



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

CRIMINAL APPEAL NO.532 OF 2020

1. Chandrakant Ananda Barfe,
Age : 60 years, Occu : Nil,
At Present in Jail,
R/o. Village Adgaon, Tq. Pathardi,
Dist. Ahmednagar

2. Amol Chandrakant Barfe,
Age : 24 years, Occu : Nil,
At Present in Jail,
R/o. As above

... Appellants
(Orig. Accused Nos. 1 & 2)

Versus

The State of Maharashtra
Through Police Inspector,
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar

... Respondent

....
WITH

CRIMINAL APPEAL NO.588 OF 2020

1. Suresh s/o. Ananda Barfe
Age : 58 years, Occu : Labourer,
2. Shivaji s/o. Ananda Barfe,
Age : 23 years, Occu : Labourer,
Both R/o. Adgaon, Tq. Pathardi,
Dist. Ahmednagar

... Appellants
(Orig. Accused No.3 & 4)

Versus

The State of Maharashtra,
Through Police Inspector,
Police Station Pathardi,
Tq. Pathardi, Dist. Ahmednagar

.. Respondent

.....

Mr. Sunil G. Magre, Advocate for the Appellants in Cri. Appeal No.532 of 2020

Mr. S. R. Adhav, Advocate for the Appellants in Cri. Appeal No.588 of 2020

Mr. G. A. Kulkarni, A.P.P. for the Respondent / State

Mr. H. U. Dhage, Advocate for Assist to P P

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

**RESERVED ON : 09.08.2024
PRONOUNCED ON : 20.09.2024**

JUDGMENT [*PER* NEERAJ P. DHOTE, J.] :

. Both these Appeals are decided by this common Judgment as the challenge is to one and the same Judgment and Order dated 13.08.2020 passed by learned Additional Sessions Judge, Ahmednagar in Session Case No.61 of 2019, convicting and sentencing the Appellants as follows:

“2) Each of the accused Nos. 1 to 4 i.e. Chandrakant Ananda Barfe, age : 44 yrs, Amol Chandrakant Barfe, age : 20 yrs, Suresh Ananda Barfe, age : 57 yrs., and Shivaji Anada Barfe, age : 45 yrs. Respectively, occupation of all labourer, all R/o. : Adgaon, Tal. Pathardi, Dist. Ahmednagar, are hereby convicted under Section 235 (2) of Cr.PC. of the offences punishable under Section 325 r/w 34 of IPC and sentenced to suffer rigorous imprisonment of three years and pay a fine of Rs.1000/- (Rs. One Thousand only), in default to suffer further rigorous imprisonment of six months; under Section 364 r/w 34 of IPC and sentenced to suffer life imprisonment and pay a fine of Rs.1000/- (Rs. One Thousand only), in default to suffer six months rigorous imprisonment; under Section 302 r/w. 34 of IPC sentenced to suffer life imprisonment and pay a fine of Rs.5000/- (Rs. Five Thousand only), in default to suffer rigorous imprisonment of six months; under Section 201 r/w. 34 of IPC suffer rigorous imprisonment of two years and pay a fine of Rs.1000/- (Rs. One Thousand only), in default to suffer further rigorous imprisonment of three months and directed payment of Rs.25,000/- (Rs. Twenty Five Thousand Only) out of the fine amount to the widow of Deceased as compensation.”

