



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

CRIMINAL APPEAL NO.424 OF 2018

- 1) Rajendra @ Rajesh Mahadev Bahir,
Age 26 years, occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
 - 2) Raghunath s/o Sahebrao Bahir,
Age 68 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
 - 3) Kailas s/o Tatyaba Bahir,
Age 65 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
 - 4) Somnath s/o Uddhav Bahir,
Age 33 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- ... APPELLANTS**

VERSUS

- 1) The State of Maharashtra
through the Police Inspector,
Jamkhed Police Station,
Tal. Jamkhed, Dist. Ahmednagar

(Copy to be served upon office of
the Public Prosecutor, High Court
of Judicature at Bombay,
Bench at Aurangabad)
 - 2) Bapusaheb s/o Asaram Bahir,
Age 34 years, Occu. Centering work,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- ... RESPONDENTS**

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Mr. Joydeep Chatterji, Advocate holding for
Mr. G.P. Pande & Mr. B.P. Pande, Advocates for appellants
Mr. S.D. Ghayal, A.P.P. for respondent No.1 – State
Mr. R.P. Phatke, Advocate for respondent No.2.
.....

WITH

CRIMINAL APPEAL NO.432 OF 2018

Sandip s/o Ganpat Bahir
Age 30 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar. ... **APPELLANT**

- 1) The State of Maharashtra
through the Police Inspector,
Jamkhed Police Station,
Tal. Jamkhed, Dist. Ahmednagar

(Copy to be served upon office of
the Public Prosecutor, High Court
of Judicature at Bombay,
Bench at Aurangabad)

- 2) Gayabai w/o Asaram Bahir,
Age 59 years, Occu. Household
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar. ... **RESPONDENTS**

.....
Mr. V.D. Sapkal, Senior Counsel with
Mr. A.R. Devakate, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent – State
Mr. R.P. Phatke, Advocate for respondent No.2.
.....

WITH

CRIMINAL APPEAL NO.456 OF 2018

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- 1) Mahadev s/o Gahininath Bahir,
Age 51 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- 2) Sukhdeo s/o Raghunath Bahir,
age 25 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- 3) Shahaji @ Shahadeo s/o Raghunath
Bahir, Age 32 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- 4) Malhari s/o Kailas Bahir,
Age 25 years, Occu. Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar.
- 5) Dada @ Ashok s/o Kisan Bahir,
Age 32 years, Occu., Agriculture,
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar. ... **APPELLANTS**

VERSUS

- 1) The State of Maharashtra
through the Police Inspector,
Jamkhed Police Station,
Tal. Jamkhed, Dist. Ahmednagar

(Copy to be served upon office of
the Public Prosecutor, High Court
of Judicature at Bombay,
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- 2) Gayabai w/o Asaram Bahir,
Age 59 years, Occu. Household
R/o Katewadi, Tal. Jamkhed,
District Ahmednagar. ... **RESPONDENTS**

.....

Mr. Joydeep Chatterji, Advocate holding for

Mr. G.P. Pande & Mr. B.P. Pande, Advocates for appellants
Mr. S.D. Ghayal, A.P.P. for respondent No.1 – State
Mr. R.P. Phatke, Advocate for respondent No.2.
Mr. S.D. Ghayal, A.P.P. for respondent - State

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

Date of reserving judgment : 26th February, 2024

Date of pronouncing judgment : 17th April, 2024

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

This group of three appeals is being decided by this common judgment since the challenge therein is to one and the same judgment and order of conviction and consequential sentence, dated 10/5/2018, passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case, No.265/2014. The appellants have been convicted and consequently sentenced to various terms of imprisonments. The relevant operative order under challenge in these appeals reads as follows :-

1) Accused Nos. 1) Mahadev Gahininath Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 7) Malhari Kailas Bahir and 11) Dada @ Ashok Kisan Bahir, are hereby convicted of the offence punishable under Sec. 302 r.w. 149 of I.P. Code,

vide Sec. 235(2) of Cr.P.Code, for committing murder of Asaram Yashwant Bahir and Nitin Asaram Bahir, and are hereby sentenced to imprisonment for life, which shall mean, till the end of their natural life and to pay fine of Rs. 15,000/- (Rupees Fifteen thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three years.

2) Accused Nos.2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 6) Kailas Tatyaba Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 302 r.w. 149 of I.P. Code, vide Sec. 235(2) of Cr.P.Code, for committing murder of Nitin Asaram Bahir, and are hereby sentenced to imprisonment for life, and to pay fine of Rs. 15,000/- (Rupees Fifteen thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three years.

3) Accused Nos. 1) Mahadev Gahininath Bahir, 2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, 7) Malhari Kailas Bahir, 11) Dada @ Ashok Kisan Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 143 of I.P. Code, vide Sec. 235(2) of Cr.P.Code, and are hereby sentenced to

rigorous imprisonment for six months and to pay fine of Rs. 500/- (five hundred) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of one month.

- 4) Accused Nos.1) Mahadev Gahininath Bahir, 2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, 7) Malhari Kailas Bahir, 11) Dada @ Ashok Kisan Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 147 of I.P. Code, vide Sec. 235(2) of Cr.P.Code, and are hereby sentenced to rigorous imprisonment for two years and to pay fine of Rs. 1,000/- (Rs. One thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three months.
- 5) Accused Nos.1) Mahadev Gahininath Bahir, 2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, 7) Malhari Kailas Bahir, 11) Dada @ Ashok Kisan Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 148 of I.P. Code, vide Sec. 235(2) of Cr.P.Code, and are hereby sentenced to rigorous imprisonment for three years and to pay fine of Rs.

1,500/- (one thousand five hundred) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of four months.

- 6) Accused Nos. 1) Mahadev Gahininath Bahir, 3) Raghunath Sahebrao Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, and 7) Malhari Kailas Bahir, are hereby convicted of the offence punishable under Sec. 452 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, and are hereby sentenced to rigorous imprisonment for a term of four years and to pay fine of Rs. 2,000/- (Rs. two thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of six months.
- 7) Accused Nos. 1) Mahadev Gahininath Bahir and 3) Raghunath Sahebrao Bahir, are hereby convicted of the offence punishable under Sec. 325 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, (in respect of injured Gayabai) and are hereby sentenced to rigorous imprisonment for a term of five years and to pay fine of Rs. 3,000/- (Rs. Three thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of eight months.
- 8) A) Accused Nos.1) Mahadev Gahininath Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 7) Malhari Kailas Bahir, and 11) Dada

@ Ashok Kisan Bahir, are hereby convicted of the offence punishable under Sec. 324 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, for causing hurt to Asaram Bahir, and are hereby sentenced to rigorous imprisonment for a term of two years and to pay fine of Rs. 1,000/- (Rs. one thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three months.

B) Accused Nos.1) Mahadev Gahininath Bahir, 2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, 7) Malhari Kailas Bahir, 11) Dada @ Ashok Kisan Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 324 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, for causing hurt to Nitin Bahir, and are hereby sentenced to rigorous imprisonment for a term of two years and to pay fine of Rs. 1,000/- (Rs. one thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three months.

C) Accused Nos.1) Mahadev Gahininath Bahir, and 3) Raghunath Sahebrao Bahir, are hereby convicted of the offence punishable under Sec. 324 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, for causing hurt to Gayabai Bahir, and are hereby sentenced to rigorous

imprisonment for a term of two years and to pay fine of Rs. 1,000/- (Rs. one thousand) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of three months.

9) A) Accused Nos. 1) Mahadev Gahininath Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 7) Malhari Kailas Bahir, and 11) Dada @ Ashok Kisan Bahir, are hereby convicted of the offence punishable under Sec. 323 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, for causing hurt to Asaram Bahir, and are hereby sentenced to rigorous imprisonment for a term of six months and to pay fine of Rs. 500/- (five hundred) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of one month.

B) Accused Nos.1) Mahadev Gahininath Bahir, 2) Rajendra @ Rajesh Mahadev Bahir, 3) Raghunath Sahebrao Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 6) Kailas Tatyaba Bahir, 7) Malhari Kailas Bahir, 11) Dada @ Ashok Kisan Bahir, 17) Somnath Uddhav Bahir, and 28) Sandip Ganpat Bahir, are hereby convicted of the offence punishable under Sec. 323 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, for causing hurt to Nitin Bahir, and are hereby sentenced to rigorous imprisonment for a term of six months and to pay fine of Rs. 500/- (five hundred) each, and in case of default in payment thereof,

to undergo further rigorous imprisonment for a term of one month.

- 10) 1) Mahadev Gahininath Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 7) Malhari Kailas Bahir, and 11) Dada @ Ashok Kisan Bahir, are hereby convicted of the offence punishable under Sec.504 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P.Code, and are hereby sentenced to rigorous imprisonment for a term of one year and to pay fine of Rs. 500/- (five hundred) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of one month.
- 11) 1) Mahadev Gahininath Bahir, 4) Sukhdeo Raghunath Bahir, 5) Shahaji @ Shahadeo Raghunath Bahir, 7) Malhari Kailas Bahir, and 11) Dada @ Ashok Kisan Bahir, are hereby convicted of the offence punishable under Sec. 506 r.w. 149 of the I.P. Code, vide Sec. 235(2) of Cr.P. Code, and are hereby sentenced to rigorous imprisonment for a term of one year and to pay fine of Rs. 500/- (five hundred) each, and in case of default in payment thereof, to undergo further rigorous imprisonment for a term of two months.
- 12) All the substantive sentences of imprisonment shall run concurrently.
- 13) All the accused Nos. 1 to 26, 28 & 32, are hereby

acquitted of the offence punishable under Sections 3 & 4
r.w. sec.25 of the Arms Act.

