

(2015) 05 BOM CK 0036

In the Bombay High Court

Case No : Criminal Appeal No. 118 of 2012

Amarjeetsingh and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106, 11, 25, 26, 27
Penal Code, 1860 (IPC) — Section 302, 307, 34, 341, 342

Citation : (2015) 2 BomCR(Cri) 670

Hon'ble Judges : S.S. Shinde, J;A.M. Badar, J

Bench : Division Bench

Advocate : R.N. Dhorde, Senior Advocate instructed by V.R. Dhorde and P.G. Patil, for the Appellant; S.G. Chincholkar, APP, Advocates for the Respondent

Judgement

A.M. Badar, J.—This appeal is directed against the judgment and order dated 9.2.2012 passed by the learned Additional Sessions Judge, Nanded in Sessions Case No. 177/2007, thereby holding appellants/accused guilty of the offences punishable under Sections 302 r/w 34, 307 r/w 34 and 342 r/w 34 of the Indian Penal Code 1861 (IPC for the sake of brevity). All the accused were sentenced to suffer life imprisonment and were directed to pay a fine of Rs. 1,000/- each and in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 read with 34 of the IPC. They were also sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 500/- each and in default to suffer rigorous imprisonment for three months, for the offence punishable under Section 307 r/w 34 of the IPC. Similarly, they were sentenced to suffer simple imprisonment for three months for the offence punishable under Section 342 r/w 34 of the IPC. Substantive sentences were directed to run concurrently by the impugned judgment.

2. Facts leading to the prosecution of appellants/accused, who shall hereinafter be referred to in their original capacity, can be summarized thus:-

(A) Appellant/accused no. 1 Amarjeetsingh S/o. Jagtarsingh Mohar is brother, appellant/accused no. 2 Jagtarsingh S/o. Makhansingh Mohar is father, whereas appellant/accused no. 3-Balvindarkaur W/o. Jagtarsingh Mohar is mother of Paramjeetkaur @ Mani (since deceased). Injured Jarnelsingh Amarjeetsingh Gill is husband of deceased Paramjeetkaur @ Mani. Informant P.W. 1-Amarjeetsingh Gill is father of injured P.W. 3-Jarnelsingh Amarjeetsingh Gill. Deceased Paramjeetkaur @ Mani was wife of injured P.W. 3-Jarnelsingh Gill. All accused persons were residing in a flat in Ganraj Apartment at Ganraj Nagar of Nanded. Informant Amarjeetsingh Gill used to reside with his family including his injured son P.W. 3-Jarnelsingh Amarjeetsingh Gill and deceased daughter-in-law Paramjeetkaur @ Mani at Bhagatsingh road at Nanded.

(B) It is case of prosecution that love affair developed between injured P.W. 3-Jarnelsingh Amarjeetsingh Gill and Paramjeetkaur @ Mani. Accused persons being her parents and brother were not approving this love relation. Resultantly, accused persons sent their daughter Paramjeetkaur @ Mani to Amritsar in Punjab State at the house of their relatives. It is case of prosecution that P.W. 3-Jarnelsingh Amarjeetsingh Gill went to Punjab and brought back Paramjeetkaur @ Mani. According to the prosecution case, while P.W. 3-Jarnelsingh Amarjeetsingh Gill was returning with Paramjeetkaur from Punjab to Nanded, accused no. 2-Jagtarsingh Mohar and his wife accused no. 3-Balvindarkaur approached informant Amarjeetsingh Gill and directed him that Paramjeetkaur be sent back or else they will commit murder of P.W. 3-Jarnelsingh Amarjeetsingh Gill as well as that of their daughter Paramjeetkaur. This happened 4 to 5 months prior to the incident in question. After returning to Nanded, P.W. 3-Jarnelsingh Amarjeetsingh Gill and Paramjeetkaur married at Wasari Saheb Gurudwara Wasari, Nanded on 27.4.2007. Thereafter, the couple started residing with informant P.W. 1-Amarjeetsingh Gill.

(C) Alleged incident had happened on 27.7.2007. On that day, there was a programme of "Akhand Path" and lunch at the house of Sarjeetsingh Gill R/o. Dashmesh Nagar. He is brother of informant Amarjeetsingh and uncle of injured P.W. 3-Jarnelsingh Amarjeetsingh Gill. Case of the prosecution as reflected from the FIR lodged by P.W. 1-Amarjeetsingh shows that at about 2:00 p.m. his son P.W. 3-Jarnelsingh Amarjeetsingh Gill and daughter-in-law Paramjeetkaur went on scooter to the house of his brother Sarjeetsingh at Dashmesh Nagar for attending "Akhand Path". At about 5:30 p.m. on that day, P.W. 3-Jarnelsingh Amarjeetsingh Gill and his wife Paramjeetkaur were returning by scooter. When the couple reached Ganraj Nagar, they were obstructed by accused persons. Then all accused persons took injured P.W. 3-Jarnelsingh Amarjeetsingh Gill and his wife Paramjeetkaur inside their flat and then they bolted the door of that flat from inside. Thereafter, according to the prosecution case, accused no. 1 Amarjeetsingh Mohar gave blow of Khanjar/dagger on abdomen of his sister Paramjeetkaur. Then accused no. 1-Amarjeetsingh gave another blow of that Khanjar/dagger on left side of chest of P.W. 3-Jarnelsingh in order to commit his murder. FIR lodged by P.W. 1-Amarjeetsingh further shows that though in injured

condition, his son P.W. 3-Jarnelsingh succeeded in coming down from the first floor flat of accused persons. Thereafter, he immediately informed this incident by calling on cellphone to his father informant P.W. 1-Amarjeetsingh Gill. It is the case of prosecution that this incident happened as the couple married against wishes of accused persons. As against this case reflected in promptly lodged FIR by father, his son-injured P.W. 3-Jarnelsingh came up with a version before police that while returning from the house of his uncle Sarjeetsingh, his mother-in-law accused no. 3-Balvindarkaur stopped them, requested them to come to her house and when he and his wife were climbing the staircase of Gajanan Apartment for going to the flat of his in-law, suddenly accused no. 1-Amarjeetsingh Mohar and accused no. 2-Jagtarsingh assaulted him by means of Khanjar/dagger and all accused persons thereafter dragged his wife Paramjeetkaur inside their flat.

(D) According to the prosecution case, P.W. 13-Avinash Sonawane-P.I. of Vazirabad Police Station immediately came to know that there is some commotion at Ganraj Nagar and therefore he deputed PSI Nivle Patil to that place. P.S.I. Nivle Patil who was sent to Ganraj Apartment then immediately called P.W. 13-Avinash Madhav Sonawane, P.I. of Vazirabad to Ganraj Apartment by reporting that the situation thereat is tense. On reaching there, P.W. 13-Avinash Madhav Sonwane PSI found door of the flat of accused persons closed from inside. By using force it was opened. Accused no. 2-Jagtarsingh and his wife accused no. 3-Balvindarkaur were found present there. Paramjeetkaur was seen lying dead on the cot in the bed-room of that flat with stab injury to her abdomen. There was stains of blood throughout the house. Dead body of Paramjeetkaur was then dispatched to Civil Hospital Nanded, where post-mortem examination was conducted on 28.7.2007. Accused no. 2 Jagtarsingh and accused no. 3-Balvindarkaur were taken to the police station. Informant P.W. 1-Amarjeetsingh Gill then lodged FIR at Police Station Vazirabad setting the investigation in motion. By that time, P.W. 3-Jarnelsingh was already admitted to the Civil Hospital, Nanded.

(E) During the course of investigation spot of incident was inspected by P.W. 11-Ashok Ghuge API along with panch witness P.W. 6-Shankar Bhusewad and spot panchanama (Exh. 73) came to be recorded on 27.7.2007 itself. Blood stained "Tabbar" of 30.5 inches in length and 2 1/2 inches in width came to be seized from the bed room of that house. Other articles from the spot including a saw were also seized. Sample of the blood found inside the flat came to be seized. Blood stained clothes of accused persons came to be seized. Similarly, blood stained clothes of injured P.W. 3-Jarnelsingh and deceased Paramjeetkaur were also seized. Statements of witnesses came to be recorded and on conclusion of investigation, accused persons came to be charge sheeted for the offences punishable under Sections 302 r/w 34, 307 r/w 34, 341 r/w 34 and 342 r/w 34 of Indian Penal Code.

