



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

CRIMINAL APPEAL NO.84 OF 2019

Sahebrao s/o. Madhavao Shirphule,
(Convict Prisoner C-11440)
Age : 53 years, Occ. Nil,
r/o. Kamari, Tq. Himayatnagar,
Dist. Nanded,
Presently Through : Superintendent,
Central Prison, Nashik Road, Nashik

..Appellant

Vs.

1] The State of Maharashtra,
Through : Police Station,
Himayat Nagar, Dist. Nanded,

2] The Superintendent,
Central Prison, Nashik Road,
Nashik

..Respondent

AND

CRIMINAL APPEAL NO.663 OF 2019

1] Prashant s/o. Sahebrao Shirphule,
(Convict Prisoner C-11439)
Age : 29 years, Occ. Labour,

2] Pradip s/o. Sahebrao Shirphule,
(Convict Prisoner C-11438)
Age : 24 years, Occ. Labour,

Appellant Nos.1 and 2 are
r/o. Kamari, Tq. Himayatnagar,
Dist. Nanded
Presently Through Superintendent,
Nashik Road Central Prison)

..Appellants

Vs.

1] The State of Maharashtra,
Through Police Station,
Himayat Nagar, Dist. Nanded

- 2] The Superintendent,
Nashik Road,
Central Prison, Nashik, ..Respondents

AND
CRIMINAL APPEAL NO.238 OF 2019

- 1] Girjabai w/o. Prashant Shirphule,
Age : 26 years, Occ.Nil,
(Convict Prisoner C-3126)
- 2] Gangabai w/o. Sahebrao Shirphule,
(Convict Prisoner C-3127)
Age : 43 years, Occ. Nil,
- Appellant Nos.1 and 2 are
r/o. Kamari, Tq. Himayatnagar,
Dist. Nanded ..Appellants

Vs.

- 1] The State of Maharashtra,
Through Police Station,
Himayat Nagar, Dist. Nanded
- 2] The Superintendent,
Central Prison,
Nashik Road, Nashik ..Respondents

Mr.S.G.Bobade and Mr.A.V.Bagal, Advocates for appellants in all appeals

Mrs.S.N.Deshmukh, APP for respondent-sole

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**

RESERVED ON : JUNE 25, 2024

PRONOUNCED ON : JULY 01, 2024

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

This group of three Criminal Appeals is decided by this common judgment, since the challenge therein is to one and the same judgment and order of conviction and consequential sentence passed by learned Addl. Sessions Judge, Bhokar, Dist. Nanded (trial Court) in Sessions Case No.20 of 2015. Vide the impugned judgment and order, the appellants have been convicted for various offences and consequentially sentenced therefor. The details thereof are given below in the tabular form:-

Sr. No.	Section	Punishment
1	302 r/w. 149 of IPC	Life imprisonment and fine of Rs.3,000/-, in default, S.I. for 02 months.
2	307 r/w. 149 of IPC	Rigorous imprisonment for 07 years and fine of Rs.2,000/-, in default, S.I. for 01 month
3	120-B of IPC	Rigorous imprisonment and fine of Rs.2,000/-, in default, S.I. for 01 month
4	143 of IPC	Rigorous imprisonment for 03 months
5	147 of IPC	Rigorous imprisonment for 01 year

Substantive sentences to run concurrently.

2. The case of prosecution, in brief, is as follows:-

The appellants are members of one and the same family. They formed an unlawful assembly, the object whereof was to commit murder of Yogesh (deceased) and some of his family

members. There was an open plot of land at village Kamari, Tq. Himayatnagar, Dist. Nanded. A dispute was there between the appellants on one hand and Yogesh and his family, on the other. On the given day, i.e. on 13.04.2015, Yogesh along with his family members came to village Kamari for settlement of the dispute. It was 11.30 am., they reached the plot. The residential house of the appellants was at a distance of about 150 ft. from the said plot. The appellants armed with various deadly weapons, mounted attack on Yogesh (deceased), Ramdas and female members of his family. As a result of the assault, Yogesh died on the spot and others suffered multiple injuries. They were rushed to Tukamai Hospital, Nanded. Ganesh (PW 1), uncle of Yogesh, had also come to Kamari along with them. He was also resident of the very village. The incident took place in his presence. The scene of offence was situated at a populated area. One of the villagers informed the police on phone about the incident. Some of the police officials arrived. PW 1 - Ganesh Shirphule (informant) was present.