14) The accused Nos. 8 to 10, 12 to 16, 18 to 26 and 32 are
hereby acquitted of all the offences, they are charged
with.

15 to 19)

20)

The Police Inspector of Jamkhed Police Station is
directed to file separate charge-sheet against absconding
accused persons as and when they are traced out.

2. The First Information Report (F.I.R. - Exh.169)
and the police papers indicate that the crime was registered
against known 32 and 7/8 unknown persons. Original
accused Nos.27, 29, 30, 30 and 31 were not before the trial
Court. Evidence against them came to be recorded in
terms of Section 299 of the Code of Criminal Code
(Cr.P.C.).

3. Vide the impugned judgment and order, the
appellants (10 in number) have been convicted. Neither the
State nor the informant/ victim did prefer appeal against
acquittal of those who have been acquitted.

4. Facts, in short, as are disclosed from the police papers and evidence before the Trial Court are as under :

Katewadi is a small village in Taluka Jamkhed, District Ahmednagar. Distance between Katewadi and Jamkhed is of around 7/8 Kms. Population of the village, at the relevant time was around 550. Most of the families in the village belong to Maratha community. Most of them have common surname, "Bahir".

5. The F.I.R. (Exh.169) was lodged by P.W.5 Bapurao by 11.30 a.m. on 12/5/2014. As stated above, the F.I.R. was registered against 32 known and 8 unknown persons. 9 of 32 persons against whom the F.I.R. was lodged, were women.

6. It is the case of P.W.5 Bapurao that his family was comprised of his wife, his parents, brother Kalyan (P.W.8) and another brother Nitin (deceased). Nitin had secured a job with Agricultural Department at Nasik. Nitin's marriage was scheduled for 19/5/2014. He had, therefore, been to the village Katewadi. Moreover, the informant's two sisters, Kalpana and Jaya along with their respective

husband and children had also come for the marriage.

7. Mahadev (original accused No.1), one of the appellants herein, is son of cousin of the father of informant Bapurao. He would reside at Katewadi itself. There was a long standing dispute between Asaram (deceased), father of P.W.5 Bapurao on one hand and appellant Mahadev and few others (original accused and convicts as well) on the other. A civil dispute originally commenced with an entry in the possession column of of the 7/12 extract. After exhausting all the remedies under the Maharashtra Land Revenue Code, 1966, the matter had reached the High Court. It was directed by the High Court that the parties may have their dispute/ civil rights decided in a civil suit. A civil suit was, therefore, preferred in the Court, at Jamkhed. The suit was decreed in favour of P.W.5 Bapurao and others.

8. It also appears that, Asaram (deceased) had sold 3 ½ acres of land in Gut No.257 to one Yuvraj Jamdade ostensibly for Rs.1,65,000/-. He had, however, received consideration of Rs.65 Lakhs. Possession of the land sold to Yuvraj Jamdade was, however, not delivered to

him. It appears that, other co-owners of the land Gut No.257 were opposed to allow Jamdhade to cultivate the land. The incident appears to be a fallout of the said dispute.

9. As per the case of the prosecution, it was 6.00 in the morning of 12/5/2014. All the family members of P.W.5 Bapurao (informant) were asleep in the house. Nitin (deceased) and Kalyan (P.W.8) had gone to the field of Hulgundes', for answering nature's call. The entrance door of the house was just simply closed (not bolted from inside). A group of persons arrived outside the house of P.W.5 Bapurao. On hearing commotion, P.W.5 Bapurao and other family members woke up. He saw Mahadev, Shahaji, Kailas, Sachin, Malhari and Raghunath Bahir (appellants herein) entered his house. Appellant Mahadev was armed with a pistol in one hand and sickle in the other (as per F.I.R.). Those others were armed with axe and swords. All of them dragged Bapurao's father Asaram (deceased) out of the house and beat him up mercilessly. Those aforesaid 6 persons were accompanied by many others as well. They too assaulted Asaram (deceased).

10. The assailants realized Nitin to have gone to answer nature's call. They went towards him. All of them assaulted Nitin. Kalyan (P.W.8) had also gone to answer nature's call. He took shelter at a tamarind tree. He saw the appellants and others named in the F.I.R. to have been assaulting Nitin. After Nitin was assaulted, the assailants again came back to the place whereat Asaram was lying as a result of assault. Gayabai, wife of Asaram had intervened to save her son Nitin. She too was not spared by Mahadev and two others. P.W.5 Bapurao and P.W.8 Kalyan could not intervene to save their father and brother since the assailants were more in number and they even sensed fear to their lives. P.W.5 Bapurao, in the meanwhile made a phone call to a police station, first on landline and then contacted Police Inspector, Incharge of the Police Station. The Police Station Officer on duty deputed two police officials, P.W.7 Bhingardive and P.W.13 Bade. Both of them came to the village Katewadi. They saw both Nitin and his father Asaram to have suffered serious injuries. Both of them again contacted Police Station to secure a police vehicle. The vehicle arrived. The injured namely Asaram, Nitin and Gayabai were first taken to Government Hospital,

at Jamkhed. The Medical Officer there instructed to rush them to Civil Hospital, Ahmednagar. They were, therefore, being taken to Ahmednagar. On the way at village Kada, it was found that, both, Asaram and Nitin passed away. They were, therefore, taken to a private hospital of Dr. Gade, who, on examination, declared them dead. The dead bodies of both of them were, therefore, brought back to Government Hospital, Jamkhed.

11. As stated above, P.W.5 Bapurao lodged the F.I.R. (Exh.169). C.R. No.76/2014 was therefore registered at Jamkhed Police Station for the offences punishable under Sections 302, 452, 325, 324, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code (IPC for short) and Sections 3/25 and 4/25 of the Arms Act. The inquest on the dead bodies of both Asaram and Nitin was conducted. Their mortal remains were subjected to autopsy. Gayabai was admitted to hospital. The accused named in the F.I.R. were arrested one after the other. The appellants Raghunath, Sukhdeo, Malhari, Somnath, Mahadev, Dada, Shahaji, Rajendra and Kailas made disclosure statements, pursuant to which sticks and iron rods allegedly used in assaulting the deceased, came to be recovered under

panchanamas (Exh.147 to 154 and 157 to 166). The seized articles, clothes of the deceased were sent to F.S.L., Nasik for analysis and report. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the charge sheet was filed before the learned Judicial Magistrate, First Class, Jamkhed. The learned Magistrate committed the case to the Court of Sessions, Ahmednagar. The case was assigned to the Court of Additional Sessions Judge, Ahmednagar (Trial Court) for trial in accordance with law.

12. The Trial Court framed the charge (Exhs.52 and 286). The accused pleaded not guilty. Their defence was of false implication.

13. The sum and substance of the defence of the accused and the appellants was that, the deceased Asaram had sold some land in Gut No.187 to one Yuvraj Jamdade. He did not deliver possession to Yuvraj. Co-owners of land Gut No.257 did not allow Yuvraj to cultivate the land. Yuvraj was asking Asaram to pay back the consideration amount. Yuvraj Jamdade and his men, therefore, committed the

crime in question.

14. So far as regards appellant Sandip (in Criminal Appeal No.432/2018) is concerned, the learned counsel would submit that, the evidence against Sandip and 4 others (namely Balu, Ashok, Pintu and Raghunath Kadam) was common. Those others have been acquitted. The appellant Sandip, therefore, deserves to be acquitted on the ground of parity. Learned Senior Counsel relied on the judgments of Apex Court in following cases :

- (1) Ram Singh Vs. The State of U.P.
(Criminal Appeal No.206/2024)
- (2) Javed Shaukat Ali Qureshi Vs. State of Gujarat
(Criminal Appeal No.1012/2022)

15. On the given day, Sandip was at Solapur to sell onions in A.P.M.C. Market. As such, it is defence of alibi. A driver of a tempo in which onions were transported and the trader in the A.P.M.C. Market, who purchased the onion were examined as defence witnesses on behalf of the appellant Sandip.

16. To establish the charge, the prosecution examined 15 witnesses and produced in evidence certain

documents. The Trial Court, on appreciation of the same, convicted the appellants who are before us in these three appeals and acquitted rest of the accused except those, against whom evidence was recorded under Section 299 of the Cr.P.C.

17. Heard. Mr. Joydeep Chatterji, learned counsel for the appellants would submit that, true, two innocent persons have lost their lives. He would, however, submit that, the F.I.R. was lodged against known 32 persons and some unknown persons. In the F.I.R., the assailants were alleged to have wielded sharp edged weapons. After having realised the deceased to have suffered injury with hard and blunt objects like sticks and iron rods, the informant gave a supplementary statement so as to suit the prosecution case. The learned counsel reminded us of the principle that no innocent person shall be convicted. According to him, the villagers had gathered while the incident took place. None of them has been examined as a witness. The case is based on two eye witness account, P.W.5 Bapurao and P.W.8 Kalyan. They are the interested witnesses. They did not intervene. The same suggests them to have not witnessed the incident. Gayabai has not

been examined for the reasons best known to the prosecution. No documentary evidence was placed on record to show that she was not keeping well and therefore unable to give evidence. P.W.5 Bapurao admittedly was in his house. The house admittedly did not have a window. His evidence that he witnessed the incident is therefore a sheer lie. Same is about the case of other eye witness, P.W.8 Kalyan. He too did not intervene to save Nitin. When the informant Bapurao had made a phone call to the police station, it is not known as to why the said report was not recorded as F.I.R. P.W.5 Bapurao in the said report has stated involvement of 2 or 3 persons only. According to learned counsel, even the F.I.R. was lodged late. The persons named in the F.I.R. were the defendants in the civil suit. Even their chronological order as defendants in the suit was not changed as accused in the F.I.R.

