



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.42 OF 2002

The State of Maharashtra, through
Telhara Police Station, Telhara,
District Akola. **Appellant.**

:: VERSUS ::

1. Ab.Ajij Sk.Mehboob,
(Original accused No.5).
2. ~~Sherkha Jarifkhan~~, **DEAD**
(Original accused No.8).
3. Sk.Mehboob Sk.Nabi,
(Original accused No.13).
4. ~~Sk.Bannu Sk.Ismail~~, **DEAD**
(Original accused No.15).
5. Yusuf Patel Tamiz Patel,
(Original accused No.16).
6. Sk.Rahis Sk.Mustafe,
(Original accused No.20).
7. Bismillakhan Khalilkhan,
(Original accused No.22).
8. Tayarsha Maqboolsha,

(Original accused No.23).

9. Rafikhan Meheboobkhan,
(Original accused No.24).

10. Sk.Tayab Sk.Munaf,
(Original accused No.25).

11. ~~Amadkhan Subhankhan~~, **DEAD**
(Original accused No.26).

12. Sidharth Shankar Wankhade,
(Original accused No.29).

13. ~~Mohd.Afzal Mohd.Aslam~~, **DEAD**
(Original accused No.32).

14. ~~Sk.Bashir Sk.Mahatu~~, **DEAD**
(Original accused No.41).

15. Inayatkhan Serfarajkhan,
(Original accused No.44).

16. ~~Amrullakhan Sarfarajkhan~~, **DEAD**
(Original accused No.46).

17. Sk.Nabi Sk.Supadu,
(Original accused No.52).

18. ~~Sk.Abdul Sk.Bismilla~~, **DEAD**
(Original accused No.58).

19. Sk.Mansab Sy.Yusuf,
(Original accused No.61).

20. Ajmatkhan Mehemoodkhan,
(Original accused No.64).

21. ~~Sk.Mehmood Daula Kasai~~, DEAD
(Original accused No.66).

22. ~~Sk.Ajij Sk.Hanif~~, DEAD
(Original accused No.71).

23. ~~Majroddin Najiyoddin~~, DEAD
(Original accused No.72).

All resident of Panchagavan,
Police Station, Telhara, district Akola. Respondents.

Shri M.J.Khan, Additional Public Prosecutor for the
Appellant/State.

Mrs.Maira Ateeb, Counsel for the Respondents.

CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.

CLOSED ON : 15/10/2025

PRONOUNCED ON : 21/11/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (State) has
challenged judgment and order dated 30.9.2000 passed

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by learned Additional Sessions Judge, Akola (learned Judge of the trial court) in Sessions Trial No.166/1991.

2. By the said judgment impugned, learned Judge of the trial court acquitted the respondents (the accused) for offences under Sections 143, 147, 148, 302, 307, 324, 326, and 341 read with Section 149 of the IPC.

3. Total 104 accused persons were put to trial before learned Judge of the trial court. The present appeal is preferred against 23 accused persons by the State challenging their acquittal.

4. Brief facts of the prosecution case are as under:

Baburao Shyamrao Kharapkar and Mangesh Krushnarao Deshmukh are residents of village Panchagavan, taluka Telhara, district Akola. The said village is comprised of five localities known as Khel

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Narshipur; Khel Krushnaji; Khel Mukadam; Khel Satwaji, and Khel Deshpande. It is alleged that 60-70% population in village Khel Narshipur is of Mohammedan community and the most of the persons are agriculturists by profession. The persons belonging to Mohammedan community, as per the allegations, are having dominance in the village and they are indulged in illegal businesses, forcibly taking cattle from other agriculturists slaughtered them, forcibly recovering money from the persons of other communities, and various illegal activities. The said people are harassing the people who are in minority in the said village. To get relief from such harassment, the villagers of Hindu community decided to form “Shiv-Sena Branch” at their village and, therefore, they consulted Prashant Purushottam Mahajan, Chief of “Shiv-Sena Branch”, taluka Telhara and fixed date as 5.6.1988 to inaugurate the branch of political party “Shiv-Sena” in

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their village. The leaders of the said political party from Akola district had consented to attend the function and, therefore, they arranged the said function in village Khel Narshipur on 5.6.1988. The villagers of Khel Narshipur also invited villagers of adjacent villages to attend the said function. The said function was to be held at Khel Narshipur, near Hanuman Temple at 5:00 pm. Villagers namely Baburao Shyamrao Kharapkar and Mangesh Krushnarao Deshmukh were looking after the arrangement of the said function under the supervision of Prashant Purushottam Mahajan. They have also reported to the concerned Police Station and also requested them to make appropriate arrangement for “Bandobast” and for maintaining public peace. The meeting was also held under the supervision of Police Sub Inspector Shri Kulkarni and all the community members have attended the said meeting and they were informed to maintain

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public peace in the village during the said function. Baburao Shyamrao Kharapkar, who was looking after the said function, deputed the other villagers to escort the other villagers who are coming to attend the said function at various spots in Khel Narshipur village. One Devidas Rothe was directed to attend at Ner-Dhamna Road to receive and lead the persons coming from other villages. Whereas, Gajanan Mahore and Motiram Zaparde were sent to Khel Deshpande locality to receive and lead the persons coming to attend the said function.

5. On the day of the incident, i.e. 5.6.1988, at about 5:00 pm, when preparation of the function was in progress and Police Constable Shri Rane was also present at the spot of the function, at the relevant time, they witnessed mob of about 100-150 Mohammedan persons holding sticks, spears, swords, iron pipes etc. in their hands. They were giving slogans against the "Shiv-Sena"

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party in protest and also disclosing their objection for opening “Shiv-Sena” branch in the village. Villager Narayan Deshmukh and Police Head Constable Shri Rane and Arbat Patwari approached the said mob and have given them an understanding not to harm anybody and villagers who gathered would go to home peacefully after the function is over. Police Head Constable Shri Rane has given a clear understanding to the mob that they have to maintain public peace, otherwise they have to face consequences and, thereafter, the mob dispersed.

6. The second incident alleged is that, when Gajanan Mahore and Motiram Zaparde were waiting at Khel Deshpande locality for persons coming to attend the function, 35-40 persons came in a tractor from the adjacent villages at about 4:00 pm to 4:30 pm. When they reached near Ram Temple and two additional persons boarded in the said tractor, at some distance,

they proceeded, at the relevant time, they came across two persons and out of them, one person gave whistle and mob of 15-20 persons came there and assaulted the persons who were travelling in the said tractor. In the said assault, one Avachitrao Kukde, Shriram Gavande, and Digambar Kukde sustained grievous injuries and succumbed to the injuries. One Sheikh Gafar Sheikh Najim also reported to be dead in the alleged riot. It is alleged that the persons who came in the tractor were assaulted by the mob who were holding sticks, spears, swords, iron pipes etc. and caused grievous injuries and four persons died due to the injuries in the said incident.

7. The third incident has happened at Ner Dhamna Road when some persons came in bullock-cart. At the relevant time, the mob of the persons holding weapons in their hands reached the spot and assaulted inmates of the bullock-cart. In the said incident, one

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Shriram Bhambere sustained grievous injuries and died on the spot. The persons in the bullock-cart have sustained injuries.

8. In all these three incidents, allegedly, 22 persons sustained injuries and 5 persons lost their lives. Out of the assailants, respondent No.1 Ab.Ajj Sk.Mehboob (original accused No.5), respondent No.9 Rafikhan Meheboobkhan (original accused No.24), and respondent No.10 Sk.Tayab Sk.Munaf (original accused No.25) were arrested from the spot at Khel Deshpande Road along with blood stained weapons like spears and sticks in their hands.

9. Regarding the said incident, PW46 Gangadhar Dhore lodged the report. On the basis of the said report, the crime was registered against 104 accused persons.

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10. During investigation, the investigating officer has drawn spot panchanama at the site of the function at Khel Deshpande Road as well as Ner Dhamna Road. The injured were referred for the medical examination and some of the injured fled away from the spot in injured condition and approached to the Government Hospital at Telhara who were treated there. The investigating officer has collected their medical certificates during the investigation. The investigating officer carried out various house search panchanamas and various weapons were recovered during the said house search panchanamas. All five dead persons were referred to the Government Hospital at Akola for conducting their postmortem examination. Their postmortem reports are collected and included in the investigation papers. The blood stained clothes of the deceased persons, blood stained weapons are also seized and forwarded to

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Chemical Analyzer. The memorandum statements of some of the accused persons are recorded and their instance also, the weapons were recovered.

11. After completion of the investigation, chargesheet is filed against 104 accused persons in the Court of learned JMFC. As the offence under Section 302 of the IPC was exclusively triable by the Court Sessions, learned Magistrate committed the case to the Court of Sessions. Learned Judge of the trial court framed charge vide Exh.72.

12. To prove the first incident occurred near the spot of the function, 11 witnesses are examined, which are as follows:

PW Nos.	Names of Witnesses			Exh. Nos.
1	Baburao eyewitness	Shyamrao	Kharapkar,	194

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6	Kashinath Tulshiram Khopale, pancha on panchanama as to the spot of the incident	214
7	Mangesh Krushnarao Deshmukh, eyewitness	216
11	Shiolal Kisanlal Jaiswal, eyewitness and injured	222
24	Prashant Purushottam Mahajan, eyewitness	242
25	Sahebrao Bhagwantrao Patil	243
26	Vishwas Shriram Pimpare	244
27	Gopal Nana Vaichol	245
28	Vasant Motiram Niwane, eyewitness	246
29	Wasudev Pandhari Arbat	247
49	ASI Shankar Rupaji Rane	391

13. To prove the second incident occurred on Road in the vicinity of Khel Deshpande in front of the house of Matin Baig, following 18 witnesses are examined:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Baburao Shyamrao Kharapkar	194
4	Gajanan Shaligram Mahore, eyewitness	205

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5	Rameshwar Atmaram Belorkar, eyewitness	206
8	Nagorao Sadashio Avatade, eyewitness	219
9	Gopal Mahadeo Patharkar, injured eyewitness	220
13	Bhaskar Mahadeo Raut, eyewitness	227
14	Anil Wasudeo Dabadghave, eyewitness	228
15	Rambhau Gopalrao Bahakar, injured eyewitness and driver of the tractor	229
16	Subhash Punjabrao Kukde, injured eyewitness	230
17	Harischandra Janrao Nerkar, eyewitness	232
18	Vinayak Mahadeo Bhise	235
19	Madhukar Gangaram Metkar, eyewitness	236
20	Laxman Vishvanath Gawande, eyewitness	237
21	Ganesh Kashinath Nerkar, eyewitness	238
22	Prabhakar Nathuji Randhe, injured eyewitness	239
23	Motiram Laxman Zaparde	241
35	Nandkishor Mahadeo Bhagat, injured eyewitness	290
46	Gangadhar Ramkrushna Dhore	354

14. As to third incident occurred at Ner Dhamna Road, in all 6 witnesses are examined, which are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Baburao Shyamrao Kharapkar	194
2	Devidas Motiram Rothe, eyewitness	200
3	Dyandev Tulshiram Mahore, eyewitness	204
36	Balwan Pandharinath Dinkar, eyewitness	291
44	Mohan Govind Bhambhere, eyewitness	348
51	Jaggu Singh Ishwar Singh Thakur, Police Head Constable	400

15. Besides the oral evidence the prosecution also relied upon the medical evidence and to prove the injury certificates of various injured persons, relied upon the evidence of Medical Officer PW48 Sattadeo Raut vide Exh.368. Whereas, PW12 Prakash Laxmanrao Joshi was examined vide Exh.224 to prove the postmortem report of Sk.Gaffar and PW50 Dr.Ajay Keshavrao Jawarkar is examined vide Exh.394 to prove the postmortem reports

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of Digambar Wamanrao Kukde, Shriram Wamanrao Bhambere, Avachitrao Kukde, Shriram Gavande.

16. During the investigation, the investigating officer has drawn various panchanamas and to prove the said panchanamas, the prosecution has examined PW1 Baburao Shyamrao Kharapkar Exh.194 who acted as a pancha on seizure of stick from respondent No.1 Ab.Ajij Sk.Mehboob (original accused No.5) Exh.195, seizure of stick from respondent No.10 Sk.Tayab Sk.Munaf (original accused No.25) Exh.196, seizure of stick from respondent No.9 Rafikhan Meheboobkhan (original accused No.24) Exh.197, spot of the incident in the midst of Khel Deshpande and Khel Narshipur Exh.198, inquest panchanama of dead body of deceased Avachitrao Kukde Exh.207, inquest panchanama of dead body of deceased Shriram Wamanrao Bhambere Exh.209, inquest panchanama of deceased Shriram Gavande Exh.210,

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inquest panchanama of deceased Digambar Kukde Exh.211 and PW6 Kashinath Tulshiram Khopale Exh.214, pancha on spot at Ner Road Exh.215, PW30 Tulshiram Govida Mahore Exh.249 acted as a pancha on various house search panchanamas Exhs.250 to 264, PW31 Bharat Sakharam Solankhe pancha on seizure memos, PW32 Rajendra Shrikrushna Exh.270 acted as a pancha on various house search panchanamas Exhs.271 to 284, PW33 Gajanan Pandhare Exh.285 pancha on house search panchanama Exh.281, PW34 Ajabrao Sontakke Exh.287 pancha on seizure of blood stained clothes of deceased Shriram Vitthal Gavande, seizure memo Exh.288, PW37 Dayaram Motiram Rothe Exh.294 pancha on various house search panchanamas Exhs.295 to 302, PW38 Vitthal Ramchandra Tekade Exh.303 pancha on house search panchanamas Exhs.304 to 313, PW39 Shankar Laxman Nand Exh.317 pancha on house search

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and recovery panchanamas Exhs.318 to 325, PW40 Mahadev Isaji Khade Exh.326 pancha on memorandum statement of accused Mobin Sk. Exh.327 and seizure memo Exh.328, PW41 Balkrishna Shamrao Agarkar Exh.329 pancha on house search panchanama Exhs.330 to 336, PW44 Devrao Gangaram Kharabkar Exh.337 pancha on house search panchanamas Exhs.330 to 336, PW43 Sukhdev Motiram Niwane Exh.338 pancha on house search panchanama Exhs.339 to 347, and PW45 Wasudev Motiram Dande pancha on house search panchanamas Exhs.351 to 352.

17. The prosecution has also examined police witnesses namely carrier PW47 Shashikant Sakharkar Exh.364, ASI PW49 Shankar Rane Exh.391 incharge of police outpost Panchagavan, Exh.51 Jaggu Singh Ishwar Sigh Thakur Exh.400 writer of PSI Kulkarni, Investigating Officer PW52 Dyandev Omkar Pinjarkar Exh.408,

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Investigating Officer Police Inspector PW53 Rupchand Ratan Chhagalani Exh.410, and Investigating Officer PW54 Mohan Rathod Exh.412.

18. After appreciating the evidence adduced, learned Judge of the trial court acquitted the accused persons by holding that the prosecution miserably failed to prove the charges against the accused persons. Being aggrieved and dissatisfied with the said observation, the present appeal is preferred by the State.

19. Heard learned Additional Public Prosecutor Shri M.J.Khan for the State and learned counsel Mrs.Amaira Ateeb for the accused persons.

20. Learned Additional Public Prosecutor for the State submitted that acquittal of the accused persons is on the ground that no specific act is attributed to them. There are inconsistencies in the evidence of the

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prosecution witnesses. He submitted that learned Judge of the trial court ignored an aspect that the accused persons were members of the unlawful assembly and in pursuance of the common object of the same, the act was executed by some of the accused persons. However, being members of the unlawful assembly, all the accused persons are responsible for the act of the other accused persons. He submitted that as per the prosecution, three incidences occurred. As far as the first incident is concerned, it took place near spot of the function. To prove the said incident, the prosecution has examined in all 11 witnesses. The evidence of PW1 Baburao Shyamrao Kharapkar; PW24 Prashant Purushottam Mahajan; PW25 Sahebrao Bhagwantrao Patil; PW26 Vishwas Shriram Pimpare; PW28 Vasant Motiram Niwane; and PW11 Shirolal Kisanlal Jaiswal is consistent which is also supported by the police witness PW49

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Shankar Rane who was also deputed on duty at the spot of the incident. Perusal of the judgment impugned reveals that self contradictory findings are given by learned Judge of the trial court.

