



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

CRIMINAL APPEAL NO.598 OF 2016

Gajanan Damodhar Bhalerao  
Age : 25 years, Occu : Agriculture,  
R/o. Gunda, Tq. Basmath,  
Dist. Parbhani

.. Appellant  
(Orig. Accused No.8)

*Versus*

1. The State of Maharashtra
2. Vithalrao Kishanrao Jawale,  
Age : 61 years, Occu : Agriculture,  
R/o. Asola, Tq. & Dist. Parbhani

.. Respondents  
(Respondent No.2 –  
Father of deceased)

...  
WITH

CRIMINAL APPLICATION NO.2702 OF 2022

IN

CRIMINAL APPEAL NO.598 OF 2016

....  
AND

CRIMINAL APPEAL NO.682 OF 2016

1. Shivaji S/o. Ganeshrao Jawale  
Age : 32 years, Occu : Agri,  
R/o. Asola, Tq. & Dist. Parbhani
2. Navnath s/o. Uttamrao Jawale  
Age : 29 years, occu : Agri,  
R/o. Asola, Tq. & Dist. Parbhani
3. Dhananjay s/o. Uttamrao Jawale  
Age : 26 years, Occu : Agri,  
R/o. Asola, Tq. & Dist. Parbhani
4. Datta @ Anna s/o. Uttamrao Jawale  
Age : 35 years, Occu : Agri,  
R/o. Asola, Tq. & Dist. Parbhani
5. Prabhakar s/o. Ganeshrao Jawale  
Age : 33 years, Occu : Service,  
R/o. Asola, At Post. Shivaji Nagar, Parbhani

... Appellants  
(Orig. Accused)

*Versus*

The State of Maharashtra

.. Respondent

.....  
WITH

**CRIMINAL APPLICATION NO.120 OF 2024**

IN

**CRIMINAL APPEAL NO.682 OF 2016**

....

Shri. P. S. Paranjape, Advocate for Appellant in Criminal Appeal No.598 of 2016

Shri. Sudarshan J. Salunke, Advocate for Appellant in Criminal Appeal No.682 of 2016

Smt. V. S. Chaudhari, APP for the Respondent / State in both the matters.

Shri. S. S. Jadhavar, Advocate for Assist to PP in Criminal Appeal No.682 of 2016 and for Respondent No.2 in Criminal Appeal No.598 of 2016

.....

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

**RESERVED ON : 23.02.2024  
PRONOUNCED ON : 17.04.2024**

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

1. These two Appeals are filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the Judgment and Order dated 20.09.2016 passed by the learned Sessions Judge, Parbhani in Sessions Trial No.131 of 2013 convicting the Appellants for the offence punishable under Sections 147, 148, 324, 302 r/w. Section 149 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and sentencing them as detailed in the operative order of the said Judgment.

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

2.1. Latabai Vitthalrao Jawale, the resident of Agrith, Tal. Asola, Dist. Parbhani, who was the mother of Angad (deceased), was knocked down by the motorcycle driven by the Accused / Appellant - Shivaji Ganesh Jawale. She suffered fracture in her leg and was hospitalized. The Accused / Appellant – Shivaji, who was the resident of the same village and kin of the deceased, promised to bear the expenses relating to her medical treatment, however, he avoided to keep his promise. Angad used to demand the medical expenditure, which were to the extent of Rs.1,00,000/- (Rs. One Lakh) from him. On the said issue of medical expenses, altercations used to take place between Angad and Accused / Appellant - Shivaji. Eventually, both the parties decided to convene a meeting to resolve the issue. Accordingly, meeting was fixed on 07.06.2013, however it was postponed for the next day at the instance of Accused / Appellant - Shivaji. In the afternoon, the Accused / Appellants went to Tadkalas Police Station and from there to the Pingali police outpost. Angad was in his beer shop by name 'Chaitanya Beer Shop'. Around 08:00 p.m. of 07.06.2013 the Accused / Appellants reached the said beer shop with the weapons like *Katti* / *Koyta*, iron rod, fighter and assaulted deceased Angad. Due to voice / shouts of Angad, Madhukar Jawale (PW3), Kalyan Ganeshrao Jawale

(PW4) and Vitthalrao Krishnarao Jawale (PW5) who were present in the nearby Aakhada, reached at the beer shop. They saw that the accused / Appellants were assaulting Angad with the said weapons. Madhukar Jawale (PW3) and Kalyan Ganeshrao Jawale (PW4) intervened to save Angad. They both suffered injuries due to assault by Accused / Appellants - Shivaji and Navnath. After the assault, the Accused / Appellants fled.