18. The learned counsel would further submit that, the panch witnesses to the seizure of sticks and iron rods were the close relations of the informant. These witnesses even did not identify the accused who made the disclosure statements. There was no evidence to indicate that the articles were seized when taken charge of and labels

bearing signatures of panch witnesses were affixed thereon. It is not known as to why the seized articles were kept in the cupboard of the investigating officer instead of placing into custody of the Muddemal Clerk. The learned counsel has given a detailed chart and notes of his submissions to ultimately submit the prosecution to have failed to bring home the charge beyond reasonable doubt.

19. Submissions made by learned Senior Counsel Mr. V.D. Sapkal have already been adverted to above.

20. Learned counsel Mr. Devakate reiterated the submissions made by learned counsel Mr. Joydeep Chatterji and learned Counsel Mr. Gopal P. Pande.

21. The learned A.P.P would, on the other hand, submit that there was a long standing dispute between the family of the informant and that of the appellant Mahadev and others named in the F.I.R. A civil suit was pending, besides revenue proceedings. Complaints against each other were lodged with the concerned Police Station. Our attention has been adverted to the reports lodged by deceased Asaram, wherein he had expressed his perception of threats to his life at the hands of appellant

Mahadev and others. According to the learned A.P.P., it is a ghastly murder. The informant being son of the deceased, had the first duty to attend to the injured and extend them best of medical treatment. It is only after passing away of his father and brother, he reached the police station and lodged the report. According to the learned A.P.P., as such, there is no delay in lodging of the F.I.R. He would further submit that, pursuant to the disclosure statement made by the appellants, the weapons used in commission of the crime have been seized. Our attention was adverted to C.A. reports to indicate the seized articles to have borne blood stains of the blood group of the deceased. According to him, now-a-days no independent person comes forward either to act as panch or give evidence. No fault therefore, could be found with the investigating officer selecting the distant relations of the informant to act as panch witnesses. He was even not in the know that the panch witnesses were the relations of the informant. The presence of both, the informant and Kalyan has not been disputed. The incident took place in the early morning. Both of them were, therefore, present at their residence. Had they intervened, both of them would have met with same fate as that of the

deceased. Gayabai, being mother, did dare to intervene to save her son. She too was assaulted. As a result of death of her husband and son, who was to get married within 8 days of the incident, she was not in the mental frame and even was not well to come to the Court to give evidence. Learned A.P.P. relied on the judgment of the Apex Court case of **Mani @ Udattu Man & Ors. Vs. State Rep. by Inspector of Police [2009 CriLJ 2268]**.

22. The learned counsel for the informant reiterated the submissions made by learned A.P.P. He too relied on the judgment of the Apex Court in case of Mani (supra) to submit that the case was based on eye witness account. The same has been corroborated by circumstantial evidence in the nature of recovery of the weapons pursuant to the disclosure statements made by the appellants. The learned counsel ultimately urged for dismissal of the appeals.

23. Before advertng to the evidence on record, let us give an overview of the number of witnesses examined on particular point/ evidence (Reproduced from the impugned judgment).

Sr. No.	Witness No.	Exh. No.	Name of the witness	Particulars
1	2	3	4	5
1	P.W.1	131	Moiz Tayyab Shaikh	Panch (clothes seizure)
2	P.W.2	144	Babasaheb Namdeo Pothare	Panch (spot)
3	P.W.3	146	Shantinath Ambadas Sapkal	Panch (seizure of wooden log/iron rod)
4	P.W.4	156	Suresh Raghunath Sapkal	Panch (seizure of iron rods/ wooden logs)
5	P.W.5	168	Bapu Asaram Bahir	Complainant
6	P.W.6	174	P.C. Vijay Abasaheb Kalokhe	Muddemal sent to Forensic Lab
7	P.W.7	176	Head Constable - Ramesh Dhondiram Bhingardive	Statement
8	P.W.8	178	Kalyan Asaram Bahir	Eye witness
9	P.W.9	183	Anil Haribhau Deokar	P.S.O./ Witness on inquest panchanamas (184, 185)
10	P.W.10	187	Sanjay Nivrutti Dhiwar	P.S.O.
11	P.W.11	193	Dr. Sanjay Kisanrao Munde	Medical Officer – P.M. Notes
12	P.W.12	196	Dr. Yuvraj Haribhau Kharade	Medical Officer- P.M. Notes + Injury certificate of injured Gayabai
13	P.W.13	198	P.C. Babasaheb Ajinath Bade	Witness on spot-shifted deceased and injured to the hospital
14	P.W.14	199	P.I. Sanjay Gangadaharrao Patil	Investigating Officer
15	P.W.15	291	P.I. Dipakkumar Chudaman Waghmare	Supplementary Charge-Sheet of Accused No.28 Sandip Bahir filed

24. Admittedly, both Asaram and Nitin met with homicidal death on 12/5/2014. Dr. Sanjiv (P.W.11) conducted autopsy on the mortal remains of both of them. Post mortem report of both, deceased Asaram and Nitin find place at Exh.194 and Exh.195 respectively. The evidence of Dr. Sanjiv indicate the following injuries were on the person of Asaram :-

- 1) Lacerated wound over scalp over right parietal region 07 x 01 cm. x scalp deep, oblique.
- 2) Lacerated wound over scalp over frontal region, 05 x 01 cm. x scalp deep, oblique.
- 3) Multiple contusions over Rt. Shoulder & Rt. Arm 06 in number (i) 2 x 2 cm. (ii) 3 x 3 cm. (iii) 5 x 3 cm. (iv) 6 x 3 cm. (v) 5 x 4 cm. (vi) 7 x 5 cm.
- 4) Multiple contusions over Rt. Forearm, 02 in numbers. (i) 8 x 2 cm. (ii) 5 x 2 cm.
- 5) Contused abrasions over Lt. Shoulder, 02 in number (i) 3 x 2 cm., (ii) 2 x ½ cm.
- 6) Contused abrasion over left arm, 1 ½ x 1 ½ cm.
- 7) Contusions over Lt. Forearm, 03 in numbers. (i) 06 x 03 cm. (ii) 5 x 3 cm. (iii) 4 x 3 cm.
- 8) Crush injury over lower part of Lt. Forearm 2 ½ cm. x 1 cm. x bone deep.
- 9) Compound fracture of lower part of radius & ulna of Lt. Forearm beneath injury No.8.

- 10) Crush injury over lower part of left leg 4 x 2 cm. x bone deep
- 11) Compound fracture of lower part of Lt. Tibia fibula.
- 12) Lacerated wounds over upper part of Lt. Leg 02 in numbers (i) 2 x $\frac{1}{2}$ cm. x 1 cm. (ii) 2 $\frac{1}{2}$ x $\frac{1}{2}$ x 1 cm. (iii) 1 $\frac{1}{2}$ x $\frac{1}{2}$ x 1 $\frac{1}{2}$ cm.
- 13) Lacerated wounds over Rt. Leg, 03 in number (i) 1 $\frac{1}{2}$ x $\frac{1}{2}$ cm. x 1 cm. (ii) 2 x 1 x 1 cm. (iii) 1 $\frac{1}{2}$ x $\frac{1}{2}$ x 1 $\frac{1}{2}$ cm.
- 14) Crush injury over lower part of Rt. Leg. 2 x 1 cm. x bone deep.
- 15) Compound fracture of Rt. Tibia fibula beneath injury No.14.
- 16) Depressed fracture of Rt. Parietal bone beneath injury No.1.
- 17) Hematoma below the injury No.1.

For the external injuries, suffered by the deceased, one separate page was attached since column No.17 was very inadequate for those injuries. The deceased sustained internal injuries as haematoma over right parietal region and intra-cranial hemorrhage was also present. These injuries were under the skull and were recorded in column No.19. Again the doctor found fracture of right 3rd and 4th ribs. Hence those were mentioned in column No.20(a). The injuries at serial No.1 and 2 mentioned in column No.17 correspond to injuries

mentioned on column No.19(iii). Again injuries at serial No.16 and 17 in column No.17 correspond to injury No.1 in the same column.

P.W.11 Dr. Sanjiv noticed following injuries on the person of Nitin :-

- 1) Lacerated wound over middle part of parietal region, 03 ½ x 1 cm. x scalp deep, oblique.
- 2) Lacerated wound over scalp over Lt. Parietal region, 04 x 1 cm. x scalp deep, oblique.
- 3) Haematoma under injury No.1
- 4) Haematoma under injury No.2
- 5) Depressed fracture of parietal bone beneath injury No.1.
- 6) Depressed fracture of parietal bone beneath injury No.2.
- 7) Contused abrasion over right arm 2 x 2 cm.
- 8) Contused abrasion over Rt. Forearm 2 ½ x 2 ½ cm.
- 9) Multiple contused abrasions over left arm, 03 in numbers (i) 5 x ½ cm. (ii) 4 x ½ cm. (iii) 3 x 2 cm.
- 10) Contused abrasion (multiple) over Lt. Forearm 04 in numbers. (i) 2 x 1 cm. (ii) 1 x 1 cm. (iii) 2 x 2 cm. (iv) 1 ½ x 1 ½ cm.
- 11) Lacerated wounds over Lt. Leg, 04 in number (i) 3 x 1 x 1 cm. (ii) 5 x 1 ½ x 1 ½ cm. (iii) 3 ½ x 3 ½ x 1 ½ cm. (iv) 6 x 1 ½ x 1 ½ cm.