21. The second incident occurred on the road of Khel Deshpande between the house of Matin Baig. To prove the said incident, the prosecution has examined in all 18 witnesses and out of that 18 witnesses PW9 Gopal Mahadeo Patharkar; PW13 Bhaskar Mahadeo Raut; PW14 Anil Wasudeo Dabadghave; PW15 Rambhau Gopalrao Bahakar; PW20 Laxman Vishvanath Gawande; PW4 Gajanan Shaligram Mahore; and PW35 Nandkishor Mahadeo Bhagat are injured eyewitnesses. Their evidence is further supported by PW5 Rameshwar Atmaram Belorkar; PW17 Harischandra Janrao Nerkar; and PW18 Vinayak Mahadeo Bhise. The evidence of these witnesses shows that they were assaulted by the

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mob of people belonging to the Muslim community. As far as respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf, who were arrested on the spot, are concerned, they are identified during the evidence. The weapons of the offence are also recovered at their instance. Thus, involvement of these accused persons is clearly established by the prosecution. There is no explanation from these respondents how they were found at the spot. From the house of the rest of the accused persons, their weapons are recovered by the prosecution. Thus, the respondents were members of the unlawful assembly and in furtherance of their common object, they assaulted the persons who came at the spot to attend the function. In the said incident, four persons namely Avachitrao Kukde, Shriram Bhambere; Shriram Gavande, and Digambar Kukde died. Whereas, 22 persons

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sustained injuries. The death of Avachitrao Kukde, Shriram Gavande, and Digambar Kukde occurred in the second incident took place at Khel Deshpande Road.

22. Third incident occurred at Ner Dhamna Road when the witnesses were approaching to the spot of the function. To prove third incident, the prosecution has examined in all six witnesses PW1 Baburao Shyamrao Kharapkar; PW2 Devidas Motiram Rothe; PW3 Dyandev Tulshiram Mahore; PW36 Balwan Pandharinath Dinkar, PW44 Mohan Govind Bhambhare; and PW51 Jaggu Singh Iswar Singh Thakur. The evidence of these witnesses also discloses about the occurrence of the incident and the evidence of these witnesses is not shattered during the cross examination. Mere suggestion cannot take place of proof. As far as identification is concerned, identification of the accused persons is

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substantial evidence. The prosecution witnesses have identified the accused persons before the court.

23. Thus, besides the oral evidence, circumstantial evidence that recovery of the weapons at the instance of respondent No.1 Ab.Ajij Sk.Mehboob; respondent No.9 Rafikhan Meheboobkhan; and respondent No.10 Sk.Tayab Sk.Munaf who were found on the spot is also established. The weapons are also recovered from the house of the accused persons.

24. To corroborate the version of the prosecution witnesses, the medical evidence is also adduced by the prosecution. PW48 Sattadeo Raut examined vide Exh.368 has proved injury certificates of Amrutrao Bahekar. PW9 Gopal Mahadeo Patharkar; PW22 Prabhakar Nathuji Randhe; PW19 Madhukar Gangaram Metkar; PW16 Subhash Punjabrao Kukde; PW21 Ganesh

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Kashinath Nerkar; Ramlal Haridas Pandav; PW20 Laxman Vishvanath Gawande; PW35 Nandkishor Mahadeo Bhagat, and PW12 Prakash Laxmanrao Joshi were examined to prove the postmortem report of Sk.Gaffar Exh.225. Whereas, PW50 Dr.Ajay Keshavrao Jawarkar is examined to prove the postmortem reports of deceased Avachitrao Kukde and Shriram Bhambere and postmortem report of Shriram Vitthal Gavande. PW1 Baburao Shyamrao Kharapkar was also examined as a pancha on seizure of stick from respondent No.1 Ab.Ajij Sk.Mehboob, seizure of stick from respondent No.10 Sk.Tayab Sk.Munaf and seizure of stick from respondent No.9 Rafikhan Meheboobkhan. He also acted as a pancha on spot panchanama regarding the spot of the incident occurred at Khel Deshpande Road. The inquest panchanama of dead body of deceased Avachitrao Kukde, Shriram Gavande, Digambar Kukde, and Shriram

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Bhambere. PW6 Kashinath Tulshiram Khopale was turned hostile, but his evidence can be appreciated which shows that there was formation of unlawful assembly. PW30 Tulshiram Govinda Mahore and PW31 Bharat Sakharam Solankhe are acted on various panchanamas as to the seizure of weapons from the houses of the accused persons. PW32 Rajendra Shrikrushna Bobade; PW33 Gajanan Pandhare Kherkar; PW37 Dayaram Motiram Rothe; PW38 Vitthal Ramchandra Tekade; PW39 Shankar Laxman Nand; PW41 Balkrishna Shamrao Agarkar; PW44 Mohan Govindrao Bhambere; PW43 Sukhdev Motiram Niwane; and PW45 Wasudev Motiram Dande are acted as panchas on various search panchanamas. Whereas, PW34 Ajabrao Sontakke acted as a pancha on seizure of blood stained clothes of deceased Shriram Gavande. PW38 Vitthal Ramchandra Tekade acted as a pancha on memorandum statement of accused Abed Khan and

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recovery panchanama of memorandum statement of accused Sk.Naseem and recovery panchanama at whose instance weapon like axe is recovered. PW40 Mahadev Isaji Khade also acted as a pancha on memorandum statement of accused Mobin Sheikh and seizure panchanama. Thus, various panchanamas are proved by the prosecution.

25. The prosecution has also adduced the evidence of the investigating officer and police witnesses. PW47 Shashikant Sakharkar acted as a carrier who has handed over the articles by the medical analyst. PW49 Shankar Rane who was incharge of police check-post of Panchagavan also witnessed the mob which came near the spot of the function. PW51 Jaggu Singh Iswar Singh Thakur was writer of PSI Kulkarni in whose presence respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10

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Sk.Tayab Sk.Munaf were arrested along with the weapons. PW52 Dyandev Omkar Pinjarkar; PW53 Rupchand Ratan Chhagalani; and PW54 Mohan Rathod are investigating officer who have investigated the crime. He submitted that the entire evidence of the prosecution sufficiently shows involvement of the accused persons in the alleged crime wherein five persons died and 22 persons were injured. The entire judgment of the trial court is perverse and self contradictory reasons are given and, therefore, the judgment impugned deserves to be quashed and set aside. He further submitted that requirement of law in criminal trials is not to prove the case beyond all doubts, but beyond reasonable doubt and such doubts cannot be imaginary, fanciful or merely a possible doubt but a fair doubt based on reasons and common sense. If the allegations against the respondents in the light of the evidence is taken into consideration,

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the prosecution has proved their involvement in the alleged incident and, therefore, their acquittal is perverse. He submitted that the witnesses cannot be expected to possess a photographic memory and, therefore, some inconsistencies ought to have been there. What is to be seen is that whether those inconsistencies are shattered the core of the prosecution which is absent here. In view of that the entire judgment of the trial court deserves to be quashed and set aside.

26. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

(1) Goverdhan and anr vs. State of Chhattisgarh, reported in (2025)3 SCC 378;

(2) Suresh s/o Purushottam Astankar vs. State of Maharashtra, reported in 2015(3) Mh.L.J. (Cri.) 424;

(3) State of UP vs. Krishna Gopal and anr, reported in (1988)4 SCC 302;

(4) Sushil Kumar Tiwari vs. Hare Ram Sah and ors, reported in 2025 LiveLaw (SC) 864;

(5) Nathu Manchhu vs. The State of Gujarat, reported in AIR 1978 Gujarat 49;

(6) Sarwan singh vs. State of Punjab, reported in (2003)1 SCC 240;

(7) State of UP vs. Nahar Singh (dead) and ors, reported in (1998)3 SCC 561;

(8) Shrawan Bhadaji Bhirad and ors vs. State of Maharashtra, reported in (2002)10 SCC 56;

(9) State of UP vs. Farid and ors, reported in (2005)9 SCC 103;

(10) Mahabir vs. State of Delhi, reported in (2008)16 SCC 481;

(11) Rajendra Shantarma Todankar vs. State of Maharashtra and anr, reported in (2003)2 SCC 257;

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(12) The State of MP vs. Bacchudas alias Balaram and ors, reported in AIR 2007 SC 1236;

(13) State of Goa vs. Sanjay Thakran and anr, reported in 2007 AIR SCW 2226;

(14) Punjabrao vs. State of Maharashtra, reported in (2002)10 SCC 371;

(15) Dani Singh and ors vs. State of Bihar, reported in (2004)13 SCC 203;

(16) Bhargavan and ors vs. State of Kerala, reported in (2004)12 SCC 414;

(17) Ram Dular Rai and ors vs. State of Bihar, reported in (2003)12 SCC 352;

(18) Shri Gopal and anr vs. Subhash and ors, reported in 2004 Cri.L.J. 3349;

(19) Daya Singh vs. State of Haryana, reported in AIR 2001 SC 1188; and

(20) Chandra Shekhar Bind and ors vs. State of Bihar, reported in AIR 2001 SC 4024.

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27. *Per contra*, learned counsel for the accused persons submitted that there was no previous acquaintance between the witnesses and the accused persons. The identification parade was held, but no evidence is adduced to prove the identification parade panchanama. The witnesses have admitted that they have not identified the accused persons during identification parade. Therefore, the identification before the court is of no consequence. The possibility of forgetting the names of the accused persons cannot be ruled out as the evidence was recorded after 12 years of the incident. Thus, involvement of the accused persons in the alleged incident is concerned is not established by the prosecution and, therefore, learned Judge of the trial court has rightly considered the evidence that involvement of the accused persons is not established and acquitted the accused persons. There is no reason to

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interfere with the judgment impugned in the appeal. In view of that, the appeal deserves to be dismissed being devoid of merits.

28. In support of her contentions, learned counsel for the accused persons placed reliance on following decisions:

(1) Criminal Appeal No.1162/2011 (Mallappa and ors vs. State of Karnataka) decided by the Supreme Court on 12.2.2024;

(2) Criminal Appeal No.51/2010 (State of Maharashtra vs. Raju Wamanrao Duf and ors) decided by this Court on 25.9.2005;

(3) Criminal Appeal No.1187/2014 (Zainul vs. State of Bihar) decided by the Supreme Court on 7.10.2025 along with connected matters;

(4) Wahid vs. State Government NCT of Delhi (Criminal Appeal No.201/2020) decided by the Supreme Court on 4.2.2025;

(5) Dana Yadav @ Dahu and ors vs. State of Bihar, reported in AIR 2002 SC 3325;

(6) Criminal Appeal Nos.2828-2829/2023 (Allarakha Habib Memon etc. vs. State of Gujarat) decided by the Supreme Court on 8.8.2024, and

(7) Criminal Appeal No.176/2014 (Venkatesha and ors vs. State of Karnataka) decided by the Supreme Court on 9.1.2025.

29. The present appeal is preferred by the State against 23 accused persons out of 104 accused. During the pendency of the appeal respondent No.2 Sherkha Jarifkhan is reported to be dead. Respondent No.4 Sk.Bannu Sk.Ismail; respondent No.11 Amadkhan Subhankhan; respondent No.13 Mohd.Afazal Mohd.Asalam; respondent No.14 Sk.Bashir Sk.Mahatu; respondent No.16 Amrullakhan Sarfarajkhan; respondent No.21 Sk.Mehmoob Daula Kasai; respondent No.22 Sk.Ajij Sk.Hanif; and respondent No.23 Majroddin Najiyoddin are reported to be dead and, therefore, the

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appeal against them is abated. To prove the guilt of the accused persons, the prosecution has examined in all 54 witnesses. As per the prosecution, three incidents occurred at three different places. The first incident occurred near spot of the function. As per the prosecution case, the function of inauguration of opening of branch of political party "Shiv-Sena" was organized on the day of the incident i.e. 5.6.1988 at village Khel Narshipur. PW1 Baburao Shyamrao Kharapkar was examined vide Exh.194. PW7 Mangesh Deshmukh; PW24 Prashant Purushottam Mahajan; PW26 Vishwas Shriram Pimpare, and PW28 Vasant Motiram Niwane are material witnesses. As per their evidence, village Panchagavan is consisted of five localities i.e. Khel Narshipur; Khel Krushnaji; Khel Mukadam; Khel Satwaji, and Khel Deshpande. At Panchagavn, population of Muslim community is about 60-70% and remaining 25%

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is of other communities. As per the allegations, the persons belonging to Mohammedan community are having dominance in the village and they are indulged in illegal businesses, forcibly taking cattle from other agriculturists slaughtered them, forcibly recovering money from the persons of other communities, and various illegal activities and, therefore, villagers decided to form a branch of “Shiv-Sena” at the village. With the consultation of the leaders, they have arranged the function of formation of “Shiv-Sena” branch on 5.6.1988. The said function was to be held at Khel Narshipur near Hanuman Temple. They have prepared a stage and made other arrangements and villagers from the adjoining villages were also invited. Some of the villagers also gathered there. PW1 Baburao Shyamrao Kharapkar was looking after the arrangement. He deputed PW23 Motiram Zaporde and PW4 Gajanan Shaligram Mahore

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at Khel Deshpande locality to guide villagers coming from the other villages to lead them towards the spot of the incident. Whereas, PW2 Devidas Motiram Rothe was deputed at Ner Dhamna Road. The evidence of these witnesses further shows that at about 5:00 pm, when they were present at the spot of the function, a mob of 100-125 persons of Muslim community came near the spot of the function and the mob was holding weapons like sticks, spears, swords, iron pipes etc. in their hands and were giving slogans. Narayan Deshmukh and Police Head Constable Shri Rane and Arbat Patwari approached the said mob and have given understanding not to harm anybody and villagers who gathered would go to home peacefully after the function is over. Police Head Constable Shri Rane has given a clear understanding to the mob that they have to maintain public peace, otherwise they have to face consequences and, thereafter,

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the mob dispersed from the said place. This evidence of the witnesses is further corroborated by PW29 Wasudev Pandhari Arbat who deposed that at the relevant time, he was serving as Talathi of village Panchagavan at Telhara. The incident occurred on 5.6.1988. The function of opening of branch of "Shiv-Sena" was organized. The spot of the function was at Khel Narshipur locality. He was present in the same village. On that day, in the morning, at about 10:00 am to 11:00 am, PSI Kulkarni had called a meeting in a school building and the persons from all communities of that village were present in the said meeting. PSI Kulkarni put a proposal in the meeting that villagers have to maintain peace as the function as to opening of "Shiv-Sena" branch in the village is organized. He has also asked the villagers as to whether anybody was having any objection for opening of branch of "Shiv'Sena" in the village. At the relevant time,

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respondent No.1 Ab.Ajij Sk.Mehboob and one Baba Patel were present in the same meeting. His evidence further shows that at about 5:30 pm, a mob of 100-150 people of Muslim community came near the spot of the function. He along with Narayan Deshmukh and Police Constable Rane approached the mob and they gave them understanding. Thereafter, the mob left the place.

30. To corroborate the said version, PW49 Shankar Rane who was deputed at Panchagavan Check-Post is also examined by the prosecution whose evidence also shows that at the relevant time, he was incharge of Check-Post of Panchagavan. On 5.6.1988, the function of inauguration of "Shiv-Sena" branch at Khel Narshipur was organized. The majority population 75% is of Muslim community and remaining of other communities. As there was likelihood of occurrence of public peace, he requested PSI Kulkarni to keep police bandobast in the

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village. He along with 5-6 police men went to village Panchagavan. PSI Kulkarni also held a meeting of the responsible persons from the various communities and requested them to keep peace in the village. He along with five police constables was deputed at the spot. They were patrolling in the village. However, they were having apprehension of breach of public peace. At about 5:00 pm, he was near the spot of the function. At the relevant time, a mob of 100-150 Muslim community holding weapons in their hands came at the spot. They were giving slogans. He along with PW29 Wasudev Pandhari Arbat and Narayan Deshmukh approached to the mob and gave them understanding not to cause any breach of peace and, therefore, the mob dispersed.

31. PW1 Baburao Shyamrao Kharapkar; PW7 Mangesh Deshmukh, and PW22 Prabhakar Nathuji Randhe, and PW24 Prashant Purushottam Mahajan are

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cross examined. Eyewitnesses PW11 Shirolal Kisanlal Jaiswal; PW25 Sahebrao Bhagwantrao Patil; and PW27 Gopal Nana Vaichol have turned hostile. Cross examination of PW1 Baburao Shyamrao Kharapkar shows that he admitted that the offence was registered against him by the police for contravening Section 135 of the Bombay Police Act and the offence was registered against him as well other 62 persons, but he denied that on the same day, he was arrested in the said incident.