3. The police drew crime scene panchnama (Exh.35) in the presence of PW 2 - Ganesh Rathod. Sample of blood spilled on the spot was obtained. The informant accompanied the police to the police station and lodged FIR (Exh.29), alleging therein the

appellants to have assaulted Yogesh, Ramdas and other family members with deadly weapons. The vehicles, wherein Yogesh along with his family members and the informant had been to village Kamari, too were subject of assault, causing lot of damage thereto. Based on the same, crime vide C.R. No.34 of 2015 came to be registered with Himayatnagar Police Station, Dist. Nanded, for the offences punishable under Sections 120-B, 143, 147, 148, 149, 307, 302 and 427 of Indian Penal Code. The appellants were arrested. Clothes on their person were taken charge of under various panchnamas. The clothes on the person of the deceased Yogesh and the injured were also seized. Mortal remains of Yogesh was subjected to inquest and autopsy. Each of the appellants made disclosure statements, pursuant to which the weapons of assault, wielded by each of them, came to be recovered under different panchnamas. Medical certificates of the injured were obtained. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The seized articles were submitted to F.S.L. The CA reports were received. Upon completion of the investigation, charge sheet was filed against the appellants before the Court of Judicial Magistrate, First Class, Himayatnagar, Dist. Nanded, which, in turn, committed the case to the Court of Addl. Sessions Judge, Bhokar.

4. The trial court framed Charge (Exh.3). The appellants pleaded not guilty. Their defence was of false implication. From the tenor of the cross-examination, it appears that sometimes, the witnesses were suggested that Yogesh died in motor vehicle accident; then, it was suggested that the assailants had masked their faces; and that, presence of the informant on the crime scene was denied. To establish the Charge, the prosecution examined fifteen witnesses and produced in evidence certain documents.

5. The trial Court, on appreciation of the evidence in the case, convicted and consequentially sentenced the appellants, as stated above.

6. Learned counsel for the appellants would submit that a false FIR has been lodged, implicating one and all the family members. Even female members have not been spared. The incident took place at a populated area. None of the persons residing in the nearby and who witnessed the incident has been examined. Learned counsel urged for allowing the appeals.

7. Learned APP would, on the other hand, took us through the evidence of each and every witness, to submit it to be a case of brutal murder and a bid on the family members of deceased Yogesh.

According to her, the case is based on the eye-witnesses account of the injured. Their evidence stands on higher pedestal. Same has been corroborated by the medical evidence and the C.A. Reports. She, ultimately, urged for dismissal of the appeal.

8. We have considered the submissions advanced by learned counsel for the parties. Perused the evidence on record. Let us advert to the evidence on record and appreciate the same.

9. The incident took place by 11.30 a.m. on 13.04.2015, at village Kamari, Tq. Himayatnagar. The appellants are members of one and the same family. There was dispute over an open plot of land. They had, therefore, come to village Kamari to settle the same.

10. PW 2 - Ganesh Rathod is witness to the crime-scene panchnama (Exh.35). His evidence is consistent with the prosecution case. It is in his evidence that the crime-scene was pointed out by the informant (PW 1 - Ganesh Shirphule). During his cross-examination, it has been brought on record that there were many houses nearby the crime-scene. True, none of the independent witnesses has been examined in the case. We may address this question a little later. The crime-scene panchnama indicates that

the dead body of Yogesh was lying at the place. He had suffered not less than 29 injuries. Even, a knife was seen at the situ in his thigh.

