



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

CRIMINAL APPEAL NO. 218 OF 2018

Dattatrao @ Bandu Vithalrao Sarje,
Age : 28 years, Occ. Agri.,
R/o. Waranga (Phata), Taluka Umari,
District Nanded.

...Appellant
(Orig. accused No.2)

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station Akhada-Balapur,
Taluka Kalamnuri, District Hingoli.

...Respondent

AND

CRIMINAL APPEAL NO. 281 OF 2018

Amol s/o Narayanrao Patange,
Age : 28 years, Occu. Agri.,
R/o. Waranga (Phata), Tq. Kalamnuri,
Dist. Hingoli.

...Appellant

Versus

The State of Maharashtra

...Respondent

.....

Appearances :

Mr. S. S. Gangakhedkar – Advocate for the Appellant in Cri. Appeal No. 218 of 2018

Mrs. Rashmi Kulkarni h/f Mr. Avinash D. Hande – Advocate for Appellant in Cri. Appeal No. 281 of 2018

Mr. S. D. Ghayal – Addl. PP for Respondent/State

Mr. P. M. Shinde & Mr. P. M. Jadhavar – Advocate to assist PP

.....

AND

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 63 OF
2018

Balwant s/o Apparao Patange,
Age : 54 years, Occu. Agri.,

R/o. Waranga (Phata), Tq. Kalamnuri,
Dist. Hingoli.

...Applicant
(Orig. Victim)

Versus

1. The State of Maharashtra,
through the Police Inspector,
Akhada-Balapur Police Station,
Tq. Kalmnuri, Dist. Hingoli.
2. Chandrakant s/o Nanarao Patange,
Age : 33 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
3. Shivaji @ Suresh s/o. Nanrao Patange,
Age : 31 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
4. Nanarao s/o Dhondianna Patange,
Age : 65 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
5. Maroti s/o Nanarao Patange,
Age : 30 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
6. Premilabai Narayanrao Patange,
Age : 3342 yrs, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
7. Sanjay s/o Nanarao Patange,
Age : 35 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.
8. Narayan s/o Nanarao Patange,
Age : 44 years, Occu. Agricultural,
R/o. Waranga (Phata), Tq. Kalmanuri,
Dist. Hingoli.

Respondent Nos. 2 to 8
(Orig. Accused Nos. 3 to 9)

9. Amol s/o Narayanrao Patange,
Age : 20 years, Occupation : Agricultural,
R/o. Waranga (Phata), Taluka Kalamnuri,
District Hingoli.

10. Dattarao @ Bandu Vithalrao Sarje,
Age : 26 years, Occu. Agricultural,
R/o. Bhayegaon, Post Manur,
Tq. Umari, District Nanded.

...Respondent No. 9 to 10
(Orig. Accused Nos. 1 to 2)

.....

Appearances :

Mr. P. M. Shinde – Advocate for Applicant

Mr. S. D. Ghayal – Addl. PP for respondent no. 1

Mr. S. S. Gangakhedkar – Advocate for respondent no. 10

Mr. A. D. Hande – Advocate for respondent nos. 6 and 8

Mr. S. N. Rodge – Advocate for respondent nos. 2 to 5 and 7

.....

AND

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 137 OF 2018

The State of Maharashtra

...Applicant
(Orig. Complainant)

Versus

1. Amol s/o Narayanrao Patange,
Age : 20 years, Occupation : Agril.,
R/o. Waranga (Phata), Taluka Kalamnuri,
District Hingoli.

2. Dattarao @ Bandu Vithalrao Sarje,
Age : 26 years, Occupation. Agril.,
R/o. Bhayegaon, Post Manur,
Taluka Umari, District Nanded.

3. Chandrakant s/o Nanarao Patange,
Age : 25 years, Occupation. Agril.,
R/o. Waranga (Phata), Tq. Kalamnuri,
Dist. Hingoli.