2.2. Angad was moved to Spandan Hospital, Parbhani. Angad succumbed to the injuries. The injured eye witnesses were provided with the necessary medical treatment. As the police were informed about the incident, the police reached Spandan Hospital. The statement / Report (Exh.86) of Madhukar (PW3) was recorded by the police as the First Information Report (FIR) and Crime No.68/2013 came to be registered for the offence punishable under Sections 147, 148, 149, 307, 323, 324, 302, 504 and 506 of the I.P.C. and for the offence punishable under Section 4 r/w. Section 25 of the Arms Act. During the course of investigation, Inquest was done, Spot Panchanama was prepared from where blood stained mud, simple mud, Chappals, blood stained weapons such as *Katti* and metallic fighter were seized and sealed, and the body was referred for Post-mortem. The statement of witnesses were recorded, the Accused / Appellants No.1 to 5 came to be arrested, the Accused / Appellant No.8 surrendered on the sixth (06<sup>th</sup>) day from the

incident, the clothes of the Accused / Appellants were seized, the *Katti* / *Koyta* one each, came to be seized at the instance of Accused / Appellants - Shivaji and Dhananjay and one rod came to be seized at the instance of the Accused / Appellant – Navnath, the clothes of Accused / Appellants came to be seized, one rod came to be seized from Accused / Appellant - Gajanan (Accused No.8), the Investigating Officer collected the medical papers and Post-mortem report, the seized muddemal articles were sent for chemical examination and on completion of investigation, Charge-sheet came to be filed against eight (8) accused persons including the Appellants.

2.3. On committal by the learned Magistrate, the case came to be registered as Sessions Trial No.131/2013 in the Sessions Court. Charge came to be framed against Charge-sheeted accused for the offence punishable under Sections 147, 148, 324, 302 r/w. Section 149 of the I.P.C. at Exh.28, to which the accused - Appellants pleaded not guilty and claimed to be tried. To prove the Charge, Prosecution examined in all twenty three (23) witnesses and brought on record certain documents. After the Prosecution closed their evidence, the statement of the Accused / Appellants came to be recorded under Section 313 (1)(b) of the Cr.P.C. The accused / Appellants denied the case and evidence of the Prosecution. On appreciation of the evidence on record, the learned Trial Court passed the impugned Judgment and

order acquitting Accused Nos.6 and 7 and convicted the Appellants, who were the Accused Nos.1 to 5 and 8.

3. Heard the learned Advocates for the Appellants and learned APP for the Prosecution assisted by the learned Advocate for the Informant.

4. It is submitted by the learned Advocate for the Appellant Nos.1 to 5 that there is delay in lodging the FIR. The eye witnesses evidence cannot be believed as the spot of incident was dark being No Moon Night and there was no electricity in the village. The recovery of the weapons at the instance of the accused cannot be relied, as the time shown in the memorandum and seizure panchanamas do not match the distance from where the recovery is shown. The seizure of blood stained clothes from the person of the Appellants cannot be believed as no one will keep the clothes stained with blood on their person. There is no evidence that there was an unlawful assembly with common object to commit the crime. It is submitted that the evidence available on record do not establish the Charge and the impugned Judgment and order be quashed and set aside and the Appeal be allowed. Reliance is placed on some Judgments in support of the arguments, which would be considered in later part of this Judgment.

5. It is submitted by the learned Advocate for Accused No.8 that the Accused No.8 - Gajanan was just a mediator between two sides to resolve the issue of compensation to the mother of deceased and had nothing to do with the incident. It is submitted that he was the impartial person and as the meeting was cancelled, he left for his native place. It is further submitted that the evidence of seizure of rod at the instance of Accused No.8 cannot be termed as the discovery under Section 27 of the Indian Evidence Act. It is submitted that the Accused No.8 has been falsely implicated and there is no evidence that he was the part of the unlawful assembly and therefore, his conviction and sentence be set aside.

6. It is submitted by the learned APP that there is evidence of injured eye witnesses, which nails the Appellants and though they are examined, their evidence remained unshaken. The Appellants were known to the witnesses and therefore, there is no question of establishing the identity. There is immediate lodging of report by one of the injured eye witness. The injuries on the deceased and the evidence of the eye witnesses established unlawful assembly and Murder and the Appeals be dismissed by maintaining the conviction and sentence.

7. The learned Advocate assisting the Prosecution made submissions on the line of submissions made by the learned APP.

**-: Homicidal Death :-**

8. As one of the Charge is for the offence of Murder punishable under Section 302 of the IPC, the Prosecution is required to prove that the death was Homicidal. It is the Prosecution's case that Angad, who was the son of PW5 - Vithalrao Kishanrao Jawale, met Homicidal Death.

9. The evidence of PW1 - Dr. Sudhir Marotirao Kakde show that he was attached to Spandan Hospital, Parbhani on 07.06.2013. At about 08:50 p.m. Angad Jawale (deceased), Madhukar (PW3) and Kalyan Jawale (PW4) had come to the hospital. Angad Jawale was in a serious condition, his blood pressure was not recordable, he was in semi-conscious condition and not responding to the verbal commands. He was having stab injury over abdominal region. There was a big stab injury over left hypo contrail region of size 8 cms x 3 cms x 10 cms with evidence of omentum coming out of wound. There were other injuries on his person which were within one hour before examination. The Medico Legal Certificate at Exh.44 is brought on record which corroborate his evidence.