- 12) Lacerated wound over upper part of Rt. Leg 05 in number (i) 3 x 1 x 1 cm. (ii) 4 x 1 x 1 ½ cm. (iii) 3 x 1 ½ x 1 ½ cm. (iv) 2 ½ x 1 ½ x 1 ½ cm. (v) 3 x 1 x 1 cm.
- 13) Contused abrasions (Multiple) over left thigh 06 in numbers. (i) 10 x 1 cm. (ii) 8 x 1 cm. (iii) 9 x 1 cm. (iv) 7 x 1 cm. (v) 8 x 1 cm. (vi) 6 x 1 cm.
- 14) Contused abrasions (multiple) over upper part of back to left side, 05 in numbers. (i) 7 x 1 cm. (ii) 8 x 1 cm. (iii) 9 x 1 cm. (iv) 6 x 1 cm. (v) 7 x 1 cm.
- 15) Contused abrasions over middle part of back to left side 02 in numbers. (i) 10 x 1 cm. (ii) 7 x 1 cm.
- 16) Contused abrasions over upper part of back to Right side and backside and right shoulder. 06 in numbers (i) 10 x 1 cm. (ii) 9 x 1 cm. (iii) 6 x 1 cm. (iv) 7 x 1 cm. (v) 8 x 1 cm. (vi) 5 x 1 cm.
- 17) Contused abrasions over middle part of back, 04 in numbers. (i) 7 x 1 cm. (ii) 5 x 1 cm. (iii) 8 x 1 cm. (iv) 6 x 1 cm.

25. P.W.11 Dr. Sanjiv found internal injuries as mentioned in Column No.19(iii). Those internal injuries were haematoma over middle part of the parietal region and haematoma over left parietal region intra-cranial haemorrhage was also present. The injuries mentioned at serial No.1 & 2 in column No.17 were corresponding injuries.

26. In his opinion, both Asaram and Nitin died due to shock due to intra-cranial haemorrhage due to injuries over

head and multiple injuries over body due to assault. The injuries were ante mortem and might have been possible by Articles No.12 and 17 to 25.

27. During his cross-examination, it has been brought on record that, no weal marks were noticed on the person of both the deceased. The doctor also admitted to have not been shown the alleged weapons by the investigating officer to solicit his opinion whether the injuries found on the person of the deceased were possible thereby.

28. In view of post mortem report, we do not propose to advert to of P.W.9 Anil's evidence in relation to inquest panchanama (Exh.184).

29. P.W.12 Dr. Yuvraj Kharade examined Gayabai. On examination of Gayabai, he found contusion over left forearm and tenderness over left side of chest. Her X-ray was taken. Then he found, she suffered fracture to left radius ulna. The contusion was 3 x 2 cm. Both the injuries were caused by hard and blunt object. The ages of the injury were 0 to 6 hours, prior to the examination. The injuries were grievous in nature.

30. P.W.1 Moiz Shaikh is a witness to the seizure of the clothes of the deceased. Those clothes were handed over by the Medical Officer to P.C. Shivaji Kharat, who in turn delivered them to the concerned police officer, who seized them under the panchanama (Exh.32).

From his cross-examination, it has been brought on record that a whitener was applied and there was some overwriting in the time of drawing of the said panchanama. It was also brought on record that the seized trouser did not bear blood stains. We do not find anything to have been elicited from the cross-examination of P.W.1 Moiz Shaikh so as to be helpful to the defence.

31. P.W.2 Baban is a panch witness to the scene of offence panchanama (Exh.145). His evidence indicates that the scene of offences were shown by the informant Bapurao (P.W.5). The crime scenes were in front of the house of the informant and towards back side of the informant's house and third one in the field of Hulgunde. His evidence indicates the investigating officer to have seized soil, blood mixed soil and stick of a Neem tree from the scene of offence.

32. From the cross-examination of this witness, it has been brought on record that he was cousin of widow of deceased Asaram. Another panch of the scene of offence too was a distant relative. It has also been brought on record that informant Bapurao (P.W.5) was also present to inquest panchanama, which was drawn a few minutes before the scene of offence panchanama was drawn. We dispel the contention of the defence that Bapurao (P.W.5) could not be presumed to be present for both the panchanamas at one and the same time. Admittedly, the inquest was drawn at Government Hospital, Jamkhed 15 minutes before the scene of offence panchanama was drawn. It is reiterated that, the distance between Jamkhed and Katewadi was not more than 7 Kms, for which travel time shall not be more than 12 minutes.

33. The question is, whether the appellants have committed murder of Asaram and Nitin. Whether they have voluntarily caused hurt to Gayabai is also an additional question.

34. Eye witness Bapurao (P.W.5) (informant) testified that, he would reside along with his parents, wife Supriya,

brother Kalyan at Katewadi. Nitin (deceased) was his another brother. He was serving with Agricultural Department at Nasik. Nitin was scheduled to get married on 19/5/2014. His two sisters along with their respective husbands and children had therefore come to the village.

35. It is further in his evidence that, Mahadev (A/1) was son of cousin of his father. There was dispute between him and father of Bapurao (P.W.5) over agricultural land Gut Nos.280, 257 and 254. The said dispute was also with others named in para 2 of his examination-in-chief. They are none other than some of the original accused before the trial Court. It is further in his evidence that, a civil suit was pending between Mahadev Bahir, his father and others. The suit was decreed in favour of his father. The suit was preceded by a litigation before the revenue authorities that had reached up to High Court.

36. In relation to the incident in question, he testified that, it was early in the morning of 12/5/2014. All of his family members including himself were asleep. They heard shouts outside their house. Hence they opened the door. Nitin (deceased) had left the house to answer nature's call.

Therefore, door of the house was just simply closed (not bolted from inside). It is further in his evidence that, when they came out of the house, he saw the appellant Mahadev was armed with a pistol in one hand and iron rod in the other. Shahaji, Sukhdeo, Kisan too were armed with iron rods. Malhari was having a wooden stick with him. Mahadev dragged Asaram towards temple by threatening him with a pistol. All of them were threatening and abusing his father Asaram. They told Asaram that they would not allow him to cultivate the land. All of them indiscriminately assaulted Asaram with the weapons in their hands.

37. It is further in his evidence that, by that time, Sandip (appellant in Criminal Appeal No.432/2018) and Balu, Ashok, Pintu, Raghunath (since acquitted) and some others, 32 in number, were there. They too joined them in assaulting Asaram. It is further in his evidence that he was there while the incident was being committed.

38. It is further in his evidence that, after assault on his father Asaram, the assailants rushed towards Nitin in the field of one Mahadev Hulgunde. His mother Gayabai followed them to rescue Nitin. She too was beaten up by

the assailants. After having assaulted Nitin, the assailants again came back to Asaram. Kalayn (P.W.8) took Nitin to the agricultural field of Hanumant Hulgunde. He (Bapurao P.W.5) was watching the incident. It is further in his evidence that, he did not intervene to save his father or brother since the assailants were more in number and armed with deadly weapons. His evidence further indicates that, he made a phone call, first to the police station and then a cell phone call to Police Inspector. The last call was made from the cell phone of Jairam Hungunde (Jairam not examined).

39. The evidence of Bapurao (P.W.5) further suggests that, the assailants had gone back to Nitin. Nitin was again assaulted. Then they (assailants) moved towards him (Bapurao P.W.5). He, therefore, entered his house to save himself. The assailants disappeared when a police vehicle reached the spot. Two police personnel had reached before the police vehicle arrived. Both Asaram and Nitin became unconscious. Mother had suffered fracture. The injured were first rushed to a Government Hospital, at Jamkhed. After taking primary treatment there, on the advice of the Medical Officer, they were being taken to Civil

Hospital, Ahmednagar. On the way at village Kada, movements of Asaram and Nitin stopped. They were therefore taken to a private hospital at Kada. A Medical Officer there declared them dead. The dead bodies were therefore, brought to Civil Hospital, Jamkhed for post mortem. Mother was being treated at the hospital. It was 10.30 a.m. by then. He went to the Police Station to lodge the F.I.R. (Exh.169). It is further in his evidence that, his F.I.R. was not recorded immediately since the Police Inspector had instructed the Police Station Officer not to record the same until he reached the Police Station. After P.W.14 P.I. Sanjay came to the Police Station, the F.I.R. was recorded. It is at Exh.169.

40. It is further in his evidence that, thereafter he went back to hospital. He again joined the police on their asking. He pointed out places whereat the offences took place. The police drew the scene of offence panchanama in his presence. It is further in his evidence that, he handed over the Police Inspector copies of the complaints (Exh.170 to 173) lodged by his father against Mahadev and others.

41. It is further in his evidence that, his mother was

not keeping well due to untimely demise of her husband and son Nitin. She, therefore, did not appear to give evidence before the Court.

42. Bapurao (P.W.5) was subjected to a searching cross-examination. He admitted to have had cell phone at the relevant time. Appellants Rajendra and Mahadev would reside on Kharda Road. He admitted his house to have no window. His family owned 15 acres of land in Gut Nos.110, 187, 189, 191 and 254. The appellants are his distant relatives. Mahadev (A/1) sold some of the land in Gut No.257. The dispute between them started in 2002.

43. It is further in his evidence that, his father sold 3 ½ acres of land in Gut No.187 to one Yuvraj Jamdhade in the year 2013. The appellants were not allowing Yuvraj to cultivate the land. The dispute between the two families was over the land sold to Yuvraj. It is further in his evidence that a police case was pending against him, his brother and deceased father on account of beating up one Sudam Bahir. Sudam was indoor patient for 15 days. They were arrested in connection with the said case. The case was pending in Court, at Jamkhed.

