



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

CRIMINAL APPEAL NO.667 OF 2016

Abdul Sayed s/o Abdul Karim
Age 29 years, Occu. Driver,
R/o Bazar Chowk, Behind Police Station,
Himayat Nagar, Taluka Himayat Nagbar,
District Nanded
(At present the appellant is in
Nanded District Prison, Nanded
Taluka and District : Nanded)

... APPELLANT
(Orig. Accused No.2)

VERSUS

1) The State of Maharashtra
through the Police Station,
Himayatnagar, Tq. Himayatnagar,
District Nanded.

(Notice to the respondent to be served
through the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad)

2) Raju @ Rajiv s/o Vishwanath Hanwate,
Age 36 years, Occu. Not known,
R/o Ambedkar Chowk, Himayatnagar,
Tq. Himayatnagar, Dist. Nanded

... RESPONDENTS

.....
Mr. Rajendra Deshmukh, Senior Advocate with
Mr. Vishal Chavan & D.R. Deshmukh, Advocate for appellant
Mrs. Dr. Kalpalata Patil Bharaswadkar, A.P.P. for R.No.1.
Mr. A.D. Soman, Advocate for R.No.2 (appointed)
.....

WITH
CRIMINAL APPEAL NO.113 OF 2017

The State of Maharashtra
through Police Station, Himayatnagar,
Tq. Himayatnagar, District Nanded. ... APPELLANT

VERSUS

- [1) Abdul Karim Abdul Wahed,
Age 65 years, Occu. Business.]
- 2) Abdul Sayed Abdul Karim,
Age 26 years, Occ. Driver.
- [3) Abdul Riyaz Abdul Karim,
Age 31 years, Occu. Business,]
- [4) Abdul Wahed Abdul Karim,
Age 30 years, Occu. Driver.]
- 5) Abdul Wajid Abdul Karim,
Age 35 years, Occu. Business.
- [6) Abdul Javed Abdul Karim,
Age 24 years, Occ. Business.]
- 7) Abdul Salim Abdul Karim,
Age 42 years, Occ. Business
- [8) Abdul Imran @ Ibrahim @ Immu
Abdul Bari, Age 19 years,
Occu. Education.]
- [9) Abdul Baki Abdul Karim,
Age 38 years, Occu. Business.]

All R/o Himayatnagar,
Tq. Himayatnagar, Dist. Nanded.

- 10) Raju @ Rajiv s/o Vishwanath Hanwate,
Age 36 years, Occ. Not Known,
R/o Ambedkar Chowk, Himayatnagar,
Tq. Himayatnagar, Dist. Nanded

... **RESPONDENTS**
(No.1 to 9 Orig. Accused
No.10 Orig. Informant)

**Application seeking leave to appeal
refused as against R.Nos.1, 3, 4, 6, 8 & 9
Criminal Appeal admitted only as against
respondents No.5 & 7**

.....
Mrs. Dr. Kalpalata Patil Bharaswadkar, A.P.P. for appellant
Mr. Rajendra Deshmukh, Senior Advocate with
Mr.Vishal Chavan & D.R.Deshmukh, Advocate for R.No.5 & 7
Mr. A.D. Soman, Advocate for R.No.10
.....

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

DATE : 21st November, 2024

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

Both these appeals, one by the convict, and the other by the State against acquittal, are taken up together since the challenge therein is to a judgment and order of conviction and consequential sentence and acquittal of some of the original accused as well, passed by the Court of Additional Sessions Judge, Bhokar in Special (Atrocity) Case, No.2/2013. Nine accused were proceeded against by filing the

charge sheet for offence of committing murder of one Nirmalabai by running tractor over her person. They were also prosecuted for certain offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution, to bring home the charge, examined 14 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the same, convicted the original accused No.2 (hereinafter referred to as the appellant) (Criminal Appeal No.667/2016) for offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.5000/-, in default to suffer further R.I. for 2 months. The Trial Court, at the same time, acquitted the appellant and rest of the accused namely accused No.2 to 9 of all the other offences they were charged with. The State, therefore, preferred an application for grant of leave to prefer appeal against acquittal. This Court, vide order dated 14/3/2017, allowed the said application partly, granting leave to appeal against acquittal of original accused No.5 and 7 (for short the respondents).

3. Long and short of the prosecution case, as can be gathered from the evidence on record, was :-

4. Nirmalabai was unmarried lady of 50 years old at the relevant time. She had two sisters and one brother. She would hold a licence to run a fair price shop. For few years, she had run the said shop from the premises of the original accused (including the appellant and the respondents herein). What could be gathered from the evidence on record was that, actually the shop was being run by the original accused. It appears that, Nirmalabai was paid a lumpsum amount per month. A month before the fateful day, i.e. 16/10/2012, Nirmalabai expressed her desire to original accused No.1 Abdul Karim, that since her nephew/ adopted son (P.W.1 Raju) was then grown-up, she therefore be allowed to shift the shop to her newly constructed premises. Allowing her to do so was necessarily a financial loss to the family of the original accused. They were, therefore, opposed to her proposal.

5. On 15/10/2012, she had been to a Government

godown, wherein foodgrains were stored, to fetch foodgrains for distribution to the cardholders attached to her shop. Some of the original accused were present at the godown. They opposed her from taking the foodgrains. She was manhandled and even assaulted as well. P.W.1 Raju (her adopted son) used to be always with her with a view to assist her in every matter. It was like, she used to be in his shadow or vice versa. They, therefore, returned and went to the Himayatnagar Police Station and lodged the report (Exh.75) against some of the original accused.

6. While they were on their way home, they received a call from Godown Keeper Hanuman Meshram (P.W.6), asking them come the very day and take away the foodgrains. They informed him that, by that time they did not have a truck to carry the foodgrains and they would come tomorrow (next day) by 12.00 noon.

7. In view of the earlier day's incidence at the godown, Nirmalabai, P.W.1 Raju along with his two friends first went to the Police Station. P.H.C. Shri Chavan (P.W.7) was

present there. They requested him to accompany him as a protection to take the foodgrains and carry to the house of Nirmalabai. While they were there, original accused No.1 made a phone call to P.W.7 Chavan and got to know Nirmalabai and others were there. P.W.7 Chavan informed them that he did talk to original accused No.1 and he assured to create no hindrance in taking foodgrains. Nirmalabai, P.W.1 Raju and two others, therefore, left the Police Station by little past 10.30 a.m. for godown. They were proceeding on foot. On the way, a red colour tractor bearing no number plate came from opposite side. Nirmalabai and others were proceeding keeping the left side of the road. The tractor suddenly came to the wrong side and knocked down Nirmalabai. She thereby fell in a roadside ditch. The respondent Nos.2 and 7 were in the company of the appellant, who was driving the tractor. It was the case of the prosecution before the Trial Court that all other respondents gathered on motorbikes and in a four-wheeler as well. All of them lifted Nirmalabai from the ditch and thrown on the road. The appellant again started the tractor and ran over the same on the head of Nirmalabai. Her head

was crushed thereby. All the culprits thereafter fled. P.W.1 Raju gave information to the concerned Police Station on cell phone. Police arrived in no time. She was taken to the Hospital. He lodged the report of the incident (first information report) Exh.76). A crime vide C.R. No.94/2012 for offences punishable under Sections 302, 143, 147, 148, 149 of the Indian Penal Code and Sections 3(1)(x), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered by 12.00 noon against the accused at Police Station, Himayatnagar.

8. The investigation was entrusted with P.W.10 Yeshwant Solanke. The appellant and the respondents were arrested. The crime scene panchanama was drawn. Inquest and autopsy on the mortal remains were conducted. Clothes on the person of the deceased and that of the appellant and the respondents and others were seized. A search of the premises wherein fair price shop was run, was made. Some documents were seized therefrom. All the articles were sent to Regional Forensic Science Laboratory, Aurangabad. The statements of persons acquainted with the facts and

circumstances of the case were recorded. Since Nirmalabai belonged to Scheduled Caste, and some of the accused had hurled abuses over her caste, the provisions of the Atrocities Act were invoked. On completion of the investigation, a charge sheet was filed. The Trial Court framed the Charge (Exh.10). All the then accused pleaded not guilty. Their defence was of false implication. According to them, Nirmalabai met with a vehicular accident and died therein.

9. As stated above, the Trial Court convicted the appellant and acquitted rest of the accused on appreciation of the evidence in the case.

10. Heard. Learned Senior Advocate representing the appellant and the respondents would submit that, both the so called eye witnesses had in fact not seen the incident. They reached the accident spot later on. It was doubtful as to whether P.W.2 Gautam was really there. P.W.1 informed the Police Station to have learnt a tractor to have bumped Nirmalabai. All the station diary entries relied on by the prosecution were fabricated. The F.I.R. was ante-dated. All

the witnesses examined in the case belonged to one and the same caste/ community. In spite of the fact that the incident took place at day time and at a place which happened to be busy with traffic and surrounded by habitat, no independent witness was examined. The learned Senior Advocate took us through the evidence of both, P.W.1 Raju and P.W.2 Gautam and adverted our attention to their cross-examination to suggest that almost entire examination-in-chief of both of them was improvement over their F.I.R. and police statement respectively. According to learned Senior Advocate, the investigation was tainted and malafide. He did not draw a panchanama to find whether Nirmalabai had really constructed a new house so as to shift the fair price shop from the premises of the appellant to her own. He submits that, it was P.W.1 Raju who wanted to grab the fair price shop. He was the son of brother of deceased Nirmalabai. He was said to be taken in adoption. He wanted to immediately inherit the fair price shop licence. It is he who might have played some mischief. According to the learned Senior Advocate, how come the investigating officer disclosed the tractor number

while it was unnumbered. The appellant's tractor was seized from his residence. The F.I.R. was ante-dated. Satish and Sandeep have not been examined. According to learned Senior Advocate, the prosecution failed to bring home the charge beyond reasonable doubt. He, therefore, urged for allowing the appeal.

11. On the question of appeal against acquittal, the learned Senior Advocate would submit that, all other male members were away in Nanded. All the family members have been falsely implicated. By virtue of acquittal of the respondents, presumption of their innocence has been reinforced. They could not be said to have shared common intention to commit murder of Nirmalabai. He, therefore, urged for dismissal of the State's appeal.

12. The learned A.P.P. and the learned Advocate for the respondent/ intervener took us through the evidence on record. They would submit that, P.W.1 Raju used to be in the company of the deceased all along. The previous day's incident speaks in volumes. It was a prelude. The F.I.R. was

registered within an hour of the incident. The clothes on the person of the respondents were stained with blood of the deceased. The same indicates their involvement in the crime in question. Both the learned Advocates took us through the evidence on record to urge for dismissal of the appellant's appeal and allowing the State's appeal.

13. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

14. Admittedly, Nirmalabai (deceased) was unmarried. She had two sisters and a brother. P.W.1 Raju was her brother's son. About two months before she breathed her last, she had taken P.W.1 Raju in adoption. P.W.1 Raju was around 25 years of age. His evidence indicates that, he was residing along with Nirmalabai in her house at Ambedkar Nagar, at the town— Himayatnagar. It is also an admitted fact that Nirmalabai held a licence to run a fair price shop. She would operate the shop from the premises of the original accused. A

month before the incident, she had requested original accused No.1 to allow her to shift the shop to her newly constructed premises. He and all other family members were opposed to the same. The same indicates that, there was some tacit understanding between Nirmalabai and the appellant and other family members. There is no evidence to indicate that Nirmalabai had taken the premises of the appellant on rent. Desire of Nirmalabai to quit the premises must have been taken as a happy moment for the appellant and his family members since without going for eviction suit they would have got vacant possession of the premises occupied by her. The recitals of Exh.75 and the evidence of P.W.5 Baban indicates or lead us to infer that though the licence was held by Nirmalabai, the shop was run by the appellant and his family members. Allowing her to shift the shop to her own premises and operate therefrom was necessarily a financial loss to the appellant and his family. In our view, therefore, this is a motive behind the crime.

15. P.W.1 Raju testified that, one month before the incident, Nirmalabai had informed original accused No.1 that

she wanted to shift the fair price shop to her newly constructed premises. A dispute thereafter arose between both of them. He further deposed that, prior to 15/10/2012, Nirmalabai deposited the amount by Challan towards price of foodgrains to be distributed to the cardholders. On 15 October, he along with his cousin brother Satish, friend Sk. Jabi accompanied Nirmalabai to the Government godown. The Godown Keeper made an entry to that effect in the record. Meantime, original accused No.1 and accused No.9 came there on motorcycle. After having realised Nirmalabai was about to take away the foodgrains to her own premises, they picked up quarrel with her. Meanwhile, other accused namely Javed, Wajed and Imran came there in a Scorpio. She was manhandled, abused and assaulted as well. She was given a threat to her life. True, the evidence that the original accused gave threat to her life was an improvement over his F.I.R. and the report of the incident lodged by Nirmalabai. His evidence further disclosed that they directly went to the Police Station from the godown. The Police Officer Meshram was present. He was reluctant to record the report. Therefore, they telephoned one social