32. Another eyewitness as to the incident is PW7 Mangesh Deshmukh. His evidence regarding the incident, is identical to the evidence of PW1 Baburao Shyamrao Kharapkar. During his evidence, he has identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.8 Tayarsha Maqboolsha, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf before the court. As far as cross

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examination regarding the first incident is concerned, nothing incriminating is brought on record. He denied that on the day of the incident, the offence was registered against him for breach of peace and for contravention of Section 135 of the Bombay Police Act. However, he admitted that he was one of the accused amongst 62 accused persons against whom the offence as to unlawful assembly is registered.

33. PW24 Prashant Purushottam Mahajan is also eyewitness to the first incident. His evidence is also identical to PW1 Baburao Shyamrao Kharapkar and PW7 Mangesh Deshmukh as far as first incident occurred. He was cross examined on identification of the accused persons who stated that he identified the accused persons as they are residents of village Panchagavan who used to come and go at Telhara. He knows the persons by their names and some are known by their faces. He has

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identified respondent No.1 Ab.Ajij Sk.Mehboob. He also identified respondent No.9 Rafikhan Meheboobkhan and respondent No.10 Sk.Tayab Sk.Munaf. During the cross examination, he admitted that except the fact that his house is situated on the way of Panchagavan, there is no other reason to identify the accused persons. It further confirmed during the cross examination that since the accused persons used to go and come by the same way to Telhara, their names are known to him. Regarding the first incident, his cross examination shows that he has seen the mob of Muslim persons near the house of PW1 Baburao Shyamrao Kharapkar. They were on the same spot for about half an hour. After giving understanding to them, they dispersed within fifteen minutes.

34. Two independent witnesses i.e. PW29 Wasudev Pandhari Arbat serving as Talathi in the said village was also present at the spot of the incident and has narrated

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that one meeting was held in the morning on 5.6.1988 wherein respondent No.1 Ab.Ajij Sk.Mehboob was present. In his presence, PSI Kulkarni enquired as to whether anybody has objection, but none has taken objection. The evidence further shows that at about 5:30 pm, near the spot of the function, a mob of 100-150 people along with weapons in their hands came. He along with PW49 Shankar Rane gave them an understanding and, thereafter, they dispersed. As far as his cross examination is concerned, it came on record that he has narrated the incident to the police and also stated names of the accused to whom he has witnessed. It also came in his cross examination that he is having acquaintance with the villagers as he is serving in the village as Talathi. He further stated that the land of respondent No.1 Ab.Ajij Sk.Mehboob is adjoining to the land of his nephew. Thus, reason brought on record

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during the cross examination is sufficient to show that there is a reason for this witness to have acquaintance with respondent No.1 Ab.Ajij Sk.Mehboob. The cross examination of PW29 Wasudev Pandhari Arbat, who was also present at the time of the incident, i.e. the first incident, who has also narrated about the meeting held in the morning under the supervision of PSI Kulkarni and he was present in the said meeting. He also narrated about the incident of gathering of 100-150 persons along with weapons in their hands at the spot of the function.

35. Thus, as far as the evidence of these witnesses regarding the first incident is concerned, which is to the extent that PSI Kulkarni conducted the meeting in the morning on the day of the function and enquired as to whether anybody is having objection as to inauguration of branch of “Shiv-Sena” in the village. At the relevant time, respondent No.1 Ab.Ajij Sk.Mehboob was present.

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He has not raised any objection at the relevant time. As there was apprehension of breach of public peace, the police were deputed at the spot of the function. When PW49 Shankar Rane was present at the spot of the incident, a mob of 100-150 people of Muslim community came at the spot along with weapons in their hands. They were given understanding and, therefore, the said mob was dispersed.

36. Thus, presence of mob of 100-150 people of Muslim community near the spot of the incident is established by the prosecution. PW1 Baburao Shyamrao Kharapkar; PW7 Mangesh Deshmukh; PW24 Prashant Purushottam Mahajan; and PW28 Vasant Motiram Niwane identified some of the accused persons. As far as identification is concerned, appreciation of the evidence as to the identification would be discussed in further part of the judgment.

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37. As per the prosecution, second incident occurred in the vicinity of Khel Deshpande near the river when the villagers from the adjacent locality were coming in village Narshipur for attending the function of inauguration of “Shiv-Sena” branch at village Narshipur. As per the prosecution, in the said incident, three persons Avachitrao Kukde, Shriram Gavande, and Digambar Kukde sustained grievous injuries and succumbed to the injuries due to the assault by the mob of the persons. Whereas, 22 persons were injured.

38. To prove the second incident, the prosecution placed reliance on the evidence of PW1 Baburao Shyamrao Kharapkar examined vide Exh.194. As per his evidence, when he was present near the spot where the function was scheduled to be held, he sent PW23 Motiram Zaparde and PW24 Prashant Purushottam Mahajan to Khel Deshpande locality for guiding the

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villagers to approach the spot of the function. At about 5:00 pm, he received a message that persons who are coming in tractor were attacked by the mob of 100-125 persons. In the said mob, respondent No.1 Ab.Ajij Sk.Mehboob; respondent No.9 Rafikhan Meheboobkhan; and respondent No.10 Sk.Tayab Sk.Munaf were present. After receipt of the message, that villagers came from the way of Khel Deshpande village, they were attacked by the mob. He immediately rushed to the spot of the incident. The police vehicles also came there and the above three accused persons were caught at the spot. He has also identified the persons who were present in the said mob before the court. He specifically stated that he can recognize faces of the accused persons. His evidence further shows that he noticed that some persons from the mob, who had come on the spot of the function, went towards Ner Dhamna Road from Khel Deshpande locality.

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Three accused persons were arrested by the police on the spot itself along with weapons in their hands. He has also witnessed that Avachitrao Kukde and Shriram Gavande were lying in unconscious condition having bleeding injuries on their persons. Similarly, Shriram Bhambere was also lying injured on the spot. He made an attempt to have communication with Shriram Gavande, but he was not in a position to speak. During that period, the police have brought one injured persons from the thorny bushes at the same spot.

39. PW4 Gajanan Shaligram Mahore was sent by PW1 Baburao Shyamrao Kharapkar in the vicinity of Khel Deshpande to escort the villagers who are coming from the adjacent villages to attend the function. Therefore, he and PW23 Motiram Zaparde were present in Khel Deshpande locality. When they were waiting for the persons waiting from outside, a tractor arrived there. 30-

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35 persons were sitting in the said tractor. His further evidence disclosed that the said villagers came from Pathardi and they also boarded in the said tractor to proceed towards the spot of the function. When they crossed riverbed of Vidrupa river by the tractor, the tractor was halted because of mechanical defect. After some time, they proceeded by the tractor. At that time, a mob of 100-125 persons holding weapons in their hands rushed towards the tractor. The said mob came from side of thorny bushes and started assaulting the persons sitting in the tractor by sticks, axes, and spears etc.. Respondent No.1 Ab.Ajij Sk.Mehboob is identified by him as one of assailants. He has also identified Ab.Hamid Sk.Mehaboob, Amadkhan Subhankhan, Israilkhan Ahamadkha, Yusufkha Ahmadkha, Amrulakha Sarfarajkha, and Sk.Tayab Sk.Munaf.

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40. The evidence of PW23 Motiram Zarpade is also on the same line and corroborates as far as the incident of assault is concerned.

41. PW5 Rameshwar Atmaram Belorkar is another eyewitness examined vide Exh.206 who testified that on 5.6.1988, he was at his house as his calf was missing and, therefore, he was searching it in Khel Deshpande locality in forest beside Vidrupa river. At about 6:00 pm, when he had been to the area, he witnessed that the mob of 100-125 persons were possessing spears, axes, and sticks in their hands. He has also witnessed one tractor coming from Khel Deshpande locality. The tractor proceeded towards the house of Mehboob Daula. At the relevant time, 2-3 persons gave whistle and, thereafter, 100-125 persons rushed from the house of Mehboob Daula towards the tractor and assaulted persons who were travelling in the tractor by weapons spears and axes. He

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has identified some persons from the mob namely Sk.Hamid, Sk.Aziz, Daula Kasai, Bajirao Wakhede, Ramesh Wankhede, Pundlik Wankhede, Sadashiv, Tulshiram, and Rama Wankhede. During the evidence, the persons pointed out by the witness have disclosed their names as narrated by the witness.

42. PW8 Nagorao Sadashio Avatade is also eyewitness to the said incident, who testified that he is resident of village Pathardi. He along with 30-35 persons of village Pathardi decided to attend the function at Panchagavan and, therefore, they proceeded from village Pathardi. After drinking water at Khel Deshpande, they proceeded by the same tractor. When they reached near Vidrupa river, due to mechanical defect, the tractor was parked. After giving push to the tractor, it again started and they proceeded ahead. At the relevant time, a mob of 100-125 persons came from out from Katwan holding

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weapons like sticks, spears, axes, and swords in their hands assaulted them. He has also sustained a blow of iron pipe on his forehead. On receiving the blow of iron pipe, he fell down. He also witnessed that spear was thrust on the person Avachitrao Kukde. Ab.Ajij Sk.Mehboob thrust the said spear to Avachitrao Kukde. The other villages who were in tractor also sustained injuries.

Thus, role of respondent No.1 Ab.Ajij Sk.Mehboob is concerned, it is specifically narrated by this witness that with the help of spear, he has given blow on Avachitrao Kukde. He has also identified some of the assailants that Pundlik Wankhede, Anisoddin Alimoddin, Jamroddin Riyasoddin, respondent No.9 Rafikhan Meheboobkhan, respondent No.10 Sk.Tayab Sk.Munaf, Sk.Mehbood Sk.Nabi, Shamsoddin Khan Fakhrulla Khan, Yasim Khan, and Sk.Shabbir Sk.Gaffar.

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43. PW9 Gopal Mahadeo Patharkar; PW13 Bhaskar Mahadeo Raut; PW14 Anil Wasudeo Dabadghave; PW15 Rambhau Gopalrao Bahakar; PW16 Subhash Punjabrao Kukde; PW17 Harischandra Janrao Nerkar; PW18 Vinayak Mahadeo Bhise; PW19 Madhukar Gangaram Metkar; PW20 Laxman Vishvanath Gawande; PW21 Ganesh Kashinath Nerkar; and PW22 Prabhakar Nathuji Randhe are injured eyewitnesses. Their evidence shows that they are residents of Pathardi. They were proceeding in tractor to attend the function. When they reached in the vicinity of Khel Deshpande, after crossing Vidrupa river, three persons holding sticks in their hands came before their tractor. They gave whistle. At the relevant time, mob of 100-125 people rushed towards the tractor from the front side of the house. Those persons were holding weapons axes and spears in their hands. They assaulted them. In the said assault, they sustained

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injuries. As per the Medical Officer the injury might have been caused by blunt and hard object.

44. PW13 Bhaskar Mahadeo Raut, another injured, has also narrated the incident on the similar lines. He has also identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.22 Sk.Ajij Sk.Hanif who is now dead. His medical certificate is at Exh.385. The injuries might have been caused by blunt and hard object within six hours.

45. PW14 Anil Wasudeo Dabadghave is another injured eyewitness. His evidence also shows in what manner the alleged incident has taken place and his evidence corroborates the evidence of PW9 Gopal Mahadeo Patharkar as well as PW13 Bhaskar Mahadeo Raut as far as occurrence of the incident is concerned. His medical certificate is at Exh.384. As per the medical

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officer all the injuries might have been caused within six hours.

46. The evidence of PW15 Rambhau Gopalrao Bahakar, who was driver of the said tractor, shows that when he has witnessed that a mob of 100-125 persons is approaching to the tractor, he jumped from the tractor and fled away from the spot. Though he stated that he has sustained the injuries in the incident, his medical certificate is not on record. His evidence is also on the similar line that when they reached at the locality of Khel Deshpande, after crossing Vidrupa river, the mob of 100-125 people attacked them and they have sustained injuries and the villagers have also sustained injuries.

47. PW16 Subhash Punjabrao Kukde is another injured eyewitness. His evidence also corroborates the narration of PW9 Gopal Mahadeo Patharkar; PW13

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Bhaskar Mahadeo Raut; and PW14 Anil Wasudeo Dabadghave. In the said incident, he has also sustained injuries. His injury certificate is at Exh.373. All the injuries caused by blunt object are within six hours.

48. PW17 Harischandra Janrao Nerkar is another injured eyewitness. His evidence is also on the similar line that they were assaulted by the mob of 100-125 people when they were proceeding towards the spot of the function. In the said incident, he has also sustained injuries. His injury certificate is at Exh.387. The injury sustained by him is contusion on back over lumber region 6 cm x 3 cm. The injury might have been caused by hard and blunt object within six hours.

49. PW18 Vinayak Mahadeo Bhise is also one of injured eyewitnesses who has also narrated in what

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manner the alleged incident has occurred and how he sustained injuries. His injury certificate is at Exh.386.

50. PW19 Madhukar Gangaram Metkar is another eyewitness who has also sustained injury in the said incident. His medical certificate is at Exh.372. As per the medical officer PW48, the injuries might have been caused by hard and blunt object caused within six hours.

51. PW20 is Laxman Vishvanath Gawande whose medical certificate is at Exh.378.

52. PW21 Ganesh Kashinath Nerkar also narrated about the incident who is also another eyewitness. His injury certificate is at Exh.374. The injuries might have been caused by sharp object within six hours and would be healed within 15-21 days and he was referred to General Hospital at Akola for further treatment.

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53. PW22 Prabhakar Nathuji Randhe is also another injured eyewitness. As far as his evidence is concerned, the same is on the similar line. His medical certificate is at Exh.371. All the injuries were bleeding profusely.

54. PW35 Nandkishor Mahadeo Bhagat is another eyewitness who has also sustained the injuries in the said incident and his evidence discloses the manner in which the alleged incident has taken place. His medical certificate is at Exh.381. This witness has also identified respondent No.17 Sk.Nabi Sk.Supadu, respondent No.9 Rafikhan Meheboobkhan, respondent No.3 Sk.Mehboob Sk.Nabi, respondent No.22 Sk.Ajij Sk.Hanif who is now dead.

55. Besides the evidence of these injured eyewitnesses, the prosecution further placed reliance on

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the evidence of PW46 Gangadhar Dhore who was also present at the spot of the incident and witnessed the incident. He has also lodged the report about the said incident. His evidence is also on the similar line of the injured eyewitnesses. During the evidence, he has identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. These three accused persons were arrested on the spot of the incident itself by the police during the riot. The evidence of PW46 Gangadhar Dhore further discloses that regarding the incident, he has lodged the FIR which was reduced into writing by the police.

56. Coming to the aspect of defence of the accused persons, as far as the evidence regarding the incident and injuries sustained by these witnesses are concerned, admittedly, it is not shattered during the cross

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examination. The tenure of the cross examination was regarding the identification of the accused persons before the court. Some omissions are also brought on record, which are trivial in nature.

57. Though PW9 Gopal Mahadeo Patharkar was cross examined, nothing incriminating is brought on record as far as his cross examination is concerned.

As observed earlier, the evidence of PW1 Baburao Shyamrao Kharapkar, as far as second incident is concerned, which is not shattered during the cross examination.

58. Though PW4 Gajanan Shaligram Mahore admitted during the cross examination that he was frightened and, therefore, he went to his house, the fact that he witnessed the incident remained intact. As far as identification of the accused persons are concerned,

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admittedly, the evidence of this witness is recorded after 12 years of the incident. It also came in his evidence that he disclosed to the police that if the assailants are brought before him, he can identify the said persons.

59. Thus, though extensive cross examination is conducted, as far as the incident and the injuries sustained by the injured eyewitnesses are concerned, it is not shattered during the cross examination.

60. Similarly, the evidence of PW5 Rameshwar Atmaram Belorkar is concerned, who has also witnessed the incident. He has identified some of the accused persons. His cross examination shows that after witnessing the incident, he went to his house. The distance between his house and the spot of the function is of five minutes. He further admitted that he did not notice any policemen at the spot of the incident. He has

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also admitted that no policemen arrived at the spot of the incident in his presence. Thus, an attempt was made to show that no police persons were present when the alleged incident has taken place.