(F) During the course of trial, the prosecution has examined as many as 14

witnesses. Their names and purpose for examination can be summarized in the following chart:-

(G) Defence of accused persons as seen from cross-examination of the prosecution witnesses as well as from their statements under Section 313 of the Code of Criminal Procedure is to the effect that P.W. 3-Jarnelsingh and his wife Paramjeetkaur (since deceased) had come to their flat for meeting them. While sitting in the flat of parents of his wife, P.W. 3-Jarnelsingh demanded Rs. 5,00,000/- from his father-in-law-accused no. 2-Jagtarsingh. According to the defence version, then accused no. 2-Jagtarsingh questioned P.W. 3-Jarnelsingh by saying as to how such type of demand is made particularly when father of P.W. 3-Jarnelsingh is not even behaving properly with him (accused no. 2-Jagtarsingh). After hearing such utterances from accused no. 2-Jagtarsingh, infuriated P.W. 3-Jarnelsingh started assaulting accused no. 2-Jagtarsingh by Khanjar/dagger. During the course of that assault, Paramjeetkaur tried to shield her father accused no. 2-Jagtarsingh and the blow of Khanjar/dagger given by P.W. 3-Jarnelsingh landed on her abdomen causing her death.

3. After hearing both sides, by the impugned judgment and order dated 9.2.2012, the learned trial Court came to the conclusion that all accused persons in furtherance of their common intention committed murder by intentionally and knowingly causing death of Paramjeetkaur in their first floor flat of Ganraj Apartment on 27.7.2007 and that they had attempted to commit murder of P.W. 3-Jarnelsingh. The learned trial Court further held that all accused persons in furtherance of their common intention wrongly confined Paramjeetkaur @ Mani in their first floor flat of Ganraj Apartment. Accordingly accused persons came to be convicted and sentenced as mentioned in opening paragraph of this judgment.

4. We have carefully perused the record and proceeding including the deposition of witnesses as well as documentary evidence produced on record.

5. Heard the learned Counsel appearing for both sides. Shri R.N. Dhorde, the learned Senior Counsel appearing for appellants/accused vehemently argued that P.W. 1-Amarjeetsingh Gill has given complete go-bye to the FIR (Exh. 56) lodged by him while in the witness box. According to the learned Senior Counsel, informant P.W. 1-Amarjeetsingh Gill has come up with a totally different version while adducing evidence before the Court. This deviation, according to the learned Senior Counsel, makes prosecution doubtful. Shri Dhorde, the learned Senior Counsel further argued that though the incident of assault on P.W. 3-Jarnelsingh is stated to have happened at the staircase, neither witnesses are deposing that there was blood on the staircase nor the spot panchanama is reflecting this fact. Shri Dhorde, the learned Senior Counsel further argued that evidence of injured P.W. 3-Jarnelsingh cannot be accepted as he has come up with a case that he never entered inside flat of accused persons but forensic evidence shows that blood of injured P.W. 3-Jarnelsingh was found inside the flat of accused persons. The learned Senior Counsel further argued that as admitted by Investigating Officer P.W. 13-Avinash Sonwane PSI, there was injury on

abdomen of accused no. 3-Jagtarsingh requiring his hospitalization and this fact is also disclosed in his arrest panchanama. However, the prosecution has not tendered any explanation on this aspect. Shri Dhorde, the learned Senior Counsel further argued that Section 106 of the Evidence Act cannot be attracted in the case in hand because finding of blood of injured P.W. 3-Jarnelsingh inside the flat makes it clear that he was inside the flat at the time of the incident. The spot panchanama and evidence of witnesses shows that the flat was locked from outside and the prosecution has not explained this aspect. Shri Dhorde, the learned Senior Counsel further argued that alleged recovery of Khanjar/dagger at the instance of accused no. 1-Amarjeetsingh Mohar is of no consequence as there was no blood on that Khanjar/dagger at the time of its seizure. He further submitted that the prosecution has tampered the evidence. With this, Shri Dhorde, the learned Senior Counsel submitted that accused persons are at least entitled for benefit of doubt as there are several infirmities and lacunae in the prosecution case.

6. As against this, learned Additional Public Prosecutor by drawing our attention to the evidence of P.W. 1-Amarjeetsingh Gill and P.W. 3-Jernelsingh argued that the evidence of both these witnesses is reliable and trustworthy. According to the learned Additional Public Prosecutor, evidence of injured P.W. 3-Jernelsingh do show that accused persons in furtherance of their common intention committed murder of Paramjeetkaur and they attempted to commit his murder. The learned Additional Public Prosecutor further argued that evidence of P.W. 13-Avinash Sonawane shows that dead body of Paramjeetkaur was found in the flat where accused no. 2-Jagtarsingh and accused no. 3-Balvindarsingh were present. They have not offered any explanation regarding death of Paramjeetkaur. The learned Additional Public Prosecutor further argued that in pursuant to the disclosure statement of accused no. 1-Amarjeetsingh Mohar, a Khanjar/dagger was recovered and it was found to be stained with blood of group "B". The learned Additional Public Prosecutor pointed out Chemical Analyzer's report which shows that blood of deceased Paramjeetkaur was of "B" group. Hence, as per contention of the learned Additional Public Prosecutor, complicity of accused persons in commission of murder of Paramjeetkaur is established. With this, the learned Additional Public Prosecutor contended that the impugned judgment and order is perfectly in consonance with the evidence on record and therefore needs no interference.

7. At the outset, we must mention that this is an appeal challenging conviction and appellants/accused are directed to suffer life imprisonment apart from payment of fine for the grave offence of commission of murder punishable under Section 302 r/w 34 of the IPC. They are also sentenced to suffer imprisonment for other offences proved against them. At this juncture, it is relevant to note that in *Kali Ram Vs. State of Himachal Pradesh*, AIR 1973 SC 2773 : (1974) CriLJ 1 : (1973) 2 SCC 808 : (1973) SCC(Cri) 1048 : (1974) 1 SCR 722 , the Hon'ble Apex Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the

evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Hon''ble Apex Court has held in the said matter that wrongful conviction of an innocent person is undesirable and shake the confidence of the people in the judicial system. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. The Hon''ble Apex Court in that matter further observed that suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. It is further observed by the Hon''ble Apex Court that to take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. It is well settled that there has to be clear evidence of the guilt of the accused and in absence thereof, it is not possible to record finding of his guilt. The primary principle is that the accused must be proved to be guilty of the offence alleged against him with the aid of clear, cogent and trustworthy evidence. The burden of proving the guilt always lies on prosecution. In the matter of Murugesan and Others Vs. State through Inspector of Police, AIR 2013 SC 274 : (2013) 1 JCC 118 : (2013) 1 RCR(Criminal) 791 : (2012) 10 SCALE 378 : (2012) 10 SCC 383 : (2012) AIRSCW 5627 the Hon''ble Apex Court has held that if the conclusion recorded by the trial Court does not reflect possible view then High Court can step in for interfering the impugned judgment and order.

8. Keeping in mind these principles, we will have to appreciate the evidence adduced by the prosecution in the instant case, wherein the learned trial Court has awarded life imprisonment to accused persons who are mother, father and brother of deceased Paramjeetkaur and in-laws of the injured P.W. 3-Jarnelsingh. The defence has not challenged the fact that said Paramjeetkaur W/o. P.W. 3-Jarnelsingh died homicidal death on 27.7.2007. P.W. 5-Dr. Kiran Khairatkar, Medical Officer of the Civil Hospital, Nanded had conducted post-mortem examination on dead body of Paramjeetkaur on 28.7.2007 and came to the conclusion that Paramjeetkaur died because of shock due to penetrating stab injury over abdomen with penetrating injury to intestine and internal organs. Post-mortem report at Exh. 70 which is contemporaneous document duly corroborates testimony of Autopsy Surgeon P.W. 5-Dr. Kiran Khairatkar shows that deceased Paramjeetkaur sustained ante mortem stab wound on abdomen of size 4 cm x 2 cm causing protruding of her intestine causing extensive internal damage. Such injury is sufficient in the ordinary course of nature to cause death. It is seen that peritoneum of deceased Paramjeetkaur was perforated causing accumulation of 1.5 liter blood apart from perforation of small intestine ruptured of mesenteric artery. This evidence is duly corroborated by evidence of P.W. 2-Nair-a panch witness on inquest. Inquest memorandum Exh. 60 also shows that due to stab wound to abdomen, intestine of dead body of Paramjeetkaur was seen protruding. Thus, with this cogent evidence the prosecution has proved that

Paramjeetkaur W/o. Jarnelsingh Gill died homicidal death on 27.7.2007.