44. It has further come on record during his cross-examination that, the incident lasted for about an hour. Villagers had gathered. Appellant Mahadev had, however, threatened them if anyone of them intervened. It was specifically suggested on behalf of accused Nos.1, 2 and 4 to Bapurao (P.W.5) in his cross-examination in paragraph No.18 as under :

“It is true to say that, I became very angry since accused were beating my father and brother.”

“हे म्हणजे खरे आहे की आरोपी माझ्या वडिलांना व भावाला मारत होते म्हणून मी खूप रागावलो होतो”

(In our view, this suggestion is nothing but an admission on behalf of those accused as to the fact that this witness got angry on having seen them assaulting his father and brother).

He did not try to disperse the assailants since they were more in number. There were no crops in the agricultural fields. The fields were, however, ploughed. Except his mother, none else from his family side came to intervene. His evidence further indicates that he named Sachin Bahir (not prosecuted) as one of the assailants. He

was specifically asked a question that accused Mahadev and other villagers were upset on account of harassment meted out to them by deceased Asaram and his family members. He replied that it was Mahadev and his family members were upset on account of civil litigation. He denied Asaram to have had received Rs.65 Lakhs as consideration from Yuvraj. He denied the consideration was shown at Rs.1,80,000/- in the sale deed. He admitted that Mahadev and others had objected for recording Yuvraj's name in the 7/12 extract. Yuvraj was not even allowed to cultivate the land. He, however, denied that, the assault was made by Yuvraj and his men since his father had refused to pay back the amount of consideration.

45. It is further in his evidence that, he watched the incident by hiding himself near the wall outside his house.

46. In response to the questions put to him on behalf of Accused Nos.3, 5, 6 and 15 during his cross-examination, it has been brought on record that he narrated the incident to P.I. Patil. P.I. Patil, in turn, dictated the same to his writer for being recorded. His evidence further indicates that contents of the F.I.R. were as per his narration. He admitted to have told P.I.

Patil that the assailants used weapons like axe, sugarcane cutter and sword. He on his own added to have told that he named Sachin Bahir (not prosecuted) to have assaulted with a bicycle chain.

47. It is further in his evidence that happenings at the back of his house were not visible while standing in front of the house. He admitted that Advocate Gundecha was representing his father in a civil suit pending in the Court of Jamkhed. He, however, denied that the said Advocate had come to the police station with a copy of plaint and the F.I.R. was lodged against all those who were the defendants in the said suit, even in their chronological order therein. It is further in his evidence that his mother did not intervene to save her husband. The scene of offence relating to the incident of beating Nitin was about twenty feet from the house of Jayram Hulgunde.

48. In response to the questions put to him during cross-examination on behalf of original accused Nos. 7, 11, 14, 16, 17 and 26, it has been brought on record that he told the doctor his name as person admitting the injured to the hospital. When he made a phone call on the landline of police station,

he told Dhiwar Saheb, name of one or two assailants. It is further in his evidence that within ten minutes of the said phone call, two police personnel reached the village. He denied that both, Nitin and his father were lying in front of his house while those two police personnel arrived. According to him, several villagers had witnessed the incident. It is further in his evidence that there were no blood stains on the clothes on his person on account of shifting of his brother and father to a police vehicle. According to him, his hands were stained with blood. It is further in his evidence that those two police personnel, who had first reached the village had accompanied him in the police vehicle for taking his brother and father to the hospital. He told those two police personnel the incident in brief and even gave names of two-three assailants. He admitted to have told doctor at Government Hospital, Jamkhed names of two-three assailants. He admitted to have had hidden himself in the house due to fear of the assailants.

49. Another eye witness, P.W.8 – Kalyan is the brother of deceased Nitin and son of deceased Asaram. It is in his evidence that on the given day by 06:00 in the morning, Nitin and he himself had gone to answer nature's call. They were in the field of Hanumant and Mahadev Hulgunde. Both of them

heard noise from the side of their house. He, therefore, rushed to his house and saw Mahadev, Shahaji, Sukhdeo and Dada were holding iron rods. Rajendra, Raghunath and Kailas were armed with wooden logs. Sandip, Somnath and Malhari were armed with sticks. All of them rushed to Nitin and beat him up mercilessly. It is further in his evidence that 25-30 other persons also came there. His mother intervened to save Nitin. Appellants – Mahadev and Raghunath assaulted her. According to him, he saw the incident while he was at Tamarind tree. It is further in his evidence that the assailants then rushed towards the house. Then he went to Nitin and his mother. He took them to the house of one Jayram Hulgunde (Jayram not examined). It is further in his evidence that P.W.5 Bapurao came there. Police personnel arrived thereafter. The appellants then ran away. The police personnel called the police vehicle. The injured were first taken to the Government Hospital, Jamkhed and then were being taken to Ahmednagar. On the way, both, his father and brother passed away.

50. In response to the questions put to him on behalf of Accused Nos. 1, 2 and 4, it has come in his evidence that he told the police about arrival of 25-30 persons. He also told the police that he watched the incident while standing at Tamarind

tree. The questions put to him and answers thereof appearing in paragraph No.7 of his cross-examination are all found to be omissions in his police statement. We, however, do not find them to be so material. **It was specifically suggested to him that he became angry when the assailants were beating Nitin. (Pl. read our view on Page No.44).** He did not raise shouts to secure presence of nearby persons to save Nitin. According to him, he did not raise shouts due to fear. It is further in his evidence that clothes on his person were stained with blood when he brought Nitin to the house of Hanumant Hulgunde. It is further in his evidence that he and Bapurao took Nitin to the place whereat their father was lying. He admitted to have been an accused in a criminal case of beating. According to him, it is a false case lodged by one Sudam Bahir. According to him, Sachin Bahir was also one of the assailants.

51. In response to the questions put to him during his cross-examination on behalf of Accused Nos.3, 5, 6 and 15, it was suggested that he and Nitin had gone in two different directions, for answering nature's call. On the fateful day he did not go to the police station.

52. P.W.7 – Bhingardive and P.W.13 – Bade were the police personnel, who reached the village in response to the directions given by police station officer after a phone call was received. It is in their evidence that they saw both, Nitin and Asaram (deceased) lying on the ground. Both had suffered severe injuries. They were unconscious. Gayabai had also suffered injuries to her left hand. It is in the evidence of P.W.7 Bhingardive that they called for a police vehicle, wherein the injured were shifted, first to the Rural Hospital, Jamkhed.

53. In the cross-examination of P.W. 7 – Bhingardive, it has come on record that there were some complaints against both the deceased. The complaints were made by some of the villagers and even some accused as well. When he reached the village, he saw nobody at the place except both the deceased, Gayabai and her daughter. He did not accompany the injured to the Civil Hospital, Ahmednagar.

54. During cross-examination of P.W.13 – Bade he told that both, Kalyan and Bapurao had told him the names of the assailants while he reached the village. He even conveyed the names of assailants to P.I. Patil same day. Both the injured were lying near their house. Even Gayabai was also there.

He did not notice blood stains on the clothes on the person of Kalyan and Bapurao. His police statement is silent to record that he stated to have shifted the injured to the hospital with the assistance of both, Kalyan and Bapurao.

55. P.W.14 – Sanjay's evidence suggests that he was in-charge Police Inspector of Jamkhed Police Station during 14th February, 2012 to 07th June, 2014. By 06:00 in the morning of 12th May, 2014 he received a phone call from P.W.5 Bapurao (informant) informing him that incident of violent beating took place at Katewadi. On his request, he sent police personnel and even police vehicle to village Katewadi. The deputed police personnel were none other than P.W.7 Bhingardive and P.W.13 Bade. It is further in his evidence that he recorded the F.I.R. as narrated by P.W.5 Bapurao and then registered the crime. He referred to the F.I.R. (Exh.169). It is further in his evidence that he paid visit to Katewadi and drew scene of offence panchanama (Exh.145). He received blood stained clothes delivered by the Head Constable Deokar. It is further in his evidence that he arrested the accused persons. Some of the accused persons made disclosure statements, pursuant to which sticks and iron rods came to be seized under the panchanama (Exh.147 to 154, 157 to 166). His

evidence further indicates that he deputed a police personnel to submit said muddemal to Forensic Science Laboratory, Nashik ('F.S.L., Nashik'). He then referred to C.A. reports (Exh.206 and 207).

56. In response to the questions put to him during cross-examination, it has been brought on record that there was no cognizable offence registered against any of the accused during his tenure at Jamkhed Police Station. He denied to have instructed the Police Station Officer not to register the F.I.R. until he reached the police station. He could not offer any explanation as to why services of same panchas (P.W.3 and P.W.4) were availed for recording memorandum statements. He even admitted to have not shown seized articles to the medical officer to seek his opinion as to whether the injuries on the person of the deceased were possible by the assault therewith. According to him, when P.W.5 Bapurao made him a call, he (P.W.5) did not relate him names of the assailants.

57. P.W.15 – Deepak Kumar did some part of investigation and filed supplementary charge-sheet against accused – Sandip Bahir.

Circumstantial evidence in the nature of recovery of weapons allegedly used in assaulting the deceased and the injured :-

58. P.W.3 – Shantinath testified that on 20th May, 2014 he was called by P.W.7 – Bhingardive. Another panch Ravi Sapkal was also called. In their presence accused – Raghunath Bahir made a statement that he would produce the wooden log which was kept by him on the wall of kitchen below the roof. His statement was recorded. He put his thumb impression. He and other panch too signed the same. It is at Exhibit 147. Then Raghunath took them to his house at Katewadi Phata. He produced a wooden log kept on a half constructed wall in the kitchen. Same was seized under panchanama (Exh.148).

59. P.W.3 - Shantinath identified Uddhav Bahir for appellant Raghunath Bahir (**wrong identification**), who made disclosure statement (Exh.147).