61. PW8 Nagorao Sadashio Avatade is also one of eyewitnesses who came from Pathardi to attend the function. His cross examination shows that there is direct route from Pathardi to Khel Deshpande locality. The distance between two villages is about 6-7 kilometers. As far as witnessing the incident is concerned, his evidence remained unshattered.

62. PW13 Bhaskar Mahadeo Raut is another injured eyewitness. His evidence is mainly to challenge identification by him. He admitted that at the time of the identification, the persons to whom he has identified were not present in the court, however he specifically

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denied that for the first time he has identified the persons in the court. Rest of the cross examination is general in nature as to the geography of the spot of the incident.

63. PW14 Anil Wasudeo Dabadghave is also injured eyewitness whose cross examination shows that when the mob was at a distance of 50 feet, the driver of the tractor shouted and ran away from the spot. There were 35-40 persons in the trolley of the tractor. His cross examination further shows that as soon as the driver shouted, they attempted to jump down from the trolley. He has also admitted during the identification parade, he has identified some persons who were not present before the court.

64. PW15 Rambhau Gopalrao Bahakar, the driver of the tractor, also stated during the cross examination that by sitting the trolley the inmates cannot see outside.

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The mob was seen by him at a distance of 100 feet from the tractor. After seeing the said mob, he stopped the tractor and shouted towards inmates in the trolley for giving them signal and then he ran from the spot.

65. PW16 is Subhash Punjabrao Kukde. His entire cross examination is as to the identification of the accused persons and some omissions and contradictions are brought on record. As to the identification, he stated that he does not remember date of occurrence of the incident. He was called by the police for identification of the accused persons.

66. PW17 Harischandra Janrao Nerkar is one of eyewitnesses. He also stated that he was called for identification parade. His cross examination further shows that before occurrence of the incident, persons who assaulted were not known to him. Thus, from the

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cross examination, the identification by him before the court was questioned.

67. The evidence of PW18 Vinayak Mahadeo Bhise shows that after occurrence of the incident, he had occasioned to go to village Panchagavan. He used to to Panchagavan by interval of 4-6 months. After occurrence of the incident, he had been to Panchagavan on 9.6.1988. He has also admitted that he could not identify the persons in the incident.

68. PW19 Madhukar Gangaram Metkar, has also sustained injuries in the said incident. His cross examination is in the denial form.

69. PW20 Laxman Vishvanath Gawande stated that for the first time, he narrated the incident on 14.6.1988. He admitted that during the identification parade he did not identify anybody. None of the persons

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in mob are known to him by their faces. Before conducting the identification parade, no photograph was shown to him by the police.

70. PW21 Ganesh Kashinath Nerkar stated about the incident, but he denied the contention that there was darkness at the time of the incident due to sunset.

71. PW22 Prabhakar Nathuji Randhe stated during the cross examination that the said incident was over within five minutes and the assailants fled away. Before occurrence of the incident, he has not seen the assailants at the time of identification. The persons identified were not present before the court, but he denied that first time he has identified the persons.

72. PW23 Motiram Zaparde, who was sent by PW1 Baburao Shyamrao Kharapkar to escort the villagers to reach at the spot of the function, is also cross

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examined, who stated that on 7.6.1988 for the first time he disclosed the incident to the police. Some omissions are also brought on record during his cross examination.

73. The evidence of PW35 Nandkishor Mahadeo Bhagat, one of injured eyewitnesses, shows that when he regained consciousness, he was in the hospital. The police recorded his statement on 14.6.1988. He had told to the police that he can identify persons by their faces who assaulted him. He has taken to the Central Jail for identification of those persons. He identified about 17 accused persons in the court. He further stated that the spot of assault is at a distance of 50-60 feet from the river bank and after arrival of those persons towards them, immediately they started assaulting them. The incident of beating was going on for 10-15 minutes.

74. PW46 Gangadhar Dhore is informant regarding the alleged incident. His cross examination shows that an attempt was made to show that he is not knowing any persons from the village Panchagavan as he never visited the said village to give physical education. As to the incident, though he is cross examined, nothing is brought on record to shatter his evidence.

75. Thus, after going through the evidence of these witnesses as to the incident is concerned, PW1 Baburao Shyamrao Kharapkar, PW4 Gajanan Shaligram Mahore, PW5 Rameshwar Atmaram Belorkar, and PW8 Nagorao Sadashio Avatade are the eyewitnesses. Whereas, PW9 Gopal Mahadeo Patharkar; PW13 Bhaskar Mahadeo Raut; PW14 Anil Wasudeo Dabadghave; PW15 Rambhau Gopalrao Bahakar, PW16 Subhash Punjabrao Kukde; PW17 Harischandra Janrao Nerkar; and PW18 Vinayak Mahadeo Bhise; PW19 Madhukar Gangaram Metkar;

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PW20 Laxman Vishvanath Gawande; PW21 Ganesh Kashinath Nerkar; and PW22 Prabhakar Nathuji Randhe are injured eyewitnesses. Their evidence consistently shows that they are from village Pathardi. They came to attend the function of inauguration of “Shiv-Sena” branch and when they were proceeding towards the spot of the function, a mob of 100-125 persons attacked them and assaulted and in the said incident, they sustained injuries. As far as identification of the accused persons is concerned, several witnesses have identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. These accused persons were also arrested by the police at the spot of the incident during riot along with weapons in their hands.

76. Coming to the last incident took place at Ner Dhamna Road, the prosecution examined PW1 Baburao

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Shyamrao Kharapkar; PW2 Devidas Motiram Rothe; PW3 Dyandev Tulshiram Mahore; PW36 Balwan Pandharinath Dinkar, and PW44 Mohan Govind Bhambhere, who are eyewitnesses, and PW51 Jaggu Singh Iswar Singh Thakur, who was working as Writer of the PSI Kulkarni at the relevant time.

77. As far as third incident is concerned, the evidence of PW1 Baburao Shyamrao Kharapkar is to the extent that when he was at the spot in the vicinity of Khel Deshpande Road, he came to know that at Ner Dhamna Road also, the villagers were assaulted by some persons. Thus, the evidence of this witness is concerned, it is only to the extent that he received information that at Ner Dhamna Road, when some of the villagers were coming in bullock cart, they were also assaulted by the mob.

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78. The evidence of PW2 Devidas Motiram Rothe shows that on 5.6.1988, i.e. on the day of the incident, function of formation of “Shiv-Sena” branch was to be held in the village. The said programme was arranged near Hanuman Temple at Narshipur. The arrangement for the said programme was made. PW1 Baburao Shyamrao Kharapkar has sent him to Ner Dhamna Road to lead the persons coming for attending the function and to bring them to the spot. Then, he went to Ner Road and was waiting for the persons coming to attend the said function. At that time, one bullock-cart was coming towards village Panchagavan and 5-6 persons were travelling in the said bullock-cart. When the said bullock-cart was coming from Ner Dhamna Road towards Panchagavan, some persons coming from the side of Khel Deshpande locality, 60-70 persons holding weapons in their hands like sticks, spear, axes, and iron pipes

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assaulted the persons who were in the bullock-cart. After witnessing the incident, he fled away and went to the field of Kumbhar wherein thorny bushes were there. He concealed himself and witnessed the incident. Due to the assault, some persons from the bullock-cart fell down and some of them fled away. He has identified some of the persons who assaulted the villagers travelling in the bullock-cart. He has identified accused respondent No.1 Ab.Ajij Sk.Mehboob and another accused Abdul Khudus, Hamid, Jamir Data, Tamij Patel, Ansarbeg, Matinbeg, Sadashio Wankhade, Bashir, Nasir, Jamir Patel, Bajirao Wankhade, Ramesh Wankhade, Dadarao Wankhade, Ahmad Khan Subhan Khan, Pundlik Wankhade, and Baba Patel. His evidence shows that the assault on the persons who were travelling in the bullock-cart took place at about 6:30 to 7:00 pm. His cross examination shows that when he was waiting there, he saw persons of mob firstly

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at a distance of 100 feet. He further admitted that sunset has been taken place. The persons from the mob who were approaching to the bullock-cart by running towards the bullock-cart. He also admitted that he fled away and was hiding himself at a distance of 15-20 feet from the spot of the incident. He denied that on arrival of the said bullock-cart, it was surrounded by those persons of the mob. He also denied that a police jeep arrived at the spot. He admitted that the persons of mob ran away from the spot at the same direction by which they came.

79. PW3 Dyandev Tulshiram Mahore is another eyewitness whose evidence is on the similar line as PW2 Devidas Motiram Rothe that the mob of 70-80 persons assaulted the persons who came in the bullock-cart and they were giving slogans. He has also identified some of the accused, but his chief examination further shows that the incident occurred prior to last 12 years and,

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therefore, he is unable to identify the persons of that mob by faces. During his cross examination, he admitted that PW1 Baburao Shyamrao Kharapkar, PW7 Mangesh Deshmukh, and PW24 Prashant Purushottam Mahajan are known to him. He has also admitted that a case was also filed by some villagers for beating to the police in the same night. He further admitted that there were number of houses near the house of Sk.Mehmoob Daula Kasai. He was charged for the offence under Section 392 of the IPC.

80. Thus, by the cross examination, an attempt was made to impeach his creditworthiness of the witness.

81. PW36 Balwan Pandharinath Dinkar is also eyewitness to the third incident which took place at Ner Dhamna Road. His evidence shows that he is resident of Ner Dhamna and they have decided to go to Panchagavan

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to attend the function and, therefore, they were proceeding in bullock-cart. The distance between villages Dhamna and Panchagavan is of 6-7 kilometers. When they reached at the spot known as Dasra Chowk which is joint road of Khel Deshpande road and Narshipur road, at the relevant time, 40-50 Muslim persons arrived there and assaulted by sticks, axes, spears, and swords. They surrounded and assaulted them. He has sustained injuries on his back due to the assault by stick. He fled away from the spot. He has identified some of the accused persons before the court which are Gowardhan Shivram Gawarguru, Sk.Tayyab Sk.Munaf, Sk.Rauf Sk.Kadir, Shafioolakha Ibrahimkha, Sk.Rahis Sk.Mustafa, Ab.Mohasin Ab.Kadir, Sharafatoolakha Jabiollakhan and Matinbeg Mujafarbeg. However, during the cross examination he admitted that he is unable to identify the said persons before the court. He has also explained that

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as the faces of those persons are changed, he is unable to identify them. Thus, as far as his evidence regarding to the incident is concerned, it is not shattered, but the evidence as to the identification of the accused persons is shattered during the cross examination as he has specifically admitted he is unable to identify the persons who were assailants due to the lapse of time.

82. PW44 Mohan Govindrao Bhambere is another eyewitness to the incident which took place at Ner Dhamna Road. His evidence is also on the similar line that when they reached near slum in village Panchagavan, they were attacked by 40-50 persons by weapons. He has narrated the names of two persons who were assailants. His cross examination shows that his statement was recorded by the police and some omissions are brought on record to the extent that has narrated

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before the police that Shriram Bhambere was assaulted with spear which is appearing in his statement.

83. Thus, the evidence of PW36 Balwan Pandharinath Dinkar and PW44 Mohan Govindrao Bhambere shows that in the incident took place at Ner Dhamna Road, Shriram Bhambere sustained the grievous injuries and succumbed to the injuries.

84. PW51 Jaggu Singh Iswar Singh Thakur, who is police constable working as Writer of PSI Kulkarni, has narrated about the two incidents which took place at Khel Deshpande Road as well as at Ner Dhamna Road. His evidence, regarding Ner Dhamna Road, is concerned, shows that along with PSI Kulkarni he visited the said spot. Various house search panchanamas are also drawn in his presence and the weapons are recovered from the houses of various accused persons. As far as his cross

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examination is concerned, his evidence is not shattered as to the incident at Ner Dhamna Road. His cross examination is on procedural aspect as to whether he has made an entry in the station diary before leaving the police station, but as far as the incident is concerned, his evidence remained unshattered to the extent that initially he visited in the locality of Khel Deshpande where respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are arrested along with weapons in their hands.

85. The cross examination of PW2 Devidas Motiram Rothe and PW3 Dyandev Tulshiram Mahore is concerned, the same shows that a police jeep arrived at the spot in their presence. They also admitted that they identified the accused persons before the court, but their full names are not known to them. PW2 is the person

who was deputed by PW1 Baburao Shyamrao Kharapkar at Ner Dhamna Road to escort the villagers to bring them at the spot of the incident. His cross examination shows that when he was waiting, nobody else has passed in his presence. The cross examination confirms that the persons of that mob were coming by running towards them. He ran away from the same place as he was scared. The cross examination further shows that as soon as the bullock-cart came on the spot, the persons from the mob assaulted them. Thus, the cross examination of this witness also shows persons coming in the bullock-cart were assaulted by the mob.

86. The evidence of PW3 Dyandev Tulshiram Mahore regarding the incident is consistent with PW2 Devidas Motiram Rothe. As far as his cross examination is concerned, nothing is brought on record to show that his evidence is not creditworthy.

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87. Besides the oral evidence, of these witnesses as to the incident, as the prosecution has come with a case that the alleged incident has taken place on 5.6.1988 and in 22 persons are injured in all three incidents, the evidence of injured witnesses is already discussed while the incident No.2 which took place in the vicinity of Khel Deshpande. Undisputedly, four persons lost their lives in the said incident.

88. To prove the injury certificates of injured persons, the prosecution has examined PW48 Dr.Sattadeo Raut who is medical officer who examined who are referred by the police for their medical examination. The evidence of the said witness shows on 5.6.1988, he was medical officer at Rural Hospital, Telhara. On that day, injured from Telhara Police Station was brought to him by the police. One of injured Amrutrao Bahekar was examined by him who has sustained contusion on left

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shoulder 6 cm x 2 cm and contusion of left side of chest 3 cm x 2 cm. The injuries were caused by blunt and hard substance. He issued medical certificate Exh.370. He examined PW9 Gopal Mahadeo Patharkar who has sustained lacerated injury on top of head 6 cm x 2 cm bone deep having excessive bleeding from the injury. He referred the said patient to the General Hospital and the injury might have been caused by blunt and hard substance like stick. He also examined PW22 Prabhakar Nathuji Randhe who has sustained in all five injuries (i) lacerated injury on top of head 10 cm x 3 cm bone deep; (ii) lacerated injury on back of head 3 cm x 2 cm bone deep; (iii) lacerated injury on right eyebrow 3 cm x 2 cm x 1 cm, (iv) lacerated injury on left side above 3 cm of left ear, 6 cm x 2 cm x 2 cm; and (v) lacerated injury on forehead 3 cm x 2 cm x 1 cm. All the injuries were with profused bleeding. The pulse of the patient was low. He

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has issued medical certificate Exh.371. The said patient was referred by him after treatment to the Government Hospital.

PW48 Dr.Sattadeo Raut has also examined PW19 Madhukar Gangaram Metkar who has sustained three injuries (i) lacerated injury on top of head 6 cm x 3 cm bone deep with excessive bleeding; (ii) contusion of left side of forehead 3 cm x 3 cm, and (iii) contusion on right shoulder 3 cm x 1 cm. All the injuries might have been caused by hard and blunt object. The said patient was referred to the General Hospital. The medical certificate is at Exh.372.

As per evidence of PW48 Medical Officer, PW16 Subhash Punjabrao Kukde who has sustained two injuries i.e. contusion of left eyebrow 3 cm x 2 cm and left eye was black and contusion on back of head 3 cm x

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3 cm. Both the injuries might have been caused by hard and blunt object. Accordingly, he issued medical certificate Exh.373.

PW21 Ganesh Kashinath Nerkar has sustained injuries namely incised penetrating injury on right arm, anterior 3 cm x 2 cm and incised injury on tip of middle of forehead 2 cm x 0.5 cm. Both the injuries might have been caused by sharp object. The patient was referred to the General Hospital. His medical certificate is at Exh.374. He has also opined that both the injuries sustained by the said patient can be caused by spear.

Ramlal Haridas Pandav is also examined who has sustained contusion of back of head 5 cm x 3 cm and contusion on back of right scapula 6 cm x 3 cm. Both the injuries might have been caused by substance like hard

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and blunt substance like stick. The medical certificate is at Exh.375.