2. The Prosecution's case as revealed from the Police Report is as under :

2.1. Deceased Ashok, resident of Adgaon, Tal. Pathardi, Dist.

Ahmednagar was looking after the agricultural fields of their entire family. His two brothers i.e. Informant – Raju and Sanjay were serving in the Armed Forces. The Appellants are from one family. The land of Deceased Ashok and the land of the Appellants were adjacent to each other. The relations between the family of Deceased Ashok and the Appellants were strained. The dispute was in respect of the agricultural land. The crops in the agricultural field of Deceased and the Informant were being damaged / destroyed by the Appellants in one or the other manner. Informant – Raju had come to village Adgaon on a month's leave. On 11.10.2018 Deceased Ashok had gone to the agricultural field. Between 06:00 and 06:30 p.m., Informant – Raju received phone call on his mobile from the mobile of Deceased Ashok. Informant – Raju heard hue and cry and no conversation took place between him and Deceased Ashok. Informant Raju tried to contact Deceased Ashok telephonically, however in vain. Informant – Raju contacted one of his brothers Sanjay over the mobile and Informant - Raju and Sanjay went to their agricultural field which was popularly known as 'Manikchand'. Deceased Ashok was not found at the agricultural land. PW5 – Manik Dashrath Londhe met them and informed that the Appellants and acquitted Accused assaulted Deceased Ashok in the agricultural field and have taken him with them on the motorcycle. Informant – Raju went to the Pathardi Police Station and lodged the Report at Exh.28 and Crime No.628/2018 came to be registered for the offence punishable under

Sections 363 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.').

2.2. On the next day, the Police paid the visit on the spot. Whereabouts of Ashok were not known. In the afternoon of 12.10.2018 Informant – Raju got the information from the Pathardi Police to come at Dharwadi. The partially burnt dead body was found near the road which was identified as that of Ashok. Inquest was done. Body was sent for Post-mortem. The cause of death was revealed as '*Burns and Head Injury with signs of Decomposition*'. The statements of witnesses were recorded. Accused came to be arrested. The motorcycles used at the time of crime came to be seized. Clothes of Deceased and that of Accused were seized. The Articles seized during the course of investigation were referred for Chemical Analysis. The relevant documents were collected. During investigation, it transpired that, out of the land dispute the Appellants and the acquitted Accused assaulted Deceased Ashok with an intention to kill and burnt his dead body at the different place from the place of assault, therefore, the Appellants and two (2) acquitted Accused persons came to be Charge-sheeted for the offence punishable under Sections 302, 201, 364, 143, 147 r/w. 149 of the I.P.C.

2.3. On committal, the learned Sessions Court framed the Charge against the Accused at Exh.8 for the offence punishable

under Sections 147, 364, 302, 201 r/w. Sec. 149 of the I.P.C. to which the Accused pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all Twelve (12) witnesses and brought on record the documentary evidence. On completion of Prosecution's evidence, the learned Trial Court recorded the statement of Accused under Section 313 (1)(b) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). After hearing both the sides and appreciating the evidence on record, the impugned Judgment came to be passed convicting the Appellants, as observed above in paragraph no.1 and acquitting Accused No.5 – Sunil Shivaji Barfe and Accused No.6 - Raju Ananda Barfe.

3. Heard learned Advocates for the Appellants, learned APP for the Respondent / State assisted by learned Advocate for the Informant. Scrutinized the evidence available on record.

4. It is submitted by learned Advocate for the Appellants that the Report was lodged by PW1 - Raju Rabhaji Shende on suspicion. The defence as seen from the cross-examination was that the Informant and his family members killed his brother Deceased Ashok due to property dispute and lodged the false Report against the Appellants due to inimical terms. The evidence shows that Deceased had no concern with the agricultural land and therefore, there was no occasion for him

to go to the agricultural land popularly known as 'Manikchand'. PW1 - Raju Rabhaji Shende tried to rope in all the family members of the Appellants for the death of his brother Ashok. Eye witness to the incident PW5 - Manik Dashrath Londhe was planted witness and cannot be relied. The conduct of PW5 - Manik Dashrath Londhe shows that he did not witness the incident. The witness examined on last seen i.e. PW6 – Ganesh Rajdhar Londhe, was the got up and planted witness. There was delay of 6 (six) days and 17 (seventeen) days in recording statements of PW5 - Manik Dashrath Londhe and PW6 – Ganesh Rajdhar Londhe, respectively. The witnesses are the interested witnesses and their testimony lacks credence. The evidence in the nature of discovery and recovery is of no assistance for the Prosecution, as the spot where dead body was found, was known to the Police and the motorcycles seized under Section 27 of the Indian Evidence Act, do not connect with the death of Ashok. The Prosecution utterly failed to establish the Charge and therefore, the Appeals be allowed and the Appellants be acquitted.