60. It is further in his evidence that on the same day Sukhdeo Bahir made similar statement that he would take out iron rod kept by him at a corner of his room. His statement was recorded. All of them signed the same. It is at Exhibit 149. Sukhdeo then took them to his room and took out the

iron rod. It was seized under panchanama Exh.150. He, however, expressed his inability to identify Sukhdeo, who made the disclosure statement.

61. It is further in his evidence that again on 22nd May, 2014 both of them went to police station. Malhari Bahir made a disclosure statement that he would produce the stick kept in the cattle shed. The statement was recorded. All of them signed the same. Malhari then took them to the cattle shed at Katewadi and took out stick. Same was seized under panchanama. He identified Malhari before the Court.

62. It is further in his evidence that on the same day i.e. on 22nd May, 2014 Somnath Bahir made a disclosure statement that he would produce the wooden stick kept by him in the passage between the roof and wall. His statement was recorded (Exh.153). All of them signed the same. Somnath then took them to his house at Katewadi and then took out the stick. It was seized under panchanama Exhibit 154. He identified Somnath before the Court.

63. During cross-examination of this witness, it has come on record that he is the cousin of the informant, P.W.5 Bapurao. He also admitted that another panch witness was

his relative. According to him, the articles seized in his presence were available with any other farmers. His evidence further indicates that on the one and same day i.e. 20th May, 2014, they paid visit to one and the same house twice in respect of two different disclosure statements.

64. P.W.4 – Suresh is another panch witness to the disclosure statement made by the accused/appellant. It is in his evidence that on 18th May, 2014, appellant – Mahadev made a disclosure statement that he would produce an iron rod. His statement was recorded vide Exhibit 157. He and another panch witness – Shivaji Sapkal signed the same. It is further in his evidence that Mahadev, police personnels alongwith panchas then went to his house and took out the iron rod from the hut in front of his house. It was seized under panchanama Exhibit 158. He identified appellant – Mahadev, but failed to identify the iron rod seized pursuant to the disclosure statement.

65. It is further in his evidence that then they returned to police station. Thereafter accused – Dada made a disclosure statement of the place where the iron rod was placed. His statement was recorded vide Exhibit 159. He then

took all of them to his residence and took out the iron rod. It was seized under panchanama Exhibit 160. The witness, however failed to identify accused – Dada and even the article, iron rod.

66. It is further in his evidence that police again asked both of them to remain present at the police station on 21st May, 2014. Accordingly, they attended the police station. Accused – Shahaji made a disclosure statement that he would produce iron rod kept at his house. The statement made by him was recorded vide Exhibit 161. All of them signed the same. Shahaji then took them to his house at Katewadi and took out the iron rod. It was seized under panchanama Exhibit 162. The witness did not identify Shahaji and even the iron rod seized pursuant to his disclosure statement.

67. It is further in his evidence that on return to the police station, another accused – Rajendra made a disclosure statement that he would point out the place whereat the wooden log is kept. His statement was recorded vide Exhibit 163. All of them signed the same. Rajendra then took them to his residence and took out the wooden log. It was seized under panchanama Exhibit 164. The witness, however did not

identify Rajendra and even the wooden log seized under panchanama Exhibit 164.

68. It is further in his evidence that on return to police station, accused – Kailash gave a disclosure statement that he would took out a wooden log kept at tin roof. His statement was recorded vide Exhibit 165. He then took them to his house at Katewadi and took out the wooden log. It was seized under panchanama Exhibit 166. The witness, however did not identify Kailash and even the wooden log. In his cross-examination, it has been brought on record that informant is the son of his cousin. Another panch, Shivaji Sapkal is the real maternal uncle of the informant. He is the cousin of Shivaji.

69. P.W.6 – Vijay was a Head Constable, who carried muddemal articles in sealed condition to F.S.L., Nashik on 25th May, 2014. He gave evidence on the same lines. He placed on record acknowledgment receipt given by the officer of F.S.L., Nashik, on the copy of forwarding letter (Exh.165) Cross-examination of this witness indicates that all the muddemal articles were kept in a cupboard of P.I. Patil. Jagdale, writer of P.I. Patil, handed over to him the same for being carried to F.S.L. Nashik.

APPRECIATION (Cr. Appeal No. 432/2018) :

70. This appellant examined two witnesses in his defence to make out the case of alibi. According to him, on the given day he had carried onions from his field for sale in A.P.M.C., Solapur. D.W.1 – Ajinath testified that he transported the onions of appellant to Solapur. According to him, appellant – Sandip was in his company on 11th and 12th May, 2014.

71. D.W.2 – Siddik claimed to be a businessman, trading in agricultural produce. It is in his evidence that appellant – Sandip had sold him onions on 12th May, 2014. Sandip had come to him in a tempo. He paid Sandip a sum of Rs.72,672/-. A copy of the bill was tendered in evidence vide Exhibit 301.

72. Cross-examination of this witness indicates that original receipt book was not tendered in evidence. Entire writing in the bill except the date and signature of issuance of the bill is in English. The evidence of both these witnesses would indicate that for village Katewadi, A.P.M.C., Ahmednagar is the nearer place. It is not known as to why the appellant Sandip, preferred to take the onions to A.P.M.C., Solapur instead of A.P.M.C., Ahmednagar. On pointed query by this

Court, learned counsel fairly admitted that the defence of alibi was raised during trial and not from day one of the arrest of this appellant. In our view, the defence of alibi has not been proved as has been expected by law.

73. There is, however another reason for us to allow this appeal. P.W.5 Bapurao, the informant had testified in paragraph 3 of his examination-in-chief that while his father was being assaulted by Mahadev, Shahaji, Sukhdeo, Malhari and Dada, Sandip (appellants) along with Balu, Ashok, Pinu @ Kishor and Raghunath (underlined accused since acquitted) and some other 25 -30 in number were there and all of them beat up his father. Neither Sandip nor those who have been acquitted (the above 4) were alleged to have been armed with any kind of weapon. All those, namely who were said to be in the company of Sandip, have been acquitted of offence of committing murder of Asaram.

74. The Apex Court, in case of **Javed Shaukat Ali Qureshi Vs. State of Gujarat, 2023 (12) Scale 568** observed in paragraph 19 as under :-

“19. We have found that the case of accused no.2 stands on the same footing as accused nos.1, 5 and 13

acquitted by this Court. The accused no.2 must get the benefit of parity. The principles laid down in the case of Harbans Singh Vs. State of U.P. & Ors., (1982) 2 SCC 101 will apply. If we fail to grant relief to accused no.2, the rights guaranteed to accused no.2 under Article 21 of the Constitution of India will be violated. It will amount to doing manifest injustice. In fact, as a Constitutional Court entrusted with the duty of upholding fundamental rights guaranteed under the Constitution, it is our duty and obligation to extend the same relief to accused no.2. Therefore, we will have to recall the order passed in the special leave petition filed by accused no.2.”

75. Same are the observations of the Apex Court in case of **Ram Singh Vs. State of Uttar Pradesh, Criminal Appeal No. 206 of 2024**, decided on 21st February, 2024. It has been observed in paragraph No.32 of the said judgment as under :-

“31. This Court in the case of Javed Shaukat Ali Qureshi, has held that when there is similar or identical evidence of eye witnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under :

15. When there is similar or identical evidence of eye witnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be

governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”

In view of the dictum in the aforesaid two authorities relied on by the learned Senior Counsel, the appellant Sandip is entitled for acquittal on the ground of parity since those four namely Balu, Ashok, Pintu @ Kishor and Raghunath have been acquitted by the Trial Court.

APPRECIATION (CRIMINAL APPEAL NO.424/2018 & 456/2018)

76. The incident took place little past 6.00 in the morning of 12/5/2014 at village Katewadi. The case is based on two eye witnesses and circumstantial evidence in the nature of land dispute being motive, and seizure of weapons allegedly used by some of the appellants. Unfortunately, two deaths took place and one suffered injuries. They were from one and the same family. Here both the sons namely P.W.5 Bapurao and P.W.8 Kalyan testified on oath that Gayabai, after having lost her husband and a young son, had not been keeping well. She was,

therefore, not examined as a witness. Her non-examination as a witness in the case is, therefore, found us to be not prejudicial to the prosecution. It is also true that, those were Summer days. Number of villagers had witnessed the incident. None of them has been examined as a witness.

77. We have to see whether the case is made out on the basis of the evidence produced by the prosecution.

MOTIVE :-

78. Admittedly, there was a long standing dispute over agricultural lands bearing Gut Nos.187, 257 and 254 between appellant Mahadev and some of the appellants and original accused on one hand and deceased Asaram on the other. The said dispute dates back to 2002. It was initially in the nature of proceedings before the revenue authorities. Ultimately, it reached the High Court. When the High Court observed the parties need to have their right decided in a civil suit, suit was filed in the Court at Jamkhed. It is stated that, the suit was decreed in favour of the deceased. In between period, there were complaints and cross-complaints against each others, lodged in the police station. The investigating officer P.W.14 Sanjay,

however, admitted that no cognizable offence was registered against any of the parties to the Sessions Case (No.265/2014) during his tenure of two years at Jamkhed Police Station.