Jagannath Ramchandra Bhise is examined who has sustained contusion on forehead left 3 cm x 3 cm, contusion of dorsal side of right arm 2 cm x 6 cm. The medical certificate is at Exh.376. The injuries might have been caused by hard and blunt substance like stick.

Namdev Yewarkar is examined and the doctor found injuries on his person; contusion on right elbow 3 cm x 2 cm, contusion of right side of back 6 cm x 3 cm. The injuries might have been caused by blunt and hard substance. His medical certificate is at Exh.377.

PW20 Laxman Vishvanath Gawande is examined on whose person the doctor witnessed contusion on left arm 4 cm x 4 cm. The medical certificate is at Exh.378.

Patient by name Suresh Awatade is examined vide Exh.379. On his person, he witnessed lacerated injury on forehead 6 cm x 2 cm bone deep. There was excessive bleeding and contusion on nose 2 cm x 1 cm. The medical certificate is at Exh.379.

Patient by name Vishwanath Gangaram Metkar is examined and lacerated injury on right elbow 2 cm x 2 cm x 1 cm and incised injury on right arm above right elbow 3 cm x 1 cm with excessive bleeding are found on his person. The injury might have been caused by hard and blunt object and injury No.2 by sharp object. His medical certificate is at Exh.380.

PW35 Nandkishor Mahadeo Bhagat is examined and on his person the doctor has found incised penetrating injury on top of head 4 cm x 2 cm x 1 cm with excessive bleeding and incised penetrating injury on

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right arm 4 cm x 1 cm x 1 cm, incised injury on right buttock 3 cm x 4 cm x 3 cm with excessive bleeding. The injuries might have been caused by sharp object like spear. His medical certificate is at Exh.381.

The doctor examined Pralhad Vitthal Akhare and Ramesh Shende whose medical certificates are at Exh.382 and 383. They are not examined as prosecution witnesses.

PW14 Anil Wasudeo Dabadghave is examined by the doctor and on his person lacerated injuries on right side forehead 3 cm x 2 cm x 0.5 cm, and contusion on left arm 3 cm x 3 cm and contusion on back over lumber region 6 cm x 3 m are found. All the injuries might have been caused by hard and blunt object like stick. His medical certificate is at Exh.384.

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The medical officer examined PW13 Bhaskar Mahadeo Raut on his person lacerated injury on right side of head 2 cm x 0.5 cm x 0.5 cm and contusion back over right scapula 6 cm x 3 cm were found. Injuries might have been caused by blunt and hard substance like stick. His medical certificate is at Exh.385.

Injured Vinayak Uike on whose person the Medical Officer found contusion on back over lumber region 6 cm x 3 cm is found. The injury might have been caused by hard and blunt object like stick. His medical certificate is at Exh.386.

On examination, PW17 Harischandra Janrao Nerkar on his person contusion back over lumber region 6 cm x 3 cm is found. The injury might have been caused by blunt and hard substance like stick. His medical certificate is at Exh.387.

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On examination of injured Baliram Shaligram Ghongare and on his person contusion on left elbow 6 cm x 4 cm with abrasion of 2 cm x 2 cm was found. The injury might have been caused by hard and blunt object. His medical certificate is at Exh.388. Said Baliram is also not examined as prosecution witness.

On examination of Vijay Mhasal, on whose person lacerated injury on left side of head 3 cm above left ear 3 cm x 1 cm x 0.5 was found, who is also not examined as a prosecution witness. His medical certificate is at Exh.389.

89. PW48 Dr.Sattadeo Raut shows that he has also examined Shriram Gavande on whose person he found huge bleeding with huge laceration on back of head 10 cm x 10 cm x 6 cm. The patient was totally unconscious. The doctor referred him to the General Hospital at Akola.

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He issued medical certificate Exh.390. The injuries might have been caused by blunt and hard object like iron bar. His evidence further shows that injuries found on all these persons are by sticks, spears, and iron bars. This witness is cross examined by learned counsel for the accused and attempted to show that the injuries like contusions and lacerations are simple injuries, which is admitted by the witness. He also admitted that he has not mentioned edges of injuries in the medical certificates. His cross examination shows that he examined each and every injured personally. He also admitted that he did not ask any history to the patients.

90. Thus, as far as injuries on the person of these injured are concerned, the same remained unshattered.

91. Another Medical officer is PW12 Prakash Laxmanrao Joshi examined vide Exh.224, who has

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conducted the postmortem on deceased Sk.Gaffar Sk.Nazir. As per his evidence, on 20.6.1988, the dead body of the said deceased was referred to him. On conducting the postmortem, he found sutured and healed wound about 5 cm on the persons of the deceased and death of the deceased is caused due to cerebral vascular with consolidation of lungs. Thus, as far as death of the deceased Sk.Gaffar is concerned, which is not homicidal death.

92. PW50 Dr.Ajay Keshavrao Jawarkar is examined vide Exh.394. He is another medical officer who has conducted the postmortem on the dead body of deceased Avachitrao Kukde, Shriram Gavande, Digambar Kukde, and Shriram Bhambere. His evidence shows that dead body of Digambar Kukde was brought to the Government Hospital at Akola. On examination the dead body, he found oblique stabbed wound on mid auxiliary line 2 cm

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x 1 cm x 4 cm deep between 4th and 5th internal postal space on right side of thorax. A large collection of blood in thoracic case. There was rupture of auxiliary artery and destruction of practical plexus. The cause of death of the said deceased was due to shock due to bleeding in right thoracic cage with rupture of practical vessel. These injuries are sufficient to cause death. The said doctor issued PM Notes which are at Exh.395.

He also conducted postmortem on the dead body of Shriram Bhambere. On examination, he noticed injuries on his person namely (i) abrasion 2 x 2 on anterior part of upper 1/3rd of right leg with fracture of both tibia and fabula; (ii) fracture on radio ulnar joint lower 1/3rd part of both hands; (iii) fracture of 10th, 11th, and 12th ribs at mid-auxillary line; (iv) lacerated wound over right parietal bone 2 x 1 x 2 deep, and (v) above wound No.4 and 3 above there is lacerated wound 3 x 2

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oblique in direction. He also noted injuries on head namely (i) lacerated wound over right parietal bone 2 x 1 x 2 deep and (ii) lacerated wound above injury NO.1 3 x 3 x 3 oblique in direction. On internal examination, he found compound fracture of right parietal bone. There is a large size of haematoma with $\frac{1}{4}$ th liter of blood between meninges and skull vault. On examination of brain,, he found lacerated below the injury and there is formation of haematoma 4 x 4 below the fracture bone. The cause of death of the deceased was due to injury to cerebrum. Cause of this fracture is of right parietal bone. Large haematoma with profused blood of about half liter between meninges and beneath brain matter which might have led to shock and death. There were multiple fractures which are contributory in precipitating the shock. Accordingly, he issued PM Notes Exh.396. The said injuries can be caused by blunt and hard substance

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and are sufficient to cause death in the ordinary course of nature.

He conducted postmortem examination on the dead body of Avachitrao Kukde who was referred to him. On examination, he noticed the injuries on his person namely (i) stab wound in right infra clavicular region 3 x 1 x 3 oblique; (ii) stab wound below left nipple between 7th and 8th inter costal space; and (iii) cut wound in mid-lines transverse in direction below 2 of sternum – 3 long, 1/4th breadth and 1 cm deep. Thorax was found ruptured of right lung in upper lobe with massive haemorrhage with thorax cavity. He also observed bleeding peritorial cavity – massive bleeding in abdominal cavity about half liter clotted blood in rupture of spleen with haemorrhage about half liter each in abdominal cavities. The cause of death of the deceased was shock due to massive haemorrhage, due to rupture of

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spleen and lung tissues due to stabbing. Accordingly, he issued PM Notes Exh.397. The injuries sustained by him were sufficient in the ordinary course of nature to cause death. The said injuries can be caused by stabbing by pointed object like spear, knife etc..

He also performed postmortem examination of the dead body of Shriram Gavande. On examination, he found injuries on his person namely vene section wounds above right medial malleolous and lacerated wound over right parietal bone 2 x 2 x 4. He found large size haematoma on both right side 4 x 4 and left side 2 x 2 over the junction of frontal and parietal bones. Compound fracture of frontal bone on right side with haematoma 2 x 2 inches – compound fracture of parietal bone on right side 1½ by 1½. Fracture of parietal bone on right side with haematoma 2 x 2 inches on left side. He also noted injury to meninges and brain matter under right

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side of wound with heamatoma format of 3 x 3 inches large size haematoma 3 x 3 inches under left side of fracture between meninges and brain matter. The cause of death of the deceased is head injury. There are multiple compound fractures of parietal and frontal bones with formation of multiple haematoma with half liter of clotted blood and abrasion to meninges and brain matter. Accordingly, he issued PM Report Exh.398. He noted that these injuries are sufficient in the ordinary course of nature to cause death by blunt and hard object like sticks, axe, and pipe etc.

93. As the evidence of these medical witnesses is not challenged by the defence, it remained unchallenged. Thus, the prosecution has established that the death of deceased Avachitrao Kukde, Shriram Gavande, Digambar Kukde, and Shriram Bhambere is caused due to the injuries sustained by them. The oral evidence shows that

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Avachitrao Kukde, Shriram Gavande, and Digambar Kukde have sustained the injuries in the second incident took place at Khel Deshpande when they were proceeding in a tractor and resulted into their death. Regarding the incident, the oral evidence further shows that respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf were arrested on the spot at the locality of Khel Deshpande along with weapons in their hands. As far as death of Shriram Bhambere is concerned, which took place during third incident occurred at Ner Dhamna Road. The evidence of witnesses also shows that involvement of respondent No.10 Sk.Tayab Sk.Munaf reveals from the evidence of PW3 Dyandev Tulshiram Mahore and PW36 Balwan Pandharinath Dinkar. Thus, it is not in dispute that the death of these four persons is homicidal death due to the assault by the mob.

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94. Another piece of evidence on which the prosecution relied upon is, the evidence of various pancha witnesses. PW1 Baburao Shyamrao Kharapkar has acted as a pancha on seizure of stick from respondent No.1 Ab.Ajij Sk.Mehboob. The panchanama is at Exh.195. He also acted as a pancha on seizure of stick from respondent No.10 Sk.Tayab Sk.Munaf and pancha on seizure of stick from respondent No.9 Rafikhan Meheboobkhan. The panchanamas are Exhs.196 and 197 respectively. He has also acted as a pancha on the spot of the incident took place in the midst of Khel Deshpande and Narshipur and also pancha on inquest panchanamas on the dead bodies of deceased Avachitrao Kukde, Shriram Gavande, Digambar Kukde, and Shriram Bhambere. The evidence of PW1 Baburao Shyamrao Kharapkar as to the panchanamas is concerned, it shows that the mob from Khel Deshpande Road proceeded

towards Ner Dhamna Road. In the meantime, the police came in jeep from Khel Deshpande. Three accused persons respondent No.1 Ab.Ajij Sk.Mehboob; respondent No.10 Sk.Tayab Sk.Munaf, and respondent No.9 Rafikhan Meheboobkhan were arrested by the police. His evidence shows that the police have seized spears and two sticks from these three persons who were arrested by the police. The police seized spear from respondent No.1 Ab.Ajij Sk.Mehboob by drawing seizure memo. The spear was stained with blood. The seizure memo is at Exh.195. Similarly, the police seized stick from respondent No.10 Sk.Tayab Sk.Munaf and stick from respondent No.9 Rafikhan Meheboobkhan. The seizure memos are at Exhs.196 and 197. Before the court, he could not identify the spear as it was not found in muddemal. He has also not identified the sticks. As far as the cross examination on the aspect of the seizure of the weapons

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is concerned, except denial, nothing is brought on record. He admitted during the cross examination that the police told him that when three persons were seen by them in the custody of the police, one of them was having spear and two were having sticks in their hands. Except this cross examination, nothing is brought on record. The evidence of PW1 Baburao Shyamrao Kharapkar also shows that he acted as a pancha on spot panchanama. From the spot, the police collected blood stained soil and simple soil. One blade of knife was also recovered from the spot. This evidence remained unchallenged.

95. PW40 Mahadev Isaji Khade has acted as a pancha on memorandum statement of accused Mobin Sk., which is at Exh.327 and recovery panchanama is at Exh.328, who is not respondent in the present appeal.

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96. The last set of evidence adduced by the prosecution is the evidence of police witnesses. The prosecution has examined PW47 Shashikant Sakharkar who acted as carrier. PW49 Shankar Rane examined Exh.391 who was incharge of Police outpost Panchagavan and has witnessed that the mob coming near the spot of the function. PW51 Jaggu Singh Iswar Singh Thakur was writer of PSI Kulkarni and his evidence is on the aspect that three persons were arrested at the spot where the second incident of assault took place as well as stated about seizure of the weapons at the instance of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. He has also stated as to the various house search panchanamas and seizure of the weapons. PW52 Dyandev Omkar Pinjarkar investigating officer is examined vide Exh.408, PW53 Rupchand Ratan

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Chhagalani investigating officer is examined vide Exh.410, and PW54 Mohan Rathod investigating officer is examined vide Exh.412.

97. As far as the evidence of PW47 Shashikant Sakharkar is concerned, his evidence is to the extent that has carried muddemal and clothes for Chemical Analyzer's Analysis, forwarding letter is at Exh.365. As far as his cross examination is concerned, only admission is that the said muddemal was not seized in his presence. Except that, nothing is brought on record.

98. The evidence of PW49 Shankar Rane is already referred while discussing the evidence as to the first incident. Sum and substance of his evidence is that he was Incharge of police outpost at Panchagavan. He was also present at the meeting held by PSI Kulkarni with the villagers belong to various communities and villagers

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were informed as to the inauguration function of “Shiv-Sena” and asked them to keep peace. As to the first incident, his evidence is to the extent that when he was on duty near the spot of the incident, a mob of 100-125 people came holding weapons in their hands and giving slogans. On giving understanding to them, they left the place. His evidence further shows that respondent No.1 Ab.Ajij Sk.Mehboob was present in the meeting as he noted his presence in the mob came near the spot of the incident. Thus, he has stated about involvement of respondent No.1 Ab.Ajij Sk.Mehboob in the mob who came along with weapons at the spot of the incident. His cross examination is on the point that he has not taken any preventive action though he apprehends that there was likelihood of breach of peace. He has also denied that persons from different communities came at the spot as audiences and he arrested them on the spot. Thus, an

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attempt was made to show that the mob came at the spot of the incident as audiences, which is denied by PW49 Shankar Rane.

99. PW51 Jaggu Singh Iswar Singh Thakur, who at the relevant time, was serving as Writer of PSI Kulkarni. His evidence is to the extent that on the day of the incident i.e. 5.6.1988, he accompanied PSI Kulkarni at Panchagavan. Before reaching Panchagavan, they halted at Khel Deshpande locality and from Khel Deshpande locality proceeded towards Narshipur whereat they saw that persons in tractor were assaulted. They arrested three persons from the said mob and seized one spear and two sticks from them. Panchanamas Exhs.195-197 were drawn in his presence. The weapon like spear was seized from respondent No.1 Ab.Ajij Sk.Mehboob, sticks were seized from respondent No.9 Rafikhan Meheboobkhan and respondent No.10 Sk.Tayab

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Sk.Munaf. He further testified that injured were taken to the hospital and attempt was made to search assailants. Spot panchanama was also drawn in his presence. Some of accused persons were arrested during night hours. He also narrated about various weapons recovered during the house search panchanamas of various accused. Thus, he has narrated the entire investigation which is carried out by the investigating officers. His evidence is on the point that whether he has made any entry in the police station diary before leaving the police station. He admitted that if the police station is to be left by any police officer, he has to inform PSO. He has also admitted that in his presence PSI Kulkarni has not received any message from police constable Rane. Except this cross examination, nothing incriminating is brought on record as far as arrest of three accused persons and seizure of weapons from them by the investigating officer.

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100. PW3 Dyandev Tulshiram Mahore is also investigating officer who has narrated about the investigation that on 5.6.1988, PW46 Gangadhar Dhore came to the police station and lodged the report. He has recorded the said report. On the basis of the same, the crime was registered. He admitted that none of the injured was brought to Telhara Police Station.

101. PW53 Rupchand Ratan Chhagalani is another police officer who has arrested one of absconding accused.

102. PW54 Mohan Rathod another investigating officer has narrated about the entire investigation carried out by him. During his evidence, portion marks "A" and "B" of the evidence of PW25 Sahebrao Bhagwantrao Patil are proved, which are at Exh.414. The omissions came on record are also put to the witness and proved. He has

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also admitted that PW17 Harischandra Janrao Nerkar has stated portion mark “A” and it was recorded as per his narration, which is at Exh.320. As far as his cross examination is concerned, the omissions and contradictions are proved by the defence.

103. On the basis of the above said evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt against the accused persons.

104. Before appreciating the evidence and entering into the merits of the appeal, it is necessary to consider the law regarding the appeal against acquittal.

105. It is well settled that while exercising the appellate powers, especially while dealing with appeals against acquittal, cardinal principle to be kept in mind is that there is a presumption of innocence in favour of

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accused, unless the accused is proved to be guilty. The presumption continues and finally culminates into a fact that when case ends in acquittal. The possibility of two views in criminal cases is not an extraordinary phenomenon while considering appeals against acquittal. A fact cannot be lost sight of the same. The trial court has appreciated the entire evidence and reversal of the order of acquittal is not to be based on mere existence of different views or mere difference of opinion. Normally, while exercising the appellate jurisdiction, it is the duty of the appellate court to see whether decision is correct or incorrect on law or facts. While dealing with appeals against acquittal, the court cannot examine impugned judgment only to find out whether view was taken correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must decide whether trial court's view was possible view. The

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appellate court cannot overturn acquittal only on the ground that after re-appreciating the evidence, it is of view that guilt of the accused is established beyond reasonable doubt.

106. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in exercise of the appellate powers, there is no inhibition of the High Court to re-appreciate or re-visit the evidence on record. However, the powers of this Court to re-appreciate the evidence is qualified power especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the

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third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

107. Learned Additional Public Prosecutor for the State place reliance on catena of decision in respect of law regarding appeal against acquittal.

The Hon'ble Apex Court in the case of **State of UP vs. Krishna Gopal and anr** *supra* held that the powers of the appellate Court, in an appeal against the acquittal, are not different from or inconsistent with those that the appellate Court has in an appeal against a conviction.

The Hon'ble Apex Court in the case of **State of UP vs. Nahar Singh (dead) and ors** *supra* by referring catena of decisions it is held that the principle with regard to interference in the appeal against acquittal

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under Section 378 CrPC are well established. While dealing with the power of the High Court to reverse an order of acquittal on a matter of fact, Lord Russell of Killowen, speaking for the Privy Council, in **Sheo Swarup vs. King Emperor, reported in AIR 1934 PC 227 (II), 1934 All LJ 905** observed thus:

“There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has ‘obstinately blundered’, or has ‘through incompetence, stupidity or perversity’ reached such ‘distorted conclusions as to produce a positive miscarriage of justice’, or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been

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tricked by the defence so as to produce a similar result.

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his

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trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”

On the similar point, he placed reliance on the decisions in the cases of **The State of MP vs. Bacchudas alias Balaram and ors** *supra*; **State of Goa vs. Sanjay Thakran and anr** *supra*; and **Girja Prasad (Dead) By Lrs. v. State of M.P.**, reported in 2007(7) SCC 625, wherein after considering various decisions, certain general principles regarding powers of the appellate court in

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dealing with appeal against order of acquittal are laid down, which are as follows:

“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

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(3) Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion;

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

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Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court, and

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

108. Learned counsel for the accused persons has placed reliance on the decision in the case of **Mallappa and ors vs. State of Karnataka** wherein also similar principles are laid down.

109. Coming to the judgment impugned in the appeal, learned Judge of the trial court, while appreciating the evidence of these witnesses, observed that the question remains that the said assembly was

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unlawful assembly in prosecution of common object. It is further held that no doubt, individual act of each of the accused is not stated by the prosecution, but their testimony shows that some of the persons in the assembly were holding weapons like sticks, spears, swords, iron pipes etc. in their hands. An assembly of more than 5 persons holding the above said weapons and making assault on the aforesaid persons and causing them injuries, as discussed above, which is proved through Medical Officer PW48 Sattadeo Raut, it leads to hold that persons were members of unlawful assembly. Their identification for the first time in the court certainly is the matter of argument, but the fact of they being members of unlawful assembly is undoubtedly proved by the witnesses about which there may not be any doubt of suspicion. It is further observed that, occurrence of death due to assault in the unlawful assembly is proved through

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these witnesses and the medical officer. As per the evidence of the above said witness, three persons namely Avachitrao Kukde, Shriram Gavande, and Digambar Kukde were with them in the tractor and Shriram Bhambere was with PW36 Balwan Pandharinath Dinkar, PW44 Mohan Govind Bhambhere in the bullock-cart whose death occurred at Ner Dhamna Road. PW50 Dr.Ajay Keshavrao Jawarkar is examined vide Exh.394 and his evidence shows that injuries sustained by these deceased were sufficient to cause death in the ordinary course of nature and such injuries can be caused by weapon like spear found on the person of deceased Digambar Kukde. It is also observed that as far as injuries on the person of other three deceased are concerned, the evidence of medical officer shows that they have sustained the injuries and the injuries are sufficient to cause death in the ordinary course of nature. The

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evidence of this medical officer remained unchallenged. Therefore, the death of deceased persons are due to injuries sustained by them is undisputed and the evidence of witnesses shows that at the relevant time, these deceased persons were with them and in the same incident assault was made on them with spears and sticks. So, on the evidence of above 11 witnesses and the medical officers, it is clear that death of four persons occurred due to the injuries sustained by them in the said incident. Another doctor's evidence already shows that the injuries also sustained by the injured in the said incident. Thus, the trial court held that death of the deceased and the injuries sustained by the deceased caused due to assault by the members of the unlawful assembly.

110. Another point taken for consideration by the trial court is that whether unlawful assembly and in

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pursuance of common object is proved and the trial court held that the prosecution has proved that the unlawful assembly was formed and in pursuance of the common object of that assembly, the villagers were assaulted and death of four persons is caused. In initial part of the judgment, the finding was given that the prosecution has proved that the villagers formed an unlawful assembly and in pursuance of the common object of that assembly, persons came in the village to attend the function were assaulted, but in the next part of the judgment, the trial court observed that the prosecution failed to prove beyond reasonable doubt the common object of the assembly. It is further held that the prosecution failed to prove that the members of the unlawful assembly were holding weapons in their hands and the intention of the said assembly is also not proved by the prosecution. The finding of the trial court, as far as identification of the

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accused persons by the witnesses, is concerned, is also contradictory as in first part of the judgment the trial court held that respondent No.1 Ab.Ajij Sk.Mehboob was one of the persons of that mob. The witnesses have identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. The witnesses are the residents of village Panchagavan. PW1 Baburao Shyamrao Kharapkar was resident of village Panchagavan. At the time of occurrence of the incident, he was the main person from village Panchagavan for taking part in establishing "Shiv-Sena" branch. He being resident of the same village, he could identify all the persons of the said mob. However, in the subsequent part of the judgment, the trial court has discarded the evidence as to the identification.

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111. Thus, perusal of the entire judgment impugned shows that contradictory findings are noted by the trial court. The finding of the trial court that the persons who are known to the witnesses is reason given by the witnesses is that his residence Telhara is on the way of village Panchagavan and accused persons to whom he is identified used to go and come by the same way and, therefore, PW24 Prashant Purushottam Mahajan knows them by their names and faces. He could recollect them by their faces. The observation of the trial court, as far as the act of respondent No.1 Ab.Ajij Sk.Mehboob is concerned, is also contradictory. The trial court observed that respondent No.1 Ab.Ajij Sk.Mehboob and one Baba Patel were present in the meeting. Said Baba Patel is not accused in the matter. Respondent No.1 Ab.Ajij Sk.Mehboob has not raised any objection for formation of “Shiv-Sena” branch and that the meeting was over. As

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respondent No.1 Ab.Ajij Sk.Mehboob was not having any grievance about formation of “Shiv-Sena” branch in the village, otherwise he could have protested in the meeting. Therefore, if the evidence of PW29 Wasudev Pandhari Arbat is taken into consideration and that Mohammedan persons attending the meeting did not object for opening of “Shiv-Sena” branch at that village, question arises how the mob of unlawful assembly had gathered there to oppose the formation of “Shiv-Sena” branch. The said observation is made by the trial court despite the evidence that respondent No.1 Ab.Ajij Sk.Mehboob was arrested at the spot by the investigating agency along with weapon in his hand.

112. While appreciating the evidence of the prosecution witnesses regarding three incidents and the judgment impugned and re-appreciation of the evidence adduced by the prosecution, which is already discussed in

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the earlier part of the judgment, as per the prosecution case, the accused persons were members of the unlawful assembly and in furtherance of common object to restrain the villages from attending inauguration of the function, riot was committed and in furtherance of common object, assaulted the villagers and caused death of four persons.

113. The law regarding formation of unlawful assembly is well settled by the various decisions of the Hon'ble Apex Court.

114. The relevant legal provision under Section 141 of the IPC defines "unlawful assembly" which says an assembly of five or more persons as designated an "unlawful assembly", if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

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Section 148 of IPC deals with rioting armed with deadly weapons - whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The offence of riot is defined under Section 146 of the IPC. In view of the said definition, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Section 149 of the IPC says that every member of unlawful assembly guilty of offence committed in prosecution of common object. If an offence is

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committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

115. Thus, if it is a case of murder under Section 302 of the IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 of the IPC.

116. Section 149 of the IPC creates a constructive or vicarious criminal liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of the assembly. By applying this principle, every member

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of an unlawful assembly to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped with the aid of Section 149 of the IPC.

117. The question which is relevant and which is required to be answered by the court is, whether the accused is member of an unlawful assembly or not.

118. The Hon'ble Apex Court in the case of **Rajendra Shantarma Todankar vs. State of Maharashtra and anr** observed that Section 149 of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in

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prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly nevertheless the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case

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every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the Court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 either clause is attracted and the Court is convinced, on facts and in law both, of liability capable of being fastened vicariously by reference to either clause of

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Section 149 of IPC merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act. These principles are settled. Applying these tests to the facts found proved beyond reasonable doubt

119. In the decision of the Hon'ble Apex Court in the case of **Zainul vs. State of Bihar** *supra* relied upon by learned Additional Public Prosecutor for the State as well as learned counsel for accused persons, by referring various decision of the Hon'ble Apex Court, it is observed that the expression "in prosecution of the common object" means that the offence committed must be directly

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connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object.

120. In **Charan Singh vs. State of U.P.**, reported in **(2004) 4 SCC 205**, the Hon'ble Apex Court held that the test for determining the "common object" of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident.

121. In the case of **Vinubhai Ranchhodbhai Patel vs. Rajivbhai Dudabhai Patel**, reported in **(2018) 7 SCC 743**, the Hon'ble Apex Court held that:

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“in a cases where a large number of accused constituting “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 of IPC is essential in such cases for punishing the members of such unlawful assembly on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an unlawful assembly is sufficient to render him vicarious liable under Section 149 of IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicarious liable under Section 149 of IPC for the offence punishable under Section 302 of IPC.”

122. In **Criminal Appeal No. 1348/2014 (Nitya Nand vs. State of U.P. & anr)** decided on 04.09.2024, the

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Hon'ble Apex Court observed by reproducing para No.22 of the judgment in the case of **Vinubhai Ranchhodbhai Patel vs. Rajivbhai Dudabhai Patel** *supra* that :

“22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground

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that their activity as members of the unlawful assembly is limited.”

123. Recently, in the judgment in the case of **Zainul vs. State of Bihar** *supra*, the Hon’ble Apex Court has held that:

“49. The expression observed that “in prosecution of the common object” means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In **Charan Singh Vs. State of U.P** reported in (2004) 4 SCC 205, this Court held that the test

for determining the “common object” of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons

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carried by its members, and their conduct before, during, or after the incident.”

It is further observed that, Section 149 of IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fasten only upon proof that the act was done in perusal of the common object.

124. Thus, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a

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probable consequence in furtherance of the common object, thereby rendering him a “member” of the unlawful assembly. Utmost it is important to consider whether the assembly consisted of some members who were merely viewers and who were there out of curiosity, without the knowledge, then such persons cannot be said to be members of the unlawful assembly. Thus, the existence of a common object is to be inferred from certain circumstances such as (a) the time and place at which the assembly was formed; (b) the conduct and behaviour of its members at or near the scene of the offence; (c) the collective conduct of the assembly, as distinct from that of individual members; (d) the motive underlying the crime; (e) the manner in which the occurrence unfolded; (f). the nature of the weapons carried and used; and (g) the nature, extent, and number of injuries inflicted, and other relevant considerations.

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125. In the light of the above well settled principles, it has to be appreciated that whether the accused persons were members of the unlawful assembly and in pursuance of common object of that assembly they are responsible for the act committed by the members of the unlawful assembly.

126. As far as the first incident is concerned, PW1 Baburao Shyamrao Kharapkar; PW7 Mangesh Deshmukh; PW24 Prashant Purushottam Mahajan; PW26 Vishwas Shriram Pimpare; are PW28 Vasant Motiram Niwane are material witnesses. The first incident has occurred near the spot where the function was arranged. As per their evidence, when they were present at the spot of the function, a mob 100-125 persons of Muslim community came near the spot of the function along with weapons like sticks, spears, swords, iron pipes etc. in their hands and were giving slogans. The evidence further discloses

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that one Narayan Deshmukh; PW49 Shankar Rane, and PW29 Wasudev Pandhari Arbat were present who approached to the said mob and have given them understanding not to harm anybody. The evidence of PW29 Wasudev Pandhari Arbat serving as Talathi of village Panchagavan at Telhara further shows that PSI Kulkarni hold a meeting in the village on that day to maintain peace as the function regarding inauguration of “Shiv-Sena” branch in the village was organized. He also asked the villages as to whether anybody is having objection about the same. In the said meeting, respondent No.1 Ab.Ajij Sk.Mehboob and one Baba Patel were present. None of the persons present in the meeting raised an objection. His evidence further shows that when he was present at the spot, a mob of 100-125 persons came at the spot with weapons in their hands.

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An understanding was given to them and, therefore, the mob left the place.

The said evidence is also corroborated by PW49 Shankar Rane, who was deputed at Panchagavan Check-Post. He was also present in the meeting held under the supervision of Police Sub Inspector Shri Kulkarni and all the community members have attended the said meeting and they were informed to maintain public peace in the village during the said function. His evidence further shows that he was deputed at the spot of the incident wherein a mob of 100-125 Muslim community holding weapons in their hands came at the spot and they gave understanding and, therefore, the mob left the place.

127. Thus, as far as the evidence of these witnesses is concerned, it shows that villagers from Muslim

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community have formed unlawful assembly for an unlawful object. Admittedly, regarding the first incident, no untoward incident has occurred. The presence of respondent No.1 Ab.Ajij Sk.Mehboob during the meeting is narrated by the witnesses. PW7 Mangesh Deshmukh and PW24 Prashant Purushottam Mahajan identified respondent No.1 Ab.Ajij Sk.Mehboob; respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. According to the prosecution, they were arrested by the police from the spot where the second incident has occurred. Thus, not only the evidence of PW1 Baburao Shyamrao Kharapkar; PW7 Mangesh Deshmukh; PW24 Prashant Purushottam Mahajan; PW26 Vishwas Shriram Pimpare; and PW28 Vasant Motiram Niwane proves constitution of unlawful assembly but also is corroborated by independent

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witnesses PW29 Wasudev Pandhari Arbat and PW49 Shankar Rane serving as Talathi and ASI respectively.

128. The second incident has occurred in the vicinity of Khel Deshpande locality and to prove the second incident, the evidence of PW1 Baburao Shyamrao Kharapkar, who received message as to the attack on the persons coming in tractor in the vicinity of Khel Deshpande locality and the villagers coming from adjacent villages to approached the spot of the function, shows that he received a message that the persons coming in the tractor were attacked by the mob. He immediately rushed to the spot of the incident where he met PSI Kulkarni. PSI Kulkarni has already arrested respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. The weapons like spears and sticks are recovered from them by the investigating officer by

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drawing seizure panchanamas. PW4 Gajanan Shaligram Mahore is eyewitness to the said incident who has also identified respondent No.1 Ab.Ajij Sk.Mehboob being present at the spot of the incident. The evidence of PW23 Motiram Zaporde is another eyewitness who has also narrated about the incident. PW5 Rameshwar Atmaram Belorkar, is another eyewitness, who is from the same village Khel Deshpande locality, who has also witnessed the mob of 100-125 persons possessing axes and sticks in their hands. He has also witnessed that villagers came by tractor were assaulted by the said mob. PW8 Nagorao Sadashio Avatade has also stated about the mob assaulted villagers coming in tractor. His evidence further shows that it was respondent No.1 Ab.Ajij Sk.Mehboob who thrust blow of spear on the persons of Avachitrao Kukde. Thus, PW8 Nagorao Sadashio Avatade has not only witnessed the incident but has

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specifically narrated the role of respondent No.1 Ab.Ajij Sk.Mehboob who has given blow of spear on the person of deceased Avachitrao Kukde. Thus, role of respondent No.1 Ab.Ajij Sk.Mehboob shows that with the help of spear, he has given blow to said Avachitrao Kukde who died in the said incident. Respondent No.9 Rafikhan Meheboobkhan and respondent No.10 Sk.Tayab Sk.Munaf were also identified by PW8 Nagorao Sadashio Avatade. PW9 Gopal Mahadeo Patharkar; PW13 Bhaskar Mahadeo Raut; PW14 Anil Wasudeo Dabadghave; PW15 Rambhau Gopalrao Bahakar; PW16 Subhash Punjabrao Kukde; PW17 Harischandra Janrao Nerkar; PW18 Vinayak Mahadeo Bhise; PW21 Ganesh Kashinath Nerkar; and PW22 Prabhakar Nathuji Randhe are injured eyewitnesses. As far as assault on them by the mob of 100-125 persons is concerned, the evidence is consistent. Their medical certificates are proved during the evidence.

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PW23 Motiram Zaparde identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. PW13 Bhaskar Mahadeo Raut has identified respondent No.1 Ab.Ajij Sk.Mehboob and respondent No.9 Rafikhan Meheboobkhan. Whereas, PW46 Gangadhar Dhore, who has lodged the FIR, has also identified respondent No.9 Rafikhan Meheboobkhan and respondent No.10 Sk.Tayab Sk.Munaf.

129. Thus, involvement of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf in the unlawful assembly is established by these witnesses who are eyewitnesses as well as injured eyewitnesses. As far as the evidence of PW8 Nagorao Sadashio Avatade is concerned, he has specifically narrated the role of respondent No.1 Ab.Ajij Sk.Mehboob giving blow by

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spear to one of deceased Avachitrao Kukde. Thus, not only involvement of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf is established by the prosecution as members of the unlawful assembly but also their presence in the unlawful assembly along with weapons is also established by the prosecution. This evidence is further by the fact respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf were also arrested from the spot along with weapons in their hands. This evidence is further corroborated by the police witness PW51 Jaggu Singh Iswar Singh Thakur who at relevant time was along with PSI Kulkarni who specifically stated that these three accused persons were arrested from the spot when he and another police staff

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visited the spot of riot where persons coming in the tractor were assaulted.

130. Coming to the third incident took place at Ner Dhamna Road, fact of forming of unlawful assembly by some of villagers and in furtherance of common object assaulted the persons came at the spot to attend the function was established by PW1 Baburao Shyamrao Kharapkar; PW2 Devidas Motiram Rothe; PW3 Dyandev Tulshiram Mahore, PW36 Balwan Pandharinath Dinkar, and PW44 Mohan Govind Bhambhere. The evidence of these three witnesses further shows that the said mob assaulted them by means of sticks and spears in their hands. In the said incident, one injured namely Shriram Bhambere has sustained injuries and died due to the injuries.

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131. On appreciating the evidence, as far as involvement of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf as members of the unlawful assembly and in furtherance of common object of the said assembly they assaulted the villagers who came to attend the function is concerned, the same is established by the prosecution not only on the evidence of injured eyewitnesses but also on the basis of independent witnesses PW29 Wasudev Pandhari Arbat and PW49 Shankar Rane. The evidence of PW8 Nagorao Sadashio Avatade specifically shows specific role of respondent No.1 Ab.Ajij Sk.Mehboob. Though these witnesses are cross examined, nothing incriminating is brought on record.

132. In view of the observation of the Hon'ble Apex Court in catena of decisions and settled principles of law,

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Section 149 of the IPC creates a constructive or vicarious criminal liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of the assembly. By applying this principle, every member of an unlawful assembly to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped with the aid of Section 149 of the IPC. The question which is relevant and which is required to be answered by the court is, whether the accused is member of an unlawful assembly or not.

133. By applying these principles to the present case, the oral evidence of the eyewitnesses supported by the evidence of PW29 Wasudev Pandhari Arbat; PW49 Shankar Rane and PW51 Jaggu Singh Iswar Singh

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Thakur shows involvement of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf as members of the unlawful assembly. The specific role attributed to respondent No.1 Ab.Ajij Sk.Mehboob is that he has given blow of spear on the person of one of deceased namely Avachitrao Kukde. The fact that they came on the spot along with other members holding weapons in their hands is sufficient to infer that they came together with an object and in pursuance of the said common object, they assaulted the villagers who have sustained injuries and four persons died in the said incident. This evidence itself is sufficient to render them as members of the unlawful assembly.

134. Learned counsel for the accused persons vehemently submitted that none of the accused persons are identified during the identification parade. The best

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evidence available with the investigating agency and with the prosecution to prove involvement of the accused persons in unlawful assembly, is that the identification by the witnesses after 12 years of the incident is difficult to accept. There is no dispute that the evidence as to the identification parade was not adduced by the prosecution and no explanation is put forth by the prosecution behind the said non production of evidence of identification. During the cross examination, PW3 Dyandev Tulshiram Mahore; PW36 Balwan Pandharinath Dinkar, and PW36 Balwan Pandharinath Dinkar have specifically admitted that they are unable to identify the said persons before the court. PW36 Balwan Pandharinath Dinkar has specifically stated that faces of the accused persons are changed and, therefore, he is unable to identify them. As far as the evidence regarding identification of the accused persons is concerned, it is shattered during the cross

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examination as except respondent No.1 Ab.Ajj Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf, none of the accused persons are identified by any of the witnesses.

135. The law regarding identification is well settled. The identification test is primarily means for the purpose of helping investigating agency with an assurance that their progress in the investigation of an offence is proceeding on the right lines. Moreover, the identification can only be used as corroborative evidence. The identification parades belong to the stage of investigation, and there is no provision in the CrPC which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the CrPC. Failure to hold a test identification parade

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would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. The identification of the accused either in test identification parade or in court is not *sine quo non* in every case if from the circumstances the guilt is otherwise established.

136. Learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Mahabir vs. State of Delhi** *supra* wherein it is observed by referring its earlier judgment in the case of **Matru vs. State of U.P., reported in (1971)2 SCC 75** that “identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only

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be used as corroborative of the statement in court. The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as

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possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony

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of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions”.

137. *Per contra*, learned counsel for the defence counsel submitted that admittedly, the prosecution witnesses have not given any description of the accused persons while giving their statements before the police. The witnesses are not from the same village. Some of the witnesses have specifically admitted that there are changes in the faces of the accused persons and have shown their inability to identify them. Though some of the witnesses have identified the accused persons, admittedly, the evidence as to the identification by them during the identification is not before the court. On the contrary, some of the witnesses have admitted that they could not identify the accused persons during the

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identification parade. She further submitted that it is pertinent to note that substantial gap of 12 years raises a doubt as to the identification. She placed reliance on the decision in the case of **Venkatesha and ors vs. State of Karnataka** *supra* wherein the Hon'ble Apex Court has ruled out the evidence of identification after eight years and observed that substantial gap of approximately eight years raises serious concern regarding identification. If no identification parade of the unknown persons took place, their identification in the trial court for the first time would cast a serious doubt on the veracity of the prosecution case.

138. As far as the above submission of learned counsel for the accused persons is concerned, it is required to be taken into consideration as far as respondent No.3 Sk.Mehboob Sk.Nabi, respondent No.5 Yusuf Patel Tamiz Patel, respondent No.6 Sk.Rahis

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Sk.Mustafe, respondent No.7 Bismillakhan Khalilkhan, respondent No.15 Inayatkhan Serfarajkhan, respondent No.17 Sk.Nabi Sk.Supadu, respondent No.19 Sk.Mansab Sy.Yusuf, and respondent No.20 Ajmatkhan Mehemoorkhan are not identified during their evidence. However, the evidence of eyewitnesses sufficiently establishes involvement of respondent No.1 Ab.Ajj Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf who are identified by PW1 Baburao Shyamrao Kharapkar, PW7 Mangesh Deshmukh, and PW24 Prashant Purushottam Mahajan, PW4 Gajanan Shaligram Mahore, PW46 Gangadhar Dhore, PW13 Bhaskar Mahadeo Raut, and PW35 Nandkishor Mahadeo Bhagat and which is further corroborated by police witness PW51 Jaggu Singh Iswar Singh Thakur in whose presence these three accused persons were arrested from the spot of the assault along

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with weapons in their hands. The seizure panchanamas are drawn.

139. It is cardinal principle in criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, burden is on the prosecution only to establish its case beyond all reasonable doubts and not all the doubts. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favouring other than truth. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense.

140. Learned Additional Public Prosecutor for the State placed reliance on catena of decision. In the case of

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Sushil Kumar Tiwari vs. Hare Ram Sah and ors *supra*, the Hon'ble Apex Court held that the principle of beyond reasonable doubt has been misunderstood to mean any and every doubt in the case of the prosecution. Often, we come across cases wherein loose acquittals are recorded on the basis of minor inconsistencies, contradictions and deficiencies, by elevating them to the standard of reasonable doubts. A reasonable doubt is one that renders the version of the prosecution as improbable, and leads the Court to believe in the existence and probability of an alternate version of the facts. It is a serious doubt which must be backed by reason. The underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious, is that at times, owing to a mis-application of this principle, actual culprits manage to find their way

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out of the clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the society. Every instance of acquittal of an actual culprit revolt against the sense of security of the society and acts as a blot on the criminal justice system. Therefore, not only no innocent should face punishment for something that he has not done, but equally, no culprit should manage an acquittal on the basis of unreasonable doubts and misapplication of procedure.

141. Keeping in mind the principle, which is laid down, as far as the appeal against acquittal is concerned, that while exercising the appellate powers, especially by dealing with appeals against acquittal, the cardinal principle to be kept is that there is presumption of innocence in favour of the accused unless the accused is proved guilty. At the same time, while exercising the

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appellate jurisdiction, it is the duty of the appellate court to see whether the decision is correct or incorrect on law or facts. While dealing with appeals against acquittal, the court cannot examine impugned judgment only to find out whether view was taken correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must decide whether trial court's view was possible view. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference at the hands of the appellate is warranted.

142. On re-appreciating and re-considering the evidence upon which the order of acquittal is founded, as

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far as the acquittal of all the accused persons is concerned, which appears to be perverse in the light of the fact that there is a positive evidence as far as respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf is concerned. The evidence is not only of the injured eyewitnesses or the eyewitnesses but also the evidence of independent witnesses i.e. PW29 Wasudev Pandhari Arbat who was present at the spot of the function as well as in the meeting witnessed the involvement of respondent No.1 Ab.Ajij Sk.Mehboob in the meeting as well as in the unlawful assembly in the mob came at the spot of the function. The involvement of respondent No.1 Ab.Ajij Sk.Mehboob is further established by the evidence of PW49 Shankar Rane who corroborates the version of PW29 Wasudev Pandhari Arbat as to the presence of respondent No.1 Ab.Ajij

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Sk.Mehboob in the meeting. As already discussed that the most of the eyewitnesses have already identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. Not only the identification of these respondents but also PW8 Nagorao Sadashio Avatade specifically narrated the role of respondent No.1 Ab.Ajij Sk.Mehboob giving blow on the person of one of deceased. There is no dispute that four persons died in the said incident and their death is homicidal one. As far as the evidence of PW8 Nagorao Sadashio Avatade to the extent of giving blow by respondent No.1 Ab.Ajij Sk.Mehboob on the person of deceased Avachitrao Kukde is concerned, the same remained unchallenged as nothing incriminating is brought on record to falsify the version. Moreover, recovery of weapons from them is established by PW51 Jaggu Singh Iswar Singh Thakur

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who at the relevant time was Writer of PSI Kulkarni and was present when respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf were arrested. Seizure of the weapons was proved by PW1 Baburao Shyamrao Kharapkar.

143. Thus, not only involvement of these respondents as members of unlawful assembly in the assault on the villagers is established by the witnesses but also the specific role is narrated by PW8 Nagorao Sadashio Avatade and the aspect of sharing of the common object is further established from the facts that they are involved as members of the unlawful assembly with the weapons and their involvement in the assault is also established by the injured eyewitnesses as well as the independent witnesses. Admittedly, this aspect was not considered by the trial court and self contradictory

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findings are recorded by the trial court. At one breath, the trial court has recorded that holding of the function of formation of “Shiv-Sena” branch on the day of the incident is undisputed. Similarly, the occurrence of the riot in the village at the relevant time is also undisputed. The death of four persons in the said incident and sustaining injuries by some of the witnesses is also remained unchallenged. The only facts seem to be challenged are that the accused persons in the matter are not persons or the members of the said unlawful assembly and they have not committed any offence. The trial court further observed that except respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf, who alleged to be accosted on the spot of the incident at Khel Deshpande locality holding weapons, in respect of the other accused, however, noting is brought

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on record that individually who were holding what weapons in their hands at the relevant time of the incident. In fact, the evidence of PW8 Nagorao Sadashio Avatade specifically shows that respondent No.1 Ab.Ajij Sk.Mehboob was holding spear and he gave blow of spear on the person of deceased Avachitrao Kukde and the said spear was recovered from him. Two sticks were recovered from respondent No.9 Rafikhan Meheboobkhan and respondent No.10 Sk.Tayab Sk.Munaf when they were present at the spot. There was no reason for the trial court to disbelieve the evidence of PW51 Jaggu Singh Iswar Singh Thakur who was present along with PSI Kulkarni at the spot of the incident. Moreover, it is not expected from the witness to narrate exact role of each accused when the witnesses were attacked by the mob.

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144. In the case of **Vinubhai Ranchhodbhai Patel vs. Rajivbhai Dudabhai Patel** *supra*, the Hon'ble Apex Court has an occasion to deal with this issue and it is observed in cases where a large number of accused constituting an 'unlawful assembly' are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 of the IPC is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an 'unlawful assembly' is sufficient to render him vicariously liable under Section 149 of the IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them

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vicariously liable under Section 149 IPC for the offence punishable under 302 of the IPC.

145. Similarly, the Hon'ble Apex Court in the case of **Nitya Nand vs. State of U.P. & anr** supra has observed that when a large number of people gather together and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" - for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming

impunity on the ground that their activity as members of the unlawful assembly is limited.

146. In the present case, the trial court in paragraph No.33 observed that nothing is on record to discard the evidence of injured eyewitness PW9 Gopal Mahadeo Patharkar and PW13 Bhaskar Mahadeo Raut, but in subsequent part of the judgment discarded their evidence while acquitting the accused persons. It is further observed that “one thing appears from the evidence of PW13 Bhaskar Mahadeo Raut that some of the accused persons are identified by these witnesses. He is resident of village Pathardi which is far away from village Panchagavan. He has no animus with the accused so that he will falsely identify them and, therefore, it appears that the evidence of this witness is natural one”. But, in subsequent part, his evidence is discarded.

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In paragraph No.34, at page No.1766 of paper book, it is further observed that PW14 Anil Wasudeo Dabadghave admits that in identification parade, he could not identify any of the assailants at Central Jail Akola. In this case, that is one of the lacuna in the prosecution case. During recording the evidence, number of witnesses have stated that they were called at Central Jail Akola for identification parade and they could not identify any of the accused, but record of the said identification parade is not brought before the court. Even, if the persons who were not identified by the witnesses in identification parade, at the same time, it was the duty of the prosecution to bring on record that the accused after their arrest were placed before the witnesses for identification parade. In the last part of the said paragraph, it is observed by the trial court that to remove the said doubts, the production of identification

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parade, record in the matter was necessary. It is best known to the prosecution why the said record is kept back and not produced in the matter.

In paragraph No.37 also, the evidence of Medical Officer PW48 Sattadeo Raut and PW19 Madhukar Gangaram Metkar is referred and observed that the said witnesses have seen dead bodies of Avachitrao Kukde, Shriram Gavande, and Digambar Kukde at Telhara who had been assaulted by the said mob. The witnesses have also deposed that the said persons who assaulted them are not known to him by their names, but he can identity them by their faces and he has identified eight persons. The evidence of this witness is independent, having no animus against the accused persons and in his cross examination there is nothing abnormal so that his testimony should be thrown away.

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As to the evidence of PW20 Laxman Vishvanath Gawande and PW21 Ganesh Kashinath Nerkar, in paragraph No.38, it is observed that the testimony of these witnesses appears to be natural. In their cross examination, nothing is found unreliable, contradictory or material omissions so that the testimony should be thrown away and, therefore, testimony of these witnesses is reliable and can be accepted as true evidence.

147. Thus, these findings of the trial court even findings in paragraph No.39 that for all the witnesses, the accused are strangers. Therefore, there is no reason for them to give false evidence against the said accused, but finally the trial court discarded the evidence and benefit is given to the accused persons. The findings of the trial court ignoring the evidence of eyewitnesses who identified specifically to respondent No.1 Ab.Ajij

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Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf coupled with circumstantial evidence sufficiently shows that the material evidence is not considered by the trial court and the benefit given to the accused persons by the trial court is unwarranted.

148. In the light of the above discussion, we find that involvement of respondent No.1 Ab.Ajj Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf is established. It is also established that they were members of the unlawful assembly and in furtherance of common object of that assembly they caused death of four accused persons namely Digambar Wamanrao Kukde, Shriram Wamanrao Bhambere, Avachitrao Kukde, Shriram Gavande and caused injuries to 22 persons. Therefore,

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the offences under Sections 143, 147, 148, 302, 324, and 341 read with 149 of the IPC are established.

149. As the involvement of the accused persons Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf in the offences is established, we suspend our judgment here to hear the accused persons on the point of sentence. The accused persons shall remain present before the court on **21/11/2025**.

150. Due to mandate of Section 235(2) of CrPC, the judgment was suspended here to hear the accused persons on the point of sentence.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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151. The accused persons were informed that they can make their submissions in detail. They can also take a reasonable time to make their submissions and accordingly, as per the request of the accused persons, the matter was kept today for hearing on the point of sentence. It is obligatory on the part of the court to hear the accused on the point of sentence to know about age of the accused, background of the accused, prior criminal antecedents etc..

152. The accused persons are heard at length. Their submissions are that now they are at the advanced age. One of the accused persons is of 90 years and other two accused persons are also more than 70 years.

153. Learned counsel for the accused persons submitted that all the accused persons are at their advanced age. The trial was conducted belatedly i.e.

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after 12 years and the appeal is also decided after 25 years. On the same set of evidence, the other accused persons are acquitted. The right of the accused of speedy trial is also infringed and taking into consideration all these aspects, a leniency be shown to the accused persons. He has submitted written notes of argument on behalf of them. In the said written of argument, it is stated that respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are at the verge of 90, 74 and 75 years respectively. The incarceration at such vulnerable age is tantamount to physical and psychological death sentence. He also invited our attention towards sentencing philosophy for elderly and submitted that the law has evolved to recognize that the object of sentencing is not solely retributive. It encompasses deterrence, prevention, and reformation.

When dealing with these exigencies, the scope for reformation is negligible and need for societal deterrence is minimal as they posed no tangible threat.

He relied upon the decision of the Hon'ble Apex Court in the case of **Basavaraj @ Benne Settapa vs. State of Karnataka, reported in (2012)8 SCC 734** wherein death penalty was commuted of a convict and observed advanced age can be mitigating factor. It is emphasized that sentencing must be individualized.

He further placed reliance on the decision of the Hon'ble Apex Court in the case of **State of Punjab vs. Birmohan Singh, reported in (2004)13 SCC 202** wherein it is observed that while upholding the conviction of a 75 year old, reduced his sentence, noting his advanced age and the fact that he had been on bail for a long period.

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Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are at their advanced age and the inevitable accompanying infirmities make them exceptionally vulnerable. Subjecting them to the rigors of prison life would be a punishment far exceeding the one contemplated by law, violating the spirit of Article 21 of the Constitution, which guarantees the right to life with dignity. The incident is 38 years old. Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf have lived with sword of damocles hanging over their heads for over three decades. The right of speedy trial is a fundamental right enshrined in Article-21.

The Hon'ble Apex Court in the landmark judgment in the case of **Hussainara Khatoon and ors vs.**

Home Secretary, State of Bihar, reported in (1980)1 SCC 81 established that a speedy trial is a fundamental right. Undue delay in the conclusion of a criminal trial or appeal is a ground for a lenient view on sentence.

The Constitution Bench of the Hon'ble Apex Court, in the case of **A.R.Antulay vs. R.S.Nayak, reported in (1992)1 SCC 225**, laid down guidelines and held that the right to a speedy trial encompasses all stages, including appeal. While it may not always vitiate the trial, it is a vital factor at the sentencing stage.

He further placed reliance on the decision of this Court in criminal appeal (**Sushil Arora vs. State**) decided on 8.2.2017 wherein explicitly considered the long delay in the conclusion of the trial as a significant mitigating circumstance for reducing the sentence.

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Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf were acquitted in 2000 and lived as free citizens for 24 years. The reversal of this acquittal after such inordinate delay has caused immense mental agony, trauma, and uncertainty, which itself is a form of punishment. This delay is not attributable to respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf warranting compassionate reduction in their sentence. The psychological impact of having an acquittal overturned after nearly two decades cannot be understated. Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf had rebuilt their lives under the legitimate belief that their ordeal was over. It is

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submitted that while the State's right to appeal is unquestionable, the consequence of a successful appeal, when it comes after the accused has enjoyed freedom for a substantial period, must be considered by the court. To sentence them to a full life term now would be disproportionately harsh. The sentencing discretion must account for this unique hardship. The principle of parity in sentencing is well recognized. In **Suresh Chandra Bahri vs. State of Bihar**, reported in 1995 Supp (1) SCC 80, the Hon'ble Apex Court held that if a co-accused in the same crime has been awarded a lesser sentence, it is a valid consideration for the court. Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf do not challenge the acquittal of others. However, the fact that the vast majority of the accused in the same incident has escaped conviction is a relevant

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factor for the court to ensure that the punishment is not disproportionately severe on these three individuals alone i.e. respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. It is submitted that although certain witnesses at trial described specific roles to these individuals, such alleged overt acts were never proved beyond reasonable doubt. The evidence on record does not conclusively established that respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf inflicted the fatal injury, as principal perpetrators. The conviction, therefore, does not stand on proof of individual homicidal acts but rests entirely on the doctrine of vicarious liability under Section 149 of the IPC. In such circumstances, lenience be shown to the accused persons.

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154. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that the circumstance under which the alleged incident has taken place, a certain community has taken the entire charge and the other community was victim at the hands of the one community. He submitted that the entire evidence on record sufficiently shows that even freedom of villagers was curtailed by this community by assaulting them mercilessly wherein four persons have lost their lives, whereas 22 persons have sustained injuries. He fairly submitted that it is not rarest of the rare case and, therefore, only two options are available with this court while awarding the punishment under Section 302 and, therefore, minimum punishment for life imprisonment is to be awarded.

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He further invited our attention towards the medical evidence and submitted that the medical evidence would disclose that in what manner these four persons and other injured persons were assaulted and that is also on account of infringing their right to move freely from one place to another and that is required to be considered by the court. He submitted that when the court is considering the advanced age of the accused persons as a mitigating circumstance, at the same time, the court has to consider the incident which is of a mob lynching. In the case of mob lynching, four persons who were residents of that village lost their lives merely because they attended the function of inauguration of “Shiv-Sena” branch. Thus, in that circumstances, the only option available to the court is to award punishment of life imprisonment.

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155. Having heard both the sides and given sufficient opportunity to the accused persons to make their submissions on the point of sentence, at this stage, we have re-capitalized the entire episode. It is the case where involvement of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf is established. It is also established that they were members of the unlawful assembly and in furtherance of common object of that assembly they caused death of four persons namely Avachitrao Kukde, Shriram Gavande, and Digambar Kukde, and Shriram Bhambere and caused injuries to 22 persons. Therefore, offences under Sections 143, 147, 148, 302, 324, and 341 read with Section 149 of the IPC was established against them.

156. As far as submission of learned counsel for the accused persons regarding proving of the incident beyond

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reasonable doubt is concerned, the same aspect is already considered by us while pronouncing the judgment.

157. It is cardinal principles of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, burden is on the prosecution only to establish its case beyond all reasonable doubts and not all the doubts. The doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. A reasonable doubt is one that renders

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the version of the prosecution as improbable, and leads the Court to believe in the existence and probability of an alternate version of the facts. It is a serious doubt which must be backed by reason. The underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious, is that at times, owing to a mis-application of this principle, actual culprits manage to find their way out of the clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the society.

158. As far as the present case is concerned, we have already discussed and after re-capitalizing and re-appreciating and re-considering the evidence upon which the order of acquittal is founded as far as acquittal of all the accused persons is concerned, which is held to be

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perverse in the light of the fact there is a positive evidence as far as respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are concerned. The evidence is not only is of an eyewitness but also the evidence of independent witnesses. PW29 Wasudev Pandhari Arbat working as Talathi was present at the spot of the function as well as in the meeting wherein he has witnessed involvement of respondent No.1 Ab.Ajij Sk.Mehboob as well as in the unlawful assembly in the mob came at the spot of the function. The involvement of respondent No.1 Ab.Ajij Sk.Mehboob is further established by the evidence of PW14 Anil Wasudeo Dabadghave and PW49 Shankar Rane who corroborate the version of PW29 Wasudev Pandhari Arbat as to the presence of respondent No.1 Ab.Ajij Sk.Mehboob in the meeting. As already discussed that most of the

eyewitnesses have already identified respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. Not only the identification of these respondents but also PW8 Nagorao Sadashio Avatade has specifically narrated the role of respondent No.1 Ab.Ajij Sk.Mehboob giving blow on one of the deceased persons. There is no dispute that four persons have died in the incident and their death is homicidal one. It is also not disputed that 22 persons have sustained injuries in the said incident, as far as the evidence of PW8 Nagorao Sadashio Avatade to the extent of giving blow respondent No.1 Ab.Ajij Sk.Mehboob on the persons of deceased Avachitrao Kukde is concerned. The same remained unchallenged as nothing incriminating is brought on record to falsify the version.

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159. Thus, considering the entire evidence i.e. the evidence in the nature of a direct evidence substantiated by the identification as well as substantiated by the fact that three accused persons are arrested on the spot holding weapons in their hands and their presence during the riot, the evidence on record shows that prior to execution of the act, they have formed the unlawful and they were members of unlawful assembly and in furtherance of the common object of that assembly the entire act was committed. Thus, the prosecution has proved that the accused persons have committed the said act with preparation

160. Considering the act of the accused persons and manner in which the act was executed by the accused persons being members of the unlawful assembly, it is well settled that when the offence is proved against the accused, then treating it lightly by awarding light

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punishment is affront to the society. The offence committed by the accused is anti-social one and it is crime against the society. It is also well settled that when the offence is proved, the court has to award adequate punishment. Mob lynching is a direct violation of Article-21 of the Constitution of India, which guarantees the right to life and personal liberty, because it denies individuals the right to a dignified existence and life.

161. Though learned defence counsel has submitted that considering their age, which is a mitigating circumstance, and, therefore, lenience be shown to them. He placed reliance on various decisions. However, considering the provisions, only two punishments are provided for the offence under Section 302 and discretion is not left in the hands of the court to award a lesser punishment than that the punishment which is provided. There is no dispute regarding the fact that the trial was

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conducted after 12 years and the appeal is also decided after 25 years, but that cannot be a circumstance to reduce the sentence as the said discretion is not left in the hands of the court.

162. Section 302 of the IPC deals with punishment for murder which states that who commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

163. Admittedly, it is not the rarest of rare case and, therefore, question of awarding sentence regarding capital punishment does not arise, but minimum sentence which requires to be imposed is only the imprisonment for life. The reducing of the sentence is only in the circumstance if the offence is made out under the lesser section i.e. under Section 304-I or 304-II.

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164. In the light of the facts and circumstances of the case and after considering the decisions relied upon by learned defence counsel which are mostly on the aspect of delay in trial. Now, the trial is already conducted and the appeal is decided. The decisions talks about right of the accused persons under Article 21 of the Constitution regarding speedy trial, but while awarding punishment, these judgments would not be helpful to the accused persons to reduce their sentence.

165. As already observed, it is not the case of rarest of the rare case to award capital punishment. However, the accused persons have caused homicidal death of four persons by giving repeated blows on their persons which is the offence under Section 302 of the IPC and minimum punishment provided is life imprisonment and maximum punishment provided is capital punishment. Some of the witnesses have also sustained grievous injuries, but as far

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as the offence under Section 307 of the IPC is concerned, which is not made out as the medical evidence nowhere shows that any of injured has sustained the life threatening injury. Therefore, these three accused requires to be acquitted as far as offence under Section 307 of the IPC is concerned.

166. Considering the nature of offence, that during the mob lynching, the accused persons, who were members of the unlawful assembly, caused death of four persons and caused injuries to 22 persons and the offence is committed by preparing themselves by carrying weapons and causing instantaneous death of four persons, it would be just and proper to sentence them imprisonment for life for the offence punishable under Section 302 read with 149 of the IPC. The offences under Sections 143, 147, 148, 324, and 341 read with 149 of the IPC are also made out against respondent No.1

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Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf. In the result, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **Partly-Allowed**.

(2) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 143 of the IPC and sentenced to suffer rigorous imprisonment for three months and fine of Rs.5000/- by each of them, in default, to suffer rigorous imprisonment for fifteen days.

(3) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10

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Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 147 of the IPC and sentenced to suffer rigorous imprisonment for one year and fine of Rs.5000/- by each of them, in default, to suffer rigorous imprisonment for three months.

(4) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 148 of the IPC and sentenced to suffer rigorous imprisonment for one year and fine of Rs.5000/- by each of them, in default, to suffer rigorous imprisonment for three months.

(5) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10

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Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 302 read with 149 of the IPC and sentenced to suffer rigorous imprisonment for life and fine of Rs.5000/- by each of them, in default, to suffer further rigorous imprisonment for three months.

(6) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 324 read with 149 of the IPC and sentenced to suffer rigorous imprisonment for two years and fine of Rs.5000/- by each of them, in default, to suffer rigorous imprisonment for six months.

(7) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10

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Sk.Tayab Sk.Munaf are hereby convicted under Section 235(2) of the CrPC for the offence punishable under Section 341 read with 149 of the IPC and sentenced to suffer rigorous imprisonment for one year and fine of Rs.5000/- by each of them, in default, to suffer rigorous imprisonment for three months.

(8) Respondent No.3 Sk.Mehboob Sk.Nabi, No.5 Yusuf Patel Tamiz Patel, No.6 Sk.Rahis Sk.Mustafe, No.7 Bismillakhan Khalilkhan, and No.8 Tayarsha Maqboolsha and No.12 Sidharth Shankar Wankhade, No.15 Inayatkhan Serfarajkhan, No.17 Sk.Nabi Sk.Supadu, No.19 Sk.Mansab Sy.Yusuf, and No.20 Ajmatkhan Mehemooodkhan are hereby acquitted of the offences under Sections 143, 147, 148, 302, 307, 324, 326, and 341 read with Section 149 of the IPC.

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(9) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are hereby acquitted under Section 235(2) of the CrPC of the offences punishable under Sections 307 and 326 read with 149 of the IPC.

(10) All the substantive sentence shall run concurrently.

(11) Respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf are entitled for set-off under Section 428 of the CrPC.

(12) Muddemal property, if any, be destroyed after the appeal period is over after seeking report from the concerned as to whether the appeal is preferred or not.

(13) Office to issue conviction warrant.

(14) R&P be sent back to the trial court.

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(15) The bail bonds of respondent No.1 Ab.Ajij Sk.Mehboob, respondent No.9 Rafikhan Meheboobkhan, and respondent No.10 Sk.Tayab Sk.Munaf stand cancelled.

(16) Copy of this order duly authenticated be supplied to learned counsel appearing for parties free of costs.

The appeal stands **disposed of** accordingly.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!