10. Cross-examination of this witness show that Angad died in the hospital at 09:15 p.m. Not giving history and name of assailants by the injured will not be sufficient to discard his testimony. His

cross-examination show that after issuance of letter the police from Tadkalas Police Station had come to the hospital. The cross-examination show that his evidence in respect of bringing the injured to the hospital and he examining them is not seriously disputed. His evidence show that the injuries suffered by Angad were sufficient in ordinary course to cause death. His cross-examination show that letter was issued to the concerned police station for conducting Post-mortem on the dead body of Angad which was removed from their hospital around 10:30 p.m. Though there is substantial cross-examination in respect of injuries, there is nothing to discard the testimony in respect of examination of Angad and noticing the injuries on his body in the evening of 07.06.2013. Not coming of the Police Officer to him with the weapons to seek his opinion whether the injuries were possible due to said weapon is inconsequential. The evidence of this witness regarding injuries on Angad remained unshaken and well corroborated by the Medico Legal Certificate.

11. The evidence of PW2 - Dr. Pandurang Vishnupant Chevle show that he was attached to the Civil Hospital, Parbhani as Medical Officer at the relevant time. On 08.06.2013 the dead body of Angad was brought to him by the police for Post-mortem at 01:15 a.m. He performed the Post-mortem. He noticed number of injuries on the dead body which are as follows :-

“1. An incised stab wound over back just below the neck measuring 3 Cms. X 2 Cms X 5 Cms. It was horizontally placed, margins were clear, cutting skin, sub cutaneous tissues, muscles and minute capillaries. The injury was red coloured. Vital reactions present.

2. Incised injury measuring 3 Cms. X 2 Cms X 3 Cms. Over back, below neck, just lateral to mid line on left side, cutting skin, sub cutaneous tissues, muscles and capillaries. The colour was red and margins were clear.

3. Incised wound (stab) measuring 3 Cms. X 2 Cms X 4 Cms., over back on left below scapula, margins were clear, colour was redm cutting skin, sub cutaneous tissues, muscles and capillaries.

4. Incised wound (stab) on back on left side, just above left hip, measuring 3 Cm. X 2 Cm X 4 Cm., cutting skin, sub cutaneous tissues and muscles as well as minute vessels, margins were clear and colour was red.

There were some injuries on central side.

5. An incised stab wound in the left hypocondriac region measuring 8 Cms. 3 Cms. X 3 Cms., obliquely placed, margins were clear, a part of omentum was protruding out of the injury. The injury had penetrating into peritoneal cavity causing perforating injury to lower part of stomach. Stomach was filled with full of blood clotted haematoma, due to injury to vessels of stomach, the injury to spleen was found caused profussed bleeding peritoneum was filed with blood clotted haematoma due rupture of and stomach. It was red coloured and vital reaction was present.

6. Contused lacerated wound on lateral aspect of scrotal region measuring 2 Cms. X 1 Cm.

7. A contused lacerated wound on left upper thigh on medial side measuring 1 Cm. X 1 Cm X 2 Cms.

8. A contused lacerated wound on left leg below knee measuring 5 Cms. X 3 Cms. X 2 Cms. It was red coloured, cutting skin and muscles.”

12. His further evidence show that all the above referred injuries were ante mortem and sufficient to cause death. The cause of death was **‘Cardiorespiratory failure due to Haemorrhagic shock due to**

**injuries to stomach and spleen’.** The tenor of the cross-examination show that his evidence in respect of the injuries, performing of Post-mortem and cause of death is not seriously disputed. Expressing the possibility that injury nos.6 to 8 were possible due to fall on hard and rough surface during scuffle or otherwise is inconsequential. It has come in the cross-examination that cumulative effect of all those injuries exasperated haemorrhagic shock associated with injuries to stomach and spleen. Post-mortem Report at Exh.65 is brought on record which corroborate his testimony.

13. The evidence of PW8 - Balasaheb Achyutrao Jawale show that on learning that the incident had taken place and injured Angad was taken to Spandan Hospital, he visited the said hospital, where he saw the dead body of Angad and as the police asked him, he agreed to act as the Panch for inquest. He noticed injuries on the body of Angad. The inquest was prepared which was read over to him, he found it to be correct and signed the same. He identified the inquest at Exh.148 as the same. In cross-examination attempt is made to show that he was not present at the time of inquest, however his testimony remained unshaken. Not making enquiry to the police by him as to whether any crime was registered is inconsequential.

14. The evidence of PW21 - Kishor Kishanrao Borde show that he was the Police Officer attached to the Tadkalas Police Station at the

relevant time. On 07.06.2013 around 10:00 p.m. while he was on patrolling duty, he received the information in respect of murder on Asola road. He went to the spot of incident and from there he went to the Spandan Hospital, Parbhani where the injured were admitted. He took the steps for Post-mortem and other formalities. This evidence of PW21 - Kishor as seen from the cross-examination show that it was not seriously disputed.