worker, namely Subhash Darwande. He came to the Police Station. Thereafter it was P.W.7 Anandsingh Chavan, who recorded the report lodged by Nirmalabai. The report is at Exh.75. It has been admitted in evidence. The gist of the said report pertain to the incident that took place at the Government Godown by 1.00 p.m. on 15/10/2012. True, P.W.2 Gautam gave admission that after discussion, a report was lodged. We find nothing wrong therein. Since the incident took place at the Government Godown and deceased Nirmalabai being a lady, it was but natural for her to discuss amongst the persons who were with her at the time of the incident and lodged the report. It was in fact not treated as F.I.R. A station diary entry (Exh.167) thereof was made.

16. The aforesaid evidence of P.W.1 Raju and Exh.7 gets corroborated by the evidence of P.W.7 Anandsingh Chavan, we do not propose to reproduce his evidence in toto. Suffice it to say, his examination-in-chief is consistent with the evidence of P.W.1 Raju and the contents of Exh.75. As regards the incident that took place at the Government Godown, P.W.7's evidence indicates that, he, therefore, went

to the house of original accused No.1. His sons had gone to Nanded. The office of Executive Magistrate was closed. He meant to say that, he wanted to initiate chapter case. Since other male members were not there, he prepared notice under Section 149 of the Cr.P.C. and served it on original accused No.1. The said notice finds place at Exh.165.

17. The aforesaid evidence further gets reinforced by the evidence of P.W.6 Hanuman Meshram, who testified that, Nirmalabai and other had come to the Police Station at the relevant time on 15 October and lodged report (Exh.75). We are conscious of the fact that it is the quality of the evidence and not plurality thereof that matters. The fact is, however, that, all the aforesaid witnesses are consistent with the incident that took place at the Government Godown. There is one more witness in that regard. He is none other than a Godown Keeper, P.W.5 Baban. He testified that, on 15 October, Nirmalabai visited the godown by 12.00 noon. One Raju was in her company besides two other persons. He produced permit and recorded the quantity of grains which she wanted to lift/ take. He went on to testify that, in the meanwhile, original

accused No.1 Abdul Karim came there. He informed her that till that time he was managing the business from his house and how she could take the grains from the godown to her own house. He said her, "*You have become too smart*", exchange of words took place between the two. P.W.5 Baban went on to state that, he then went into the godown to attend to other licence holders. On his return, he was told by Nirmalabai that Abdul Karim assaulted her with kicks and fist blows. She was asking others to accompany her to the Police Station for lodging the complaint. She and others then left the godown.

18. P.W.5 Baban is an independent witness. From his evidence and from the evidence referred to hereinabove, the fact that Nirmalabai had been to the godown by 12.00 noon on 15 October to fetch the foodgrains had been duly proved. Abdul Karim and others came there. They manhandled, abused and even beat up, has also been reinforced by the evidence of P.W.1 Raju and P.W.5 Baban, and the contents of Exh.75, which is under signature of deceased Nirmalabai. This incident is a prelude to the main offence. Exh.75 would be admissible in evidence under Section 32(1) of the Evidence

Act, i.e. when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

19. The evidence of P.W.1 Raju further disclosed that, on the same day, after a while, the Godown Keeper made them a call and asked them to take away the foodgrains the same day. He was, however, informed that no vehicle was available and they would be visiting the Godown tomorrow i.e. on the next day. He asked them to come by 12.00 noon and take away the foodgrains.

20. In view of the incident that took place at the godown on 15 October, it was but natural for Nirmalabai and P.W.1 Raju to first go to the Police Station and seek police protection to fetch the foodgrains. P.W.1 Raju testified that, he accompanied Nirmalabai to the Police Station. He telephoned his two friends to come to the Police Station. They requested P.W.7 Chavan to accompany them to the Godown so that they could fetch foodgrains and carry the same safe. On return,

P.W.7 Chavan told him that he had been to the house of original accused No.1 and even godown as well. He told accused No.1 had assured him that he would not create any hurdle to allow Nirmalabai to fetch foodgrains. He, therefore, did not accompany them.

21. P.W.7 Chavan testified on the same lines. His evidence indicate that, up to 10.30 a.m., Nirmalabai, P.W.1 Raju and others two were at the Police Station. During their presence, he had received a phone call of accused No.1. Accused No.1 realised presence of the trio at the Police Station. P.W.7 Chavan even informed original accused No.1 that Nirmalabai left the Police Station for godown. This indicates the appellant and others, if any, got inkling that Nirmalabai was proceeding to the godown to fetch foodgrains. Admittedly, P.W.7 Chavan and another Police Officer were placed under suspension for having not assisted Nirmalabai in the matter. According to him, one Sandeep Palshikar was approached and he had given assurance to give understanding to appellant and his family members.

22. As such, the evidence so far referred to above undoubtedly indicate that, on the previous day i.e. on 15 October 2012, some of the original accused had abused and manhandled Nirmalabai at the godown. She, therefore, went to the Police Station and lodged the report (Exh.75). She wanted to run the fair price shop on her own in her newly constructed premises. It was not necessary for the investigating officer to find whether she has any ample premises to run the shop. The reason therefor was, she was a licence holder, entitled to run the shop from whatever premises she would be pleased to. The evidence further disclosed that, by little past 10.30, Nirmalabai, P.W.1 Raju, P.W.2 Gautam and one another left the Police Station for godown. They were proceeding on foot. There is presumption under Section 114(f) that the common course of business has been followed in particular case.

23. The aforesaid evidence indicates that, Nirmalabai along with P.W.1 Raju and P.W.2 Gautam and two others proceeded towards godown on foot. The appellant's family

members had come to know the same from P.W.7 Chavan. While they were on their way to godown, a red colour tractor came from opposite side. It left its right track. It was taken to the wrong side. It knocked down Nirmalabai. She thereby fell in a ditch. From the evidence referred to hereinabove, it is amply proved that, P.W.1 Raju was in the company of Nirmalabai that time. He testified that the respondents were sitting on the tractor by the side of the appellant, who was at the wheel of the tractor and knocked down Nirmalabai. He further testified that, other acquitted accused came there on motorbikes and Scorpio and all of them lifted Nirmalabai and thrown her on the road. This piece of evidence of P.W.1 Raju is exaggerated one. In India, the principle "*falsus in uno falsus in omnibus*" is not applicable. We are also conscious of the fact that, now-a-days a tendency is there that when two or three members of the family are involved, one or two are added thereto to teach the family a lesson. We have, therefore, to sift the grain from the chaff. While the respondents No.2 and 3 were sitting by the side of the appellant, it cannot be presumed that they had shared common intention or were aware that the

appellant was going to knock down Nirmalabai with a dash of a tractor. Both of them, therefore, cannot be said to have shared common intention with the appellant. It is true that, the C.A. reports (Exhs.62 and 63) indicate the blood group of the deceased was "B". This blood group was ascertained from the clothes on her person at the time of the incident. There is no challenge thereto. The evidence of P.W.1 Raju gets reinforced that these respondents lifted Nirmalabai from the ditch. He (P.W.1) lied that the other respondents and these two thrown Nirmalabai on the road, in the F.I.R. he has stated that they kept/ placed Nirmalabai at the road side. There is a vast difference between placing a person at the road side and throwing her away. This is a material omission amounting to contradiction. The same indicates that P.W.1 Raju also wanted to implicate the two respondents in the crime in question. What has been stated by him in the F.I.R. is to be relied on and his evidence and the evidence of P.W.2 Gautam that the respondents and others, after picking Nirmalabai from the ditch, threw her on the road has to be discarded. The act of the respondents placing Nirmalabai by the road side can in no

way be termed to be an incriminating act. Had they really intended to kill her, they would have assaulted her while she was in the ditch itself. The finding of blood of the blood group of the deceased on the clothes of the respondents is due to their act of lifting the deceased from the ditch and placing her at the road side. That cannot be taken as an incriminating circumstance.

24. Both P.W.1 Raju and P.W.2 Gautam testified in one voice that the appellant took the tractor reverse and ran the back side wheel of the tractor over the head of the deceased twice. The evidence of P.W.1 Raju indicates that the tractor did not bear the number plate.