79. In our view, the dispute over the agricultural lands stated hereinabove was really not a motive. There is another aspect of the matter to be motive to the incident. Admittedly, Asaram (deceased) sold 3 ½ acres of land in Gut No.187 to one Yuvraj Jamdade in the year 2013 for a consideration of sum of Rs.1,80,000/-. According to the appellants, the actual consideration amount was Rs.65 Lakhs. The same was received by deceased Asaram. The other co-owners of the said land did not allow Yuvraj to enter the land and cultivate the same. It was he, therefore, who was asking Asaram to pay back his entire consideration amount. By the time the incident took place, name of Yuvraj had not been recorded in the revenue record of the 7/12 extract, pursuant to the sale deed. It was, therefore, suggested to the informant that the murders were committed by none other than Yuvraj and his men. From the evidence on record, no one would readily buy such a theory. It is a matter of common knowledge that

victims ordinarily do not spare the actual culprits and implicate innocents. Moreover, there is nothing except the suggestion.

80. The appreciation of the evidence of P.W.5 Bapurao would suggest that his presence at his residence has not been disputed by the appellants. Admittedly, his younger brother Nitin (deceased) was scheduled to get married on 19/5/2014. P.W.5 Bapurao would reside along with his parents, P.W.8 Kalyan and Bapurao's wife Supriya etc. Nitin was serving with Agricultural Department at Nasik. He had come to the village for his marriage. For the very reason, his two sisters along with their respective husband and their children had also been to the house of Bapurao.

81. The evidence of P.W.5 Bapurao would indicate that, Nitin (deceased) and Kalyan (P.W.8) had left the house some time before 6.00 in the morning to answer nature's call. Suggestions given to the eye witnesses in their cross-examination indicate the said fact to have not been in dispute. It was only suggested that both Nitin (deceased) and Kalyan (P.W.8) had gone in two different directions in

the field of Hulgunde. It is in the evidence of P.W.5 Bapurao (informant) that, on hearing commotion outside his residence, he came out to see what the matter was. He saw the appellants. According to him, appellant Mahadev was armed with a pistol in one hand and iron rod in the other. Learned counsel for one of the appellants might be right in submitting that, had the appellant Mahadev really been armed with a pistol, he would have shot his target dead instead of inflicting number of blows. The appellants have been acquitted of the offences punishable under the Arms Act.

82. The evidence of P.W.5 Bapurao further suggests the appellants Shahaji, Sukhdeo and Dada were armed with iron rods, appellant Malhari had in his hand wooden stick. It is further in his evidence that, Mahadev dragged his father (deceased Asaram) towards temple. Close reading of evidence of both, P.W.5 Bapurao and P.W.8 Kalyan would indicate that none of them claimed any of the appellants to have had entered their house, assaulted any one in the house or dragged Asaram from the house. In our view, therefore, conviction of the appellants for the offences punishable under Section 452 read with Section 149 of the

Indian Penal Code is unsustainable.

83. The evidence of P.W.5 Bapurao would further indicate that, after assaulting his father Asaram, the assailants went towards Nitin. He (Nitin) too was assaulted. When Nitin's mother Gayabai intervened to save him, appellants assaulted Gayabai as well.

84. As per the case of the prosecution itself, Asaram was murdered just outside his residence while Nitin was killed in the field of Hunglude. There is evidence of P.W.8 Kalyan to indicate him to have brought Nitin by the side of his father Asaram in front of the house. The evidence of P.W.5 further indicates that, he first made a phone call on landline of Police Station and then made a phone call to P.I. Sanjay (P.W.14). This evidence of P.W.5 Bapurao gets reinforced by the evidence of P.W.13 Babasaheb Bade and P.W.14 Sanjay. He, however, claimed to have made a phone call from the cell phone of Jairam Hulgunde. True, Jairam has not been examined. Non-examination of Jairam would be of little consequence since in response to the phone call made by P.W.5 Bapurao, P.I. Sanjay (P.W.14) had directed P.W.7 Bhingardive and P.W.13 Bade to

immediately rush to the village. Evidence of both these witnesses indicate they did reach the village within 10-15 minutes. The Police Station Officer had also directed them to go to the village and do the needful. True, their evidence would indicate that, while they reached the village, none was present at or around the house of P.W.5 Bapurao. Both Asaram and Nitin were lying in severely injured condition by the side of each other. It is they (P.W.7 & 13) who had secured a police vehicle in which the injured were rushed first to Government Hospital at Jamkhed. On advice of the Medical Officer, the injured were shifted to Civil Hospital, Ahmednagar. On the way, both Asaram and Nitin died. They, therefore, returned to Jamkhed. P.W.5 Bapurao was categorical to state to have had informed the Police Inspector and those two police officials that they were 2-3 assailants. This has been brought on record through the cross-examination. The tenor thereof and evidence of P.W.5 Bapurao and P.W.8 Kalyan would indicate that P.W.5 Bapurao meant to say that there were number of assailants besides the figure 3, he stated to P.W.14 Sanjay and P.W.7 Bhindardive. The learned A.P.P. was right in contending that number of injuries on the

person of the deceased would indicate that it was an exercise of number of assailants. We are at one with his submissions. We do agree with his further submission that Court has to sift chaff from grain. Falsehood is to be disengaged from truth.

85. The evidence of P.W.5 Bapurao would further indicate that his residence did not have a window. He saw the incident standing by the side of one of the walls of his residence. True, he admitted to have hidden himself in the house. His evidence, however, indicates that, when the incident commenced, he had come out of the house. From the suggestions given to P.W.5 Bapurao, one cannot reach to the conclusion that from commencement of the incident till the assailants dispersed, P.W.5 Bapurao remained in his house. Such was not even the suggestion. When the incident takes place just outside the house, it was but natural on the part of P.W.5 Bapurao to come out of the house and witness the same.

86. The evidence of P.W.5 Bapurao further indicates that the assailants thereafter went towards Nitin. All of them assaulted Nitin. P.W.8 Kalyan claimed to be an eye

witness to the incident, wherein Nitin unfortunately died. It is in the evidence of P.W.8 Kalyan that he saw the incident by hiding himself behind a tamarind tree. He saw Mahadev, Shahaji, Sukhdeo and Dada (appellants) armed with iron rods. Rajendra, Raghunath, Kailas held wooden logs. Sandip, Somnath, Malhari were armed with sticks. All of them beat up Nitin mercilessly. Mahadev and Raghunath beat up his mother (Gayabai) when she intervened to save Nitin. The injuries on the person of Gayabai indicate, she was victim of the assault. It is further in his evidence that, he first took Nitin and mother to the house of one Jairam Hulgunde. He then brought Nitin just outside his residence. Two police personnel thereafter first came and then a police jeep arrived. Rest of his evidence as regards taking the injured to the hospital and bringing them back after having found two of them to be dead, is consistent with the evidence of P.W.5 Bapurao.

RECOVERY OF ARTICLE :-

87. P.W.3 Shantinath and P.W.4 Suresh are the witnesses in whose presence the concerned appellants made disclosure statements, pursuant to which the sticks

and iron rods came to be seized. P.W.3 is a witness to disclosure statement by Raghunath and Sukhdeo on 20th May and disclosure statement by Mahlari and Somnath on 22nd May. Evidence of this witness indicates he identified Uddhav Bahir for Raghunath who allegedly made statement, pursuant to which a stick came to be seized. The disclosure statement made by these 4, pursuant to which the articles came to be seized, find place at Exhs.147 to 154. This witness did not identify appellant Sukhdeo before the Court as one to have made a disclosure statement. First two disclosure statements made by Raghunath and Sukhdeo respectively were dated 20th May whereas the next two made by appellants Malhari and Somnath were dated 22nd May.

88. Similar is the case of P.W.4 Suresh Sakpal. His evidence indicates that, on 18th May, the appellant Mahadev and Dada made disclosure statement (Exhs.157 and 159), pursuant to which iron rods came to be seized under panchanamas (Exhs.158 and 160). This witness did identify Mahadev, but could not identify the iron rod recovered pursuant to his disclosure statement. So far as regards disclosure statement made by appellant Dada is

concerned, this witness neither identified Dada before the Court nor did he identify the iron rod allegedly recovered pursuant to the disclosure statement made by Dada.

89. His evidence further indicates that, on 21/5/2014, appellants Shahaji, Rajendra and Kailas made disclosure statements (Exhs.161, 163 and 165 respectively), pursuant to which iron rods and wooden logs came to be seized under panchanamas (Exhs.162, 164 and 166 respectively). This witness did not identify Shahaji, Rajendra and Kailas before the Court nor could he identify the articles seized pursuant to the disclosure statement made by these persons.

90. The evidence of investigating officer Sanjay (P.W.14) in regard to the disclosure statements made by the aforesaid appellants and recovery of iron rods and sticks pursuant thereto is general in nature. We do not subscribe to the submissions made by learned A.P.P. that we have to see the recovery of articles and not the identity of the persons. If we agree with his submissions, then there would be a mix up of evidence. In case of one of the appellants, he allegedly made a statement that he would take out stick

from his residence while he took it out from a cattle shed in front of the house. Admittedly, all these articles are easily available with the farmers. It is true, the C.A. reports indicate some of the seized articles borne human blood while others borne blood of blood group of either of the deceased Asaram and/ or Nitin.

91. Admittedly, both P.W.3 Shantinath and P.W.4 Suresh were very close relations of the informant. It is not known as to why the investigating officer availed their services for all the disclosure statements and recoveries made pursuant thereto. The investigating officer did not offer any explanation in that regard. For this reason, and for the fact that these witnesses either did not identify the appellants who made the disclosure statements or could not identify the articles seized pursuant to their respective disclosure statements, we would not like to place much reliance on the evidence of the C.A. reports relating to the seized articles and the basic evidence in that regard in the nature of disclosure statement and consequential recoveries.