9. As seen from the evidence of injured P.W. 3-Jarnelsingh Gill, after the alleged incident of assault on him he was taken to the Civil Hospital by Raju, Sattya and Hardayal. There he was examined by P.W. 4-Dr. Shashikala W/o. Suryakant Nagshettiwar Medical Officer. Her evidence as well as injury certificate at Exh. 68 issued by her shows that P.W. 3-Jarnelsingh sustained following injuries:-

(A) Stab wound of size 3 cm x 5 cm x 1 1/2 cm on left shoulder grievous in nature caused by sharp object.

(B) Stab wound of size 3 cm x 1/2 cm x 5 cm on left chest grievous in nature caused by sharp object.

(C) Incised wound of size 1 cm x 0.5 cm on index finger.

10. From Civil Hospital, Nanded, P.W. 3-Jarnelsingh was shifted to Yashoda Hospital, Nanded on 28.7.2007, where P.W. 12-Dr. Ravindra Narayanrao Chiddarwar examined him. Evidence of P.W. 12-Dr. Ravindra Chiddarwar also shows that P.W. 3-Jarnelsingh had suffered injury to left side of the chest and was having intercostal drain in situ on left lower zone. P.W. 12-Dr. Ravindra Chiddarwar also noted sutured injury to his left shoulder and to right index finger. We have noted these injuries as nature of injuries caused to the victim gives considerable assistance in coming to the conclusion as to whether there was an attempt to commit murder of the victim.

11. The points which arise for determination in the instant appeal therefore is whether accused persons in furtherance of their common intention committed murder of Paramjeetkaur @ Mani and attempted to commit murder of P.W. 3-Jarnelsingh after wrongfully confining them.

12. Now let us put on record the background facts which according to the prosecution has resulted in commission of this offence. Trustworthy evidence of P.W. 1-Amarjeetsingh Gill and his son P.W. 3-Jarnelsingh Gill shows that because of love affair between P.W. 3-Jarnelsingh and Paramjeetkaur (since deceased) who was daughter of accused nos. 2 and 3 and sister of accused no. 1, she was sent to Amritsar in Punjab State by accused persons. Their evidence further shows that P.W. 3-Jarnelsingh Gill brought Paramjeetkaur back to Nanded and married her at Gurudwara on 22.4.2007. Though according to the prosecution case this act of P.W. 3-Jarnelsingh infuriated accused persons and because of that the prosecuting party and accused persons were not on talking terms; cross-examination of informant P.W. 1-Amarjeetsingh Gill shows that once accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur (parents of his deceased daughter-in-law Paramjeetkaur) had been to his house for dinner. His cross-examination also shows that even after return of P.W. 3-Jarnelsingh with Paramjeetkaur from Punjab, accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur had been to his house and requested him to send their son-in-law P.W. 3-Jarnelsingh and their daughter Paramjeetkaur to their house. As seen

from evidence of P.W. 1-Amarjeetsingh Gill he refused this request of accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur. This material elicited from cross-examination of the informant goes to show that accused/parents of deceased Paramjeetkaur were attempting reconciliation for having cordial relations with their son-in-law and his parents and for this purpose they had even visited house of informant Amarjeetsingh Gill.

13. Fate of the prosecution case to a large extent hinges on testimony of informant P.W. 1-Amarjeetsingh Gill and his son injured P.W. 3-Jarnelsingh Gill. We may note their antecedents brought on record by the defence in order to ascertain which yardstick needs to be applied for evaluating their evidence. Cross-examination of P.W. 1-Amarjeetsingh Gill shows that he along with his son P.W. 3-Jarnelsingh had faced trial for attempting to commit murder. P.W. 1-Amarjeetsingh Gill further admitted in his cross-examination that his son P.W. 3-Jarnelsingh is facing trial for the offence punishable under Section 307 of IPC with an accusation that he attempted to commit murder by firing bullets in the campus of the Court itself. This fact is also admitted in his cross-examination by P.W. 3-Jarnelsingh and P.W. 7-Babu Pathan-a panch witness. It is brought on record from cross-examination of P.W. 1-Amarjeetsingh Gill that he faced trial with an accusation that he committed murder of his own father-in-law. With such criminal antecedents of P.W. 1-Amarjeetsingh Gill and P.W. 3-Jarnelsingh, we are required to be careful and cautions while appreciating and evaluating evidence of both these interested witnesses. Similarly we will have to keep in mind that Sarjeetsingh-brother of P.W. 1-Amarjeetsingh Gill is an active member of Congress Party and was the Deputy Mayor of Nanded Waghale Municipal Corporation.

14. Let us now examine evidence of informant P.W. 1-Amarjeetsingh Gill as well as that of his son injured P.W. 3-Jarnelsingh. Version of P.W. 1-Amarjeetsingh Gill shows that incident in question was informed to him by his son P.W. 3-Jarnelsingh on cellphone. This narration as per version of P.W. 1-Amarjeetsingh Gill as well as P.W. 3-Jarnelsingh is soon after the murderous assault on P.W. 3-Jarnelsingh. It was on the basis of narrations of his son P.W. 3-Jarnelsingh, P.W. 1-Amarjeetsingh Gill immediately lodged report of the incident in question which has resulted in registration of Crime No. 159/2007 under Sections 302, 307, 341, 342 r/w 34 of the IPC with Police Station Vazirabad, Nanded. It would be appropriate to consider what was this first information report setting the wheels of investigation in motion. In this FIR lodged on 27.7.2007, P.W. 1-Amarjeetsingh Gill reported to police that his injured son P.W. 3-Jarnelsingh informed the following facts to him by calling on his cellphone immediately after the assault. Recitals in this FIR (Exh. 56) are to the following effect:-

At about 5:30 p.m. of 27.7.2007 P.W. 3-Jarnelsingh along with his wife Paramjeetkaur were returning by scooter from the house of Sarjeetsingh brother of informant Amarjeetsingh Gill, after attending "Akhand Path" and lunch thereafter. All accused persons obstructed them while they were passing from

Ganraj Nagar. Then all accused persons after wrongfully restraining them took them to their house/flat at Ganraj Nagar and confined them by bolting the door of that house from inside. Thereafter, accused no. 1-Amarjeetsingh Mohar gave blow of Khanjar/dagger in abdomen of Paramjeetkaur and murdered her. Subsequently, accused no. 1-Amarjeetsingh Mohar gave blow of Khanjar/dagger on left side of chest of Jarnelsingh and thereby attempted to kill him. Injured Jarnelsingh then came down and informed this incident by calling on cellphone of informant Amarjeetsingh Gill.

15. This is what in nutshell is the FIR (Exh. 56) lodged by informant Amarjeetsingh Gill. This FIR as such candidly shows that murder of Paramjeetkaur was committed by accused persons in presence of her husband injured P.W. 3-Jarnelsingh and thereafter accused persons attempted to commit his murder. This FIR lodged with promptitude giving first version about the crime goes to show that place of occurrence was inside the flat of accused persons at Ganraj apartment of Nanded.

16. Now let us see what informant P.W. 1-Amarjeetsingh Gill states before the Court. This informant has stated before the Court that at about 6:00 p.m. of 27.7.2007 his son P.W. 3-Jarnelsingh called him on cellphone and informed him that his in-laws had obstructed and thereafter called them to their house. As per version of P.W. 1-Amarjeetsingh Gill, P.W. 3-Jarnelsingh further informed him on cellphone that when he was climbing the stairs, he was assaulted from the front direction. As per narrations of P.W. 3-Jarnelsingh disclosed by informant P.W. 1-Amarjeetsingh Gill before the Court, accused no. 2-Jagtarsingh assaulted P.W. 3-Jarnelsingh by dagger on hand and thereafter accused no. 1-Amarjeetsingh Mohar assaulted P.W. 3-Jarnelsingh by dagger on hand as well as chest. Thereafter, all accused persons dragged Paramjeetkaur inside their house whereas P.W. 3-Jarnelsingh ran away from the staircase itself. This is what P.W. 1-Amarjeetsingh Gill deposed about the disclosure by P.W. 3-Jarnelsingh on his cellphone about the incident soon after its happening. Thereafter, according to P.W. 1-Amarjeetsingh Gill he went to Ganraj Nagar and after coming to know that his son P.W. 3-Jarnelsingh was taken to civil hospital, he went to that hospital. Then he went to Police Station Vazirabad and lodged report (Exh. 56).