5. It is submitted by learned APP assisted by learned Advocate for the Informant that there was dispute between both the sides. PW1 - Raju Rabhaji Shende had lodged the Report two days prior to the incident in question, against the Appellants and their families for obstructing their possession of land. The evidence of eye

witness is corroborated by his previous statements. After the eye witness disclosed the incident to PW1 - Raju Rabhaji Shende, prompt Report was lodged. Due to enmity, the Appellants have committed the murder of Deceased Ashok. Through the evidence of PW6 – Ganesh Rajdhar Londhe, the Prosecution has proved that Deceased Ashok was lastly seen being carried by the Appellants. The witnesses were the natural witnesses. It was for the Appellants to explain as to how the death of Ashok was caused in the field by virtue of Section 106 of the Indian Evidence Act. Slight variation in the testimony about the time of actual incident will not be fatal for Prosecution. Learned Trial Court has properly appreciated the evidence on record and rightly convicted the Appellants. The Appeals be dismissed.

6. Homicidal Death is a *sine qua non* for the offence punishable under Section 302 of the I.P.C. It is the Prosecution's case that Deceased Ashok Rabhaji Shende died Homicidal Death. PW2 – Bhujang Natha Dahiphale was the public servant working as Circle Officer for Pathardi Tahsil. On 12.10.2018, while he was in his office at Miri, he received telephonic call as well as written intimation by the Tahsildar Pathardi for acting as Panch at the request of the Police. The communication to that effect was at Exh.38 to which he identified. Accordingly, he reached Dharwadi. Talathi by name Bhausahab Khude had also come there. One partially burnt male human

body was lying at the road side. The clothes on the body were partially burnt. He noticed blood over the burnt grass and earth. The Police collected the burnt grass, blood stained grass, partially burnt clothes and ash from the said spot and had drawn the Panchanama at Exh.36. His evidence further shows that the Inquest at Exh.37 was prepared. The dead body was identified by one Raju (PW1), who introduced him as the brother of the Deceased. The cross-examination could not create any dent in his evidence that he acted as the Panch for the Spot Panchanama at Exh.36 and Inquest at Exh.37.

7. The evidence of PW10 – Parmeshwar Wamanrao Jawale who was posted at Pathardi Police Station as A.P.I. on 12.10.2018 shows that, he got the investigation of the case along with Report at Exh.28. He got the information that dead body was lying at Karanji – Chincholi road within the limits of village Dahrwadi and so he proceeded to the spot along with P. I. and staff. His evidence shows that the two Panchas which were called, were Mr. Khule and Mr. Dahiphale (PW2). Spot Panchanama at Exh.36 and Inquest at Exh.37 came to be drawn. The partially burnt clothes of Deceased, simple soil, ash, partially burnt grass and blood stained soil were collected from the spot of incidence. The dead body was referred for Post-mortem to Civil Hospital at Ahmednagar. As the Informant requested for in-camera Post-mortem, the

body was referred to B. J. Medical College, Pune for Post-mortem. The communication in that regard is brought on record in his evidence at Exhs.79 and 80.

8. Non receipt of written order authorizing PW10 - Parmeshwar Wamanrao Jawale to investigate the crime and only receiving oral instructions to investigate the crime, would not affect the investigation done by him pursuant to the provisions of Section 156 (2) r/w. Section 157 (1) of the Cr.P.C. His further cross-examination shows that PI. Mr. Ratnaparakhi (PW11) and DySP Mr. Mandar Jawale were present. Cross-examination could not create any dent in his evidence given in the Examination-in-chief.

9. The evidence of PW1 - Raju Rabhaji Shende shows that on 12.10.2018 he received the message from the Pathardi Police Station to reach Dharwadi and accordingly he reached there. He saw partially burnt dead body. He identified the dead body as that of his brother Ashok. He corroborates the evidence of PW2 - Bhujang Natha Dahiphale and PW10 - Parmeshwar Wamanrao Jawale regarding preparing of the Inquest and Spot Panchanama, seizure of Articles from the spot and referring the body for Post-mortem. His cross-examination fortifies his evidence that he received the message from the Police and accordingly he reached the spot at Dharwadi where he noticed dead body in

partially burnt condition. There is no serious challenge in respect of the identification of the dead body by PW1 - Raju Rabhaji Shende as that of his brother Ashok.