4. Shivaji @ Suresh s/o. Nanrao Patange,
Age : 31 years, Occupation. Agril.,
R/o. As above.

5. Nanarao s/o Dhondianna Patange,
Age : 65 years, Occupation. Agril.,
R/o. As above.
6. Maroti s/o Nanarao Patange,
Age : 30 years, Occupation. Agril.,
R/o. As above.
7. Premilabai Narayanrao Patange,
Age : 42 yrs, Occupation. Agril.,
R/o. As above.
8. Sanjay s/o Nanarao Patange,
Age : 35 years, Occupation. Agril.,
R/o. As above.
9. Narayan s/o Nanarao Patange,
Age : 44 years, Occupation. Service,
R/o. As above.

Respondents
(Orig. Accused Nos. 1 to 9)

.....

Appearance :

Mr. S. D. Ghayal – Addl. P. P. for Applicant/State
Mr. S. S. Gangakhedkar – Advocate for respondent no. 2
Mr. A. D. Hande – Advocate for respondent nos. 7 to 9
Mr. S. N. Rodge – Advocate for respondent nos. 3 to 6 and 8

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

RESERVED ON : 12TH JANUARY, 2024
PRONOUNCED ON : 30TH JANUARY, 2024

JUDGMENT [Per Neeraj P. Dhote, J.] : -

1. These are the two Appeals under Section 374(2) of the Code of Criminal Procedure [for short 'Cr.PC.'] filed by the Convicts

challenging the Judgment and Order passed by the learned Additional Sessions Judge, Hingoli in Sessions Trial No. 45 of 2010, convicting them for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and sentencing them to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for one year. Other two are the Applications for leave to Appeal under Sections 378 of the Cr.P.C. against the acquittal of co-accused by the learned trial Court, by the Informant (Private Party) and the State.

2. Heard all the sides through their respective learned Advocates and learned Addl. PP. Perused the paper-book.

3. The prosecution's case as revealed from the Police Report is as under : -

3.1. Information was received by PW6 – Dilawarkhan s/o Taherkhan Pathan, who was posted as Assistant Police Sub-Inspector at Police Outpost Dongarkada on 20.07.2009 at about 12:00 noon that, a dead body of a man was lying in the forest at some distance from the road behind Sugar Factory and adjacent to Forest Nagar. Informant reached the spot and found a dead body at the distance of 25-30 fts., from the road. There were injuries on the dead body. He lodged the report at Exh. 97. Crime came to be registered for the offence punishable under Section 302 and 201 of the Indian Penal Code against

unknown person. The investigation was carried out. The inquest was done. The spot panchanama was conducted, dead body was sent for *post mortem*, the identity of the dead body was revealed as that of Vishal Balwant Patange, who was the son of PW1 – Balvant Apparao Patange. The statements of witnesses were recorded. It was revealed that there was land dispute between the father (PW 1) of the deceased and his family members on one hand and the accused persons and the acquitted co-accused on the other and the crime was committed out of the said dispute. The Appellants and the co-accused came to be arrested. The muddemal seized during the investigation was sent to the office of Chemical Analyzer for analysis. The vehicle used in the crime came to be seized. On completion of investigation, the Appellants along with the acquitted co-accused came to be charge sheeted.

4. The learned trial Court framed the Charges against the Appellants and acquitted co-accused vide Exh.7 for the offences punishable under Sections 120 (B), 109, 302 r/w 34 and 201 r/w 34 of the Indian Penal Code to which the Appellants and the acquitted co-accused pleaded not guilty. To prove the charge, the prosecution examined in all Nineteen (19) witnesses and brought on record certain documents. After the prosecution closed its evidence, the learned trial Court recorded the statements of the Appellants and the acquitted co-accused under Section 313(1)(b) of the Cr.PC. Their case is that of

total denial. Thereafter, the impugned Judgment and Order came to be passed by the learned trial Court acquitting the co-accused nos. 3 to 9 and convicting the appellants herein, who were the accused nos. 1 and 2.