11. PW 6 - Govind is witness to the inquest panchnama (Exh.52). PW 13 - Dr.Sachin conducted autopsy on the mortal remains of Yogesh. The post mortem report (Exh.82) indicates that Yogesh died of hemorrhagic shock due to multiple injuries. The evidence of PW 13 - Dr.Sachin and the post mortem report (Exh.82) indicate Yogesh to have suffered 29 injuries, as under :-

External Injuries :-

- 1) CLW over left forearm, middle 1/3rd to lower 1/3rd oblique 8x 2 cm. extensorly.
- 2) CLW over left forearm external aspect middle 1/3rd longitudinal 5 x 1 cm.
- 3) CLW over left forearm middle 1/3 rd flexor aspect 6 x 2 cm. longitudinal.
- 4) CLW over left forearm flexor aspect upper 1/3 rd transverse 5 x 1 cm.
- 5) Incised wound over right ankle joint medial transverse 8 x 2 x 3 cm.
- 6) Incised wound over right leg lower 1/3rd middle side longitudinally oblique lateral upper midial lower 6 x 1 x 2 cm.
- 7) CLW over right6 thigh middle 1/3rd longitudinally oblique lateral lower to upper medial 12 x 4 ½ cm.
- 8) CLW over left feet dorsum lateral near ankle joint 7 ½ x 2 cm. transverse.
- 9) Incised wound over left thigh near left knee joint laterally 5 x 2 x 4 cm.

- 10) Incised wound over left lower 1/3rd laterally transverse 5 x 1 x 3 cm.
- 11) CLW over left thigh upper 1/3rd lateral longitudinal 4 ½ x 1 cm.
- 12) Incised wound over left thigh laterally middle 1/3 rd 6 x 3 x 3 cm.
- 13) CLW over left lower back transverse 7 x ½ cm.
- 14) CLW over left lower back oblique 3 x 1 cm.
- 15) Stab wounds over left lateral side abdomen middle to lower 3 injuries (wounds) 8 x 2 x 10 cm., 7 x 3 x 8 cm., 9 x 2 x 10 cm. at the same plane measures each.
- 16) Just below that injury No. 15 4 CLWs 2 x 1 cm. each.
- 17) Stab wound just above left inguinal region transverse 10 x 2 x 12 cm.
- 18) Multiple CLWs over left side lumbar region 3 x ½ cm., 2 x ½ cm., 1 cm. x ½ cm. , 2 x ½ cm. 4 x 1 cm. transverse.
- 19) CLW over left hypochondrium transverse 8 x 1 cm.
- 20) CLW over left hypochondrium oblique 2 x 1 cm.,
- 21) CLW over left sided chest at rib 2 nd level transversely oblique 6 x 1 cm. and that above one CLW 3 x ½ cm. parallel.
- 22) Incised wound over left chest laterally at level of nipple 3 x 2 x 3 cm.
- 23) Stab wound over left axillary region 3 x 2 x 4 cm.
- 24) CLW over left shoulder anterior 3 x 2 x 1 cm.
- 25) CLW over left chest above nipple 3 x 1 cm.
- 26) CLW over center of chest longitudinal 3 x 1 cm.
- 27) CLW over left ear middle back 2 x ½ cm.
- 28) CLW over trachea transverse 3 x 1 cm.
- 29) Stab wound over left thigh middle 1/3rd medially 3 x 3 x 5 cm.

Fractures :-

- 1) Fracture right tibia and fibula lower end bone cut-pieces
- 2) Fracture right tibia and fibula lower 1/3rd bone cut-pieces
- 3) Fracture left femur lower end, epicondylar
- 4) Rupture or injury to large intestine and bleeding in abdominal cavity.

Internal Injuries :-

- 1) Left femoral vein and left femoral artery cutting of right tibial artery cut
- 2) Abdominal wall punctured just above left inguinal region.
- 3) There was peritoneum punctured above left inguinal region.

The knife was required to be removed from the thigh of the deceased Yogesh. The clothes of the deceased were also taken charge of, when delivered by the Medical Officer to the police. Although PW 13 was subjected to searching cross-examination, nothing could be elicited to indicate that Yogesh was not met with homicidal death.

12. The Investigating Officer (PW 15) had solicited opinion of Dr.Sachin (PW 13) as regards with what kind of weapon, the injuries on the person of Yogesh were caused. The opinion given by him is at Exh.84, wherein he opined that "मयताचे अंगावरील जखमा अत्यंत धारधार, तीक्ष्ण हत्याराने (sharp weapon) करण्यात आलेल्या आहेत". During his cross-examination, Dr.Sachin (PW 13) was shown the weapons namely, axe, sickle and knife and his opinion was solicited. According to Dr. Sachin, the injuries on the person of deceased Yogesh were possible with the

assault by such kind of articles. In view of the aforesaid evidence, we have no hesitation to observe Yogesh to have met with homicidal death.

Assault on the family members of deceased Yogesh :-

13. PW 9 – Ramdas testified that deceased Yogesh was his cousin. It is in his evidence that he had accompanied Yogesh and his (Yogesh) father – Namdeorao to village Kamari. Their relative – Uttam Mane was also with them along with the members of his family namely, Archana, Parvataibai, Jaishribai. It is in his evidence that they reached the village by 11.30 a.m. No sooner they arrived, the appellant Sahebrao started abusing his uncle Namdevrao (father of Yogesh). The appellants - Prashant, Pradip, Girjabai and Gangabai too were involved in the quarrel with them. The appellant - Sahebrao was armed with axe. He assaulted Yogesh on his stomach, hands and legs. Appellant - Prashant assaulted Yogesh with knife on his hands, legs and stomach; while Pradip assaulted Yogesh on stomach with sickle. The appellants – Girjabai and Gangabai assaulted him with iron rods. They also assaulted his mother Laxmibai, sister Seema, grandmother - Sharjabai and aunt Parvatabai. It is in his evidence that he too was assaulted by the appellants. His condition became serious. He was, therefore, referred to Sunshine Hospital,

Hyderabad. He was discharged from the hospital on 17.04.2015. The police recorded his statement on 20.04.2015. Although this witness appeared to have given details of the assault, it is not known as to why the Investigating Officer has not obtained and placed on record his medical papers. There is no document in the nature of MLC or medical papers issued by Sunshine Hospital, indicating that Ramdas was admitted to that hospital and was treated for the injuries suffered in the incident. We, therefore, do not propose to give much importance to the evidence of PW 9 – Ramdas.

14. The informant (PW 1 – Ganesh) claimed to have had witnessed the incident. It is he, who lodged the FIR. It is in his evidence that he along with Yogesh and other family members had come to village Kamari. The purpose of visit was settlement of the dispute over a piece of land (house site). It was 13.04.2015 by 11.30 in the morning, they reached village Kamari in two vehicles. It is in his evidence that the appellant - Sahebrao was armed with axe; Prashant had knife with him; Pradip was holding sickle; and Girjabai and Gangabai were armed with iron rods. It is further in his evidence that all these five appellants assaulted Yogesh with those weapons with multiple blows. It is further in his evidence that Parvatibai (mother of Yogesh), Laxmibai, Seemabai, Ramdas and Sarjabai

came to rescue Yogesh. All the five appellants assaulted them too with the respective weapons in their hands. It is further in his evidence that he sent all the five injured to Tukamai Hospital, Nanded. Somebody from village made telephone call to the police. The police arrived by 01.00 p.m. He showed them the dead body of Yogesh. Police drew crime-scene panchnama (Exh.35) and collected earth and blood from the crime scene. It is further in his evidence that he accompanied the police to the police station, whereat he lodged the FIR (Exh.29). The weapons, allegedly used by the appellants in assaulting Yogesh and other injured, were shown to him. He identified the same. It is further in his evidence that the photographs, eight in number, were snapped while drawing the crime-scene panchnama.

15. PW 1 - Ganesh was subjected to searching cross-examination. It has come on record that he would run a fair-price shop at village Kamari. On the first day of every month, food-grains are distributed. Distribution of food-grains would continue for next 4-5 days. Thereafter, there used to be no work in the fair-price shop. It is further in his evidence that he had three brothers. His elder brother Bhairoba passed away. The other two brothers are Namdev and Sahebrao. Namdev would reside at Pune. Yogesh (deceased)

and Kishor were Namdev's sons. They were serving at Pune. The appellants are his distant relations. He went on to state that the father of appellant - Sahebrao was real brother of his father. His father was, however, given in adoption. He was no-way related to the family of Kondbarao Shirphule. He was confronted with his FIR to bring on record the omission that Parvatibai and other female members had intervened to rescue Yogesh and they too suffered injuries. Although this fact specifically does not find place in the FIR, it has been specifically mentioned that all the female members were also assaulted with deadly weapons. The vehicles too were damaged. We, therefore, do not find it to be a case of material omission amounting to contradiction. Since the informant himself was examined, it was not necessary for the prosecution to examine the police official, who recorded the same, although objection was raised on that point. We do not find that non-examination of such police official to be prejudicial to the defence in the nature of having lost an opportunity to bring on record omission amounting to contradiction.

16. In paragraph 14 of the evidence of PW 1 - Ganesh, it has been appearing that 7-8 policemen had come to the spot. An axe, knife, sickle and two iron rods were lying on the spot when the police arrived. The police seized all the weapons in his presence. Some

villagers were also present. Photographs were snapped. Those were collectively marked as Exhs.30 and 31. It has also been brought on record that the houses of Uttamrao, Govind, Kondiba were around the crime scene. True, none of them has been examined by the prosecution. It has also been brought on record that the house of the appellants was at a distance of just 150 ft. away from the crime scene. It is further in his evidence that on the following day, he went to Nanded to meet the injured. He visited the hospital and informed the injured to have cremated Yogesh. He also informed them to have lodged the FIR and contents thereof. Here, learned counsel for the appellants meant to say that the other alleged injured were in the know about the contents of the FIR and therefore, they gave their statements suitable and consistent with the FIR. It is further in his evidence that Ramdas and Parvatibai informed him as to how the incident occurred. He, however, immediately clarified that he too was present while the crime took place. He categorically denied that vehicle of Yogesh met with accident and he died therein. According to us, whatever came to the mind of the defence-lawyer, was put in when cross-examining the witnesses. Then, it was suggested to him that it was he, who pierced the knife in the thigh of Yogesh. As already stated above, it was even suggested to some of the witnesses that the culprits had their face masked. Be that as it may.

17. PW 10 – Seema and PW 11 – Laxmibai were said to be the victims of the crime. Both of them were examined. It is in the evidence of PW 10 – Seema that it was Monday of 13.04.2015. She along with her mother was present at her house. It was 11.30 a.m. Both of them came out of the house on hearing noise of the vehicle. The appellants had come in the vehicle. All of them quarreled with Namdevrao on account of dispute over an open space. Sahebrao (appellant) was requested not to quarrel and the dispute would be solved. It is further in his evidence that all the male appellants were armed with sharp weapons like, axe, knife and sickle, while Girjabai and Gangabai were armed with iron rods. All of them assaulted Yogesh first. When they intervened, they too were assaulted by all the appellants. Cross-examination of PW 10 – Seema indicates that she was disabled with both of her legs due to Polio. She, therefore, could not do any work or move anywhere. She, however, denied that without any help, she could not do any work. A very vital admission was elicited from her to indicate that her uncle Ganesh (informant) told the contents of the FIR. Learned counsel for the appellants had, therefore, every reason to contend that she gave statement consistent with the contents of the FIR.

18. On the same lines is the evidence of PW 11 – Laxmibai. We, therefore, do not reiterate the same. She was suggested that the faces of the assailants were masked. She denied the same. Her evidence further indicates that there was no personal enmity between Pradip and Yogesh.

19. On the lines of the evidence of PW 10 – Seema and PW 11 – Laxmibai, we have evidence of PW 12 – Parvatibai, another victim. She too spoke in one voice. Her evidence is very much consistent with the evidence of PW 10 – Seema and PW 11 – Laxmibai. Only with a view to avoid repetition, we do not reiterate the same. In her examination-in-chief itself, the incident has been narrated by her. In the cross-examination, however, she admitted the informant had told him to have lodged the FIR and the contents thereof. When her statement was recorded, the informant was present in the hospital. This suggestion itself indicates that she was hospitalised as a result of the injuries suffered. She gave vital admission to the effect that since she was unable to speak, the informant narrated the incident. In short, it has been brought on record that her police statement was given by the informant (PW 1).

20. PW 14 – Dr.Dattatraya was Medical Practitioner, serving with Tukamai Hospital, Nanded. It is in his evidence that Seema,

Laxmibai, Parvatabai and Ramdas were brought to the hospital by their relatives. Since Ramdas was serious, he was referred to Apeksha Hospital, Nanded, where ICU facility was available. He examined Seema, Laxmibai and Parvatabai and noticed following injuries on their person:-

Injuries on the person of Seema:-

- 1) Incised wound on left hand 1 x 6 x 1 cm. on palmer aspect on X-ray examination there was fracture of 2nd and 3rd metacarpal with flexor tendon injury.
- 2) Incised wound on left foot 4 x 4 x 1 cm. on X-ray fracture 3rd, 4th, & 5th metatarsal with extension tendon injury.
- 3) Incised wound middle, index, little finger of right hand 1 x 1 cm.
- 4) Incised wound right forearm medial aspect 1 x 1 cm.

Injuries on the person of Laxmibai :-

- 1) Incised wound on forehead midline 1 x 3 cm. bone deep
- 2) Stab wound on left arm lateral aspect, with tear of biceps muscle 1 x 5 x 4 cm.
- 3) Incised wound on left thigh 1 x 4 x 2 cm.
- 4) Incised wound on right thigh 1 x 1 x 1 cm.
- 5) Incised wound on left forearm 1 x 1 x 1 cm.
- 6) Incised wound on right hand palmor aspect 1 x 3 x .5 cm.
- 7) Incised wound on right ring finger palmor aspect 1 x 1 cm.

Injuries on the person of Parvatibai :-

- 1) Incised wound on right postero lateral aspect of neck right side.
(a) 1 x 2 x 1 cm. (b) 0.5 x 2 x 1 cm.

- 2) Stab wound on left side of chest on lateral aspect 1 x 4 cm. and 10 cm deep.
- 3) Incised wound on right arm 1 x 2 x 1 cm.
- 4) Incised wound on left hand 1 x 3 x 1 cm.
- 5) Incised wound on left forearm dorsal aspect 1 x 1 x 1 cm.
- 6) Stab wound postero aspect on right ankle (a) lateral side 1 x 5 x 2 cm. (b) Medial side 1 x 5 x 2 cm.
- 7) Incised wound on left left (a) 1 x 4 x 1 cm. (b) 1 x 4 x 1 cm.

Their injury certificates find place at Exhs.86, 87 and 88, respectively. It is in his evidence that he issued medico-legal certificate. It is further in his evidence that he informed MLC to the Police Station, Vazirabad, on his letterhead. Same is placed on record (Exh.89). His opinion was solicited, as to whether, the injuries suffered by these injured (female) were possible with a particular kind of weapon shown to him. He gave his opinion vide Exh.91. The opinion indicates that the injuries suffered by these females were possible by a sharp cutting object like axe, knife (धारधार शस्त्र, उदा.कु-हाड).

21. The injury certificates of Seema, Laxmibai and Parvatabai indicate that they suffered the injuries, grievous in nature. All the injuries were suffered within six hours before their examination. A history of assault was given. They were indoor patient for some

days. Although the injury certificates indicate these victims to have suffered injuries grievous in nature, no other supportive medical paper like x-ray or anything has been placed on record. It is not known, as to why they were referred to private hospital instead of referring them to a primary health centre or Civil Hospital, Nanded. Be that as it may. The fact remains that PW10 to PW 12 suffered various kinds of injuries with sharp-edged weapons. They were admitted to Tukamai Hospital, Nanded, by little past 02.30 p.m. on 13.04.2015. The crime-scene panchnama (Exh.35) indicates that the dead body of Yogesh was lying there. He had suffered not less than 29 injuries, caused with sharp-edged weapons.

22. Then, there is evidence of other witnesses namely, PW 3 - Avadhoot, panch witness, in whose presence, clothes of Laxmibai, Seema, Parvatibai were seized under three different panchnamas Exhs.37 to 39, respectively. PW 4 - Shobhabai is panch witness to the seizure of Saree delivered by the appellant - Girjabai on 17.04.2015 under panchnama Exh.42; while Gangabai delivered her Saree on the same day in her presence under panchnama Exh.43.

23. PW 5 - Dnyaneshwar is panch witness as regards seizure of clothes of the appellants - Sahebrao, Prashant and Pradip under different panchnamas Exh.46 to 48. It is further in his evidence that

thereafter, he accompanied the police to the house of the appellants. Appellants - Gangabai and Girjabai delivered two iron rods each. Those were seized under panchnamas Exhs.49 and 50. Admittedly, the rod seized from Girjabai did not borne blood stains. It was not a recovery pursuant to the disclosure statement. It was suggested to him in cross-examination that while he had accompanied the police to the house of the appellants, the entrance door was open. The same indicates the defence to have admitted him to have accompanied the police to the appellants' house.

24. PW 8 - Sk. Mehboob is witness to the disclosure statement, allegedly made by appellant - Prashant on 15.04.2015, pursuant to which, the knife came to be seized from *Besharam* shrubs. It was seized under panchnama Exh.60; while the memorandum statement of Prashant is at Exh.59. PW 8 is panch witness to two other disclosure statements: one made by Sahebrao on 16.04.2015; and another made by Pradip on 17.04.2015. As per the evidence of this witness, Sahebrao made disclosure statement Exh.61 and pointed out the axe, which came to be seized under panchnama Exh.62; while, as per his further evidence, Pradip made disclosure statement, pursuant to which a sickle came to be recovered under panchnama Exh.64. We do not propose to rely on

the evidence of this witness. As per the prosecution case itself, as narrated by PW 1 (informant), Sahebrao wielded axe, Prashant used knife, while Pradip assaulted with sickle and the appellants Gangabai and Girjabai assaulted with iron rods. It means, as per the case of prosecution, it was only one knife used in commission of the crime and that too, by Prashant. As per the prosecution case itself, the photographs, inquest panchnama and post mortem report indicate the knife remained pierced in the thigh of deceased Yogesh. Same was removed while post mortem was conducted by PW 13 - Dr.Sachin and delivered it to the police. Thus, it is surprising, as to how come second knife came to be seized, pursuant to the disclosure statement made by Prashant (Exh.59) and same was recovered under panchnama (Exh.60). What kind of investigation it is!

25. It is reiterated that as per the prosecution case itself and from the reliable evidence in the nature of inquest and medical examination of the deceased and the photographs, the knife was found pierced in the thigh of deceased Yogesh. It was at situ. Then, how come a second knife came to be seized from the disclosure statement allegedly made by Prashant. The prosecution case that the appellants - Prashant, Sahebrao and Pradip made disclosure

statements, pursuant to which the weapons came to be seized, therefore, cannot be accepted. There is one more reason to disbelieve this piece of evidence of PW8 - Sk. Mehboob, that since, according to the informant, while the police reached the crime-scene, all the weapons of assault were lying thereat and the police took charge thereof. We have, therefore, every reason not to believe the evidence of PW 8- Sk. Mehboob and the Investigating Officer (PW 15) as regards the disclosure statements made by the appellants and recovery of the articles namely, axe, sickle and knife. Consequently, we do not propose to rely on the C.A. reports in relation to these articles.

26. The fact, however, remains that the evidence on record in the nature of photographs, inquest panchnama and post mortem report indicates that Yogesh was assaulted at the place mentioned in the crime-scene panchnama (Exh.35). His dead body was lying thereat until police arrived. Twenty-nine external injuries and even some internal injuries were noticed on his person during post mortem examination. The opinion of the Medical officer is that these injuries were caused by sharp-edged weapons. PW 10 - Seema, PW 11-Laxmibai and PW 12-Parvatibai too were referred to Tukamai Hospital. Their medical certificates referred to herein-above indicate them too have suffered injuries with sharp-edged weapon.

27. In the case in hand, Girjabai and Gangabai appear to have been falsely roped in. Both of them are alleged to have assaulted the deceased and other injured with iron rods. The medical evidence does not indicate the deceased or the injured to have suffered any injury with a hard and blunt object. As such, the medical evidence rules out the eye-witnesses account. We, therefore, find these female appellants to have been roped in. Although their sarees appear to have blood stains, those were recovered four days after the incident. The iron rod seized from one of them did not borne blood stains. We have already discarded the C.A. reports as regards the weapons seized, for the reasons given while appreciating the evidence of PW 8 – Sk. Mehboob, relating to the recovery of weapons, pursuant to the disclosure statements. As such, it is the case indicating the medical evidence being inconsistent with the eye-witness account. All the victims have suffered injuries with sharp-edged weapons, which were used by the appellants – Sahebrao, Prashant and Pradip. No weal-mark was found on the person of any of the injured or even the deceased. A benefit of doubt, therefore, needs to be extended to the appellants – Girjabai and Gangabai.

28. So far regards the evidence regarding assault by the appellants - Sahebrao, Prashant and Pradip on the deceased and the injured, same is proved by the evidence of PW 1 (informant) and the victims themselves. We do not find non-examination of any independent witness, in the facts and circumstances of the case, to be fatal to the prosecution case. Since the appellants - Girjabai and Gangabai are being acquitted, it would not be a case of unlawful assembly of the appellants. Section 34 of Indian Penal Code, therefore, would take place of Section 149 of Indian Penal Code. The appellants - Sahebrao, Prashant and Pradip assaulted the deceased and the injured victims. Conviction recorded by the trial court and the consequential sentence against them would, therefore, be maintained but with replacing Section 149 of IPC with Section 34 of IPC.

29. In the result, the following order:-

- (i) Criminal Appeal Nos.84 of 2019 and 663 of 2019 stand partly allowed.
- (ii) The judgment and order dated 27.10.2017, passed by learned Addl. Sessions Judge, Bhokar, Dist. Nanded, in Sessions Case No.20 of 2015, is modified to the extent of conviction as regards the

appellants namely, Sahebrao s/o. Madhavao Shirphule, Prashant s/o. Sahebrao Shirphule and Pradip s/o. Sahebrao Shirphule and they are hereby convicted for the offences punishable under Sections 302, 307 r/w. 34 and 120-B of Indian Penal Code. They are hereby acquitted of the offences punishable under Sections 143 and 147 of Indian Penal Code. The order of sentence to stand unaltered.

(iii) Criminal Appeal No.238 of 2019 is allowed.

(iv) The order of conviction and consequential sentence dated 27.10.2017, passed by learned Addl. Sessions Judge, Bhokar, Dist. Nanded, in Sessions Case No.20 of 2015, for the offences punishable under Sections 302 r/w. 149, 307 r/w. 149, 120-B, 143 and 147 of Indian Penal Code, is set aside to the extent of the appellants namely, Girjabai w/o. Prashant Shirphule and Gangabai w/o. Sahebrao Shirphule. They are acquitted of the said offences.

(v) The appellant namely, Girjabai w/o. Prashant Shirphule is on bail. Her bail bonds stand cancelled.

(vi) The appellant - Gangabai w/o. Sahebrao Shirphule is in jail. She be released forthwith, if not required in any other case.

(vii) Fine amount deposited by these appellants, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP

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