92. In case of **Ramanand alias Nandlal Bharti Vs.**

State of Uttar Pradesh (AIR 2022 SC 5273), the Apex

Court held :-

“53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchanama that the investigating officer may draw in accordance with law. This first part of the panchanama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchanama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or

any other article is discovered then that part of the entire process would form the second part of the panchanama. This is how the law expects the investigating officer to draw the discovery panchanama as contemplated under section 27 of the Evidence Act.”

(Underlined is our's)

93. Moreover, the evidence of the investigating officer in regard to the discovery statement and recovery pursuant thereto is very general in nature. In paragraph no.54 of the judgment in case of Ramanand Bharti (supra), it has been observed :-

“54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchanama. . . .”

(Underlined is our's)

94. It is reiterated that, we are conscious of the fact that principle of *Falsus in Uno Falsus in Omnibus* is not applicable in India. However, when truth and falsehood are mingled with each other and are inseparable, a benefit of doubt is required to be given to the accused. It is in human nature to exaggerate an incident. It also appears in some

cases that along with actual culprits, an innocent is implicated. Possibility of same to have happened in this case could not be ruled out, except in case of the appellants namely Mahadev Gaghininath Bahir, Rajendra @ Rajesh Mahadev Bahir and Sukhdeo Raghunath Bahir. We have more than one reason to say so. First of such reason is the fact that the F.I.R. was lodged against 32 known and 4/5 unknown persons. 9 of the 32 accused named in the F.I.R. were female (wives of some of the appellants). The same indicates the informant's instinct to implicate one and all with whom his family was at loggerheads. It is, however, not the fact that all those named as accused in the F.I.R. were defendants in the suit. Only 8 of the 32 named in the F.I.R. were the defendants. Be that as it may. In the F.I.R., the informant alleged the appellants to have been armed with weapons like pistol, sickle, scythe, sword, axe etc. To our mind, when the mortal remains of the deceased were subjected to post mortem examination and it was revealed that they were assaulted with hard and blunt objects, the informant might have changed his version before the Court attributing them with weapons which were hard and blunt objects. True, he

gave a supplementary statement as well. P.W.8 Kalyan might have given statement suitable to the prosecution case since his statement was recorded on the following day. His evidence would indicate that, the accused were 32 in number besides 4/5 unknown persons. He too appears to have named one and all with whom the family was not on good terms. True, the Trial Court, on appreciation of the evidence in the case, convicted 10 and acquitted rest of the accused persons except those who were absconding. Admittedly, neither the State nor the informant or P.W.8 Kalyan has preferred appeal against their acquittal. There is one more startling fact, which indicate that one Sachin Bahir was also named as one of the accused/ assailants in the F.I.R. The investigating officer found him to have been in Mumbai on the given day. A report under Section 169 of the Cr.P.C. was, therefore, filed. The same appears to have not been taken exception to.

95. As such, the evidence of P.W.5 Bapurao and P.W.8 Kalyan indicate that they had lodged the F.I.R. and given statement before the police against 32 known and 4/5 unknown persons. The main assailants were allegedly armed with sharp weapons. On post mortem, it was

realised the deceased to have suffered injuries with hard and blunt objects. They, therefore, might have changed their version before the Court. The fact, however, remains that, the presence of both these witnesses at their house and even at the scene of offence has been made out and even suggestions indicate the same to have not been disputed. It is reiterated that, it is in human nature to exaggerate the version or paint the incident bright. With actual culprits, some innocents are also involved. Here is the case, however, that, the cross-examination of both these witnesses conducted on behalf of the Mahadev Gaghininath Bahir (appellant No.1 in Criminal Appeal No.456/2018), Rajendra @ Rajesh Mahadev Bahir (appellant No.1 in Criminal Appeal No.424/2018) and Sukhdeo Raghunath Bahir (appellant No.2 in Criminal Appeal No.456/2018) indicates that, it was specifically suggested to both of them that they were angry on having seen the accused assaulted Asaram, Nitin and Gayabai (here original accused Nos.1, 2 and 4). To be precise, the suggestions are reproduced below :-

“It is true to say that, I became very angry since accused were beating my father and brother.”

96. Same is the suggestion to P.W.8 Kalyan in para 10, which reads as under :

“It is true to say that, I became angry when assailants were beating Nitin. I did not raise shouts to gather nearby persons to save Nitin.”

“हे म्हणणे खरे आहे की आरोपी माझ्या वडिलांना व भावाला मारत होते म्हणून मी खूप रागावलो होतो”

P.W.8 volunteered that, due to fear, he did not raise shouts.

97. Similar is the case as regards assault on Gayabai. We have already observed above that, appellant Mahadev had a strong motive to be after Asaram in view of Asaram (deceased) to have sold 3 ½ acres of land to Yuvraj Jamdade a year before the incident. The appellants did not allow Yuvraj to enter the land. It is difficult to digest a suggestion that the incident was committed by Yuvraj and his men and not by appellant Mahadev and those others on whose behalf the aforesaid three suggestions were given. Since possibility of falsely implicating the other appellants could not be ruled out, we propose to give them benefit of doubt.

98. It is reiterated that, there is no evidence to indicate in what words the appellants had abused and who gave threats to the lives of the victims. The evidence of P.W.5 Bapurao is general in that regard. He testified that the assailants abused and gave threats. The same is taken to have made in one voice. No abusive words have been reproduced.

99. Moreover, when the victims unfortunately died of the assault, the assailants could not have been convicted for lesser offence of the very assault namely for the offence punishable under Sections 323, 324 of the Indian Penal Code. To that extent, we are not in agreement with the findings recorded by the trial Court. We also find the trial Court to have exceeded its jurisdiction in imposing life sentence in following words :-

“1) Imprisonment for life shall mean till the end of their natural life.”

100. The offence punishable under Section 302 of the Indian Penal Code prescribes punishment for offence of murder. Section 302 reads thus :-

“302. Punishment for murder:- Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.”

101. In case of **Ravinder Singh Vs. State Government of NCT of Delhi (2024) 2 SCC 323**, the Apex Court observed :

“Penal Code, 1860 – S.53 r/w S.43 – Sentence - Imposition of life imprisonment for a specified minimum non-remittable term – Reiterated, can be imposed only by High Courts and Supreme Court – Imposition of life imprisonment for a specified minimum non-remittable term, held, not prohibited under I.P.C. or Cr.P.C., but the power to impose such a modified punishment, held, can only be exercised by High Court and in the event of further appeal, by Supreme Court, and not by any other court in the country.”

102. We, therefore, withdraw the words, “life imprisonment shall mean till the end of their natural life.

103. For all the aforesaid reasons, the appeals partly succeed. Hence the order :

ORDER

(i) Criminal Appeal No.432/2018 is allowed. The

impugned order of conviction and consequential sentences passed against the appellant Sandip s/o Ganpat Bahir is hereby set aside. He stands acquitted of the offences for which he was convicted under the impugned order. He be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(ii) Criminal Appeal Nos.424/2018 and 456/2018 are partly allowed. Appellants Mahadev s/o Gahininath Bahir and Sukhdeo s/o Raghunath Bahir (appellants No.1 and 2 in Criminal Appeal No.456/2018) are hereby convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code i.e. for committing murder of Asaram and Nitin and, therefore, they are sentenced to suffer imprisonment for life. (Trial Court has not passed separate sentence for murder of Asaram and Nitin).

(iii) The appellant No.1 Rajendra @ Rajesh Mahadev Bahir (in Criminal Appeal No.424/2018) is convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code i.e. for committing murder of Nitin Asaram Bahir and, therefore, his conviction and sentence for offence punishable under Section 302 read

with Section 149 of the Indian Penal Code and consequential sentence given in clause (2) of the impugned order to stand unaltered.

(iv) The words “Imprisonment for life which shall mean till the end of their natural life” appearing in clause (1) of the impugned order is hereby withdrawn.

(v) There is no interference with the order directing the payment of fine of Rs.15,000/- (Rupees fifteen thousand) by each of them and consequential sentence in default of payment of fine.

(vi) The order of conviction and consequential sentences recorded as against appellant No.3 Shahaji @ Shahadeo s/o Raghunath Bahir, appellant No.4 Malhari s/o Kailas Bahir and appellant No.5 Dada @ Ashok s/o Kisan Bahir (in Criminal Appeal No.456/2018) and appellant No.2 Raghunath s/o Sahebrao Bahir, appellant No.3 Kailas s/o Tatyaba Bahir and appellant No.4 Somnath s/o Uddhav Bahir (in Criminal Appeal No.424/2018) is hereby set aside. They stand acquitted of the offences for which they were convicted and consequently sentenced by the Trial Court. They be set at liberty forthwith if not required in any other

case. Fine amount, if paid, be refunded to them.

(vii) Conviction of appellant Mahadev s/o Gahininath Bahir and consequential sentence for offence punishable under Section 325 read with Section 149 of the Indian Penal Code for assaulting Gayabai to stand unaltered.

(viii) Conviction of accused No.1 Mahadev Gahininath Bahir, accused No.2 Rajendra @ Rajesh Mahadev Bahir and accused No.4 Sukhdeo Raghunath Bahir and consequential sentence imposed by the Trial Court for the offences punishable under Sections 143, 147, 148 (clauses 3, 4 and 5 of the impugned order) to stand unaltered.

(ix) All the substantive sentences shall run concurrently.

(x) Rest of the order, convicting the appellants Mahadev s/o Gahininath Bahir, Sukhdeo s/o Raghunath Bahir and Rajendra @ Rajesh Mahadev Bahir and consequential sentences stands set aside.

(xi) On deposit/ recovery of the entire fine amount, the same shall be paid to injured Gayabai Bahir who lost her husband and a son, towards compensation. Clause 19 of

the impugned order stands modified accordingly.

(xii) Clause No.20 of the order impugned herein stands unaltered.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-