10. The other evidence is that of PW8 - Dr. Abhijit Limbraj Bandgar, the Medical Officer, who performed the autopsy on the dead body at Sasoon Hospital, Pune. His evidence shows that, on 13.10.2018 dead body of Ashok Rabhaji Shende was brought by the Pathardi Police for Post-mortem. On conducting the Post-mortem, he noticed the following signs of decomposition of body :

- “1) Greenish blackish discolouration over abdomen and chest at place
- 2) Peeling of skin present over left posterior aspect of elbow, back and left gluteal region
- 3) Blebs formation present over right upper limb, on cut section, decomposing gases present
- 4) External genital distended.”

10.1. He noticed the following external injuries :

“Superficial to deep dermo-epidermal burns present in distribution as follows, shows blackening and reddening in floor with blebs formation at places containing reddish serous fluid on cut section. Heat ruptures present over antero-lateral aspect of left upper limb and antero-medial aspect of left upper thigh, with reddish floor and margins. Singeing of scalp hairs present.

Sr. No.	Region of body	% of burn	Spared area
1.	Head, neck and face	1%	Anterior aspect of head, face and neck
2.	Chest and abdomen	16%	Umbilicus and Suprapubic area
3.	Left upper limb	9%	Nil
4.	Right upper limb	1%	Whole limb except spared except lateral aspect of upper

			half of right arm.
5.	Left lower limb	8%	Antero-lateral aspect of left thigh, lower limb and whole foot
6.	Right lower limb	6%	Antero-lateral aspect of right thigh, antero-lateral aspect of leg and whole foot.
7.	Back	2%	Whole back except scapular areas
	Total	43%	

10.2. He noticed the following internal injuries :

- “1) Under scalp haematoma present over right fronto-parietal region, of size 9 cm x 6 cm, red
- 2) Under Scalp haematoma present over left parieto-temporal region, of size 10 cm x 5 cm, red”

10.3. He further noticed injuries to the brain as follows:

“Dura – Intact, Thin subarachnoid haemorrhage present over left temporal region, of size 6 cm x 4 cm, red.”

11. PW8 - Dr. Abhijit Limbraj Bandgar gave probable cause of death as ‘Burns and Head Injury with signs of decomposition’ as mentioned in Column No.22 of the Post-mortem Report at Exh.74. Viscera and Articles were preserved for analysis. He denied the suggestion that signs noted in column Nos.12 and 17 of the Post-mortem Report cannot be simultaneously seen, when body is decomposed. The Post-mortem Report corroborate his evidence. The cross-examination is negligible and his testimony remained unshaken.

12. The above referred evidence establishes that the partially burnt dead body was found within the jurisdiction of village Dharwadi. The Police called the panchas and informed PW1 – Raju Rabhaji Shende who identified the dead body as that of his brother Ashok as he had lodged the Report of abducting his brother Ashok Rabhaji Shende. The injuries as noted in the medical evidence and cause of death are sufficient to come to the conclusion that the death was Homicidal. No other conclusion is possible. Thus, we hold that Ashok Rabhaji Shende met with Homicidal Death and his body was found on 12.10.2018.

13. The Prosecution's case largely hinges on the testimony of PW5 - Manik Dashrath Londhe who is examined as eye witness to the incident, PW6 – Ganesh Rajdhar Londhe who is examined as the witness who saw the Appellants taking the Deceased on the motorcycle and PW1 - Raju Rabhaji Shende, who lodged the Report as he learnt about the involvement of the Appellants from PW5 - Manik Dashrath Londhe. Their evidence shows that Deceased Ashok was brother of Informant - Raju Rabhaji Shende. PW5 - Manik Dashrath Londhe was the relative of PW1 - Raju Rabhaji Shende and consequently of Deceased Ashok. PW5 - Manik Dashrath Londhe and PW1 - Raju Rabhaji Shende being the interested witnesses and due to strained relations with the Appellants / Accused, their testimony is to be evaluated with great care and caution.