17. Let us now put on record what P.W. 3-Jarnelsingh has deposed before the Court about the incident in question. As per his version, on 22.7.2007 after attending "Pooja" at the house of his uncle Sarjeetsingh he and his wife Paramjeetkaur were returning via Ganraj Nagar. P.W. 3-Jarnelsingh further stated that his mother-in-law accused no. 3-Balvindarkaur was standing on the road. She stopped them and requested them to come to her house. Therefore, he along with his wife Paramjeetkaur started going to the flat of his in-laws. As per version of P.W. 3-Jarnelsingh his wife Paramjeetkaur was ahead of him and he was following her while climbing the staircase. His mother-in-law accused no. 3-Balvindarkaur was behind him. P.W. 3-Jarnelsingh deposed that while climbing the staircase, his father-in-law (accused no. 2) and brother-in-law (accused no.

1) came in front of him armed with Khanjar/dagger and assaulted him with Khanjar/dagger. He further stated that his mother-in-law pushed him ahead from the back side. P.W. 3-Jarnelsingh further deposed that he sustained blow in between the thumb and index finger. Then his brother-in-law (accused no. 1) gave second blow on his shoulder and thereafter on his chest. As per his version he then rescued himself and started shouting for help. Then his mother-in-law (A3), father-in-law (A2) and brother-in-law (A1) took his wife inside the flat. He then came down and informed the incident to his father on cellphone. Thereafter, Raju, Sattya and Hardayal who came there hearing his shouts admitted him to the Government Hospital. He took treatment in that hospital for one day and thereafter was shifted to Yashoda Hospital, Nanded where he took treatment as indoor patient for 13 to 14 days. Evidence of P.W. 3-Jarnelsingh further shows that except his turban, all other clothes worn by him were drenched with blood.

18. This is the evidence regarding the actual incident coming from the mouth of P.W. 3-Jarnelsingh. We are alive to the fact that P.W. 3-Jarnelsingh is an injured witness. Injuries suffered by him in this incident are already mentioned by us in foregoing paragraphs. It hardly needs to mention that an injured witness is a stamped witness whose presence on scene of offence admit no doubt as he himself is a victim of crime. Great weightage is required to be given to his testimony provided the same is reliable and trustworthy. Congruous version of P.W. 1-Amarjeetsingh Gill and P.W. 3-Jarnelsingh goes to show that the incident in question was disclosed by the victim of the offence-P.W. 3-Jarnelsingh immediately to his father P.W. 1-Amarjeetsingh Gill on cellphone. In pursuant to that information, P.W. 1-Amarjeetsingh Gill claims to have lodged the FIR. In view of this factual backdrop, we are having no alternative but to compare version of both these witnesses with that of each other as well as with the FIR in order to ascertain whether both these persons are witnesses of truth or not.

19. Narration of statement of P.W. 1-Amarjeetsingh Gill made by us in foregoing paragraph when compared with the FIR (Exh. 56) makes it writ large that informant Amarjeetsingh Gill had given a complete go-bye to his version in FIR and this is a very significant circumstance in the instant case. The incident stated by P.W. 1-Amarjeetsingh Gill in the FIR being the first version of the occurrence is required to be given due weightage in the normal course. This first version is demonstrating confinement of P.W. 3-Jarnelsingh and his wife Paramjeetkaur and that too forcibly in the flat of accused persons and thereafter commission of murder of Paramjeetkaur in presence of P.W. 3-Jarnelsingh apart from attempt to commit his murder by accused persons. However, when we look at the evidence of P.W. 1-Amarjeetsingh Gill then it becomes clear that case of the prosecution as sought to be proved at the trial appears to be completely different than the one narrated in the FIR (Exh. 56). During trial, theory of assault on P.W. 3-Jarnelsingh on staircase and then murdering Paramjeetkaur inside the flat is propounded. Statement of P.W. 1-Amarjeetsingh Gill before the Court is thus totally contrary to the statement made by him in the FIR (Exh. 56). His recital in the FIR constituting his first statement is as such discrediting him and his

subsequent version is contradicted by this FIR. He appears to have modulated his version in tune with version of injured P.W. 3-Jarnelsingh in order to bolster up the prosecution case. This is a circumstance which creates a reasonable doubt in the prosecution case and for that purpose valuable assistance can be gained from Kalyan and Others Vs. State of U.P., (2001) 8 AD 67 : AIR 2001 SC 3976 : (2001) CriLJ 4677 : (2001) 8 JT 200 : (2001) 6 SCALE 556 : (2001) 9 SCC 632 : (2001) AIRSCW 3953 : (2001) 7 Supreme 330 . In somewhat similar situation in paragraph no. 15 of this judgment, the Hon"ble Apex Court has observed thus:-

"15. What weighed most to the trial Court for acquitting the accused persons was that the prosecution had failed to prove the case beyond reasonable doubt and the sequence of circumstances narrated by the witnesses in the Court was totally different than the occurrence detailed in the First Information Report. In the First Information Report it is stated that while attacking the deceased persons the accused persons had used only guns with which they were armed. Only Ram Murti and Ram Dayal (Pws) are stated to have been assaulted with lathi, ballam and kanta. The aforesaid two persons are stated to have been assaulted when they were running from the house of the complainant. It may be worth noticing that according to the FIR, at that time, only such accused persons who were armed with guns were on the ground whereas others are suggested to have claimed the roof tops to murder the deceased persons, namely, Mulaim Singh, and Itwari. None of the persons who were on the ground are stated to be armed with any weapons other than the guns. Similarly it is not evident from the FIR that who of the accused persons went on the roof top and with what weapons they were armed with. The incident stated in the FIR, being the first version of the occurrence has to be given due weight. The trial Court does not appear to have committed any glaring irregularity in disbelieving the alleged eye-witnesses whose testimony was concededly contrary to the case of the prosecution as projected in the FIR. It is true that the statements of Pws 1, 4, 5, and 6 cannot be thrown out merely on the ground that they are partisan witnesses or have any enmity with some of the accused persons. However, the testimony of such witnesses require to be judged with more circumspection. The case of the prosecution, as sought to be proved at the trial, appears to be different than the one as narrated in the FIR. When the testimony eye-witnesses is totally different from the story set out in the FIR, the trial Court cannot be held to have taken a view which was not at all possible. The view taken by the trial Court could have been disturbed only if there were compelling reasons. We do not find any compelling reason noticed by the High Court while setting aside the order of acquittal."

Shri Dhorde, the learned Senior Counsel has rightly relied on ruling in Ram Kumar Pandey Vs. State of Madhya Pradesh, AIR 1975 SC 1026 : (1975) CriLJ 870 : (1975) 3 SCC 815 : (1975) 3 SCR 519 : (1975) 7 UJ 423 , wherein, in paragraph no. 9, the Hon"ble Apex Court has observed thus:

"9. No doubt, an F.I.R. is a previous statement which can, strictly speaking, be

only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R.

We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case."

20. Keeping in view the facts and circumstances of the instant case particularly the variance between the FIR and the deposition of the informant made in the Court, it needs to put on record that the case of the prosecution is not free from doubt and considering the inconsistencies and contradictions in evidence of P.W. 1-Amarjeetsingh Gill-informant, it is not safe to rely on his evidence as he has totally disowned version in the FIR.

21. Now let us examine intrinsic worth of evidence of injured P.W. 3-Jarnelsingh and to ascertain whether conviction can be based on testimony of this injured witness. As per version of this witness, the incident of murderous assault on him occurred on the staircase of the first floor of Ganraj Apartment where flat of accused persons is located. It is apposite to note that as seen from material brought on record from cross-examination of P.W. 1-Amarjeetsingh Gill and P.W. 3-Jarnelsingh, Ganraj Apartment is located on busy road and it is three storied complex having shops at ground floor. The flats in that building are occupied by several residents. The building of the apartment is having channel gate. This situation of the spot needs to be kept in mind while evaluating evidence of P.W. 3-Jarnelsingh.

22. As seen from evidence of P.W. 13-Avinash Sonawane, Police Inspector, Vazirabad even before lodging the FIR, he had deputed one officer named, Nivle Patil-PSI to the spot at about 5:45 p.m. of 27.7.2007 as he came to know that there was some commotion at that place. The prosecution has chosen not to examine PSI Nivle Patil who visited the spot immediately after the incident. Evidence of P.W. 13-Avinash Sonawane Police Inspector who investigated the crime shows that on call from said Nivle Patil informing that there is a serious law and order problem, he immediately went to the spot of the incident. Thus, one can assume that P.W. 13-Avinash Sonawane, Police Inspector, reached the spot within a short span of time and as seen from his cross-examination he was there by 06.05 to 06.07 p.m. If the incident of murderous assault on P.W. 3-Jarnelsingh had really happened at the staircase, in normal course the staircase and adjoining wall must have been stained with blood. Persons visiting the spot within minutes from the occurrence of incident would have noticed trail of blood at least up to channel gate of the apartment. A prudent investigator would have noted this fact. However, evidence of P.W. 13-Avinash Sonawane, Police Inspector is conspicuously silent on this aspect.

23. Be that as it may, it is seen from the evidence of P.W. 13-Avinash Sonawane, Police Inspector that on the same day he had deputed P.W. 11-Ashok Ghuge, Assistant Police Inspector to the spot for recording spot panchanama. P.W. 1-Amarjeetsingh Gill claims to have accompanied P.W. 11-Ashok Ghuge, API to the spot and then the spot is stated to have been inspected in presence of panch witnesses P.W. 6-Shankar Bhusewad and one Rajesh Kendre. Though P.W. 11-Ashok Ghuge, API has deposed in detail about the fact situation prevalent on the spot of the incident, he has not spoken that he had noticed stains of blood either on the staircase or adjoining wall of Ganraj Apartment. Evidence of panch witness P.W. 6-Shankar Bhusewad is totally silent about noticing blood stains on staircase or wall adjoining the staircase. The spot panchanama at Exh. 73 proved by both these witnesses is narrating the situation on the scene of occurrence in minute details and we have carefully perused the same. There is no mention of finding of blood stains on staircase or the wall adjoining the staircase of Ganraj Apartment in the spot panchanama (Exh. 73) though all other details found on the spot right from entering through the channel gate of the building are vividly described in the said spot panchanama. In this background, evidence of P.W. 1-Amarjeetsingh Gill that there were stains of blood near the flat of accused persons cannot be accepted. Even otherwise his evidence is totally unworthy of credence.

24. In the light of this situation emerging from evidence on record coupled with the fact that as per version of P.W. 4-Dr. Shashikala Nagshettiwar, P.W. 3-Jarnelsingh had sustained at least two grievous stab wounds on his left shoulder and left side of the chest, non-finding of blood of P.W. 3-Jarnelsingh either on the staircase or on the wall of the staircase assumes great importance. We may note that even evidence of P.W. 8-Gurmitsingh Gill a panch witness to the seizure of blood stained clothes of P.W. 3-Jarnelsingh and seizure panchanama at Exh. 81 shows that clothes worn by P.W. 3-Jarnelsingh were literally drenched with blood. Same is the position as disclosed in Chemical Analyzer's report Exh. 103. In the light of this evidence, a lurking doubt arises as to whether incident of murderous assault on P.W. 3-Jarnelsingh really occurred at the staircase of Ganraj Apartment leading towards first floor; as deposed by him or whether it happened inside the flat of accused persons as per first version in the FIR. This leads to inference that P.W. 3-Jarnelsingh is not telling the true facts. His evidence as such does not appears to be free from doubt.

25. The next aspect emerging on record from evidence of P.W. 3-Jarnelsingh which makes us to disbelieve his version is that he claims he did not enter in the flat of accused persons but rather fled from the staircase leading to the first floor. This version of P.W. 3-Jarnelsingh is even reiterated by him in his cross-examination by stating that he had not gone inside the house of accused persons and therefore, he is not aware as to what happened inside that flat. He further stated that it did not happen that he was confined in the room. P.W. 3-Jarnelsingh is showing his ignorance about the incident happened inside the flat of accused persons after his wife Paramjeetkaur was dragged inside. This version

of P.W. 3-Jarnelsingh is not in consonance with the first version regarding the prosecution case as reflected in the FIR which shows that the couple was dragged inside the flat of accused persons and then there was a murderous assault on them. On close scrutiny of evidence adduced by the prosecution, claim of P.W. 3-Jarnelsingh that he did not enter inside the flat of accused persons at the time of incident appears to be doubtful making his evidence unworthy of credence. P.W. 1-Amarjeetsingh Gill-informant who accompanied police to the spot has stated before the Court that on wall and floor of all rooms of the flat of accused persons as well as on the bed there were stains of blood. Evidence of P.W. 6-Shankar Bhusewad, a panch witness, so also that of P.W. 11-Ashok Ghuge, API who recorded spot panchanama and recitals in spot panchanama (Exh. 73) shows that there were stains of blood on sofa, door, mattress cover, floor, and walls of all rooms including kitchen of the flat of accused persons as well as on the cot. P.W. 11-Ashok Ghuge, API while recording the spot panchanama scratched blood from floor, inner door and walls of flat of accused persons and this fact is also reflected in spot panchanama (Exh. 73). Blood stained cover of the mattress in the bed-room was also seized. The samples of blood so collected from the spot of the incident and other articles were seized vide panchanama (Exh. 73) by P.W. 11-Ashok Ghuge. Evidence of P.W. 6-Shankar Bhusewad and P.W. 11-Ashok Ghuge coupled with contemporaneous document-spot panchanama at Exh. 73 shows that in the bed-room of the flat of accused persons one blood stained weapon which is named in the spot panchanama as "Tabbar/Katta" of size 30 1/2 inches in length and 2 1/2 inches in breadth with wooden handle was found. That blood stained "Tabbar" came to be seized vide spot panchanama Exh. 73 and it was also subjected to the chemical analysis.

26. Now let us examine whose blood was found inside the flat and on weapon "Tabbar" seized from bed-room of the flat of accused persons. Samples of blood of all accused persons came to be seized by the prosecution and those were subjected to chemical analysis as seen from evidence of P.W. 13-Avinash Sonawane, Investigating Officer. Chemical Analyzer's report at Exh. 105 is in respect of sample of blood of accused persons. It shows that blood group of all accused persons is "B". Sample of post-mortem blood of deceased Paramjeetkaur who happens to be daughter of accused nos. 2 and 3 was also sent for chemical analysis and Chemical Analyzer's report at Exh. 101 also shows that her blood group was "B".

27. As seen from evidence of P.W. 3-Jarnelsingh, after initial admission at Government Hospital he was shifted to Yashoda Hospital, Nanded for medical examination. The prosecution has examined Dr. Ravindra Chiddarwar of the said hospital as P.W. 12 and during the course of his examination this witness produced medical case file of P.W. 3-Jarnelsingh before the trial Court and the same is marked as Article "A" by the learned trial Court. Perusal of medical case papers produced before the learned trial Court by P.W. 12-Dr. Ravindra Chiddarwar during the course of his evidence contains reports of Serologist at page no. 99. This report shows that blood group of P.W. 3-Jarnelsingh is "O". It is

well settled that even unproved documents of the prosecution can be looked into for the purpose of defence of the accused. Chemical Analyzer's report at Exh. 103 shows that blood stained clothes of P.W. 3-Jarnelsingh were having human blood "O" group. It is thus clear that blood group of injured P.W. 3-Jarnelsingh is "O".

28. According to evidence of P.W. 13-Avinash Sonawane-Investigating Officer it was he who for the first time broke open the door of flat of accused persons and entered inside to find accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur along with dead body of their daughter Paramjeetkaur. Thus, if claim of P.W. 3-Jarnelsingh that he never entered inside the flat of accused persons at the time of incident is true, there is absolutely no reason for finding blood of group "O" or blood of any other group than "B" in the flat of accused persons. However, the fact revealed ultimately is otherwise. P.W. 13-Avinash Sonawane-Investigating Officer had sent seized articles including samples of blood collected from flat of accused persons for chemical analysis along with P.W. 9-Gangutai Nartawade, Police Head Constable. Exh. 87 is the request letter addressed to the Chemical Analyzer. Chemical Analyzer's report of the articles sent to the chemical analysis is at Exh. 103. This Chemical Analyzer's report shows that weapon "Tabbar" seized from the bed-room of the flat of all accused persons was stained with human blood of "O" group. Chemical Analyzer's report at Exh. 103 further shows that blood scratched from wall of the bed-room and the door in front of the wall of the flat of accused persons was human blood of "O" group. This Chemical Analyzer's report further reveals that blood stained mattress cover seized from bed-room of flat of accused persons was having blood of "O" group thereon. It thus makes it explicitly clear that blood of P.W. 3-Jarnelsingh was found on the door and wall of bed-room apart from mattress cover seized from bed-room of flat of accused persons. Blood stained weapon found in that bed-room was also containing blood of P.W. 3-Jarnelsingh. At the cost of repetition, it needs to mention there that first version of the prosecution case reflected in the FIR is to the effect that P.W. 3-Jarnelsingh and his wife Paramjeetkaur were forcibly taken inside flat of accused persons and they were wrongfully confined there by bolting the door of that flat from inside. With this nature of evidence again this aspect makes prosecution case doubtful leading to an inference that P.W. 3-Jarnelsingh must have been inside the flat of accused persons at the time of the incident. Then a question arises as to why he is suppressing this fact particularly when his wife Paramjeetkaur met with a homicidal death inside that flat at that point of time. In the light of this situation, we are unable to persuade ourselves to consider evidence of P.W. 3-Jarnelsingh as reliable and trustworthy. He seems to be deliberately not disclosing the incident in the manner in which it happened. Reason for suppression of true incident by him can be inferred from the discussion in following paragraph.

29. There is one more important circumstance which creates doubt in the prosecution case and indicates that the prosecution has suppressed the genesis and the origin of the present occurrence. Evidence of P.W. 3-Jarnelsingh and his

father P.W. 1-Amarjeetsingh Gill shows that by 6:00 p.m. of 27.7.2007 the incident had already happened. Evidence of P.W. 13-Avinash Sonawane, Police Inspector-Investigating Officer shows that it was about 5:45 p.m. of that day he received information that there is some problem at Ganraj Nagar and therefore, he sent PSI Nivle Patil with some constables to the spot. His version further shows that said PSI Nivle Patil informed him that there is serious law and order problem and therefore, his presence on the spot is necessary. As a result, as seen from evidence of P.W. 13-Avinash Sonawane he reached Ganraj Apartment at about 6:05 p.m. to 6:07 p.m. of 27.7.2007. Though in examination-in-chief P.W. 13-Avinash Sonawane, P.I. has vaguely stated that door of the flat of accused persons was found closed from inside and as it was not opened despite his directions by the inmates, he used force and opened the said door; in cross-examination he has specifically stated that he opened it by giving kick blows on it. This Investigating Officer is very specific in saying that the outer door of the flat of accused persons was not broken before his arrival.

30. Close scrutiny of evidence of Prosecution shows that this version of P.W. 13-Avinash Sonawane is not free from doubt. The spot panchanama (Exh. 73) recorded on the very same day by P.W. 11-Ashok Ghuge, API with P.W. 6-Shankar Bhusewad panch shows that on the staircase leading to that flat, a saw used for cutting iron was found lying. Blade of that saw was also found lying separately there at. Outer door of the flat of accused persons was found to be having a big hole caused due to sawing it by a saw and breaking it by iron rods. That hole was found to be of size 1 1/2 ft. x 2 ft. Two pieces of iron pipe used for breaking that door were found lying nearby. The outer latch/bolt of that door was found lying in front of the door. The spot panchanama further shows that a lock of Tiger company was also found lying outside the flat. Evidence of P.W. 11-Ashok Ghuge, API and P.W. 6-Shankar Bhusewad panch is perfectly in tune with the fact situation recorded in the spot panchanama. This situation prevalent on the spot of the incident is totally contrary to the version of P.W. 13-Avinash Sonawane, P.I. who has stated that he had opened the door of the flat by giving kick blows on it. The outer lock of the door of the flat was seemed to have been broken while opening that door. Middle portion of that door was required to be cut and thereafter that door seems to have been forcibly opened even causing breaking of inner bolt thereby. This evidence coupled with the material elicited from cross-examination of P.W. 13-Avinash Sonawane to the effect that during investigation from the neighbour of accused persons, it transpired that the said flat was locked from outside; casts a serious shadow of doubt on the prosecution case and gives an inference that the outer door of the house of accused persons was locked from outside when P.W. 13-Avinash Sonawane, P.I. went there. There is scope to infer that this outer door of the flat might have been opened by somebody else. It appears that this aspect is totally shrouded in deep mystery and evidence of the prosecution on this aspect is totally ambiguous and doubtful. This mystery remained unresolved and therefore, benefit of this lacunac evidence goes to accused persons.

31. Evidence of P.W. 13-Avinash Sonawane further shows that when he entered inside the flat of accused persons, he found accused no. 2-Jagtarsingh with accused no. 3-Balvindarkaur inside that flat apart from dead body of their daughter Paramjeetkaur which was lying on the cot. P.W. 13-Avinash Sonawane then brought accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur to police station. Evidence of this witness coming on record from his examination-in-chief is totally silent about injuries on person of accused no. 2-Jagtarsingh. It was in his cross-examination that the defence has brought on record that there was an injury to the stomach of accused no. 2-Jagtarsingh and therefore, he was initially treated at Primary Health Centre, Ardhapur and thereafter at S.G.G.S.M. hospital, Nanded. Arrest panchanama of accused no. 2-Jagtarsingh do show that he was having fresh bleeding injury to his abdomen apart from injury to his right hand. The prosecution has not at all explained injury to the abdomen as well as to the right hand of accused no. 2-Jagtarsingh, in its evidence. Therefore, a reasonable inference can be drawn that the prosecution has not presented the true version about the incident and had suppressed material facts from the Court. If the fact that accused no. 2-Jagtarsingh was having fresh injury to his abdomen and right hand is considered in the light of defence of accused persons then omission to explain injury on accused no. 2-Jagtarsingh certainly probalised defence version which is explaining injury on accused no. 2-Jagtarsingh. It is the defence version that P.W. 3-Jarnelsingh along with his wife Balvindarkaur had been to the flat of accused persons and thereat P.W. 3-Jarnelsingh demanded an amount of Rs. 5,00,000/- to his father-in-law, accused no. 2-Jagtarsingh for the purpose of business. The defence has further contended that on hearing such demand, accused no. 2-Jagtarsingh replied P.W. 3-Jarnelsingh that his father is not behaving properly and therefore, such demand of money should not be made. The defence version about the incident is that then P.W. 3-Jarnelsingh started assaulting his father-in-law (accused No. 2) Jagtarsingh by dagger. One blow landed on abdomen of accused no. 2-Jagtarsingh and thereafter Paramjeetkaur intervened and tried to shield her father accused no. 2-Jagtarsingh. According to defence version in that process she sustained a blow of Khanjar/dagger on her abdomen at the hands of her husband P.W. 3-Jarnelsingh. Evidence adduced by the prosecution is showing presence of blood of P.W. 3-Jarnelsingh on mattress cover of the bed-room of flat of accused persons apart from wall and door of that bed-room is giving an inference that P.W. 3-Jarnelsingh was inside the flat of accused persons. Reasonable doubt in prosecution case also arises because the staircase leading to the flat of accused persons was not having any blood stain. Accused no. 2-Jagtarsingh was actually found to be having injuries which remained unexplained. These facts probalise the defence version. Naturally benefit of such lacunac evidence should go to accused persons.

32. Non presentation of true version by the prosecution and suppression of material facts from the Court fell for consideration of the Hon"ble Apex Court in the matter of Lakshmi Singh and Others Vs. State of Bihar, AIR 1976 SC 2263 :

(1976) CriLJ 1736 : (1976) 4 SCC 394 : (1976) SCC(Cri) 671 and relevant portion found in paragraph no. 11 of the judgment reads thus:

"11.Indeed if the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai and Bharath Rai Vs. The State of Bihar, AIR 1968 SC 1281 : (1968) CriLJ 1479 : (1968) 3 SCR 525 tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of occurrence is highly probalised. Under these circumstances the prosecution had a duty to explain those injuries. In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants."

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. The State of Punjab, Criminal Appeal No. 266 of 1971 decided on April 25, 1975 = (reported in Puran Singh and Others Vs. The State of Punjab, AIR 1975 SC 1674 : (1975) 4 SCC 518 : (1975) SCR 299 Supp which was also a murder case, this Court, while following an earlier case, observed as follows:

"In State of Gujarat Vs. Bai Fatima and Another, AIR 1975 SC 1478 : (1975)

CriLJ 1079 : (1975) 2 SCC 7 : (1975) 3 SCR 993 one of us (Untwalia, J.,) speaking for the Court, observed as follows:

"In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all. The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

33. Similarly, paragraph no. 19 of the ruling in Babu Ram and Others Vs. State of Punjab, AIR 2008 SC 1260 : (2008) 2 CLT 364 : (2008) CriLJ 1651 : (2008) 2 JT 384 : (2008) 3 SCC 709 : (2008) AIRSCW 1276 : (2008) 2 Supreme 35 can be quoted with advantage on this aspect, which reads thus:

"19. Further, it is important to point out that the omission on the part of the

prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

Evidence on record adduced by the prosecution is indicating that P.W. 3-Jarnelsingh is lying on a most material point and suppression of genesis and the origin of incident by the prosecution is probabilising the defence version.

34. Now let us examine evidence of alleged recovery made on the basis of voluntary disclosure statement of accused no. 1-Amarjeetsingh Mohar. Section 27 of the Evidence Act deals with the information and the facts discovered by the accused. It is an exception to Sections 25 and 26 of the said Act. For invoking aid of Section 27 of the Act, there must be discovery of fact albeit relevant fact in consonance with the information received from a person accused of an offence and the discovery of such fact must be deposed to. Only so much of the information as released distinctly to the fact thereby discovered is admissible. In the case in hand it is in evidence of P.W. 13-Avinash Sonawane, Investigating Officer that while in custody of police, on 30.7.2007 accused no. 1-Amarjeetsingh Mohar made a statement before panch witness P.W. 10-Sheikh Firozoddin that he had hidden knife in a shop and is ready to take it out. Similar is the evidence of said panch witness. It is seen from evidence of both these witnesses that disclosure statement made by accused no. 1-Amarjeetsingh Mohar came to be recorded. This statement is at Exh. 90. As per version of both these witnesses, accused Amarjeetsingh Mohar then took them to shop no. 50 near Gurudwara, obtained key of that shop from neighbouring shop owner, opened that shop and took out a Khanjar/dagger from the drawer of the table kept in that shop. Though P.W. 13-Avinash Sonawane has not deposed that he had sealed that Khanjar/dagger while seizing it, this fact is added in his evidence of P.W. 10-Sheikh Firozoddin. Seizure panchanama at Exh. 91 does not show that said dagger was sealed while seizing it. Cross-examination of P.W. 13-Avinash Sonawane shows that there were no stains of blood on the Khanjar/dagger recovered at the instance of accused no. 1-Amarjeetsingh Mohar. However, Chemical Analyzer's report at Exh. 103 shows that the said Khanjar/dagger was having stains of blood group "B". When the Khanjar/dagger recovered at the instance of accused no. 1-Amarjeetsingh Mohar was not sealed while it was seized and when Investigating Officer has categorically stated that there was no blood on the said Khanjar/dagger at the time of its seizure, finding of blood of group "B" on that Khanjar/dagger cannot be construed as an incriminating circumstance against accused no. 1-Amarjeetsingh Mohar. The prosecution has not adduced evidence to exclude possibility of tampering the seized Khanjar/dagger as it appears that the same was not kept in sealed condition after its seizure. Therefore, it cannot be said that said Khanjar/dagger is proved to have been used in the commission of murderous assault on P.W. 3-Jarnelsingh and as such the fact of recovery of Khanjar/dagger at the instance of accused no. 1-Amarjeetsingh Mohar loses its significance and its discovery cannot be said to

be that of a relevant fact.

35. It was also argued by the learned A.P.P. for the State that Parajmeetkaur was in custody of accused persons and she died in their custody. As such, in view of Section 106 of the Indian Evidence Act, accused persons are liable to explain the circumstances leading to her death and as there is no explanation, in all probabilities accused persons had committed her murder. This contention of the learned Additional Public Prosecutor is of devoid of any substance. So far as accused no. 1-Amarjeetsingh Mohar is concerned, evidence of P.W. 13-Avinash Sonawane shows that he was not present in the flat but he was brought to the police station subsequently by PSI Nivle Patil. Though P.W. 13-Avinash Sonawane P.I. has stated in his evidence that accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur were found inside the flat with dead body of their daughter Paramjeetkaur, as observed in foregoing paragraph. Chemical Analyzer's report at Exh. 103 showing presence of blood of "O" group on cover of the mattress in the bed-room apart from door and walls of the bed-room of the flat of accused persons indicates that even P.W. 3-Jarnelsingh was also present in that flat at the time of the incident in question and similar is the prosecution case disclosed in the FIR. Apart from this, evidence of P.W. 13-Avinash Sonawane P.I. that he broke open the door of flat of accused persons by means of kick blows is also unworthy of credence because of recitals in spot panchanama Exh. 73 as well as version of P.W. 11-Ashok Ghuge A.P.I. and panch witness P.W. 6-Shankar Bhusewad. Their evidence do indicate that outer door of that flat was cut open by a saw and it was in all probability locked from outside as even that lock was found lying there. Investigation from the neighbor by P.W. 13-Avinash Sonawane had also transpired that the outer door of flat of all accused persons was locked from outside. In the wake of this nature of evidence, it cannot be said that the fact as to how Paramjeetkaur died homicidal death is a fact which was exclusively within knowledge of accused persons. At this juncture, it is apposite to quote paragraph nos. 12, 13 and 14 from the judgment of the Hon"ble Supreme Court in the matter of Vikramjit Singh @ Vicky Vs. State of Punjab, (2007) CriLJ 1000 : (2006) 12 SCALE 321 : (2006) 12 SCC 306 : (2006) 10 SCR 375 Supp , which read thus:

"12. In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked Section 106 of the Indian Evidence Act although opining:

"The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed

to offer any explanation which might drive the court to draw a different inference."

13. Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule. e.g., where burden of proof may be imposed upon the accused by reason of a statute.

14. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt."

Similar is the ratio of rulings in *Sunder @ Sundararajan Vs. State by Inspector of Police*, (2013) 2 AD 405 : AIR 2013 SC 777 : (2013) 1 Crimes 265 : (2013) 2 JT 483 : (2013) 1 RCR(Criminal) 943 : (2013) 2 SCALE 204 : (2013) 3 SCC 215 : (2013) AIRSCW 1058 : (2013) 1 Supreme 641 , *Rajinder Singh Vs. State of Haryana*, AIR 2013 SC 2529 : (2013) 3 Crimes 14 : (2013) 2 DMC 564 : (2013) 3 JCC 2106 : (2013) 13 JT 532 : (2013) 3 RCR(Criminal) 722 : (2013) 8 SCALE 753 : (2013) AIRSCW 3848 : (2013) 4 Supreme 577 , *Ramchandra @ Rama Shankar Madane Vs. The State of Maharashtra*, (2013) ALLMR(Cri) 2790 , *Smt. Nayana Chandrakant Kamble Vs. State of Maharashtra*, (2013) 5 ABR 958 : (2013) ALLMR(Cri) 4225 : (2014) 1 BomCR(Cri) 82 , *Sitaram Hiranman Jopale Vs. State of Maharashtra*, (2013) 4 ABR 1102 : (2013) ALLMR(Cri) 3237 : (2013) 4 BomCR(Cri) 530 : (2013) CriLJ 3588 and *Raju Singh and Another...Versus...State*, reported in 2010 DGLS (Cri.) Soft 1269 relied by the learned APP. Thus, it is crystallized position of law that Section 106 of the Evidence Act does not relieve the burden of prosecution to prove guilt of the accused beyond reasonable doubt but where the prosecution has succeeded to prove the facts from which a reasonable inference can be drawn regarding the existence of certain other facts and the accused by virtue of special knowledge regarding such facts fails to offer any explanation then the Court can draw a different inference. It is clear from the evidence on record that the prosecution has not discharged the initial burden of establishing prima facie the guilt of accused persons beyond all reasonable doubt. Therefore, the question of shifting the onus on accused persons in respect of the facts which can be said to be within their special knowledge does not arise. It is not even established that how Paramjeetkaur died is a fact which was exclusively and especially within the knowledge of accused persons. As such the prosecution cannot take aid of Section 106 of the Indian Evidence Act, 1872 for inferring guilt of accused persons. It is indeed true that a strong suspicion exists against appellants/accused but the same cannot form the basis of conviction.

36. As observed by us, Ganraj Apartment where the incident had happened is situated in a populous area of Nanded having main road on its front. The said building has shops at the ground floor and residents are occupying the apartments in the said building. Evidence adduced by the prosecution for establishing guilt of accused persons is not at all trustworthy and reliable for the reasons already disclosed by us. Therefore, the same cannot be accepted in order to record finding of guilt of accused persons for grave offences. The available evidence as discussed by us suffers from infirmity and therefore cannot be acted in absence of other evidence. However, in the instant case, the prosecution has not examined any independent witnesses. Even P.S.I. Nivle Patil who went to the spot first in point of time and who had brought accused no. 1-Amarjeetsingh Mohar to police station is not examined by the prosecution. The police officer who recorded FIR of P.W. 1-Amarjeetsingh Gill is also not examined. No witnesses from Ganraj complex or residents of that apartment were examined. Even persons named Raju, Sattya and Hardayal who allegedly took injured P.W. 3-Jarnelsingh from Ganraj Apartment to the civil hospital are also not examined by the prosecution. In the matter of Hiralal Pandey and Others Vs. State of U.P., AIR 2012 SC 2541 : (2012) CriLJ 2421 : (2012) 2 Crimes 106 : (2012) 3 JCC 1671 : (2012) 4 SCALE 369 : (2012) 5 SCC 216 : (2012) AIRSCW 2503 : (2012) 3 Supreme 1 the Hon"ble Supreme Court has held in para no. 12 thus:

"12. Hem Raj and Others Vs. State of Haryana, AIR 2005 SC 2110 : (2005) CriLJ 2152 : (2005) 3 JT 600 : (2005) 10 SCC 614 : (2005) 2 SCR 1152 : (2005) 1 UJ 665 , this Court has held that non-examination of independent witnesses by itself may not give rise to adverse inference against the prosecution, but when the evidence of the alleged eye-witnesses raises serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witnesses would assume significance."

37. It is case of prosecution that clothes of all accused persons were found to be stained with blood. Evidence of P.W. 8-Gurmitsingh Gill panch witness shows that blood stained clothes of accused no. 2-Jagtarsingh came to be seized vide seizure panchanama Exh. 78 on 27.7.2007. His evidence further shows that blood stained clothes of accused no. 1-Amarjeetsingh Mohar came to be seized vide seizure panchanama Exh. 79 whereas blood stained clothes of accused no. 3-Balvindarkaur came to be seized vide seizure panchanama Exh. 80. Those clothes were sent to the Chemical Analyzer through P.W. 9-Gangutai Nartawade Police Head Constable. Chemical Analyzer's report at Exh. 103 shows that blood of "B" group was found on clothes of accused no. 2-Jagtarsingh and accused no. 3-Balvindarkaur. Chemical Analyzer's report Exh. 103 shows that though human blood was found on clothes of accused no. 1-Amarjeetsingh Mohar, group of that blood could not be determined. Chemical Analyzer's report at Exh. 105 shows that all accused are having blood of "B" group. Accused no. 2-Jagtarsingh had suffered wound on his abdomen and his wife accused no. 3-Balvindarkaur was with his company. Therefore, finding of blood of "B" group on clothes of accused

no. 2-Jagtarsingh and his wife-accused no. 3-Balvindarkaur cannot be treated as incriminating circumstance. There is no evidence to show that seized clothes were duly sealed and they were sent to the Chemical Analyzer in sealed condition. Possibility of tampering the seized clothes was not eliminated by the prosecution.

38. At this juncture, it is apposite to note that in *Pohalya Motya Valvi Vs. State of Maharashtra*, AIR 1979 SC 1949 : (1979) CriLJ 1310 : (1980) 1 SCC 530 : (1980) SCC(Cri) 261 , the Hon"ble Apex Court has held that mere finding of blood stains on clothes of accused by itself is not sufficient to prove offence. As such, this evidence is also insufficient to prove offences alleged against accused persons.

39. We have already concluded that evidence of P.W. 1-Amarjeetsingh Gill and that of P.W. 3-Jarnelsingh is not trustworthy and reliable. Other evidence adduced by the prosecution is in the nature of circumstances sought to be proved against accused persons. It is well settled that for proof of a criminal charge by circumstantial evidence, the prosecution must prove and establish the incriminating circumstances against accused persons beyond all reasonable doubts and such circumstances must give rise to only one conclusion to the exclusion of all others that those were accused persons and nobody else who had committed the crime. [Refer *Sharad Birdhichand Sarda Vs. State of Maharashtra*, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 , *Aftab Ahmad Anasari Vs. State of Uttaranchal*, AIR 2010 SC 773 : (2010) CLT 499 : (2010) 1 Crimes 97 : (2010) 1 JT 424 : (2010) 1 SCALE 408 : (2010) 2 SCC 583 : (2010) 1 SCR 1027 , *Mohd. Arif @ Ashfaq Vs. State of NCT of Delhi*, (2011) 3 Crimes 228 : (2011) 9 JT 563 : (2011) 8 SCALE 328 : (2011) 13 SCC 621 : (2011) 10 SCR 56 .

40. We have carefully perused the impugned judgment of the learned Additional Sessions Judge, Nashik. It is seen that the learned Additional Sessions Judge has narrated version of witnesses and found injured P.W. 3-Jarnelsingh as a witness of truth. However, it is seen that the learned trial Court has failed to assess and analysis his evidence as well as other evidence and circumstances brought on record with crystallized judicial view. It is seen that the evidence on record is not evaluated and scrutinized in proper perspective. Serious infirmities as well as improbabilities in the prosecution case as discussed by us in foregoing paragraphs which creates doubt, were not considered at all. Without proper appreciation of evidence of interested witness P.W. 3-Jarnelsingh, the learned trial Court placed implicit reliance on his testimony by giving reasons that no material contradictions were found in his version and his statement was recorded on the day of incident itself. Contrary version of the prosecution in promptly lodged FIR came to be overlooked. The evidence of injured P.W. 3-Jarnelsingh was not compared with other evidence and circumstances brought on record. Even forensic evidence was not appreciated in proper perspective though the learned trial Court has recorded finding that blood of injured-Jarnelsingh was of

"O" group in paragraph nos. 47 and 48 of its judgment. The learned trial Court accepted that blood of injured P.W. 3-Jarnelsingh was found on mattress cover in the bed-room of flat of accused persons. The learned trial Court further observed that blood of "O" group of injured Jarnelsingh was found on some articles and this incriminating facts establish guilt of accused persons. It is further observed that no proper explanation was given by accused persons in respect of finding of blood on articles as well as clothes. At this juncture, as already mentioned by us in foregoing paragraphs, P.W. 3-Jarnelsingh has disclosed that the incident happened on the staircase and outside the flat. He claims to have never entered inside the flat of accused persons. As such, in spite of criticizing the defence for unsatisfactory explanation in respect of finding of blood of P.W. 3-Jarnelsingh inside the flat, the learned trial Court ought to have held that this circumstance creates a doubt in version of injured P.W. 3-Jarnelsingh. At any rate, we are of the considered opinion that the view taken by the learned trial Court convicting accused persons cannot be sustained.

41. In the instant case, it cannot be said that even the circumstantial evidence sought to be relied by the prosecution is forming a chain so complete giving sole conclusion of guilt of accused persons. Unless prosecution establishes the guilt of accused persons beyond reasonable doubt conviction cannot be recorded. Liberty of present appellants/accused cannot be curtailed without having a proof beyond reasonable doubt going by the standard of proof required in a criminal case. A prudent person for the reasons set out by us will certainly entertain doubt about the involvement of appellants/accused in the crime in question.

42. In the result, we pass the following order.

ORDER

(i) Impugned judgment and order dated 9.2.2012 passed by the learned Additional Sessions Judge, Nanded thereby convicting and sentencing appellants/accused for offences punishable under Sections 302 r/w 34, 307 r/w 34 and 342 r/w 34 of the IPC is quashed and set aside.

(ii) Appellants/accused are acquitted of the offences punishable under Sections 302 r/w 34, 307 r/w 34 and 342 r/w 34 of the IPC.

(iii) Appellant/accused no. 1-Amarjeetsingh S/o. Jagtarsingh Mohar and appellant/accused no. 2-Jagtarsingh S/o. Makhansingh Mohar are in jail. They be set at liberty forthwith, if not required in any other case.

(iv) Appellant/accused no. 3-Balvindarkaur W/o. Jagtarsingh Mohar is already on bail. She need not surrender to her bail bonds. Her bail bonds stands discharged.

(v) Fine amount, if any, paid or realized from appellants/accused be refunded to them.