



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

CRIMINAL APPEAL NO.335 OF 2018

Mohd. Arifoddin s/o Gulam Dastagir
Farooqui, Age 46 years, Occu. Service,
R/o Police Quarters, Building No.21,
Police Headquarters, Parbhani

... APPELLANT

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station, Parbhani
Taluka & District Parbhani

2. Vaishali Khanderao Sidgor,
Age major, Occu. Housewife,
R/o 241, 242, Police Quarters,
Parbhani, Taluka and
District Parbhani

... RESPONDENTS

.....
Mr. P.S. Paranjape, Advocate for appellant
Mrs. Vaishali Choudhari, A.P.P. for respondent No.1.
Mr. P.C. Mayure, Advocate for respondent No.2.
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 15th April, 2024.

Date of pronouncing judgment : 6th May, 2024.

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

The challenge in this appeal is to a judgment and
order of conviction and consequential sentence, dated

16/3/2018, passed by learned Adhoc Additional Sessions Judge-1, Parbhani in Sessions Trial, No.54/2014. Vide impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.50,000/- with default stipulation. The appellant's father was also prosecuted along with him. The father has been acquitted. Neither the State nor the victim has preferred appeal against acquittal.

2. The facts, in brief, giving rise to the present appeal are as follows :-

Both, the appellant and Sodgir (deceased) were the members of constabulary, District Parbhani. Both of them were residing in Police Quarters (residences) at Parbhani itself. The appellant suspected Sodgir (deceased) to have illicit relationship with his wife. The appellant had, in the past, requested Sodgir to disassociate himself from his (appellant's) wife. The appellant had even threatened to kill him if he failed to do so.

6/2/2014 was one of the days of Urus of "Turabul Haq Dargah", Parbhani. Sodgir was deputed on Bandobast

duty there. The appellant along with his father came there. The appellant picked up quarrel with Sodgir and rained multiple blows on him with a knife. Sodgir on his own went to Civil Hospital in an autorickshaw. He unfortunately succumbed during the treatment. Police officials of Traffic Department on duty there detained the appellant then and there. P.W.1 Vishnu, Assistant Police Inspector was on duty there. He immediately informed the Control Room and the head of the Kotwali Police Station, Parbhani on his Walkie-Talkie. P.W.13 Chate (P.I.) along with staff rushed to the crime scene. The appellant was handed over to their custody. The appellant was detained. P.W.12 Vaishali, widow of the deceased Sodgir was informed. She was taken to the Civil Hospital. She lodged the F.I.R. (Exh.103) at 7.30 Hrs. in the evening. She alleged therein that the wife of the appellant had thrown waste water towards her. There was, therefore, quarrel between both of them. She also alleged therein that the appellant suspected her husband to have illicit relationship with his (appellant's) wife.

3. The initial investigation was carried out by P.W.13 Chate. On the directions of the higher ups, the investigation was handed over to Additional S.P., P.W.19 Pranay Ashok.

4. During the investigation, scene of offence panchanama was drawn. Inquest (Exh.67) on the deceased was conducted. His mortal remains were subjected to post mortem examination. The clothes on the person of the deceased and the appellant were seized. The appellant's motorcycle was also taken into custody from nearby of the crime scene. The appellant made a disclosure statement, pursuant to which a knife used in commission of the crime came to be seized. Statements of persons acquainted with the facts and circumstances were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet before the Court of Chief Judicial Magistrate, Parbhani. The learned Judicial Magistrate, First Class, Court No.1, Parbhani committed the case to the Court of Sessions, Parbhani. The case, in turn, was assigned to the Trial Court for trial in accordance with law.

5. The Trial Court framed the Charge (Exh.32) against the appellant and his father for committing murder of Sodgir in furtherance of their common intention. The appellant pleaded not guilty. His defence was of false implication. The appellant placed on record his submissions in writing. According to the appellant, he served the Police Department for 28 years. He

was present on Roll Call duty at 8.30 p.m. on 5/2/2014. The head of R.P.I., Police Headquarters given him a duty of delivery of passport related documents to the concerned Department in Nagpur. He, therefore, went to Nagpur in a private luxury bus. He reached Nagpur by 6.00 in the morning on the fateful day. He went to the concerned office by 10.30 in the morning and handed over the envelope containing the documents. He started his return journey by 12.00 noon and reached Parbhani by 8.30 p.m. While he reached his home, P.I. Chate (P.W.13) and other police officials took him to Kotwali Police Station and arrested him. It is further his case that, he learnt about the murder of Sodgir from his colleagues while he was in custody of police. According to him, some unknown persons had assaulted Sodgir at the place whereat the Urus was being celebrated. His relations with P.W.1 Vishnu and P.W.2 Prasad were not good. Other witnesses and panchas examined in the case were relatives of deceased Sodgir. Although deceased Sodgir was in Police Department, he would work for Bhartiya Janata Party (B.J.P.). He was close to then Deputy Chief Minister. With the political influence, the investigation was assigned to Addl. S.P. Pranay Ashok (P.W.19). Thus, the appellant was falsely implicated in the crime in question.

6. To bring home the charge, prosecution examined 19 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellant as stated above.

7. Heard. After having heard learned counsel for the appellant, he placed on record short notes of his arguments. First he referred to the prosecution case and then countered the same. According to him, an innocent person (appellant) has been involved in the crime sheerly out of politics and internal rivalry among the constabulary. According to him, the case was not such as it was required to be investigated by an officer of the rank of Addl. S.P. Our attention was drawn to the evidence of P.W.19 investigating officer Pranay Ashok. The Trial Court has observed while recording of evidence, this witness was being prompted by someone during recording of his evidence. According to the learned counsel, the same suggests an officer of I.P.S. rank went to such an extent. Then our attention was adverted to an application preferred by the widow of the deceased for transfer of the case from the Trial Court to some other Court. According to learned counsel, it was at the behest of the authorities concerned and the A.P.P., Incharge of the

case. Preferring such application was nothing short of an act to pressurize the Trial Court.

8. Turning to the evidence on record, the learned counsel would submit that, it was elementary principle of law that when an information as to commission of a cognizable offence is given to an officer Incharge of the police station, the same is to be registered as F.I.R. According to him, when P.W.1 Vishnu claimed to have reported the Headquarters and the P.S.O. of the Kotwali Police Station, the same ought to have been treated as F.I.R. For the reasons best known to the authorities concerned, the matter reported by P.W.1 Vishnu has been suppressed from the Court. According to him, the statement of P.W.12 Vaishali, widow of the deceased, was recorded as an F.I.R. with a view to make out motive for the appellant to commit the offence. The so called eye witnesses namely P.W.1 Vishnu, P.W.2 Prasad and P.W.3 Ranjeetsingh did not leave the crime scene either to lodge the report at the concerned police station or take the injured Sodgir to Civil Hospital for treatment. It was an Urus and hundreds of persons had gathered there. The incident allegedly took place in broad daylight. In spite of availability of independent witnesses, none of them has been examined. When the appellant was

overpowered then and there, there was no opportunity for him to conceal the weapon of assault. According to the learned counsel, Section 27 of the Evidence Act has been blatantly misused in the case. The so called eye witnesses could have taken charge of the knife with which Sodgir was assaulted. The dead body of Sodgir was brought to the Civil Hospital by Police Constable Shri Murkute. The same suggests that Sodgir on his own did not go to the hospital nor any rickshaw driver took him to the hospital in auto. Shri Murkute has not been examined.

9. The learned counsel would further submit that, on the previous day the appellant was present at his Headquarters on a roll call duty by 8.30 p.m. He was assigned the duty to deliver certain documents to Passport Office in Nagpur. He accordingly went to Nagpur by private luxury bus. After having done his duty, he returned to Parbhani by 8.30 p.m. According to learned counsel, the burden of proof is on the prosecution to prove that the appellant was present at the Urus place and committed the crime. The appellant shall not be mistaken to have taken a defence of 'alibi'. In his written submissions, the learned counsel posed not less than 11 questions which arise on appreciation of the evidence. Only with a view to avoid repetition, we do not propose to enlist them below since those

get covered with his oral and written submissions. He would further submit that, a Police Constable who was said to have delivered passport related documents to Passport Office in Nagpur, after getting it back from the appellant, was not examined as a witness. The one (P.W.16 Santosh Mohale), who was examined in proof of taking back the envelope from the appellant's residence, was not examined during investigation i.e. his statement under Section 161 Cr.P.C. was not recorded. No original station diary entries were placed on record. The appellant was not subjected to medical examination no sooner he was taken into custody. According to the learned counsel, all these facts lead to unerring conclusion that the prosecution evidence fell short to bring home the charge. He would further submit that the same would be fortified by the fact that the appellant's father, against whom there was no material, had even been prosecuted for the offence along with the appellant. The learned counsel ultimately urged for allowing the appeal.

10. The learned A.P.P. and the learned counsel representing the victim would submit that, its an open and shut case. They took us through the evidence of the prosecution witnesses and relied on the reasons given by the Trial Court in

support of the impugned judgment and order. The reliance was placed on Section 41 of the Code of Criminal Procedure to make out a distinction between arrest and detention. They ultimately urged for dismissal of the appeal.

11. Considered the submissions advanced. Perused the evidence on record and documents relied on. Also perused the impugned judgment and order. Let us appreciate the same.

Admittedly, the day i.e. 6/2/2014 was one of the days of Urus of Turabul Haq Dargah at Parbhani. Deceased Sodgir was admittedly deputed on Bandobast duty at the place of the Urus. It is also not in dispute that Sodgir was assaulted by little past 2.30 p.m. at the place at which he was on duty. The question is, whether the assault was made by the appellant, or unknown persons as alleged by the defence.

12. P.W.1 Vishnu was A.P.I. attached to Police Headquarters, Parbhani. He was on traffic Bandobast duty at the place of Urus. It is in his evidence, P.C. Shri Javed, Shri Kakde and Lady Constable Smt. Shinde were on duty with him at the same place. There was a Make-Shift Police Chowki raised for Bandobast. It was located at Hanuman Chowk.

Sodgir (deceased) arrived in police uniform. The appellant followed him after a while. The appellant was clad in civil dress. There was some exchange of words between appellant and Sodgir. A quarrel ensued between the two. He, therefore, went close to them. He saw the appellant assaulted Sodgir with number of knife blows. The assault was indiscriminate as regards parts of the body of Shri Sodgir. It is further in his evidence that, he tried to rescue Sodgir. In the process, clothes on his person were stained with blood of Sodgir. His evidence further indicates that, there was one old person (father of the appellant – since acquitted).

13. The evidence of P.W.1 Vishnu further indicates that, Sodgir himself went to Civil Hospital in auto. P.W.1 Vishnu claimed to have immediately contacted Control Room and Kotwali Police Station, Parbhani on Walkie-Talkie. Lady Constable also informed the same on Wireless. Police officials of Kotwali Police Station arrived in official vehicle on the spot. Police officer P.W.13 Chate was one of them. It is further in the evidence of P.W.1 Vishnu that the appellant was handed over to Shri Chate and his staff. They took him to Kotwali Police Station. He did not leave the place as he was required to be there to control the traffic and crowd gathered there. It is further

in his evidence that, he learnt Sodgir to have passed away, by little past 3.15 p.m.

14. It is further in his evidence that, motorcycle of the appellant, the Scooty of lady constable Smt. Shinde and motorcycle of himself were parked in the nearby. He identified his clothes stained with blood shown to him during recording of his evidence. According to him, he was sporting white shirt and Khaki pant (uniform of traffic police).

15. P.W.1 Vishnu was subjected to a searching cross-examination. It is brought on record that, people from Marathwada and even across the State of Maharashtra attended the Urus. He was further suggested that, traffic branch made separate arrangement for Bandobast at the place of Urus. A separate Make-Shift Police Chowki was raised. It is further in his evidence that, for about 10 to 12 days, people across the State of Maharashtra visited the Dargah whereat Urus was celebrated. There was Hanuman Chowk in the nearby, adjacent to Compound wall of MSEB Office. There was a Police Chowki. It is also brought on record during his cross-examination that, towards southern side at a 5 ft. distance of Hanuman Chowk Police Chowki, a Make-Shift Traffic Police

Chowki was raised. One P.H.C. was on duty as P.S.O. There was wireless facility available in the tent. For attending wireless duty, a police constable was deputed at the Police Chowki. The witness clarified that, it was not wireless, but Walkie-Talkie facility was available. He admitted to have had with him a Walkie-Talkie instrument. Similar instrument was with Shri Prasad (P.W.2). It is further in his evidence that, he was on duty at that place from 2.00 p.m. to 8.00 p.m. Same were the duty hours of P.W.2 Prasad. According to him, there was nothing as regards recording/ registering of information at Hanuman Chowk Police Chowki. There was no entry in the register kept at Hanuman Chowk Police Chowki about he and Prasad were on duty there. In our view, the same may be natural since they belonged to Traffic Department. Hanuman Chowk Police Chowki was under control of Kotwali Police Station. Duty register is maintained at Police Headquarters. Police officials on duty at Headquarters did not have fixed duty hours. The work of assignment of duty takes place by 8.30 p.m. According to him, A.S.I. Shri Dhoke and P.C. Shri Shinde were their immediate predecessors on duty at the place of Urus. A person on duty continues to do his duty until his successor reports on duty. He admitted that, whatever message or information was forwarded to headquarters by

Police Station, the same is taken note of in the register. The police staff of Hanuman Chowk Police Chowki were also on duty. It is further in his evidence that, Sodgir (deceased) was not on duty at their tent. He (Sodgir) was not on duty at Kotwali Police Station as well. He was not appointed on duty through Kotwali Police Station. It is further in his evidence that, he knew the appellant since 1990. He claimed to have known the appellant's full name and given the same accordingly in his statement. He was confronted with his police statement to find omission therein about first name of the appellant. His statement to police is also silent to record registration numbers of two-wheelers belonging to him, appellant and lady Constable Manisha Shinde. The distance between Hanuman Chowk Police Chowki and Kotwali Police Station was of 1 Km. It is only on receipt of his message, Shri Chate and others had come to the Urus place. Addl. S.P. and other police staff had also been to the spot of the incident, immediately after he gave the message. He did not remember whether he caught hold of the appellant. It is further in his evidence that, police officials attached to Hanuman Chowk Police Chowki were on duty at Urus place did not accompany Chate and Addl. S.P. to Kotwali Police Station. It is further in his evidence that, he did not go to Kotwali Police Station or headquarters during his duty hours at

the place of Urus nor his signature was obtained on any writing by Chate or Addl. S.P. during his duty hours at Urus place on the fateful day.

16. It was specifically suggested to P.W.1 Vishnu in his cross-examination that he caught hold of the appellant during he made assault. That time he did not take out the knife from the hand of the appellant. The suggestion given, is reproduced below for better appreciation.

"सदर घटनेनंतर मी आरोपीला हनुमान चौकात तात्पुरती चौकी व असणारी पोलीस चौकीच्या समोर आम्ही आरोपी नं.१ यास पकडले. मी आरोपी नं.१ यास तो मारहाण करत असतांना पकडले आहे हे खरे आहे. जेव्हा मी आरोपी नं.१ यास मारहाण करत असतांना पकडले त्यावेळी तो चाकूने मारहाण करत होता त्यावेळी तो चाकू मी हस्तगत केला नाही. हे म्हणणे खरे आहे की ज्यावेळी मी आरोपी नं. १ यास पकडले त्यावेळी त्याच्या हातात कोणतेही हत्यार नव्हते."

"It is true to say that, I caught hold accused No.1 during assault by him. When I caught hold accused No.1 at the time of assault, that time I had not taken knife by which accused No.1 was assaulting. It is true to say that, when I caught hold accused No.1, at that time in his hand not having any weapon."

17. It is further in his evidence that, he did not take Sodgir to Make-Shift Traffic Police Chowki or Hanuman Chowk Police Chowki. He claimed ignorance to which place injured Sodgir went after the assault. He admitted that, he would have asked one of his colleagues to accompany the injured to hospital. He admitted to have not directed any autorickshaw driver to take Sodgir to hospital. He did not visit Civil Hospital after having learnt Sodgir to have passed away. His statement was recorded on the following day by police officer Shri Chate (P.W.13). Police Officer Shri Pranay Ashok (P.W.19) was also present during recording of his statement. He admitted to have no opportunity to give statement by going over to the police station nor the police officer had an opportunity to call him for recording his statement at the concerned police station on the given day. According to him, therefore, only Shri Chate (P.W.13) and P.W.19 Pranay Ashok recorded his statement at the Police Chowki situated at Hanuman Chowk, Parbhani. His evidence further indicates that, in spite of he asked the passers-by to intervene to rescue Sodgir, none of them came forward. He, however, admitted to have not called his staff in the tent and a staff of permanent Police Chowki, for rescuing Sodgir. He claimed ignorance about others who were on duty along with deceased at the place of Urus. He denied the suggestion

that Sodgir was beaten up by some unknown person at the place of Urus and he succumbed thereby at Civil Hospital, Parbhani. According to him, it did not happen that police officer of Kotwali Police Station caught hold of the appellant at the scene of offence. His attention was drawn to his police statement wherein such matter is appearing. His evidence that it was he who caught hold of the appellant did not find place in his police statement (it is an omission). He denied that the appellant had not been to the place of incident by 2.30 p.m. on the given day, as he had left for Nagpur the previous evening.

18. It is further in his evidence that, deceased Sodgir was earlier working in Traffic Branch. He knew deceased and Prabhakar Giri. Both of them were trapped by the A.C.B. He did not notice blood stains on the uniform of his colleague deputed on traffic Bandobast duty at that place. He further testified that he did not approach his higher-up Shri Farooqui to seek his permission to leave the spot to give information of the incident, at Kotwali Police Station. It was specifically suggested to P.W.1 Vishnu that both, the appellant and the deceased were residing in Police residential quarters. He, however, claimed ignorance about the Quarter Number in which the appellant was residing. It is brought to our notice that P.W.1 Vishnu first read

over his police statement and gave evidence before the Court. According to him, he did so on the directions of learned A.P.P. Incharge of the case. It was further suggested to him that during the post mortem examination on the mortal remains of Sodgir, his blood sample was obtained and some of the blood was applied on his shirt. The same suggests the appellant to have admitted the shirt of P.W.1 Vishnu to have blood stains of the blood group of the deceased. It is specifically the blood of the deceased to have been found on the uniform shirt of P.W.1.

19. He was suggested that, police officer Shri Chate, Addl. S.P. and other police staff had been to the spot of the incident. According to him, they arrived there in response to the message given by him.

20. Only with a view to avoid repetition, we do not propose to refer and reproduce the evidence appearing in the examination-in-chief of P.W.2 Prasad and P.W.3 Ranjeetsingh, who were on duty along with P.W.1 Vishnu as A.S.I. and Home Guard respectively. The evidence in examination-in-chief of both these witnesses is on the lines of the evidence of P.W.1. Both of them were on duty at the place of Urus. They claimed to have seen the appellant stabbed Sodgir with knife blows.

According to them, P.W.1 Vishnu contacted headquarters and Kotwali Police Station on his Walkie-Talkie and related about the incident. It is also in their evidence that, lady constable Smt. Manisha Shinde was also on duty with them.

21. In the cross-examination, P.W.2 Prasad admitted to have not made any entry in the duty register about Manisha Shinde to have been on duty at the place of Urus. She was assigned wireless duty. In his cross-examination, he admitted that P.W.1 Vishnu and Javed were not standing on Circle (platform). He further admitted that, the uniform of police officials of Traffic Department and Civil Police was different. According to him, Sodgir had never been with him for traffic duty. He too was residing in police quarters, No.9. He admitted to have not given the description of clothes, P.W.1 Vishnu was clad in during duty hours. He did not state exact words of hot exchange between the appellant and deceased. He personally settled the quarrel between the two. His clothes were not stained with blood. Same was the case of the clothes on the person of Home Guard, P.W.3 Ranjeetsingh. It is further in his evidence that, none of the three, P.W.1 to P.W.3 tried to take out the knife from the hands of the appellant. He admitted to have not brought Sodgir at all to the Make-Shift Police Chowki or

Hanuman Chowk Police Chowki. It is further in his cross-examination that it was P.W.1 Vishnu who handed over custody of the appellant to P.W.13 Chate. He too had given information to P.W.13 Chate about the incident. Shri Chate did not take it down nor obtained his signature thereon while he visited the crime scene. Similar thing happened with P.W.1 Vishnu when he had given information on Walkie-Talkie. He denied to have not seen the incident. According to him, when the appellant was caught hold of, knife was not in his hand. He did not give registration number of two-wheelers including that of the appellant, parked in the nearby. According to him, his statement was recorded by 6.00 in the evening by P.W.13 Shri Chate. He denied the appellant to have not assaulted Sodgir (deceased). He learnt Sodgir to have passed away by 4.00 p.m. He did not rush to Civil Hospital thereafter. According to him, he did not give any information to the Police Chowki located at the Civil Hospital, Parbhani. He did not know who admitted Sodgir to Civil Hospital. He admitted that, the wireless facility was there at Hanuman Chowk Police Chowki only with a view to give or receive information regarding any disturbance in maintenance of law and order.

22. The cross-examination of P.W.3 Ranjeetsingh

indicates that, his statement was recorded in Hindi and translated into Marathi. It is reiterated that, his evidence in examination-in-chief is consistent with the evidence of P.W.1 Vishnu and P.W.2 Prasad.

23. P.W.4 Shivaji was a P.H.C. at the relevant time. Deceased Sodgir was his colleague. It is in his evidence that he recognised the appellant. When the incident took place, he was at his residence. He learnt about the incident on telephonic message. He, therefore, rushed to the Civil Hospital. He saw Sodgir to have received multiple injuries. He then went to the house of Sodgir. He brought his wife (P.W.12 Vaishali) to the Civil Hospital. Thereafter the Medical Officer on duty declared Sodgir dead. It is further in his evidence, about 5 to 6 months before, he and Sodgir were doing duty jointly and even one month before the incident, they were on joint duty at Shaniwar Bazar, Parbhani. It is in his evidence that, the appellant had come to them and asked Sodgir to disassociate himself from his wife. He had even threatened to kill him if he did not discontinue the relationship with his wife.

24. P.W.5 Vitthal is a witness to a disclosure statement made by the appellant on 12/2/2014 at 9.40 a.m. It is in his

evidence that, the appellant made a statement to have concealed the knife at a particular place and he would take it out. His statement (Exh.63) was recorded. He signed the same as a witness. It is further in his evidence that, the appellant then led him and the police officials to a D.P. near MSEB Office and pointed out the knife. It was seized under the panchanama (Exh.64). This witness in his cross-examination, admitted to have belonged to a political party, B.J.P.

25. P.W.6 Vilas is a witness to the inquest panchanama (Exh.67). Our attention has been drawn to Column No.13 in the inquest panchanama. The said column is blank. The title of the said column is "More Information, if any". (अधिक माहिती, संशय असल्यास).

26. According to learned counsel for the appellant, when the inquest was conducted, everything was in the knowledge of the police officials. The said column is blank to state it to be a case of assault made by the appellant on the deceased. The same indicates the police officials were not in the know that the assault was made by the appellant. Our attention has, however, not been drawn to the cross-examination of the police officer who drew the inquest

panchanama. In short, the officer was not offered opportunity to explain as to why the said column remained blank. In our view, non-filling in the Column No.13 in the inquest panchanama (Exh.67) is of little consequence in view of there being voluminous and reliable evidence on record.

27. P.W.7 Gajanan is a witness to multiple panchanamas drawn by the investigating officer. Exh.82 is a panchanama drawn in his presence. It relates to the seizure of clothes of P.W.1 Vishnu. He identified the clothes of P.W.1 Vishnu. It was drawn at 8.40 of 6/2/2014.

Then he is a panch witness to another panchanama (Exh.83), relating to seizure of clothes of the deceased, delivered by police staff Shri Murkute at 9.30 p.m. True, Shri Murkute has not been examined. Those were the clothes in the nature of shirt, banian, Khaki colour police uniform, blue cap etc. He is also panch witness to the panchanama (Exh.84) relating to seizure of clothes of the appellant. It was drawn at 7.00 in the morning of 7/2/2014. He gave description of the clothes seized under the panchanama. He is again a witness to the another panchanama (Exh.85), relating to seizure of clothes of original accused No.2 (since acquitted). It was drawn on

10/2/2014.

28. It is not known as to why the investigating officer of I.P.S. rank availed the services of one and the same person (P.W.7) for 4 different panchanamas. The fact, however, remains that, the suggestion was given that the blood of the deceased was obtained and applied on the shirt of P.W.1 Vishnu before it was being seized. Without there being further to show the same, it is just unpalatable to accept such a suggestion. The fact remains that, blood of the deceased was found on the uniform shirt of P.W.1 Vishnu, who was on duty at the very place when he witnessed the incident and even intervened in the quarrel.

29. P.W.8 Sachin is a witness to the scene of offence panchanama (Exh.89). We do not propose to refer to his evidence in extenso since there is no dispute about the place whereat the incident took place. The sketch of the scene of offence has also been given in evidence.

30. P.W.9 Sanjay, P.W.10 Santosh and P.W.11 Govind were the police constables who carried muddemal articles to the concerned Forensic Science Laboratories on the directions

of the investigating officer. These witnesses placed on record office copies of the forwarding letters bearing endorsements indicating acknowledgement given by the concerned authorities thereon. These documents are Exhs.93, 95 and 101 respectively.

31. P.W.12 Vaishali (widow of the deceased) testified that she was residing in police quarters (Building No.21). The appellant too was residing in police quarters. Just 5 to 6 days before the incident, the wife of the appellant had thrown waste water on her and therefore, there was quarrel between her and the wife of the appellant. It is further in her evidence that, the appellant was suspecting her husband (deceased) to have illicit relations with her (appellant's wife). Her evidence further indicates that, the police staff took her to Civil Hospital on the fateful day. On having been to the Civil Hospital, she realized her husband to have passed away. She, therefore, lodged the F.I.R. (Exh.103).

32. True, P.W.12 Vaishali is not an eye witness to the incident. Learned counsel for the appellant, therefore, submitted that, she was introduced as a witness and made to lodge the F.I.R. only with a view to make out a false case of

motive to be attributed to the appellant.

33. P.W.13 Chate was Incharge Police Inspector of Kotwali Police Station. It is in his evidence that, at 2.50 p.m., on 6/2/2014, P.W.1 Vishnu informed him on Walkie-Talkie that one Police Constable was stabbed at Jamb Naka, Hanuman Chowk. He took entry of the said message in the station diary and along with his staff, went to the spot of the incident. It is further in his evidence, P.W.1 to P.W.3, one Javed and lady constable Smt. Shinde were there. He made enquiry with P.W.1 Vishnu. He (P.W.1), in turn, related him about the incident. We do not propose to reproduce the same. The evidence of P.W.13 Shri Chate indicates that the entire happening at the scene of offence was related to him by P.W.1 Vishnu while he (P.W.13) rushed to the spot in response to message given by P.W.1. It is further in his evidence that, he took the appellant to his custody for further enquiry and investigation. It is further in his evidence, he then sent the appellant through his staff to the police station for avoiding further complications. It is in his evidence that, he saw the uniform shirt of P.W.1 Vishnu stained with blood. Then he went to Civil Hospital, Parbhani. Sodgir was under treatment. He related the details of the incident to Addl. S.P. Pranay Ashok

(P.W.19). He too had been to the spot. P.W.12 Vaishali had been to the Civil Hospital. It is further in his evidence that, Sodgir breathed his last by 3.15 p.m. Then he decided to register the crime. The Kotwali Police Station gave him the Crime Number "21/24". Photographs of the dead body of Sodgir were snapped. His widow identified the dead body. He then conducted the inquest (Exh.108). He forwarded the same to the Medical Officer along with letter (Exh.109). Then he obtained the clothes on the person of the deceased through his staff Shri Murkute. Then he recorded the statement-cum-F.I.R. given by P.W.12 Vaishali (widow of the deceased) and then registered the crime.

34. During his cross-examination, it is brought on record that, deceased Sodgir was deputed on duty for Bandobast at the spot of Urus ceremony. His duty hours were from 2.00 p.m. to 8.00 p.m. He could not give the names of other police officials deputed on duty at the very place. According to him, the duty to take entry in the station diary is that of the Police Station Officer (P.S.O.). He admitted to have left the police station only after receiving full information about the incident. According to him, at Kotwali Police Station, he did not receive information of commission of any cognizable offence.

According to him, if Police Chowki receives information of any crime, then the concerned staff intimate the information of the crime at the Police Station, and P.S.O. makes entry in the station diary. He admitted that, P.W.1 Vishnu had not given any information of a cognizable offence, at Police Chowki which was adjacent to Jamb Naka as an eye witness. He admitted that, when P.W.1 Vishnu disclosed him how the incident took place, he realised that it was commission of a cognizable offence. He did not record statement of P.W.1 Vishnu as a complaint nor he himself lodged report on behalf of State.

35. P.W.14 Pandit was the police constable deputed at R.P.I. Police Headquarters, Parbhani. It is in his evidence that, on 5/2/2014, he was attached to Headquarters, Superintendent of Police, Parbhani. He knew the appellant. On 5/2/2014, the appellant had been summoned to give evidence in a case in Sessions Court, Parbhani. After completion of his duty, the appellant was present on Roll Call Duty at 8.30 p.m. The appellant was assigned a duty to hand over Passport related papers at Passport Office in Nagpur. An entry regarding allocation of such duty was taken in a concerned register. According to him, the Buckle Number of the appellant was "55". He claimed ignorance as to whether the appellant went to

Nagpur in discharge of his assigned duty. It is further in his evidence that, on the following day, he came to know the appellant to have committed murder of Sodgir at Hanuman Chowk. He, therefore, went to Kotwali Police Station. Police Officer Pranay Ashok was present. The appellant too was present there. He enquired with the appellant in respect of his duty of delivering Tapal at Passport Office in Nagpur. The appellant told him that mistake had happened from him. The appellant informed him that the envelope containing the papers was at his residence. It is further in his evidence that, he, therefore, deputed Police Constable Santosh Mohale to get back those papers from the house of appellant. Shri Santosh Mohale accordingly brought back the same. It is further in his evidence that, he then deputed Shri Magar to deliver those documents to Passport Office in Nagpur. According to him, his statement was recorded by P.W.19 Pranay Ashok. His cross-examination indicates that, original station diary extracts (Exh.123 to 125) were not before the Court. According to him, Exhs.123 to 125 were not copies of original station diary. He admitted that it was possible for him to file original station diary entries. In our view, while those station diary entries were admitted in evidence, the defence appears to have not raised any objection for admitting it in evidence as it being not original

one, or certified copies of the original. Moreover, there is on record a communication, indicating that the entire original record was placed before the Court and since the same was necessary for day-to-day affairs in the Police Station, a request was made to the Court to return the original, retaining the copies thereof. The said communication is at Exh.126. He was confronted with certain entries in the register to bring on record that, as per the manpower register, it was the appellant who was deputed to deliver Tapal in Nagpur. The order book, station diary entry, attendance register and manpower register were admitted in evidence vide Exhs.118 to 122 respectively. Exh.123 is an entry indicating the appellant had a duty to give evidence in relation to an offence under Sections 306 and 498-A of the Indian Penal Code in Sessions Court at Parbhani on 5/2/2014. Exh.124 is the entry indicating the Tapal to have been handed over to Head Constable, Buckle No.55 (appellant). Exh.125 is an extract of station diary dated 6/2/2014, wherein it has been recorded that the appellant was deputed to go to Nagpur to deliver certain documents at Passport Office, but when it was realized that he committed murder in the afternoon on 6/2/2014, an entry was taken about the Tapal to have not been delivered at its destination.

36. P.W.15 Dr. Muddasir was a Medical Officer who conducted post mortem examination and gave his report (Exh.131). The same would be referred to later on. He was subjected to a searching cross-examination, from which it is brought on record that deceased Sodgir was indoor patient at Civil Hospital, Parbhani prior to post mortem examination. He admitted that, if any MLC Case/ patient admitted to hospital, then it is required and necessary to Medical Officer to forward that MLC to Police Chowki which is situated in the Campus of the Civil Hospital, Parbhani for recording of the statement of that patient. He admitted to have made no enquiry as to who had treated Sodgir before he breathed his last. He did not call for bed ticket/ document to confirm the history recorded in MLC while Sodgir was admitted to hospital. According to him, the post mortem report is silent to record exact time of death of Sodgir. He confirmed that, Column No.10/(vii) in inquest panchanama was blank. He admitted that, presence of rigour morties spreading it all over the body is changed from season to season. The dead body of Sodgir was not preserved in ice. He further admitted that, condition of eyes closed/ partially closed/ open, depends upon circumstances viz- frightening, pain, disorder, or even by natural death. He admitted that, in frightened condition on account of assault, the eyes of

deceased may be open. He admitted that, if the condition of fingers are normal and then person dies normally and fingers are in stringent condition, then that person may be died due to frightened condition. He admitted that, in post-mortem report vide Exh.131, the condition of fingers of deceased Sodgir were not mentioned and he had not mentioned sequence of injuries as length, depth and breadth of those injuries. He further admitted that, the neck condition differ from person to person and the length of neck of deceased Sodgir was not mentioned in post mortem report. He admitted that, injury No.3 in Column No.17 of post mortem report Exh.131 is not mentioned at which level of neck it was. He admitted that, if there is oblique injury of incised wound, then depth of the starting point is higher than the depth of ending point. He admitted that in the post mortem report Exh.131, injury No.3 was not having reference where blood was collected.

37. P.W.16 Santosh was a Police Constable at the relevant time. He was attached to Headquarters, Superintendent of Police, Parbhani. One Rathod was his senior. It is in his evidence that, he knew the appellant because appellant was his staff member (fellow colleague). It is in his evidence that, on the directions of his officer Shri Rathod, he

went to the house of the appellant in the afternoon of 6/2/2014 and brought back the Tapal that was delivered to the appellant on the preceding day for being delivered to Passport Office, at Nagpur.

38. The cross-examination of this witness indicates that, the investigating officer did not record his statement under Section 161 of the Cr.P.C. He admitted to have not made any entry in the station diary regarding he left the office to get back the Tapal from the house of the appellant. He admitted that, no station diary entry was made on his return to the office from the residence of the appellant. He claimed ignorance as to whether the appellant was at Kotwali Police Station at 4.00 p.m. on 6/2/2014. He admitted that, Shri Rathod did not prepare panchanama about getting back the Tapal given to appellant for being delivered to Passport Office in Nagpur.

39. P.W.17 Sachin is a Nodal Officer, Idea Cellular Ltd. He tendered in evidence certain documents relating to Cell Phone Number 9604508453. He also tendered in evidence the concerned other details in relation to the very cell phone number. He also placed on record a certificate in terms of Section 65-B of the Indian Evidence Act. According to him, the

said cell phone (SIM Card) was issued in the name of the appellant. He also produced on record CDR of Tower location for the period from little past 9.00 p.m. of 5/2/2014 to the entire day of 6/2/2014. According to him, the Tower location of the cell phone at the relevant time was Daulat Building, Shivaji Chowk, Parbhani. The Tower location of the cell phone by 9.15 p.m. of 5/2/2014 was Trimurti Nagar, Parbhani. The documents produced by him on record are at Exhs.145 to 147.

40. P.W.18 Mandar was another Nodal Officer of Airtel Cellular Company. It is in his evidence that, in response to the requisition received from S.P., Parbhani, the CDRs. and Tower location of Phone Number 9096795412 were provided. According to him, the said cell phone was issued in the name of the appellant, Arefoddin Dastagir Gulam. He too produced on record certificate in terms of Section 65-B of the Indian Evidence Act. The documents tendered in evidence by this witness are at Exhs.153 to 155. His evidence indicates that, the Tower location of the said cell phone was at Datta Nagar, Jintur, District Parbhani on 5/2/2014 at 8.30 a.m. while the Tower location thereof at 3.27 p.m. on 6/2/2014 was Trimurti Nagar, Parbhani.

In his cross-examination, he was confronted with CDRs. in relation to call made at 8.30 a.m. on 5/2/2014. The call was between the cell phone Number 9421390964 and 9096795412. He could not give Customer Name of the mobile number 9421390964.

41. P.W.19 Pranay Ashok was the investigating officer, specially appointed. He was in the rank of Addl. S.P. He took over the investigation from P.W.13 Chate. His evidence indicates that, he sent seized articles to C.A's. Office at Nasik along with his forwarding letters. He recorded Memorandum Statement given by the appellant and consequential seizure of knife. Most of the part of the investigation had already been completed by P.W.13 Shri Chate before P.W.19 Pranay Ashok was entrusted with the investigation.

42. What has been brought to our notice is that, his evidence was recorded through Video Conferencing as he was Superintendent of Police, Ratnagiri. The Trial Court noticed that, he was being prompted while his evidence was being recorded. The learned counsel for the appellant found it to be a good reason to brand him to be a dishonest officer, indulged to falsely implicate the appellant in the crime in question. We are

not inclined to accept the said submission. He was confronted with the appellant's arrest panchanama (Exh.165). It was drawn at Kotwali Police Station. Then his further evidence was adverted to, to suggest that the medical examination of the appellant was conducted between 7.00 a.m. and 10.00 a.m. on 7/2/2014, i.e. on the next day of his arrest. According to him, he had written a letter to the Civil Hospital for obtaining CCTV footage of the time while Sodgir was admitted to Civil Hospital in an auto. According to him, CCTV facility was not available at Civil Hospital in those days. He, therefore, could not get it.

43. During cross-examination of P.W.19 Pranay Ashok, it is brought on record that, he had investigated 10-12 crimes before the one in question. It was suggested to him that, the deceased Sodgir was deputed on Bandobast duty at the spot of Turabul Haq Dargah. He did not seize the diary maintained by deceased Sodgir. He admitted that, had he seized the diary, he could have ascertained the timing of duty hours of staff deputed for Bandobast at the place of Urus. According to him, Sodgir's officer did not inform him that Sodgir had not reported on duty. It is further brought on record during his cross-examination that, on 5/2/2014 at the time of roll call of 8.00 p.m., appellant was deputed for delivering Tapal to Passport Office in Nagpur. He

deposed that, he did not know anything as regards Roll Call that took place at 8.00 a.m. on 5/2/2014. According to him, Constable (B.No.1695) was deputed at Mumbai for delivery of Tapal. He stated that, during investigation, he collected copy of order book dated 5/2/2014 of 8.00 p.m. of Police headquarters. It was suggested to him that, the copy of order book dated 6/2/2014 of 8.00 p.m. disclose that staff (appellant) bearing Buckle No.55 was absent. He voluntarily stated that, on 6/2/2014 at 8.00 p.m., the appellant (Buckle No.55) was absent due to his arrest by Police Department, Parbhani. He admitted that, in the order book extract dated 6/2/2014, there is no reference about the arrest of the staff (B.No.55). He denied that, at the time of roll call, at 8.00 p.m. on 6/2/2014, the appellant was in transit period of his Nagpur duty for delivery of Tapal and, therefore, in the said extract of order book, his absence has been recorded. He admitted that, during investigation he did not record statement of officer of Nagpur office where the Tapal was dispatched from Parbhani, and also not verified the inward register of Nagpur office. He denied the suggestion that, he had not recorded statement of the officer of Nagpur and not verified Inward register of Nagpur office because he was very well aware that the accused No.1 had been to Nagpur for delivering Tapal on 5/2/2014 at 10.00 to

10.30 p.m. and he was in transit during night and reached Parbhani at 9.00 p.m. He further denied that, when he came to know the appellant was deputed on Tapal duty to Nagpur and he had already been at Nagpur then he had been at the headquarter office at Parbhani and in collusion with officer of headquarter namely Pandit Raghunath Rathod, scratched the duty of appellant with whitener and written the name of Magar, Police Constable, B.No.1695. He further denied that, on 5/2/2014 at the time of roll call of 8.00 p.m. his staff Magar (B.No.1695) was deputed to Mumbai for Tapal duty. He stated that, he did not know whether on 6/2/2014 Shri Magar had been to Mumbai. He admitted that, as per arrest panchanama of appellant, he was arrested on 6/2/2014 at 9.30 p.m. As per record, he arrested the appellant. The arrest panchanama is in the file of the Court vide Exh.165.

44. He stated that, on the day of the alleged incident, he initially stated that he came to know through wireless that injured had been to Civil Hospital, Parbhani but he again stated that, he did not know whether on the day of alleged incident injured had been to Civil Hospital, Parbhani. He further stated that he had not enquired with his staff members on duty at Urus place whether they had admitted injured Sodgir to Civil

Hospital, Parbhani. He admitted that, P.W.1 to P.W.3 and lady Constable Smt. Manisha Shinde had never been to Civil Hospital, Parbhani right from moment of the incident till Sodgir breathed his last. He stated that, no entry was made about the occurrence of the alleged incident, at Police Chowki situated at Hanuman Chowk, Parbhani. He admitted that, prior to his reaching the spot of Hanuman Chowk, Parbhani, P.I. of Kotwali Police Station namely Chate was already present there at about 2.45 p.m. He admitted that, he never directed Shri Chate to take complaint of the traffic police officials on duty (P.W.1 to P.W.3) and lady constable Manisha Shinde in respect of the alleged incident. He admitted that, at 2.45 p.m. approximately neither he nor Shri Chate was in know about who committed murder of Sodgir. Hence, he did not direct Shri Chate to record complaint of any of the police officials of Traffic Department on duty at the place of Urus. He admitted that, the complaint in respect of cognizable offence could be lodged by any person including police officer. He admitted that, when Sodgir was brought to Civil Hospital, he was unconscious. He further admitted that, unconscious person was not able to reach to hospital on his own for medical treatment. He did never come to know who brought Sodgir to Civil Hospital for medical treatment in autorickshaw. He further admitted that, Column

No.10(vii) and Column No.13 in the inquest panchanama (Exh.67) were blank. He denied the suggestion that Column No.10(vii) and 13 of inquest panchanama were Blank because the officers including him and other persons who were present at Civil Hospital were not knowing who committed murder of Sodgir. He further stated that, in the complaint of informant it is not mentioned that on the day of alleged incident, deceased Sodgir was on his duty at relevant time by wearing spectacles. He further admitted that, the eye witnesses also did not state in their statements that on the day of alleged incident at the relevant time the deceased was wearing spectacles and during his investigation, it was not satisfactorily disclosed that the spectacles which were seized belonged to which person. He further admitted that, he had not brought the case diary on the day of recording of his evidence in respect of his investigation in the crime right from beginning to its end. He admitted that, till filing of the charge sheet, he had not filed copy of duty register of the traffic police officials who were on duty at the time of Urus from 2.00 p.m. to 8.00 p.m.

APPRECIATION

45. Close scrutiny of the aforesaid evidence indicates

that, both, the appellant and the deceased were the members of constabulary, District Parbhani. Both of them were residing in Police Quarters. On the fateful day, deceased Sodgir was deputed on Bandobast duty at Urus of Turabul Haq Dargah. The evidence of P.W.1 to P.W.3 also indicates that, they were on duty at the very place as members of Traffic Department. Their evidence indicates that, the appellant came there on a two-wheeler. He was sporting civil dress. A quarrel ensued between him and the deceased. It is in their presence the appellant stabbed Sodgir number of times. The post mortem report (Exh.131) indicates the following injuries were noticed on the person of the deceased :

- (1) Stab injury over right chest 7th intercostal space. Mid clavicular line. Oval shape of size 2 x 3 x 1 cm.,
- 2) Stab injury over left chest at 6th intercostal space anterior axillary line, oval shaped of size 1 ½ x 2 ½ x ½ cm.
- 3) Stab injury over left side of neck posterior side oval shaped of size 2 x 2 ½ x 1 cm. Oblique indirection with collection of blood approximately 200 cc.
- 4) incision over right cubital Fossa. Oval shaped of size 5 ½ x 1 ½ x ½ cm. with Brachal vessels cut with clean cut margins of incision.
- 5) Incision over right arm inner aspect (upper side) of size

1 ½ x ½ x ½ cm.

- 6) Stab injury at left arm with entry wound at lateral side of left arm 4 x 1 cm. having sharp margins with collection of blood, approximately 50 ml.
- 7) Stab injury over back at 8th intercostal space, below scapula in horizontal direction of size 2 x 4 x 1 cm.
- 8) Contusion over right parietal region of size 2 x 2 cm.
- 9) Abrasion over left knee size 3 x ½ x ½ cm.

All the injuries were ante mortem.

On internal examination, he found that brain was pale, both lungs were congested, in heart right and left ventricles were empty. In mouth all teeth were present. Liver was pale, spleen was also pale, kidney was congested. He preserved viscera in two bottles and blood in one bottle.

46. The deceased died of hemorrhagic shock due to multiple stab injuries and incised wound. The defence admits that Sodgir was assaulted while he was on duty at the place of Urus. The defence only denied that the assault was made by the appellant. As per the defence version, some unknown persons assaulted the deceased. On close scrutiny of the

evidence on record, we do not find any reason to disbelieve the evidence of the prosecution witnesses. True, P.W.13 Shri Chate, who was first informed of the incident by P.W.1 Vishnu on Walkie-Talkie, ought to have recorded it as F.I.R. If not at that time, when he immediately paid visit to the crime scene and interacted with P.W.1 to P.W.3, he ought to have recorded their statements then and there. However, in our view, the failure on his part shall not be an advantage to the appellant since his involvement in the crime has been proved beyond reasonable doubt. True, on the previous day, the appellant was deputed to deliver Tapal to Passport Office, in Nagpur. He, was, therefore, supposed to leave for Nagpur. It is his case that, he left Parbhani by 8.00 in the evening for Nagpur and returned by 8.30 on the following day. We are conscious of the fact that, the burden to prove is on the prosecution to make out a case that it was the appellant who has committed the crime. The evidence on record indicates that, the appellant did not go to Nagpur. The evidence of Nodal Officers of Cellular Companies indicate that the Tower location of the cell phones of the appellant were within the vicinity of Parbhani and Jintur. The appellant, therefore, came with a case that, he went to Nagpur without taking any cell phone. In our view, keeping a cell phone with oneself has now-a-days become a necessity.

There is evidence of P.W.16 Santosh who had brought back the Tapal from the house of the appellant, which was given to him to deliver to Passport Office in Nagpur. The same suggests that the appellant did not go to Nagpur. The authorities concerned were required to depute Shri Santosh Mohale to hand over the Tapal to the concerned office in Nagpur. True, the statement of the witness Santosh Mohale (P.W.16), who brought back the Tapal was not recorded under section 161 of the Cr.P.C. It is not mandatory for the prosecution to examine only those witnesses whose statements under Section 161 Cr.P.C. have been recorded. Section 231 of the Cr.P.C. speaks for evidence for prosecution in case of trial before a Court of Sessions. Sub-section (1) of section 231 reads thus :

“On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.”

47. In the case in hand, we do not find the evidence of Santosh Mohale to be not reliable only on the ground that his statement under Section 161 Cr.P.C. to have not been recorded by the investigating officer.

48. It is true that, P.W.1 to P.W.3 could have removed

the knife from the possession of the appellant while he was assaulting the deceased. The learned counsel for the appellant was, therefore, somewhat justified in contending that while the appellant was overpowered, the appellant had no opportunity to hide/ conceal the knife. The same suggests the investigating officer to have misused Section 27 of the Indian Evidence Act. He may be right to some extent. The knife was recovered from a nearby place. It might be possible that the appellant threw away the knife after having assaulted the deceased. We do not propose to rely on the evidence in relation to the disclosure statement made by the appellant and the recovery of knife. The evidence on record, however, undoubtedly goes a long way to conclude that the appellant suspected the deceased to have illicit relationship with his wife. He had earlier threatened the deceased and even asked to discontinue the relationship. On the given day, in spite of having been entrusted with a duty to go to Nagpur, the appellant did not go. He followed the deceased to his work place i.e. Bandobast duty at Urus and assaulted him with a knife. The injuries suffered by the deceased indicate the appellant had intended to eliminate Sodgir. It is reiterated that P.W.13 Chate ought to have recorded the information given by P.W.1 Vishnu as F.I.R. Failure to do so and faults in investigation should not always go

to the benefit of the accused/ convict unless some material prejudice is shown. True, the appellant was handed over to the custody of P.W.1 Shri Chate immediately, who in turn, detained him at Kotwali Police Station and finally arrested him after registration of the crime. This too was a mistake/ fault on his part. It is also true that the appellant was medically screened on the following day. His medical examination ought to have been done immediately on his arrest. The learned A.P.P. and the learned counsel for the victim relied on Section 41 of the Cr.P.C. to contend that there is distinction between detention and arrest. They meant to say that when the appellant was delivered to the custody of P.W.13 Shri Chate, he was not arrested but detained for 4 hours until a crime came to be registered pursuant to the F.I.R. lodged by the widow of the deceased. When it had already been disclosed to P.W.13 Shri Chate, he ought to have arrested the appellant, if required. Needless to mention that, existence of power to arrest is one thing and justification for arrest is another. Since P.W.13 Shri Chate awaited registration of a crime until the widow of the deceased lodged the F.I.R. against the appellant, he did not prefer to arrest the appellant. The same suggests that, he did not find it imminent to arrest the appellant no sooner he was taken into custody and he, therefore, kept him safe at Kotwali

Police Station. When the prosecution could produce on record voluminous evidence indicating the appellant's involvement in the crime, then necessarily it was for him to make out his defence of alibi. True, if he so desired to make out his defence.

49. The application preferred by the widow of the deceased for transfer of the case has no bearing on the result of the case since her transfer application was turned down by the learned Sessions Judge. The transfer of the case was asked for on the ground that even after examining number of witnesses, the learned Trial Judge made observations as to what had remained in the case, she mistook the Judge to have been siding the defence. We do not find that such an exercise, i.e. moving an application for transfer of the case from the Trial Court to other was a trick to pressurize the Trial Court to convict the appellant.

50. It is reiterated that, we found the evidence of P.W.1 to P.W.3, eye witnesses, to be cogent and reliable. Since they were on Traffic Bandobast duty, they themselves thought it fit not to leave their duty place and go to the concerned Police Station to lodge the report. Admittedly, uniform shirt of P.W.1 Vishnu was found to have been stained with the blood of the

deceased. This fact has been admitted by the defence, only with a suggestion that the blood of the deceased was applied on the shirt of the appellant after it was taken charge of. Moreover, it was a prerogative of the S.P. to whom the investigation of the crime is to be entrusted. We do not find P.W.1 to P.W.3 to be planted witnesses. At the cost of repetition, it is observed that, suggestion given to P.W.1 Vishnu reproduced below indicate the appellant to have admitted his presence at the spot of the incident. The suggestion is again reproduced below.

"सदर घटनेनंतर मी आरोपीला हनुमान चौकात तात्पुरती चौकी व असणारी पोलीस चौकीच्या समोर आम्ही आरोपी नं.१ यास पकडले. मी आरोपी नं.१ यास तो मारहाण करत असतांना पकडले आहे हे खरे आहे. जेव्हा मी आरोपी नं.१ यास मारहाण करत असतांना पकडले त्यावेळी तो चाकूने मारहाण करत होता त्यावेळी तो चाकू मी हस्तगत केला नाही. हे म्हणणे खरे आहे की ज्यावेळी मी आरोपी नं. १ यास पकडले त्यावेळी त्याच्या हातात कोणतेही हत्यार नव्हते."

"It is true to say that, I caught hold accused No.1 during assault by him. When I caught hold accused No.1 at the time of assault, that time I had not taken knife by which accused No.1 was assaulting. It is true to say that, when I caught hold accused No.1, at that time in his hand not having any weapon."

51. On appreciation of the evidence referred to

hereinabove, we find the Trial Court to have rightly convicted the appellant. We are at one with the findings recorded by the Trial Court. In the result, the appeal fails. The same is, therefore, dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-