14. The evidence of PW5 - Manik Dashrath Londhe shows that from 2010 to 2015 he was the Member of Village Panchayat and at the time of deposition i.e. on 12.11.2019, he was the Director of Agriculture Produce Market Committee (APMC), Pathardi. This background of this witness shows that he was active in the public life which is indicative of he having public support. Couple of crimes were registered against him. One crime was for the offence punishable under Section 307 of the IPC on the Report lodged by one Baburao Revnath Shende and another was for the offence punishable under Sections 496, 366 registered with the Tophkhana Police Station. One private complaint bearing Criminal M. A. No.124/2011 was also filed against him for the offence punishable under Section 447 of IPC by one Manisha Yogesh Barfe. It is worth to note that surname of the Appellants is also Barfe. This is indicative of the background of this witness.

15. PW5 - Manik Dashrath Londhe deposed that he was having his agricultural land near Barfe locality of village Adgaon where he was residing with his family. The agricultural land of Draupadabai Shende who was his maternal aunt and mother of PW1 - Raju Rabhaji Shende was adjoining to his land. On 11.10.2018 around 10:00 a.m. he and Deceased Ashok went to irrigate his land popularly known as

'Manikchand'. Land of Deceased Ashok was adjoining to his land. Four female labourers were cutting the grass in the land of Deceased Ashok. Around 05:30 p.m. female labourers left as their work was over. He and Deceased Ashok were irrigating their respective lands. At about 06:00 p.m., Deceased Ashok left the field on his motorcycle No.MH-12-DK-1580 for his home *via* Barfe locality. When he was irrigating his land, he suddenly heard hue and cry and so he saw in that direction. He noticed that all the four Appellants were assaulting Deceased Ashok with kick and fist blows in front of Barfe locality and at the boundary of irrigation canal. As he got frightened, he remained at his field. He further noticed that Deceased Ashok was taken by the Appellants on the motorcycle towards Kamat Shingave by the boundary of canal. He also noticed two (2) motorcycles including motorcycle of Deceased Ashok, however, he stayed in his land.

16. Further evidence of PW5 - Manik Dashrath Londhe shows that 10 to 15 minutes after the said incident, PW1 - Raju Rabhaji Shende, Sanjay Shende, Vinayak Shende and Janardhan Shende came to his field in search of Ashok. He informed them about the incident. They started search of Ashok within and around that area, however he was not found and so PW1 - Raju Rabhaji Shende telephonically informed the Police Sub-Inspector of Pathardi Police Station. Since the Police had come to the nearby village, they came to Adgaon and met them. As the

Police suggested to report the matter to the Police station, he, PW1 - Raju Rabhaji Shende and others went to Police Station and Report was lodged by PW1 - Raju Rabhaji Shende against the Appellants.

17. Though PW5 - Manik Dashrath Londhe in his evidence deposed of going to agricultural field in the morning at 10:00 a.m. on 11.10.2018 and was there till evening beyond 6:00 p.m., his cross-examination show that on 11.10.2018 i.e. on very same day, one crime was registered against him and others at Pathardi Police Station for causing damage to the tomb by forming an unlawful assembly and rioting. If that be so, his testimony regarding his presence in the field is required to be seen with doubt. Needless to state that one person cannot be at two places at the same time. It appears strange that despite registration of crime for Rioting, he was comfortably working in the field. In such circumstance, a person would try to be at such place where he would not be traceable by Police.

18. Though PW5 - Manik Dashrath Londhe deposed of witnessing the incident, informing PW1 - Raju Rabhaji Shende about the incident and accompanying PW1 - Raju Rabhaji Shende to the Police station where the Report was lodged by PW1, his statement under Section 161 of the Cr.P.C. was recorded by the Police on 16.10.2018 i.e. after five (5) days. This is clear from the evidence of PW11 – Ramesh

Kashiram Ratnaparakhi, who investigated the crime from 15.10.2018. When he accompanied PW1 - Raju Rabhaji Shende to the Police station for lodging the Report, his statement ought to have been recorded being the eye witness. No explanation is forthcoming from the Prosecution regarding this delay in recording his statement. This delay raises a serious doubt about the testimony of PW5 - Manik Dashrath Londhe that he witnessed the incident.

19. The conduct of PW5 - Manik Dashrath Londhe, as seen from his above discussed evidence that, he remained in his field after noticing the incident was highly unnatural. He did not try to intervene, though Deceased Ashok was his relative. True, there can be no straight jacket formula for behavior of a person in response to a particular situation. His evidence nowhere shows that the assaulters were armed with weapons so as to create fear in his mind preventing him from going to rescue Deceased Ashok. Considering his background, as noted above, he stands on different footing as compared to a common man leading a humble life, who would get frightened by such incident. Thus, his conduct of mutely witnessing the assault on his relative, makes us to view his testimony with doubt.

20. Though as discussed above in his evidence PW5 - Manik Dashrath Londhe deposed of assault by the Appellants to Deceased

Ashok, however, admittedly, as seen from his evidence in paragraph no.5 he stated before the learned Magistrate while recording his statement under Section 164 of Cr.P.C. the names of more two persons i.e. Raju Ananda Barfe and Sunil Shivaji Barfe (both acquitted) as the assaulters in addition to Appellants. This shows inconsistency in his previous statement under Section 164 of Cr.P.C. and the evidence with regard to number of assaulters. Had he been really the eye witness to the incident, he would have been consistent in his said previous statement and testimony. This aspect again creates doubt about his testimony of witnessing the incident.

21. Though PW5 - Manik Dashrath Londhe deposed that he had gone to his agricultural field, in his cross-examination he deposed that 7/12 extract of Gat No.103 of village Adgaon was not showing his name and he further admitted that no land was standing in the name of Deceased Ashok in Gat No.103. Suggestion was given in cross-examination that he had no cause to go to the said land for irrigation. In view of the above discussion, the evidence of PW5 - Manik Dashrath Londhe does not inspire confidence. It is writ large from his testimony that he was not the witness of sterling quality. On evaluation of evidence of PW5 - Manik Dashrath Londhe, as discussed above, it is not possible to accept his evidence and the same is required to be seen with doubt. Merely because he is named in the Report lodged

by PW1 - Raju Rabhaji Shende by which criminal law was set in motion, as the eye witness to the incident, is not sufficient to accept his testimony for the reason that, he was closely related to PW1 - Raju Rabhaji Shende, Deceased Ashok and the possibility of he being the got up witness cannot be ruled out. Their relationship was such, that he would stand by PW1 - Raju Rabhaji Shende.

22. Admittedly, PW1 - Raju Rabhaji Shende, the brother of Deceased Ashok, was not the eye witness to the incident. His evidence shows that he was in the services of the Indian Military and had come on leave and therefore was present in the village Adgaon on 11.10.2018. Their agricultural land was being cultivated by Deceased Ashok. The agricultural lands of the Appellants were adjoining to their land and on petty reasons relations between their family and family of the Appellants were strained. As he and his another brother Sanjay Rabhaji Shende were in the services of armed forces, the Appellants used to cause mischief by damaging their crops and used to threaten them to involve in the case of atrocity, he gave written report to Pathardi Police on 08.10.2018 which was at Exh.23.

23. In his further evidence PW1 - Raju Rabhaji Shende deposed that on 11.10.2018 between 06:00 pm and 06:30 pm he received phone call from the phone of Deceased Ashok to his mobile, however he only

heard hue and cry and no conversation took place between them. Though he again tried to contact Deceased Ashok, it went unsuccessful. He along with his brother Sanjay went to their agricultural land called 'Manikchand' in search of Ashok. In the field, they met PW5 who informed them of assault to Deceased Ashok by the Appellants - Chandrakant, Amol, Suresh and acquitted accused Sunil and his (Ashok's) abduction by them. He contacted Pathardi Police Station and lodged Report at Exh.28 with the Pathardi Police Station. On the next day, he showed the spot to the Police where Ashok was assaulted and from where he was abducted.

24. PW1 - Raju Rabhaji Shende admitted that one of his distant relative Baburao Shende has prosecuted him and his family members for the offence punishable under Section 307 of the IPC which culminated in Sessions Case No.316/2016. In the said case, PW5, Deceased Ashok and other 16 persons were the accused. The said case was pending.

25. From above evidence of PW1 - Raju Rabhaji Shende, it is more than clear that he and his family on one hand and the Appellants and their families on the other were at the loggerheads. He admitted that according to him the incident took place in the land known as 'Manikchand' whereas he had shown the spot of incident to the Police as the one located in front of Barfe locality. True it is that his evidence

shows that Barfe locality was adjoining to the land called 'Manikchand', from his evidence it is seen that he was not certain about the spots. When it was the case of the Prosecution that PW5 - Manik Dashrath Londhe was the eye witness to the incident, it is strange as to how PW1 - Raju Rabhaji Shende who was not the eye witness, had shown the spot to the Police. Be that as it may.

26. The evidence of PW11 – Ramesh Kashiram Ratnaparakhi, who was the Police Inspector at Pathardi Police Station at the relevant time and investigated the crime from 15.10.2018, shows that on 11.10.2018 i.e. on very same day, Complaint / Report was lodged by the Appellants - Shivaji and Suresh against PW1 - Raju Rabhaji Shende wherein he sought protection and relief. This is indicative of inimical relations between both the sides.

27. The evidence of PW1 - Raju Rabhaji Shende regarding receipt of phone call from Deceased Ashok on his mobile in the evening of 11.10.2018 is not corroborated. Though the Prosecution through the evidence of PW12 – Ganesh Dnyaneshwar Ingale, who was posted as the PSI and one of the Investigating Officer from 27.10.2018 brought on record the CDRs of both the mobile numbers, at Exh.120, the same are inadmissible as the Nodal Officer is not examined to prove the same. Further, there is no evidence in the nature of Certificate under Section

65B of the Indian Evidence Act which is indispensable for electronic record to become admissible.

28. As regards the evidence of PW1 - Raju Rabhaji Shende that after he met PW5 - Manik Dashrath Londhe and learnt about the incident he gave call to the Police. The evidence of PW11 – Ramesh Kashiram Ratnaparakhi, the second Investigating Officer shows that out of number of calls received by him on 11.10.2018 in the evening, one call was that of PW1 - Raju Rabhaji Shende who informed him (PW11 – Ramesh Kashiram Ratnaparakhi) that he (PW1 - Raju Rabhaji Shende) and his brother (not named) were beaten by Barfe family. There is nothing to show that this PW11 – Ramesh Kashiram Ratnaparakhi had reason to depose false. It is thus clear from the evidence of this Police witness that, at the first instance what was reported to him by PW1 - Raju Rabhaji Shende was that he and his brother were assaulted by Barfe family. From this, there surfaces two versions of the Prosecution story, one that, the Appellants assaulted Deceased Ashok, and the other that, the members of Barfe family assaulted PW1 - Raju Rabhaji Shende and his brother. This again requires us to see the Prosecution's case with doubt.

29. The evidence of PW12 – Ganesh Dnyaneshwar Ingale who was one of the I.O. shows that in supplementary statement PW1 - Raju

Rabhaji Shende named Raju Ananda Barfe and Sunil Shivaji Barfe (acquitted accused) in addition to the other accused persons. His evidence further shows that PW1 - Raju Rabhaji Shende submitted the application dated 26.10.2018 at Exh.121 stating involvement of Raju Barfe, Sunil Barfe, Bandu Barfe and Kishor Barfe in the crime. From this, it is clear as to how attempts were being made by PW1 - Raju Rabhaji Shende to add the accused persons in the crime. From this, the possibility of designed Report to the Police, which was treated as F.I.R. cannot be ruled out.

30. The evidence of PW6 - Ganesh Rajdhar Londhe shows that he knew Deceased Ashok, PW1 - Raju Rabhaji Shende and the accused persons. He was aware about the disputes between both the families. On 11.10.2018 between 06:00 p.m. and 06:30 p.m. when he was passing from the Gat No.5 of minor canal, he saw three motorcycles passing from the road. On first motorcycle he noticed the Appellants Raju, Amol and Deceased Ashok between them in an unconscious state and other Appellants and acquitted accused persons on other two motorcycles. Though he admitted that he came to know that Ashok was murdered on the very next day after he saw him being carried by the accused persons, admittedly, his statement was recorded on 28.10.2018 i.e. after 17 days. The said delay remained unexplained. His further evidence go to

show that on 12.10.2018 in the morning he was called by the Police as the Panch Witness at the land called 'Manikchand'. Nothing incriminating was found on the spot and the panchanama at Exh.63 was drawn upon which he signed. Though it has come in his cross-examination that he told the Police about the same on the very next day, no reason is forthcoming for such delay in recording his statement by the Police. These aspects are more than sufficient to discard the testimony of this PW6 – Ganesh Rajdhar Londhe that he saw Deceased Ashok with the Appellants.

31. The other evidence is in respect of seizure of motorcycles at the instance of Accused Amol and Accused Shivaji. Mere seizure of motorcycles is not sufficient, unless there is evidence to connect the same with the crime. There is no evidence to connect the said vehicles with the crime. As regards the evidence of showing the spot by Accused No. 1 – Chandrakant, the spot was known to the Police as is clear from the evidence of Investigating Officers and therefore the said evidence will not be relevant under Section 27 of the Indian Evidence Act. It is neither the case of Prosecution nor there is evidence that the dead body of Ashok was discovered at the instance of the Appellants. The dead body was found on 12.10.2018 and the Accused Nos. 1 and 2 were arrested on 24.10.2018 and Accused Nos. 3 and 4 were arrested on

15.10.2018. The C.A. Report at Exh.112 shows that the blood of Deceased Ashok was haemolysed and hence was unsuitable for blood grouping. The other C.A. Reports are in respect of the articles collected from the spot which shows the residues of petroleum hydrocarbons on some of the articles. This material on record takes the case of Prosecution no further in proving the Charge against the Appellants.

32. The ratio of the Judgments cited by the learned Advocates for the Appellants in the case of (i) **Ram Singh vs. The State of U.P Criminal Appeal No.206 of 2024** decided by Hon'ble Supreme Court of India on 21.02.2024, and (ii) **Mr. Mohan @ Machindra Shankar Mandale vs. The State of Maharashtra, 2024 ALL M.R. (Cri.) 2429** is that, any lingering doubt about the involvement of an accused in the crime that he is accused of committing, must weigh on the mind of the Court and in such situation, the benefit of doubt must be given to the accused and when two views of a case are possible, the view which is beneficial to the accused is to be adopted. This is well settled position in law.

33. On re-appreciation of the evidence available on record, as discussed above, the evidence does not inspire confidence and it is clear that, is not worthy of acceptance. The evidence of the first Informant show that he set the criminal law in motion on the basis of hearsay information. The evidence of the eye witnesses is highly

doubtful and lacks credence. The other evidence on record takes the case of Prosecution no further. On the basis of the evidence available on record it is not possible for us to maintain the conviction and sentence recorded by learned Trial Court. Hence, we proceed to pass the following order :

ORDER

- (i) The Criminal Appeal Nos.532 of 2020 and 588 of 2020 are allowed.
- (ii) The Judgment and Order dated 13.08.2020 passed by the learned Additional Sessions Judge, Ahmednagar in Session Case No.61 of 2019 convicting and sentencing the Appellants namely Chandrakant Ananda Barfe, Amol Chandrakant Barfe, Suresh Ananda Barfe and Shivaji Ananda Barfe is hereby quashed and set aside.
- (iii) The Appellants namely Chandrakant Ananda Barfe, Amol Chandrakant Barfe, Suresh Ananda Barfe and Shivaji Ananda Barfe are acquitted of the offence punishable under Sections 325, 364, 302 and 201 r/w. 34 of the IPC.
- (iv) The Appellants be released forthwith, if not required in any other crime.
- (v) Record & Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP