeep which took the deceased to the hospital or followed the jeep on his motorcycle or which of the witnesses accompanied the deceased in the jeep at the time of shifting him to the hospital are normal discrepancies not affecting the main incident. We find that the evidence of the eye-witness as regards the main incident is consistent, cogent and reliable. At this stage it will be beneficial to refer to the decision of the Apex Court in the case of ***Bhagchandra Vs State of Madhya Pradesh [2021 SCC Online 1209]***. The Apex Court referred to the decision in case of ***State of Uttar Pradesh v. Krishna Master*** which

held as under:

“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal

discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not often that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”

57. Applying these principles, we are of the view that the discrepancies pointed out by the learned Counsel for Appellants are minor discrepancies pertaining to the insignificant aspects. If we appreciate the ocular evidence which has come on record, the eye-witnesses have come with the consistent case and the testimonies of the eye-witnesses is cogent, reliable and trustworthy and proves the case of the prosecution beyond reasonable doubt. The ocular evidence is corroborated by the injuries shown in the post mortem report of the deceased which reads thus :

- “1] Abrasions multiple over right elbow region laterally measuring 7-8 cm in size, reddish in colour over area of 6 cm in size (breadth) over elbow region.*
- 2] Cut and incised wound over anterior side of left chest below*

nipple near lateral axillary line oblique elliptical measuring 5 cm. X 2 cm. and extending in to peritoneal cavity if traced with handle of blade.

- 3] *Cut and incised wound over lateral side of left chest wall below 2nd injury 6 cm. apart measuring 3 cm. X 2 cm. elliptical and if traced also extending into peritoreal cavity. Through 2nd puncture wound omentum protruding out forming a mass of about 10 cm. in diameter.*
- 4] *Abrasions over left foot toes, skin appeared avulsed and also nail of left great toe avulsed, reddish.”*

58. The decisions of the Apex Court in ***Jainul Haque (supra)*** and ***Balwantbhai B. Patel (supra)*** do not assist the case of the Appellants for the reason that the Apex Court in ***Jainul Haque (supra)***, in the context of exhortation, has held that unless the evidence in this respect be clear, cogent and reliable no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. As regards the decision in the case of ***Balwantbhai B. Patel (supra)***, the said decision was rendered in the facts of that case where the Apex Court on the basis of evidence found the appellants’ presence therein to be on shaky foundation. The decision in the case of ***Hem Raj and Others (supra)*** does not assist the case of the Appellant, being rendered in the facts of that case

wherein the Apex Court expressed doubts about the involvement of person alleged to have exhorted the main accused to kill. As discussed above, in our opinion, the ocular evidence as regards the Accused Nos.3 and 4 is intrinsically sound and reliable and the decisions of the Apex Court rendered in the facts of those case is inapplicable to the present case.

59. Now we shall examine the other contentions raised by the Appellants. Learned counsel for the appellants submits that the motorcycle used in the incident has not been identified; that the Jeep in which the deceased was taken to the hospital was not seized and the blood stains on the middle seat of the Jeep have not been sent for chemical analysis; that the chemical analysis report does not show the blood stains on the knife as well as the earth and sand which was sent as samples. It is expected of the investigating agency to seize all the incriminating evidence. The spot panchnama reveals that at the spot of incident the spot panchas observed broken pieces of the indicator glass of the motorcycle, blood stained soil and small stones near the spot of incident, the blood stained knife and blood stained soil at the place where the knife

was lying. The spot pancha PW-8 has deposed that the police did not seize the big stone having blood stains at two to three places. The chemical analysis report states that the stone pieces and earth and sand samples were stained with blood- the blood group being inconclusive, however there was no blood detected on Exhibit 3 and 4 i.e. the knife and the earth and sand samples.

60. It is stated by the eye witnesses that the Accused Nos.1 and 2 came to the spot of incident on a motorcycle. The investigating agency was expected to carry out the necessary investigation in order to connect the motorcycle to the commission of the offence. Unfortunately, in the present case there was much left to be desired in the investigation. The investigator has failed to seize immediately the motorcycle after the lodging of FIR and no efforts have been taken to get the witnesses to identify the motorcycle. The seizure panchnama has been drawn after three days of the incident and the motorcycle was brought to the police station by the owner of the vehicle.

61. Similarly, it was expected that during the investigation, jeep of

Kapil Karche would be examined and the blood stained covers would be sent for chemical analysis to establish the blood group of the deceased on the jeep seat cover. Unfortunately, even this was not done. To what extent this will assist the case of accused will necessarily depend on the other evidence which has been brought on record.

62. We find that the ocular evidence is consistent and establishes the guilt of accused without any doubt. Another factor to be noted is that immediately after the incident, FIR is lodged by PW-1 who was accompanied by PW-4. The FIR fully corroborates the ocular evidence of prosecution witnesses. In our opinion, as the present case is a case of direct evidence, even if the other incriminating circumstances are not proved beyond reasonable doubt, it will not prove fatal to the case of prosecution. At this stage it would be beneficial to refer to the decision of the Apex Court in the case of *Sheo Shankar Singh v. State of Jharkand & Ors (2011) 3 SCC 654*, wherein the Apex Court has held as under :

“54. The question, however, is whether the failure of the investing agency to make a reference would in the circumstances of the case discredit either the version of the witnesses that the T-shirt was bloodstained when it was seized

or constitute a deficiency of the kind that would affect the prosecution version. Our answer is in the negative. Failure to make a reference to forensic science laboratory is in the circumstances of the case no more than a deficiency in the investigation of the case. Any such deficiency does not necessarily lead to the conclusion that the prosecution case is totally unworthy of credit. Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case.

55. In *Ram Bihari Yadav v. State of Bihar and Ors.* (1998) 4 SCC 517 this Court while dealing with the effect of shoddy investigation of cases held that if primacy was given to such negligent investigation or to the omissions and lapses committed in the course of investigation, it will shake the confidence of the people not only in the law enforcing agency but also in the administration of justice.

56. The same view was expressed by this Court in *Surendra Paswan v. State of Jharkhand* (2003) 12 SCC 360. In that case the investigating officer had not sent the blood samples collected from the spot for chemical examination. This Court held that merely because the sample was not so sent may constitute a deficiency in the investigation but the same did not corrode the evidentiary value of the eye-witnesses.”

63. It is the contention of learned counsel for the Appellants that the spot of incident has not been identified as there is no “lap” (katta) near the Anganwadi school. The eye-witnesses are consistent in their evidence that the deceased was sitting on the lap (katta) outside the Anganwadi

school. PW-1 in his cross-examination has deposed that lap (katta) is situated on the portion marked "A" shown in the photograph and the Umber tree is situated in front of that lap. He has further described the dimensions of lap (katta) being one feet in height and about five to ten feet in length. Similarly, PW-4 has deposed that the deceased was sitting in front of veranda of Anganwadi school PW-5 has deposed that the deceased was sitting at a distance of five to six feet from the veranda in front of Anganwadi school. PW-7 in his cross-examination has deposed that the veranda of Anganwadi is situated at upper level and the ground is at lower level and there is a difference in the levels of near-about one feet and that deceased was sitting in the middle portion of veranda. From the evidence which has come on record of the eye-witnesses, it appears that there was a lap (katta) in front of the veranda of the Anganwadi school, which was about one feet in height on which the deceased was sitting at the time of incident. It has further come in the evidence that after the deceased was assaulted, he shouted and walked about 10 feet and fell at the spot. PW-1 in his cross examination has deposed about two spots, i.e. the spot where the deceased was sitting, which is situated at a distance of six feet east of the Umber tree, which was in front of veranda of the

Anganwadi school, as well as the spot where the deceased was lying. Similarly, PW-5 has deposed that after being stabbed the deceased kept his hand on his stomach and went running some distance and fell down. It is therefore clear that the spot of incident is near the veranda of the Anganwadi school and in our opinion, nothing much turns on as to whether the deceased was sitting on the lap (katta) or near the veranda inasmuch as the assault had taken place when the deceased was sitting near the Anganwadi school.

64. As regards the motive, we may once again refer to the decision of the Apex Court in the case of ***Sheo Shankar Singh*** (*supra*) wherein the Apex Court has in paragraph 15 held thus :

“15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper

appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye- witnesses.”

65. The evidence shows that one and half months prior to the alleged incident, the accused Nos.2 to 4 along with others had assaulted the deceased over a dispute that the deceased should not take sand from the road which is adjacent to the land of the accused. As regards the Accused No.1, one day prior to the alleged incident, i.e., on 11th March 2012, a quarrel had taken place between Laxman, i.e., the cousin uncle of Shantaram on one hand and Haribhau and accused No.1 on the other hand, which had led to the filing of complaint with Phaltan police station.

66. If we read the evidence of PW-1 in its totality, PW-1 has in the cross-examination stated that the accused no.1 was obstructing the

transportation of the sand by deceased-Shantaram as damage was being caused to the crops. He has further admitted that the quarrel had taken place between the deceased and Algude on account of carrying of sand. As such, it is evident that there was a dispute between the accused Nos.2 to 4 and the deceased over the issue of carrying of sand and as regards the Accused No.1 the incident, which had taken place one day prior to the incident.

67. Learned counsel for the appellants have submitted that the accused have been falsely implicated by relying upon the cross-examination of PW-1 where he stated that after the medical officer had declared Shantaram dead, the witnesses started discussing in respect of the next steps and the discussion went on for about 15 to 20 minutes. If we see the timelines, the incident had taken place at about 7:45 a.m. and within 15 to 20 minutes the deceased was shifted to the Government Hospital, Phaltan and thereafter 15 to 20 minutes were consumed in the medical examination and Shantaram was declared dead. There was a discussion for about 15 to 20 minutes amongst the witnesses and thereafter at about 8:30 a.m. PW-1 went to the police station alongwith

PW-7 for lodging the FIR. The mere fact that there was discussion for 15 to 20 minutes after Shantaram was declared dead would not conclusively establish that the said discussion was as regards the false implication of the accused. It is quite probable in such circumstances for the relatives to discuss amongst themselves as to the next step required to be taken which is in all possibility is regarding the approaching the police for registration of FIR as well as informing the relatives about the death of Shantaram. It is noteworthy that FIR was registered without any delay which completely eliminates possibility of false implication. Considering the above, we find that the decision of the Apex Court in the case of *Jalpat Rai(supra)* relied upon by Mr. Jadhav does not assist the case of the Appellants as regards the false implication.

68. It has been brought in evidence that there are houses which are situated near the spot of incident and, in spite thereof no independent witnesses, not even the wife of the owner of flour mill, have been examined. If we look at the incident in question, the incident had taken place at about 7:45 a.m. and the Jeep of Kapil Karache was called, who came there immediately and the deceased was shifted to the hospital.

None of the eye-witnesses who were present at the spot of incident has deposed about the presence of any other person. It is quite probable that considering the manner in which the deceased was swiftly taken to the hospital, other persons may not have witnessed the incident. In our opinion, the evidence of the eye-witnesses is consistent and convincing and therefore, merely because the independent witnesses have not been examined cannot be a reason to doubt the veracity of eye-witnesses. It is also to be noted that the presence of eye-witnesses at the spot of incident is natural and, as such, the failure to examine any other independent witness is not fatal to the case of prosecution. Non-examination of independent witness by itself may not give rise to adverse inference against the prosecution.

69. Learned counsel for the appellants have also pointed out that there is no recovery at the instance of appellants and that the knife which has been produced in the Court is different from the knife which has been seized as recorded in the spot panchnama. The investigating officer in this case has not been examined as he had expired, however, scribe of the spot panchnama, namely, PW-10-Police Naik Ramesh Pharande has been

examined. He has identified the knife which has been seized and has deposed that although they had noted the dimensions of knife in inches in fact, those dimensions were in centimeters. He has further deposed that the investigating officer, Mr. Kale had dictated the dimensions in centimeters, however, inadvertently he has noted the same in inches.

70. After the statement under section 313 of the Code of Criminal Procedure, 1973 was recorded, the chemical analysis report was received and the said circumstances were not put to the accused. It is settled position that if the circumstances are not put to the Accused in the statement under Section 313 of Cr.P.C, it cannot be used against the Accused. Leaving aside the chemical analysis report, if the ocular evidence on record is considered, the same conclusively establishes the guilt of the Accused beyond reasonable doubt.

71. Considering the ocular evidence, which is duly corroborated by the documentary evidence on record, we are of the opinion, that the prosecution has established guilt of the Appellants beyond reasonable doubt. We do not find any infirmity in the impugned judgment and

order dated 31st December, 2012 passed in Sessions Case No 71 of 2012 and accordingly uphold the conviction and sentence imposed by the impugned judgment and order.

72. Criminal Appeal No.122 of 2013 and Criminal Appeal No.1144 of 2019 stand dismissed.

73. The bail bonds of accused no.3–Amol Vitthal Algude and accused no.4-Sanjay Jaysing Algude stand cancelled and they are directed to surrender within a period of four weeks from today.

[SHARMILA U. DESHMUKH, J.]

[REVATI MOHITE DERE, J.]