25. P.W.2 Gautam testified consistent with the evidence of P.W.1 Raju. According to him, he was summoned by P.W.1 to the Police Station. He, therefore, went there and thereafter accompanied them for proceeding towards godown. According to him, after the incident, he left the place. The learned Senior Advocate took exception to the conduct of P.W.2 Gautam. According to him, had he really been there, he

ought to have continued to be there and reported the police from his cell phone. It is only in the evening he went to the Police Station in response to the police call and gave a statement. The learned Senior Advocate meant to say that P.W.2's presence at the crime scene was doubtful. We are not in agreement with the learned Senior Advocate. P.W.1 Raju was all along consistent about having called his friends including P.W.2. His presence at the police station was made out by P.W.7 Constable Chavan. It was but natural for them that while proceeding, P.W.2 Gautam was following P.W.1 Raju and Nirmalabai. According to P.W.2 Gautam, he and another were following Nirmalabai and P.W.1 Raju. The gap between them was not more than 25 ft. It was but natural that mother and son duo would be together while others were strangers to the mother, would necessarily keep themselves behind.

26. Had P.W.1 Raju really not witnessed the incident, he could not have narrated in the F.I.R. the colour of the tractor and the fact that the tractor did not bear the number plate. He even could not have stated that the respondents lifted her from the ditch. His presence at the crime scene is thus made out. In

response to his phone call, police arrived at the crime scene. Learned Senior Advocate heavily relies on the information given by P.W.1 Raju on phone. A station diary entry to that effect finds place at Exh.168, which reads thus :

"यावेळी राजू विश्वनाथ हानवते यांचा फोन आला की माझ्या आत्याला टॅकरने उडविले आहे व ती मरून पडली आहे. अशी माहिती मिळाली. सदर माहिती मिळताच आम्ही **PC 487** यांना फोन लावून कळविले व घटनास्थळ कडे जाण्यास सांगितले म्हणून नोंद."

27. The station diary entry regarding Nirmalabai's presence at the police station to seek help finds place at Exh.167. The learned Senior Advocate wanted to make much capital of Exh.168, wherein P.W.1 Raju appears to have reported that he learnt his aunt (adoptive mother) had been knocked down by a tractor. The learned Senior Advocate stresses on the line that P.W.1 Raju informed the police to have learnt about the incident. Our attention to the cross-examination of P.W.1 Raju in that regard was also drawn, who too testified that P.W.1 Raju accordingly informed the police. The same suggests P.W.2's presence with P.W.1 Raju. Immediately after this stray admission, both the witnesses had categorically denied that they were not in the company of

Nirmalabai to proceed towards the godown. We have already observed above that, Nirmalabai was unmarried lady. P.W.1 Raju used to be with her all along to assist her. His presence at the Police Station about half an hour before the incident has already been made out by the evidence of P.W.7 Chavan. His evidence further indicates that, Nirmalabai, P.W.1 Raju and other two unknown persons left the Police Station for godown and thereafter within 15 minutes the incident took place. Both P.W.1 Raju and P.W.2 Gautam immediately thereafter denied to have not seen the incident and they were giving false evidence. At the cost of repetition, it is stated that, had P.W.1 Raju not witnessed the incident, he could not have reported in the F.I.R. the colour of the tractor. The fact that it was unnumbered, the further fact that the respondents lifted Nirmalabai from the ditch. In response to his phone call, one P.C. rushed to the crime scene and took him to the Police Station. Necessarily, on the suggestion of the defence itself, half an hour was spent in recording the F.I.R. The F.I.R. is registered by 12.00 noon i.e. within an hour of the incident. All these facts go long way to indicate that P.W.1 Raju and P.W.2

Gautam did not part company of Nirmalabai. After they left the Police Station, their presence with her has to be assumed in view of the previous day's incident and proved as well.

28. The incident cannot be said to be an accident like hit and run. The crime scene panchanama (Exh.113) indicates the tyre marks. The panchanama has not been taken exception to. The tractor was seized from the house of the appellant and his family members within three hours after registration of the crime. The seizure panchanama (Exh.115) indicates that it was a red colour tractor bearing no number plate. The panchanama indicates that the rear right side wheel had blood on it. The investigating officer (P.W.10) cut the tyre and took the piece stained with blood. It was sent to FSL. The C.A. report (Exh.62) indicates the tyre of the tractor was stained with human blood. All these facts go a long way to indicate that the tractor involved in this crime was none other than which was seized by the investigating officer. Admittedly, the family of the appellant owns the tractor. Pending trial, they took the custody of the tractor on supratnama. The Assistant Motor Vehicle Inspector Goraknath Kolhe (P.W.9) was

examined. His evidence indicates that he examined the vehicle to find no mechanical defect with it. This fact further reinforces that it was not an accident but intentional running over the tractor on the head of Nirmalabai.