5. It is submitted by the learned Advocates for the Appellants that the case is based on circumstantial evidence and though the prosecution examined the witness to show that the deceased was lastly seen in the company of Appellants, he is the chance witness whose testimony is unbelievable. It is submitted that the prosecution has not established the Charge by credible evidence and the chain of circumstances to prove the guilt of Appellants is not established. It is submitted that the Prosecution has failed to establish the motive behind the crime. It is submitted that the evidence of discovery at the instance of the Appellants is unworthy of acceptance. It is submitted that the evidence available on record do not prove the Charge against the Appellants and the learned trial Court has erroneously passed the impugned Judgment and Order convicting the Appellants. It is submitted that the Appeals be allowed. In support of their submissions, the learned Advocates for the Appellants have cited the following judgments.

[i] Shankar Vs. The State of Maharashtra,
2023 (3) BomCR (Cri) 238

[ii] Ravi Mandal Vs. State of Uttarakhand,
AIR 2023 SC 2554

- [iii] Brijlala PD Sinha v. State of Bihar,
(1998) 5 SCC 699
- [iv] Jaswant Gir v. State of Punjab,
(2002) 12 SCC 438
- [v] Sukhtam v. State of Maharashtra,
(2007) 7 SCC 502
- [vi] Babu v. State of Kerala,
2010 AIR SCW 5105
- [vii] Chandrapal v. State of Chhattisgarh (Earlier M.P.),
AIR 2022 SC 2542
- [viii] Sahadevan and Anr. V. State of T.N.,
AIR 2012 SC 2435
- [ix] Anter Singh v. State of Rajasthan,
AIR 2004 SC 2865
- [x] Krishan Mohar Singh Dugal v. State of Goa,
AIR 1999 SC 3842
- [xi] Hanuman Tulshiram Jadhav & Anr. Vs. State of
Maharashtra,
2011 (3) Bom.C.R. (Cri) 746
- [xii] Sahebrao Lukdu Jadhav & Anr. Vs. State of Maharashtra,
Through PI and Anr,
2014 (2) Bom.C.R. (Cri.) 63.

6. The aforesaid judgments are in respect of legal position in the cases based on ‘circumstantial evidence’ and evidence in the nature of ‘last seen together’. In the case based on circumstantial evidence, (a) the chain of circumstances from which the conclusion of guilt is to be drawn should be fully established (b) the facts so established should be consistent only with the hypothesis of the guilt of the accused (c) the

circumstances should be of a conclusive nature (d) the circumstances should exclude every possible hypothesis except the one sought to be proved and (e) there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

7. It is submitted by the learned Addl. P. P. that the prosecution has examined one witness whose testimony establishes that the deceased was last seen with the Appellants before his death. He further submitted that there was long standing property dispute between the parties and out of the same the crime is committed. It is submitted that through the evidence available on record, the prosecution has successfully established the Charges and the learned trial Court has rightly convicted the Appellants and the Appeal be dismissed.

7.1. It is further submitted that the acquittal of the co-accused needs to be set aside as the learned trial Court has erroneously acquitted them.

8. It is submitted by the learned Advocate for the Applicant in the Application for Leave to Appeal that the acquittal of the co-accused by the learned trial Court is improper. It is further submitted that the Appellants herein are rightly convicted by the learned trial Court and on

the basis of the evidence available on record, both the appeals are liable to be dismissed.

9. The evidence on record show that, the prosecution witnesses / evidence can be categorized as follows : -

- (i) Relatives of the deceased (PWs 1, 4, 5 and 8)
- (ii) Witness who saw the dead body (PW 11)
- (iii) Medical Evidence (PWs 10, 12 and 13]
- (iv) Pancha Witnesses (PWs 2, 3 and 9)
- (v) Evidence on last seen together (PW 7)
- (vi) Informant and the Police involved in the investigation
(PWs 6, 14 to 19)

10. Admittedly, the case in hand is based on circumstantial evidence. The evidence of PW1 – Balwant Apparao Patange, who is the father of deceased Vishal, show that he has one daughter by name Jayabai (PW 8). On 18.07.2009, deceased Vishal went to Parbhani to purchase books for competitive examination and stayed overnight in the house of Jayabai (PW 8). The evidence of PW8 – Jayabai show that she was the sister of deceased Vishal, and on 18.07.2009, the deceased Vishal had come to her house at Parbhani and he stayed in her house overnight. Her evidence further show that, on 19.07.2009, which was Sunday, deceased Vishal left her house at about 06:00 p.m. to 06:30 p.m. From the cross-examination of both these witnesses, it is seen that there is no challenge to the said aspects of deceased Vishal going to his

sister's house on 18.07.2009 and leaving her house in the evening of 19.07.2009.

11. The evidence of PW1 – Balwant show that he contacted Vishal over the phone on 19.07.2009 and the deceased informed him that he will return home by the train of 08:30 p.m. and his last contact with the deceased was around 10:30 p.m. when he reached near Ardhapur and, thereafter, there was no contact with his son Vishal. The evidence show that in the morning of 21.07.2009 at 09:00 a.m., he learnt about the death of his son Vishal. There is no challenge to this aspect of the evidence.

12. The evidence of PW11 – Gangadhar show that he was the auto-rickshaw driver and he used to ply his auto on Dongarkada-Waranga road and on 20.07.2009, when he was taking the passengers to Mahalingi, he saw the dead body of a male person by the side of the road and so he stopped his auto and informed about the same to the Dongarkada outpost police and proceeded further. There is no challenge to this evidence.

13. The evidence of PW6 – Dilawarkhan s/o Taherkhan Pathan show that in the year 2009 he was attached to the Balapur Akhada Police Station and was posted as Assistant Police Sub-Inspector at Police

Outpost, Dongarkada. One Press Reporter came to the Police Outpost at 12:00 noon on 20.07.2009 and informed him about the dead body of one male person lying in the forest adjacent to Forest Nagar and so he went on the spot and saw the dead body of a male person and he lodged report at Exh. 98 against unknown person. There is no challenge to this aspect of evidence.

14. The evidence of PW1 – Balwant show that the Police informed him that the dead body was kept at mortuary at Government Hospital at Nanded and his relatives went to Nanded and identified the dead body to be that of his son Vishal and after it was brought, the funeral was done.

15. The evidence of PW10 – Dr. Shivaji Munjaji Digraze show that he was the Medical Officer of Primary Health Centre, Dongarkada during the period 2009 – 10. On 20.07.2009, the dead body, which was well nourished and cold, was sent to him by the Police for *post mortem* and he performed the autopsy thereof. His evidence show that *rigor mortis* was present, tongue was inside the mouth, there was bleeding from the right ear. On external examination, he found the following injuries on the dead body.

- (i) Contusion mark round the neck 36 cm. X 0.5 cm.
- (ii) Contusion over frontal area 3 x 3 x 0.5 cm.
- (iii) Contused lacerated wound over parietal region 5 x 1 x 4 cm

- (iv) *Contused lacerated wound over occipital region 5 x 1 x 4 cm*
- (v) *Contused lacerated wound over occipital region 8 x 1 x 4 cm*
- (vi) *Abrasion on backside below neck between scapulas 4 x 3 cm.
on left scapula 3 x 2 cm.*
- (vii) *There was fracture of skull bone including occipital and parietal bone.*

. On internal examination he found the following injuries : -

- (i) *Contused lacerated wound over parietal region 5 x 1 x 4 cm.*
- (ii) *Contused lacerated wound over occipital region. 5 x 1 x 4 cm.*
- (iii) *Contused lacerated wound over occipital region. 8 x 1 x 4 cm.*

15.1. His evidence further show that the brain matter had come out and there was fracture to the hyoid bone. Pleura, right lung and left lung were congested. Peritoneum and cavity congested and stomach, small intestine, liver, pancreas, spleen and kidney were also congested. The injuries were homicidal. In his opinion, the death was due to *asphyxia, strangulation and head injuries to vital part - brain* and he issued provisional cause of death certificate which is at Exh. 111. He issued the *post mortem* report which is at Exh. 114. The evidence show that the death was caused before 16 hours of the *post mortem* and the injuries were possible by iron rod (article 13) and the injuries on the neck were possible by rope (article 14). The cross-examination show that the homicidal death of deceased Vishal is not disputed.