15. The above discussed evidence proved that in the evening of 07.06.2013 Angad was brought to the Spandan Hospital with several injuries on his body and he died. Through the above discussed medical evidence, it is proved by the Prosecution that the death of Angad was due to the injuries suffered by him. In short, the Prosecution has successfully proved that Angad died Homicidal Death. Even there is no serious challenge to the death of Angad as Homicidal.

**-: Spot of Incident :-**

16. The evidence of PW20 - Balu Devidas Bharose show that he was the resident of village Asola. On 07.06.2013 while he was proceeding towards his field at around 08:00 p.m., he saw Angad lying on the road near beer shop in an injured condition. He, PW3 – Madhukar and PW4 – Kalyan shifted Angad to the Spandan Hospital in bolero jeep of Angad. Angad died in the hospital. The omissions as

shown in his cross-examination in respect of the names of PW3 – Madhukar and PW4 – Kalyan and ownership of jeep do not affect his testimony that while travelling towards his field he saw Angad on the road near the beer shop in injured condition. The rest of the cross-examination do not affect the core of his testimony.

17. The evidence of PW9 Ananta Rangnathrao Jawale show that at 06:00 a.m. of 08.06.2013 while he was coming to village Asola from Basmat road, Madhukar Jawale (PW3) and Police were present at the Chaitanya Beer Shoppy. The place of incident was shown by Madhukar Jawale (PW3), which was showing the signs of scuffle. Blood was seen on the road in front of beer shoppy. Chappals were found lying. One metallic yellow colour fighter (Article-1) having four holes and two pointed projectors, *katti* (Article-31) having wooden handle of 5 inches and curve blade of 19 inches were found on the spot. The said Articles were having blood stains. All the Articles were collected and sealed under the panchanama. He identified Exh.150 as the said Spot Panchanama. His evidence show that the said Articles were shown to him and he identified the same which were seized from the spot. His further evidence show that soil was collected from the spot. The cross-examination could not create any dent in the testimony of this witness in respect of his acting as the Panch and preparing Spot Panchanama in his presence.

18. The evidence of PW11 – Nagnath Manikrao Shendge, the Investigating Officer corroborate the testimony of PW9 - Ananta in respect of preparing the Spot Panchnama. His evidence show that the spot of incident was in front of Chaitanya Beer Shop on Asola road. There was blood and weapons lying on the spot. He deposed of preparing the Spot Panchanama of that place in presence of two panchas and seizure of the Articles and mud from that spot. He identified Exh.150 as the same Spot Panchanama. His evidence show that he sent the letter at Exh.205 to the Tahsildar to draw the map of the said spot of incident.

19. The evidence of PW23 - Prabhu Sambhaji Katkade show that on 08.06.2013 he was the Circle Officer and as per the order of the Tahsildar he prepared the sketch map of the spot of incident which was at Asola village near the beer shoppy. He identified Exh.227 as the same map of spot of incident. Not knowing the gut number of the spot of incident by this witness is inconsequential. The cross-examination fortifies the evidence of this witness regarding preparation of map of the spot of incident.

20. The above discussed evidence established that the spot of incident was on the Asola Pati to Asola road in front of Chaitanya Beer

Shoppo and weapons at Article-1 and 31 were seized from the said spot.

**-: Eye Witnesses to the Incident :-**

21. The Prosecution examined three witnesses i.e. PW3 - Madhukar, PW4 - Kalyan and PW5 - Vithalrao as the eye witnesses to the incident. They are relatives of each other. They all are resident of village Agrit in Asola Taluka, Dist. Parbhani. The Prosecution's case mainly rests on the evidence of these witnesses being the eye witnesses to the incident. The evidence of the said three eye witnesses show that three months prior to the murder of Angad, the wife of PW5 - Vithalrao and mother of deceased Angad – Latabai was dashed by motorcycle driven by the Appellant - Shivaji Jawale, who was amongst their kin. Due to the said dash, Latabai suffered fracture in her leg for which she had to take medical treatment and incur certain expenditure. The Appellant - Shivaji Jawale committed to compensate the said medical expenditure, however he was avoiding to obey the commitment. On that count altercations took place between deceased Angad and the Appellant - Shivaji Jawale. The cross-examination of these three witnesses on this aspect show that the said incident of dash to wife of PW5 Vithalrao and mother of deceased Angad by motorcycle driven by the Appellant - Shivaji Jawale was not in dispute.

22. The evidence of PW3 - Madhukar show that his *Aakhada*

was barely 200 feet away from the beer shoppy i.e. spot of incident, which was being run by deceased Angad. This aspect that deceased Angad was running the beer shoppy is not disputed as can be seen from the tenor of cross-examination of the eye witnesses. His evidence show that two minutes are required by walk to cover the distance between his *Aakhada* and the spot of incident. On 07.06.2013 at about 08:00 p.m. when he, PW4 - Kalyan and PW5 - Vithalrao were present at his *Aakhada*, they heard the shouts of Angad from the side of beer shoppy, therefore, they all three i.e. he, PW4 – Kalyan and PW5 - Vithalrao ran towards the beer shoppy where the light of petromax and bulb attached to inverter were glowing. He saw all the Appellants assaulting Angad with the weapons like Koyta, Pipe, Fighter. Due to assault, Angad suffered bleeding injuries. When he and PW4 - Kalyan intervened, they both were assaulted by Appellant – Shivaji and he was also assaulted by Appellant - Navnath. Due to the shouts at the place of incident, the persons by name Gopal, Keshav and Balu reached the spot of incident. Due to their arrival, the Appellants fled. Injured Angad was shifted to Hospital in the jeep by himself, PW4 - Kalyan and others. During the treatment, Angad died in the Spandan Hospital. He and PW4 - Kalyan were provided medical treatment for the injuries suffered by them. In the hospital, the police recorded his statement which was treated as the FIR at Exh.86. He deposed of recording his supplementary statement by the police on 09.06.2013 and seizure of his clothes. During his

evidence, he identified the Appellants as the assailants.

23. In the cross-examination his evidence that he possessed the *Aakhada* and some of his family members were residing there has been fortified. The said *Aakhada* being his own place, his presence at the relevant time at *Aakhada* is natural. The cross-examination fortifies that the distance between *Aakhada* and beer shoppy was very near i.e. 200 feet. The distance between his *Aakhada* and place of incident is such that his evidence that he heard the shouts of Angad is believable. From the cross-examination, it is seen that his evidence to the extent of specific / particular weapons in the hands of the Appellants for assault was an omission in his report. It is needless to state that the report / FIR is not an encyclopedia. What is clear from his testimony is that his evidence is corroborated by his previous statement given to the police in the nature of report and supplementary statement. It is true that it has come in his evidence that there was no electricity and load shedding was in operation at the time of the incident, his evidence that there was light of petromax and inverter at beer shoppy remained unaffected. Undisputedly, all the Appellants are named in the FIR as the assailants.

24. His reaching the spot of incident and witnessing the incident further gets fortified as he suffered injuries on his person in the assault due to intervention. The evidence of PW1 - Dr. Sudhir corroborate his testimony that he was examined in Spandan Hospital.

The evidence of said doctor show that PW3 - Madhukar suffered following injuries:

“(1) Contusion on right shoulder region, measuring 6 cms C 2 cms caused by hard and blunt object. Its age was one hour and nature of the same was simple.

(2) A Contusion on back, on right side measuring 2 cms X 1 cms. It was caused by hard and blunt object. The age was one hour and it was simple in nature.

(3) A contusion over left back region measuring 2 cms X 1 cms. It was caused by hard and blunt object. Age was one hour and it was simple in nature.

(4) An abrasion on right neck region of size. It was measuring 1 cm X 2 cms. It was caused by hard and blunt object. Age was one hour and nature was simple.

(5) A contusion on left side of back region, measuring 2 cms X 1 cms, caused by hard and blunt object within one hour. Nature it was simple.”

25. The Certificate at Exh.46 corroborate the testimony of the doctor and PW3 – Madhukar for the injuries. The evidence of PW1 - Dr. Sudhir show that the said injuries were possible by blow of pipe (Article-32). His evidence that his blood stained clothes were seized in the hospital is corroborated by the evidence of PW10 - Rama Manikrao Jawale wherein he deposed of seizure of blood stained clothes of PW3 - Madhukar which were Articles-34, 35 and 36 under the panchanama at Exh.153 in the Spandan Hospital. The evidence of said panch witness remained unchallenged. PW3 - Madhukar also identified his clothes at the time of his evidence. Nothing has come in the cross-examination of PW3 – Madhukar to discard his testimony that he witnessed the

incident. Though it was night time, his evidence show that there was light of petromax and bulb of inverter near the place of incident. The Appellants were known persons to him and therefore, there was no difficulty for him to identify them. The omission as referred above is not of that nature which would affect his evidence. Though in his cross-examination it is brought that within one minute one can reach police outpost from the place of incident, not going to the police outpost instead of hospital is a natural conduct because one will seek the medical help first in point of time in such a situation. The evidence of this witness which is corroborated by his prompt report to the police and injuries on his person gives the required assurance that he was the eye witness to the incident. The contention of the learned Advocate for the Appellants that there was delay in reporting the matter to the police has no merits. Resultantly, the testimony of PW3- Madhukar is accepted.

26. The evidence of PW4 - Kalyan Ganeshrao Jawale show that he was the brother of PW3 - Madhukar. His evidence show that they all reside jointly. Deceased Angad was his paternal cousin and was running the beer shoppy on Asola road by name 'Chaitanya Beer Shoppy'. On 07.06.2013 at about 08:00 p.m. he himself, PW3 - Madhukar and PW5 – Vithalrao were present at *Aakhada*. There was no electricity at that point of time. They heard noise of quarreling from the side of beer shoppy of Angad which was situated near the *Aakhada*. He noticed

stopping of motorcycle at the beer shoppy. He, PW3 - Madhukar and PW5 - Vithalrao ran towards said beer shoppy, wherein petromax was burning and there was bulb connected to the inverter. He deposed that Angad was being assaulted by the Appellants with weapons like *Katti*, pipe and fighter. His evidence show that he and PW3 - Madhukar intervened and they were also assaulted by the Appellant Shivaji with Koyta and PW3 – Madhukar was also assaulted by Appellant – Navnath by Rod. His evidence show that due to noise of quarrel, Keshav Jawale, Balu Bharose and Gopal reached the spot of incident due to which the assailants ran away. *Katti* and fighter which were with the Appellants Prabhakar and Datta had fallen down on the spot of incident. He deposed of shifting Angad to Spandan Hospital. As he suffered the injuries, he was given the treatment for two days in the hospital and discharged after two days. He identified the Appellants as the assailants.

27. The cross-examination of PW4 - Kalyan show that there were material omissions in his previous statement recorded by the police in respect of the assault on Angad and the availability of light at the beer shoppy. One can see that the omissions surfaced due to the manner in which the examination-in-chief was recorded. Had there been no other evidence, the omissions would have been fatal. However, his evidence that he reached the spot of incident and witnessed the incident cannot

be discarded for more than one reason. His presence at the *Aakhada* and reaching the spot after hearing the shouts of Angad has been deposed by PW3 - Madhukar. The report / statement of PW3 - Madhukar show the name of PW4 - Kalyan as the witness to the incident. The report lodged by PW3 - Madhukar and the evidence of PW3 - Madhukar show that they were assaulted when they intervened. The evidence of PW1 - Dr. Sudhir show that in the night of 07.06.2013 he examined Kalyan Jawale (PW4) who was having injury which was the contusion on left upper arm measuring 3 cms x 2 cms and age of injury was one hour and it was caused by hard and blunt object and he took out the x-ray. The Medico Legal Certificate at Exh.45 is brought in the evidence of this doctor which corroborate the evidence that PW4 - Kalyan suffered simple injury which was treated. It is true that there is no evidence that his clothes were seized. However, due to the above referred evidence of PW3 – Madhukar and PW1 – Dr. Sudhir corroborated by the report lodged by PW3 – Madhukar, the evidence of PW4 - Kalyan that he witnessed the incident is accepted.

28. Though PW5 - Vithalrao deposed that he witnessed the incident, his testimony about witnessing the actual incident is kept out of consideration for the reason that his evidence show that in the year 2004 he suffered paralysis attack and till the date of his evidence he was taking the treatment for the said ailment. His evidence show that he

took five (5) to seven (7) minutes to reach the spot of incident from the *Aakhada*. He gave contrary evidence about reaching the spot of incident, as at one point he deposed that he reached by walk and at another point he deposed that he reached by running. His evidence show material omissions in respect of the incident. His name does not find place in the report lodged by PW3 - Madhukar as the one who accompanied them at the spot of incident. In the light of these aspects, his testimony that he witnessed the actual incident is required to be seen with doubt. Further, though he deposed of hatching conspiracy by the Appellants, he admitted that he was not present when the conspiracy was hatched. Thus, the testimony of this witness to the extent that he witnessed the incident is kept out of consideration.

29. The learned Advocate for the Appellants cited the Judgments in the case of **Thulia Kali vs. State of T. N., 1972 CRI.L.J. 1296** and in the case of **Shivlal and Anr vs. State of Chhatisgarh, 2011 AIR (SCW) 6480** wherein the importance of prompt lodging of FIR is emphasized and it is observed that unexplained inordinate delay in sending copy of the FIR to the Magistrate may affect the Prosecution case adversely. In the case in hand as seen from the above evidence, there is recording of statement of PW3 - Madhukar in the hospital immediately after the incident and registration of crime by PW21 – Kishor, Investigating Officer. There is no cross-examination in respect of

sending the copy of FIR to the Magistrate. Thus, the said rulings are of no assistance to the Appellants.

**-: Arrest of Appellants :-**

30. The evidence of PW21 - Kishor, the Investigating Officer show that during the investigation Appellants were arrested. The arrest memorandums / forms are at Exhs.211, 212, 213, 214, 215 and 225. His evidence show that the Accused No.8 - Appellant Gajanan surrendered on 13.06.2013. The arrest of the Appellant in the crime is not in dispute.

**-: Discovery :-**

31. It is the case of Prosecution that *Katti / Koyta* - Article-31, Rod (Article-32) and *Katti / Koyata* (Article-33) were discovered and seized at the instance of Accused / Appellants - Shivaji, Navnath and Dhanraj, respectively pursuant to the provisions of Section 27 of the Indian Evidence Act. For that the Prosecution examined PW6 – Purbhaji Pralhadrao Jawale. His evidence show that on 12.06.2013 he was called by the police in the Tadkalas Police Station where the said three Appellants were in the police custody / lock up and they voluntarily stated to show the place where the weapons / Articles were concealed and memorandums to that effect were prepared which were at Exhs.142, 143 and 144. He deposed that the said three accused / Appellants led them to the land of Appellant Shivaji from where they removed the aforesaid Articles / weapons which were seized and sealed

under the panchanamas.

32. From the cross-examination of this panch witness, it is seen that the distance between Tadkalas and Asola *via* Khanapur is 30 kms and in those days one hour time was required to travel that distance. The time on three (3) memorandums is mentioned as 08:15 to 08:30 hours, 08:35 to 08:50 hours and 08:55 to 09:10 hours and the time mentioned in the second part of the said memorandums is shown as 09:15 to 10:30 hours, 09:15 to 11:00 hours and 09:15 to 11:30 hours. Considering the evidence in respect of the distance and time required to arrive the said place as deposed by this witness, we find merit in the submission of the learned Advocate for the Appellants that the first seizure panchanama should have started at 10:20 hours. Thus, we accept the contention of learned Advocate for the Appellants that the time appearing in the said memorandums and seizure panchanamas if compared with the distance required to reach the said spot from the Police Station Tadkalas, do not reflect the true picture. Thus, we are not impressed with the Prosecution's evidence in respect of the discovery / recovery and seizure of the Articles-31, 32 and 33 at the instance of the said Appellants namely Shivaji, Navnath and Dhanraj, respectively and the said evidence is discarded.

33. The evidence of PW15 - Ganesh Bhaurao Gadhwe show that

on 13.06.2013 he was called at Tadkalas Police Station wherein the Appellant - Gajanan was present with one pipe which was seized by the police under the panchanama at Exh.189. However, his evidence show that he could not identify the Appellant - Gajanan as the same person. He deposed that he did not recollect the face of accused Gajanan and he could not see whether he was present in the Court or not. In his cross-examination it has come that the clothes and pipe were shown by the police. In view of this evidence, the Prosecution's case that the rod was seized from the Appellant - Gajanan is discarded.

34. The other evidence on record is in respect of the seizure of the clothes of the accused and Articles and reports of Chemical Analysis. Though the evidence on record show that the Articles were seized and sent for Chemical Analysis, the C.A. Reports (Exh.228) show that the blood group of deceased Angad could not be determined as the results were 'inconclusive'. The result of Chemical Analysis of the Articles sent for examination show the human blood and blood group was 'inconclusive'. Thus, the evidence in the nature of seizure of the Articles for the purpose of corroboration is of no assistance for the Prosecution to prove the Charge.

**-: Motive and Unlawful Assembly :-**

35. As discussed earlier while considering the evidence of eye witnesses, mother of deceased Angad suffered fracture in her leg due to

the dash of motorcycle driven by the Appellant – Shivaji and there were altercations between the Appellant - Shivaji and deceased Angad on the point of non payment of medical expenditure. At the cost of repetition, the said evidence is not in dispute. The evidence therefore show that the terms between the Appellant - Shivaji and deceased Angad were not cordial and they were on inimical terms.

36. The evidence of PW5 - Vithalrao show that he and deceased Angad were demanding money towards hospital expenditure from the Appellant - Shivaji and his father and since they started threatening them, they disclosed about the same to PW17 - Anand Bharose. The meeting was arranged in the village on 07.06.2013 when Appellant Gajanan Bhalerao who was relative of Appellant Shivaji had come to their village. However, Appellant – Shivaji, his father and his relatives declared that the meeting would be held on the next day.

37. The evidence of PW17 - Anand Sheshrao Bharose show that he was knowing both the sides / parties. On 07.06.2013 the Appellant - Shivaji and his father Ganesh had come to him for discussion that meeting was to be convened to finalize the issue of payment of medical expenditure on that day or next day. They had come to his house in between 05:30 and 06:00 p.m. and it was decided to hold the meeting on the next day and thereafter they left.

38. The evidence of PW18 - Onkar Vishwanath Giri show that on 07.06.2013 he was at the Pingali outpost of Tadkalas Police Station and the Appellants had come to the outpost on three (3) motorcycles and stopped in front of the outpost where they were present for half an hour and reasons given by them was to drink the water. He identified the Appellants as the same persons who had come together on the day of incident.

39. The above evidence show that though the meeting was arranged to resolve the dispute, it was postponed / cancelled from the Appellants side. Though it is the contention of the learned Advocate appearing for the Appellant - Gajanan that after the meeting they left to their respective houses, there is nothing to show that the Appellants went to their respective houses or villages after the meeting was cancelled. The above evidence show that all the Appellants were together and had been to the police outpost and stopped half an hour at the outpost. In the evening the Appellants assaulted Angad. This show that they shared the common object of assaulting Angad and they were successful in executing their common object as is proved by the Prosecution from the evidence of PW3 - Madhukar and PW4 - Kalyan.

40. Learned Advocate for the Appellants relied on the Judgments in the case of **Kuldip Yadav and Ors. Vs. State of Bihar, 2011**

**Cri. L .J. 2640** and in the case of **Kamaksha Rai and others vs. State of U.P., AIR 2000 SC 53** on the point that for conviction with the aid of Section 149 of the I.P.C. the evidence must show that not only the nature of common object, but also that the object was unlawful and large number of persons are accused of committing a crime and the Court should be extremely careful in scrutinizing the evidence. Legal position set out in the aforesaid Judgments is well settled. In the case in hand, as discussed above, the assembly of the Appellants was an unlawful assembly with the object of assaulting Angad and they had executed the same.

41. The other Judgments relied upon by the Advocate for the Appellants is in the case of **Narsinbhai Haribhai Prajapati Etc. Vs. Chhatarsinh and Others, AIR 1977 SC 1753** wherein it is observed that, *‘the blood stained clothes and Dhariyas with the Accused were wholly insufficient for sustaining the Charge of murder’* and in the case of **Najabhai Desurbhai Wagh vs. Valerabhai Deganbhai Vagh and Others, AIR 2018 SC (Criminal) 1026** wherein there was nothing on record to suggest any previous enmity between the parties and common object to commit the murder could not infer only on the basis that the weapons carried by the accused were dangerous. As discussed above, the evidence in the nature of seizure of clothes by the Investigating Officer is kept out of consideration as the C.A. reports fall short of showing the

blood of deceased on the Articles. Further, the discovery of weapons at the instance of Appellants is discarded.

**-: Conclusion :-**

42. The above discussion and the evaluation of the evidence available on record show that through the evidence of PW3 - Madhukar and PW4 - Kalyan the Prosecution has established that the Appellants assaulted deceased Angad with deadly weapons i.e. *Katti / Koyta* etc. From the evidence of said two eye witnesses, the Prosecution has established that the Appellants were the authors of the crime and they caused the injuries to Angad. The use of the aforesaid deadly weapons in the assault and the nature of injuries on dead body of Angad, proved through the medical evidence, clearly establishes the intention on the part of the Appellants to commit the Homicidal Death. The evidence of PW3 - Madhukar and PW4 - Kalyan is trustworthy. PW3 - Madhukar and PW4 - Kalyan identified the Appellants as the assailants. Though it has come in the evidence of eye witnesses that at the time of incident there was no electricity due to the load shedding, the evidence of both the eye witnesses show that there was petromax and inverter light at the Beer shoppy where the incident had taken place. The Appellants were known to the eye witnesses. PW3 - Madhukar and PW4 - Kalyan are the injured eye witnesses as they suffered the injuries due to intervention in the incident of assault. It is settled position in law that the evidence of injured eye witness stands on higher pedestal. They both with the help

of others had shifted Angad to the hospital. They were also treated for their injuries. There is immediate disclosure of the incident to the police by PW3 - Madhukar which culminated in recording his statement and registration of crime. All the Appellants are named in the Report / statement given by PW3 - Madhukar to the police. This lends corroboration from the testimony of PW3 - Madhukar and PW4 - Kalyan. The Prosecution has proved the spot of incident. The weapons, *Katti* (Article-31) and Fighter (Article-1), were seized from the spot of incident.

43. True it is that the evidence in respect of the discovery / recovery / seizure brought on record by the Prosecution is discarded. However, that will not result in discarding the entire Prosecution's case. It is needless to state that the recovery / discovery / seizure is a corroborative piece of evidence. It is also settled position in law that corroboration is only a rule of prudence. When the testimony of the injured eye witnesses inspire confidence and remains unshaken in the cross-examination, it can certainly form the basis to prove the Charge. The evidence on record show that even after the cancellation of the meeting, the Appellants did not disperse and they remained together till Angad was done to death. The evidence on record established the unlawful assembly by the Appellants with the object of assaulting Angad. Merely because the eye witnesses were related to the deceased

cannot be the ground to discard their testimony. As seen from the statement of the Appellants recorded under Section 313 (1)(b) of the Cr.PC. their case is that of total denial and false implication. The evidence on record as discussed above proved the essential ingredients for the offences punishable under Sections 147, 148, 324, 302 r/w. Section 149 of the I.P.C.

44. On re-appreciation of the evidence available on record, as discussed above, the conviction and sentence recorded by the learned Trial Court do not call for interference. The Appeals, therefore, fail and thus, the following order:

#### **ORDER**

- (i) The Appeals are dismissed.
- (ii) Record and Proceedings be sent back to the Trial Court.
- (iii) Pending Criminal Application Nos.2702 of 2022 and 120 of 2024 stand disposed of.

**( NEERAJ P. DHOTE, J. )**

**( R. G. AVACHAT, J. )**