29. We need not refer to the evidence of other witnesses since the same were not referred during the submissions made by learned Advocates. It is true that, cross-examination of both P.W.1 Raju and P.W.2 Gautam indicates that they have made a lot of improvements in their examination-in-chief, number of paragraphs have been adverted to. We are in agreement with the learned Advocate that both the witnesses have stated much more over and above their F.I.R. and police statements. We have closely perused the same. We do not propose to reproduce the same. It is the part of record. If we propose to reproduce the same in the judgment, it would become very bulky. Those improvements in no way could be termed to be material omissions amounting to contradictions so as to disbelieve their evidence. Whatever material omissions were there, have already been referred to hereinabove. F.I.R. is not an

encyclopaedia.

30. In short, appreciation of the evidence referred to hereinabove lead us to conclude that Nirmalabai was holding a licence to run a fair price shop. The fair price shop was being run from the premises of the appellant and his family members. The premises was not taken on rent. The evidence on record indicates that the shop was being run by the appellant and his family members for not less than 5 years. Necessarily Nirmalabai was given a lumpsum amount in consideration thereof. A month before she breathed her last, she had expressed her desire to original accused No.1 that she wanted to run the shop from her own premises, meaning thereby she wished to run the shop on her own. P.W.1 Raju was taken in adoption by her. He would reside with her. The same suggests that, both of them were going to operate the shop from Nirmalabai's premises. On the given day, she had been to the godown to fetch foodgrains. The evidence of Godown Keeper vouch for the same. That time, original accused No.1 and others opposed her, abused and even beat her up. She had, therefore, no option but to approach the

Police Station. She lodged the report of the said incident vide Exh.75. As per the understanding between Nirmalabai and the Godown Keeper, the foodgrains were to be fetched on the following day. In view of the previous day's incident, she was apprehensive that the appellant and his family members would come to the Godown and restrain her from fetching the foodgrains. Her fear turned out to be true. With a view to secure police help for fetching foodgrains, she along with P.W.1 Raju and P.W.2 Gautam went to the Police Station first. P.W.7 Chavan, Head Constable dealt them with. During that interaction, he had received phone call of accused No.1. He informed him that Nirmalabai and others have come. He told them to have asked the original accused not to disturb her. He told her that accused No.1 had assured him that there would be no obstruction. He, instead of accompanying her, asked them to directly go to the godown. He then testified that, they left the Police Station for godown by little past 10.30. Nirmalabai, P.W.1 Raju and P.W.2 Gautam proceeded towards godown on foot. Within 15 to 30 minutes, a tractor driven by appellant came from opposite side. The tractor did not have

any mechanical defect that time. The crime scene panchanama indicates that the deceased was at the extreme left side of the road. The tractor driver (appellant) took the tractor to the opposite side and knocked her down. When she was removed from the ditch and placed on the road, he ran over the tractor on her head twice. P.W.1's evidence in that regard is reinforced by the F.I.R. (Exh.76) and the circumstantial evidence that the tractor was seized within three hours thereafter. It was red colour. It was seized from the premises of the appellant and his brothers. The tractor did not bear number plate. The crime scene panchanama indicates the rear right wheel had human blood on it. The tyre piece was cut and sent to the C.A. The C.A. report indicates the tractor borne human blood. The respondent had necessarily been at the crime scene. They lifted Nirmalabai from the ditch and placed on the road. Thereby clothes on their person got stained with the blood of the deceased. C.A. report (Exh.62) reinforce the same.

31. In view of the above, we find no merit in the appeal against conviction. The Trial Court has rightly convicted the

appellant. We are at one with the finding recorded by the Trial Court.

32. So far as regards appeal against acquittal is concerned, we have already observed that although the presence of the respondents with the appellant was made out, there is nothing to indicate that they had shared common intention with him to commit murder of Nirmalabai. Their act of lifting her from the ditch and placing her at the roadside cannot be termed to be incriminating for the reasons stated hereinabove itself. When two view are possible, the one which favours the respondents (acquitted accused) must prevail. In view of the same, the State's appeal against acquittal too is liable to be dismissed.

33. In the result, both the appeals stand dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-