16. Coming back to the evidence of PW1 – Balwant, it shows that he had a dispute of landed property with the acquitted accused no. 7 – Premilabai Patange. He deposed that all the accused were abusing him because of the agricultural dispute and all accused were threatening to kill. According to him, they filed criminal cases against them. The cross-examination shows that the said evidence was an improvement from his previous statement given to the Police. This improvement is proved in the evidence of the PW18 – Vithal Santram Lambture, wherein the omission appears to be pertaining to the word 'All' and 'Them'.

17. The evidence of PW4 – Sharda Abasaheb Deshmukh shows that the deceased Vishal was her nephew and PW1 – Balwant was the cousin brother of her husband. Her evidence shows that her family had purchased the land from one Hanmanloo Tamloorkar on 12.05.2008 and the said Hanmanloo had purchased the said land from acquitted accused no. 7 – Premilabai Patange, who had also filed suit against them in respect of the said land and the Court passed order in their favour i.e. PW 4. Her evidence indicates that PW1 Balwant was supporting their family and, therefore, the accused persons had grudge against PW1 – Balwant and they decided to commit murder of anyone from their family.

18. The evidence of PW5 – Abasaheb Shamrao Patange shows

that he and his brother Renukrao Patange had purchased two acres of land each from Hanmanloo Tamloorkar in the name of their wives and said Hanmanloo had purchased the land from acquitted accused no. 7 – Premilabai Patange who was from their brotherhood. His evidence shows that PW1 Balwant was supporting them.

19. From the above evidence of PW 1, PW 4 and PW 5, it is seen that there was dispute between the relatives of PW 1 on the one hand and the Appellants and their relatives on the other hand. It is the prosecution's case that on account of land dispute, the Crime has been committed. The Prosecution's case primarily rests on the testimony of PW7 – Pralhad Bapusaheb Patange. As per the prosecution, he is the witness who had lastly seen the deceased Vishal with the Appellants. According to the learned Advocates for the Appellants, PW7 – Pralhad was the chance witness. In **Rajesh Yadav and another Versus State of Uttar Pradesh**, (2022) 12 SCC 200, which is considered in the judgment of **Ravi Mandal Versus State of Uttarakhand**, AIR 2023 SC 2554, relied upon by the learned Advocates for the Appellants, the Hon'ble Apex Court of India has considered the term 'chance witness' in detail. The relevant paragraphs are reproduced herein below.

29. *A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny*

may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in *State of A.P. v. K. Srinivasulu Reddy*, (2003) 12 SCC 660:

“12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as “chance witnesses” it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.”

*30. The principle was reiterated by this court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719: (SCC p.725, paras 21-23)*

*“21. In *Sachchey Lal Tiwari v. State of U.P.* [(2004) 11 SCC 410: 2004 SCC (Cri) Supp 105] this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passerby had deposed that he had witnessed the incident, observed as under:*

If the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression “chance witness” is borrowed from countries where every man's home

is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. *The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh [(1997) 4 SCC 192: 1997 SCC (Cri) 538], Harjinder Singh v. State of Punjab [(2004) 11 SCC 253: 2004 SCC (Cri) Supp 28], Acharaparambath Pradeepan v. State of Kerala [(2006) 13 SCC 643: (2008) 1 SCC (Cri) 241] and Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188]). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan [(2004) 10 SCC 632: 2005 SCC (Cri) 579]).*

23. *Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide Thangaiya v. State of T.N. [(2005) 9 SCC 650: 2005 SCC (Cri) 1284]). Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) and Darshan Singh (PW 4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned."*

20. The evidence of PW7 – Pralhad Patange show that he was the resident of Waranga Phata. On 19.07.2009, at 08:00 a.m., he and one Gangadhar Patange started for going to Sati (Pangra) to bring the daughter of said Gangadhar Patange for Panchami festival. They reached Sati (Pangra) between 12:00 noon to 01:00 p.m. The matrimonial relatives of Gangadhar's daughter did not send her due to sowing season. They started the return journey from Pangra in between 05:00 p.m. to 06:00 p.m. As there was no arrangement for travelling, they became late at Basmath. They came upto Bhokar Phata by truck

and stopped at Ambai Dhaba at Hiwara Phata for dinner. After the dinner, they stopped at Pan Shop. One luxury bus arrived there from which, deceased Vishal Patange alighted. The appellant nos. 1 and 2 were there in Omni car. The appellants called deceased Vishal and had a talk with him. Thereafter, deceased and both the appellants went towards Dongarkada by Omni Van. On 22.07.2009, he came to know that Vishal was murdered. He identified the Appellants as the said two persons.

21. The cross-examination of PW 7 – Pralhad Bapusaheb Patange show that he knew deceased Vishal and both the Appellants and he was on talking terms with them. The above evidence to the extent that *the appellants called the deceased Vishal* was an improvement from his police statement and it has been proved by the defence in the evidence of PW18 – Vithal Santram Lambture.

22. Admittedly, the said Gangadhar Patange with whom this PW 7 – Pralhad Bapusaheb Patange had gone to Sati (Pangra) is not examined. The above evidence of PW 7 – Pralhad Bapusaheb Patange show that though the deceased and the Appellants were at a distance of 30-40 ft from where he was standing, he did not call them. His evidence show that it was raining in that night and though there was no arrangement for travelling, he did not try to have lift in the said Omni

Van wherein the Appellants had come. In the light of the evidence that the relations between both the sides were strained and they were on inimical terms, the evidence of PW7 – Pralhad Bapusaheb Patange that deceased Vishal alighted from the bus and joined the company of the Appellants in the car is required to be seen with doubt. Further, the deceased Vishal was on his return journey to his home at Waranga (Phata), as seen from the evidence of PW8 – Jayabai it is unlikely that he will get down in middle of his journey at Ambai Dhaba. According to PW1-Balwant, when he contacted deceased Vishal over the phone on 19.07.2009, deceased Vishal told him that he would return home by the train. In the light of this evidence of PW 1 - Balwant, the evidence of PW 7 – Pralhad Bapusaheb Patange regarding travelling of deceased Vishal in the Bus, is required to be seen with doubt.

23. Though in the evidence of PW7 Pralhad it has come that they started their return journey from Sati (Pangra) in between 05:00 to 06:00 p.m., his evidence is completely silent as to at what time he had seen the deceased Vishal and the Appellants together. Whereas the evidence of PW1 – Balwant show that deceased was at Ardhapur when he contacted him on phone at 10:30 p.m. The evidence of PW7 further show that he came to know about the incident of murder of Vishal on

22.07.2009 and his statement was recorded on 22.07.2009 but he did not disclose anybody that he had seen the Appellants and the deceased Vishal together at that night on the Ambai Dhaba. In the backdrop of this evidence on record, the evidence of PW7-Pralhad that, he had seen the deceased Vishal and the Appellants lastly together on 19.07.2009 is required to be seen with doubt.

24. Moreover, in the light of the testimony of PW4 – Sharda Abasaheb Deshmukh and PW5 – Abasaheb Shamrao Patange, the evidence of PW7 – Pralhad Bapusaheb Patange becomes unworthy of acceptance. The evidence of PW4 - Sharda and PW5 - Abasaheb show that on 19.07.2009 i.e. on the date PW7 – Pralhad claims to have seen the appellants and the deceased Vishal together, the Appellants had come to their field for sowing and the Appellants had obstructed them from sowing operation. The evidence of PW4 show that their family restrained the Appellants and so they beat them and filed false complaint against their family. This evidence of the prosecution show the presence of Appellants on 19.07.2009 at the field. There is no evidence in respect of time of this incidence at the field. With this evidence on record, the prosecution's evidence that deceased Vishal lastly seen with the Appellants is unworthy of acceptance.

25. Another piece of evidence is that of PW12 – Dr. Sheshrao

Narwade, who examined both the appellants and found injuries on the person of both the appellants. In the backdrop of the evidence of PW4 – Sharda Abasaheb Deshmukh and PW5 – Abasaheb Shamrao Patange that, on 19.07.2009, the appellants had come to their field for sowing and when their family members restrained them the appellants beat them and filed false complaint against them, the injuries on the appellants cannot be attributed with the homicidal death of deceased Vishal. The said injuries on the person of the appellants were old abrasions within the age of 72 hours and according to this PW12 Doctor, the abrasions are possible by rubbing any hard, blunt and rough surface.

26. The other evidence is in the nature of discovery and seizure of the belongings of deceased Vishal at the instance of the appellants. On the point of discovery and seizure of articles, the prosecution has examined PW3 – Raosaheb Adkine as a panch witness. His evidence show that one Tommy (Iron Rod) and Nylon Rope were seized at the instance of the Appellant No. 1 – Datta under the memorandum at Exh. 71 from the road side pit near Nanded road under the seizure memorandum at Exh. 74. His evidence further show that three (3) boots (shoes) from different places from one field and school bag, books, pair of socks and two photographs appearing in the book were seized from the river-bed at the instance of appellant no. 2 under the memorandum at Exh. 72 and seizure panchanama at Exh. 73. Though

the said articles are identified by PW1 Balwant and PW8 Jayabai as that of deceased Vishal, it is strange how three (3) boots can be that of one person i.e. of deceased Vishal. Evidence of this witness show that, all the articles were recovered from open place accessible to all. Moreover, the reports of Chemical Analyzer do not take the prosecution's case any further, as the result of analysis were inconclusive.

27. The other evidence brought on record by the prosecution is that of the policemen, who have carried the viscera, DNA kit for the Chemical Analysis and the investigation carried out by them and discovery at the instance of the acquitted co-accused.

28. There is one aspect which needs to be noted and that is in the evidence of PW1 Balwant, who is the father of deceased Vishal, it has come that his father was prosecuted for the murder of Dadarao Patange and two (2) criminal cases were pending against him (PW1-Balwant) in the Court at Kalamnuri. His evidence further show that there are Dance Theatres (Tamasha Theatres) at Waranga Phata, wherein dance is performed and he read in newspaper that one Ashok Banger was murdered near the Dance Theatre and one Sheshrao Deshmukh was murdered at Waranga (Phata). Suggestion is given to him that deceased Vishal used to always attend the dance performance at the Dance Theatres.

29. The evidence brought on record by the prosecution do not conclusively establish the guilt of the appellants in the crime. The prosecution has failed to prove the circumstances so as to form a complete chain which would point towards guilt of the appellants. The circumstances brought on record by the prosecution do not rule out the possibilities that the crime was committed by someone else other than the appellants.

30. In the result, the appeals are required to be allowed and the conviction and sentence awarded to the appellants by the trial Court is required to be interfered with to that extent.

31. So far as the applications filed by the State and the PW1 Balwant against the acquittal of the co-accused by the trial Court concerned, we find no merit in the said applications seeking leave to file appeal as the prosecution has utterly failed to establish the charge against the respondents in the said application for leave to appeal. *Sans* evidence against the co-accused, the learned Trial Court has rightly acquitted the co-accused. Thus, the said applications are liable to be rejected.

32. Having regard to the above, we pass the following order : -

ORDER

[i] The Appeals are allowed.

- [ii] The conviction and sentence recorded by the learned Additional Sessions Judge, Hingoli in Sessions Trial No. 45 of 2010 against the appellants for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and sentencing them to undergo life imprisonment and to pay fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for one year, is quashed and set aside.
- [iii] The Appellants are acquitted of the offence punishable under Section 302 r/w 34 of the Indian Penal Code.
- [iv] The Appellants be set at liberty, if not required in any other case.
- [v] The fine amount if deposited by the Appellants, be refunded to them.
- [vi] The muddemal articles be dealt with as directed by the learned trial Court.
- [vii] The applications filed by the State and PW1-Balwant for leave to Appeal are dismissed.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde