

(2018) 10 BOM CK 0142

In the Bombay High Court

Case No : Criminal Appeal No. 645, 1178 Of 2013, 222 Of 2016

Arun Laxman More

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 16-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 120B, 143, 147, 148, 149, 302, 304II, 506[2]
Arms Act, 1959 — Section 4, 25
Code of Criminal Procedure, 1973 — Section 164
Bombay Police Act, 1951 — Section 37(1), 135

Citation : (2018) 10 BOM CK 0142

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

Bench : Division Bench

Advocate : P.B.Shah, Gunjan Shah, K.P.Shah, D.G.Khamkar, S.S.Kaushik, Abdul Chaudhari, Subhash Hulyalkar

Final Decision : Dismissed

Judgement

Â S.S. SHINDE, J

1. Criminal Appeal No.645 of 2013 and Criminal Appeal No.222 of 2016 are directed against the Judgment and Order dated 12th April, 2013 passed

by the Additional Sessions Judge, Pune in Sessions Case No.899 of 2009 thereby convicting accused No.3 Arun Laxman More and accused No.4

Vilas Manik More for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code [for short 'IPC'] and sentencing them

to suffer life imprisonment and to pay a fine of Rs.2000/Â, in default to suffer rigorous imprisonment for three months each. The trial Court also

convicted accused Nos.3 and 4 for the offence punishable under Section 506 [2] read with Section 34 of the IPC and sentenced them to suffer

rigorous imprisonment for one year and to pay a fine of Rs.500/Â, in default to suffer rigorous imprisonment for one month each. All the sentences were directed to be run concurrently.

2. Criminal Appeal No.1178 of 2013 is filed by the State against the acquittal of accused Nos.1 to 7 for the offence punishable under Section 120ÂB

of the IPC, acquittal of accused Nos.1 and 2 for the offence punishable under Section 109 read with Section 302 of the IPC, and acquittal of accused

Nos.3 to 7 for the offence punishable under Sections 143, 147, 148, 149 read with Section 302 of the IPC.

3. All these three Criminal Appeals are arising out of one and the same Judgment and Order passed by the trial Court, hence the same are being decided by this common Judgment. Â

4. TheÂ prosecutionÂ case,Â inÂ brief,Â isÂ as under:

[A] The informant Bhagwan Pawar was a Civil Contractor, residing at Chinchwad with his family members including deceased Anil, who was 18

years of age. Accused No.1 Hiranman Pawar was also residing in same locality as well as similarly doing work of Civil Contract. Accused No.1

Hiranman does not have license for doing contract work, therefore, he was doing work in the name of other license holders and was paying commission

to them. Approximately five years preceding to the incident, accused No.1 Hiranman had asked informant to assign contract work on his license to

which informant resisted. Therefore, accused No.1 Hiranman got annoyed against informant.

[B] On 16thÂ June, 2009, while deceased Anil was proceeding on foot, he was intentionally dashed by accused No.3 Arun by motor cycle for which

there was scuffle. Then on 18th June, 2009, around 3.00 p.m. the informant was at his work at Ravet area. At that time he received telephonic

message from a relative that Anil had been assaulted and was admitted to Niramaya Hospital. Accordingly, informant passed information to his

brother Mahadeo and rushed to Niramaya Hospital. When he went there, Anil was under treatment but was not in position to speak. Informant

inquired with Raju Palle, Salman Irani and Santosh Irani about the incident. They told that, on that day around 2.30 p.m., they were proceeding with

deceased Anil towards Shivaji chowk after consuming lemon juice near Jayshree talkies. At that time accused Nos. 1 to 3 i.e. Arun, Vilas, Datta and

two unknown persons arrived there, called Anil at one side and assaulted. It was informed that accused No.3 Arun was holding sharp edged knife

whilst accused No.4 Vilas was holding sword and accused No.5 Datta and two others were holding sticks. It was informed that accused No.3 Arun

dealt knife blows at the chest of Anil whilst accused No.4 Vilas assaulted Anil by means of sword. The rest accused persons beat Anil by sticks. It

was informed that when the above named persons tried to intervene, accused No.4 Vilas threatened them by wielding sword and thereafter all

assailants fled by auto rickshaw. Thereafter Anil while taking treatment in Niramaya Hospital, succumbed to injuries around 4.15 p.m. The informant

got assured himself that accused no.1 Hiranman due to contract work rivalry had hatched conspiracy with the aid of rest of the accused and had

committed murder of Anil therefore, he went to concerned police and lodged report.

[C] On receipt of report regarding cognizable offence, the police registered crime vide CR No. 269 of 2009 and investigation was undertaken by PI

Pinjan. Before that PI Pinjan had already received telephonic message from PSO about the incident. Accordingly, he deputed API Kale to proceed

towards the place of occurrence. P.I. Pinjan as per information, went to Niramaya Hospital. At that time Anil was under treatment in ICU ward and

then was declared dead around 4.20 p.m. P.I. Pinjan directed PSI Nalawade to prepare inquest Panchanama and to send dead body for post

mortem. Thereafter P.I. Pinjan along with informant and other witnesses came to police station. At the instance of Bhagwan Pawar, FIR Exhibit 58

was recorded.

[D] During the course of investigation, statement of various witnesses were recorded. API Kale drawn Panchanama of the scene of offence. Time to

time accused came to be apprehended. At the instance of some of the accused incriminating articles namely weapons and clothes were seized. Seized

Muddamal articles were sent for chemical examination. P.M. notes were collected from Medical Officer. During course of investigation, CA report

was received which was submitted in the Court. After completion of investigation, charge sheet came to be filed in the Court of concerned

Magistrate. The offence punishable under Section 302 of the Indian Penal Code being exclusively triable by the Court of Sessions, the learned

Magistrate has committed the case for trial to the Court of Sessions.

[E] Charge Exhibit 17 was framed against accused Nos. 1 to 7. Its contents were read over and explained to the accused in vernacular to which

they pleaded not guilty and claimed to be tried. The defence of the accused is of total denial.

5. After recording the evidence and conducting full fledged trial, the trial Court convicted the original accused No.3 Arun and accused No.4 Vilas for

the offence punishable under Section 302 read with Section 34 of the IPC and sentenced them to suffer life imprisonment and to pay fine, as afore?

stated. The trial Court also convicted accused Nos.3 and 4 for the offence punishable under Section 506 [2] read with 34 of the IPC and sentenced

them to suffer rigorous imprisonment for one year and to pay fine as afore? stated. Hence Criminal Appeal No.645 of 2013 is filed by original accused

No.3 Arun and Criminal Appeal No.222 of 2016 is filed by original accused No.4 Vilas, challenging their conviction and sentence.

6. The trial Court acquitted accused Nos.1 to 7 from the offences punishable under Section 120B of the IPC. The trial Court also acquitted accused

Nos.1 and 2 from the offence punishable under Section 109 read with Section 302 of the IPC. The trial Court also acquitted accused Nos.3 to 7 from

the offence punishable under Sections 143, 147, 148, 149 read with Section 302 of the IPC. Therefore challenging the said acquittal order, the State

has filed Criminal Appeal No.1178 of 2013.

7. Mr. Shah, learned counsel appearing for the Appellant in Criminal Appeal No.645 of 2013 argued that the prosecution has not shown any personal

enmity between deceased and accused No.3 and therefore it has to be assumed that he acted as the agent of Accused Nos.1 and 2. However, the

learned trial Court disbelieved the theory of conspiracy and have acquitted accused Nos.1, 2, 5, 6 and 7, hence accused No.3 also ought to have been

acquitted, as there is totally no motive, no intention, no mens rea for accused No.3 to have committed the murder of the deceased. The trial Court has

held that accused Nos.1, 2, 5, 6 and 7 have been falsely implicated, therefore, it can be held that the accused Nos.3 and 4 have also been falsely

implicated. Learned counsel further argued that through out the investigation, the blood group of the deceased is not mentioned. It is not mentioned any

where that the blood found on the clothes of the accused or on the knife or

sword is matching to the blood of the deceased. On the contrary, it is mentioned that blood grouping is inconclusive.

8. Learned counsel further submitted that no independent eye witness is examined, no clothes of eye witnesses or rickshaw driver were seized to show that they had taken the deceased to the hospital. All the eye witnesses and panchas are related and or known to the deceased and his family. It is alleged that the incident has happened on old Pune-Mumbai highway, which is busy road and also having shops and residences nearby. Still the prosecution has not examined single independent witness. There are contradictions and omissions in the statements of eye witnesses with respect to the incident itself.

9. Learned counsel has alternatively argued that, even if assuming that the accused person has committed the crime, there was no intention to kill.

There are no antecedents against accused No.3. He is not a harden criminal. The accused is married and having three children and is in jail since

June, 2009. Hence it is prayed that the offence may be converted under section 304 Part-II of IPC. Mr.P.B. Shah, learned counsel appearing for the

appellant " accused in support of his submissions, placed reliance upon the exposition of law in the cases of Litta Singh & another Vs. State of

Rajasthan(2015) 15 SCC 327, State of Rajasthan Vs. Poona Ram & others(2016) 12 SCC 501, Shahajan Ali & others Vs. State of Maharashtra &

others(2017) 13 SCC 481, Madanayya Vs. State of Maharashtra [2017] 13 SCC 485 , Jawahar Lal & another Vs. State of Punjab [1983] 4 SCC

159 and Jayaraj Vs. State of Tamil Nadu AIR 1976 SC 1519. Learned counsel therefore prayed that the appeal may be allowed.

10. Mr. Khamkar, learned counsel appearing for the Appellant in Criminal Appeal No.222 of 2016 has supported the contentions raised by learned

counsel Mr. Shaha, and prayed that the appeal deserves to be allowed. Alternatively, learned counsel argued that even if the evidence of the

prosecution witnesses is accepted as it is, the allegations against appellant " Vilas are that he has assaulted deceased Anil on his leg, and therefore,

it is prayed that the offence may be converted under section 304 Part-II of IPC. In support of his submissions, learned counsel placed reliance upon

the exposition of law in the case of Hardeep Singh & others Vs. State of Haryana AIR 2008 SC 3113.

11. On the other hand, learned A.P.P. appearing for the State has supported the findings recorded by the Trial Court while convicting and sentencing

the accused Nos.3 and 4 for the offence punishable under Sections 302 read with section 34 of the IPC. Learned A.P.P. referring to the evidence of

eye witnesses PW³ Raju and PW⁵ Firoz submitted that the prosecution has brought on record sufficient evidence against all the accused persons

that they have hatched criminal conspiracy, all the accused persons were members of the unlawful assembly and all of them armed with deadly

weapons have committed rioting. Therefore, in the submission of learned A.P.P., the findings recorded by the Trial Court in acquitting accused Nos.1

to 7 from the offence punishable under Section 120B of IPC, further acquitting accused Nos.3 to 7 from the offences punishable under Sections 143,

147, 148, 149 of IPC, section 34 and 149 read with section 506(2) of IPC and from the offence punishable under section 4 read with section 25 of

the Arms Act, are not in consonance with the 8 evidence brought on record by the prosecution. Learned A.P.P. therefore prayed

that Criminal Appeal No. 1178 of 2013 deserves to be allowed. In support of his submissions, learned APP placed reliance upon the exposition of law

in the case of Kattukulangara Madhavan (dead) through legal representatives Vs. Majeed and others(2017) 5 SCC 568.

12. In order to prove its case, the prosecution has examined as many as 19 witnesses. PW¹ Bhagwan Chandar Pawar is the informant. His

evidence shows that he was working as a Licensed Government Contractor. At the time of incident, he himself, his wife, two sons namely Akash and

Anil (deceased) were residing together, along with his brother Mahadu. He knows accused Nos.1 to 7, who are the resident of the same vicinity

where he is residing. His evidence further shows that accused No.1 was doing the business of contractor but was not having license to that effect.

Accused No.1 used to work on the basis of license of other persons and used to give commission to the said license holders. Accused Nos.1 to 5

were doing the business of contract collectively and there was terror of the accused persons in the vicinity. The evidence of PW¹ further shows that

five years prior to the incident, accused No.1 demanded license from him and assured that he will pay 5% commission, but the informant denied to

give the license. Thus, the prosecution has brought on record through the evidence of the informant that there was rivalry between the accused

persons and the informant on the count of contract work. The evidence of PWÂ1 further shows that accused Nos.1 to 5 threatened him and his son

Anil time to time and even he has filed complaints against accused Nos.3 to 5.

13. The evidence of PWÂ1 Bhagwan further discloses that on 16th June, 2009, his son Anil when was returning to home by foot, at that time accused

No.3â?" Arun More gave dash to him by motorcycle, but no complaint to that effect was filed in the Police Station. His evidence further discloses that

on 18th June, 2009, at about 3.00 p.m., he received phone call from one Sunny Gaikwad informing that Anil had received injuries by sword and he was

admitted in Niramay Hospital, Chinchwad. His evidence further discloses that he went to Niramay Hospital and saw that his son was serious. Raju

Palle, Santosh Khillare, Firoz Irani, Salman Jafree, friends of his son Anil, had been in the hospital. His evidence further discloses that Raju Palle

informed him that accused No.4 Vilas assaulted Anil with sword and accused No.3 Arun assaulted Anil by dagger and rest of the accused had

assaulted Anil by sticks. His evidence further discloses that Anil died in the hospital. He lodged F.I.R. (ExhibitÂ58) in Pimpri Police Station. He

evidence further shows that the FIR bears his signature and the contents of the same are correct.

14. Thus through the informant (PWÂ1), the prosecution has proved that there was enmity between the accused persons and the informant on the

count of contract work. Even the evidence of PWÂ1 discloses that two days prior to the incident i.e. on 16th June, 2009, when his son Anil was

returning home, at that time accused No.3 Arun has intentionally gave dash to Anil by his motorcycle. His evidence further shows that immediately

after the incident, FIR was lodged.

15. PWÂ2 Mahadeo Chandar Pawar, is real brother of the informant. His evidence shows that he was working along with the informant as Civil

Contractor, he knows all the accused persons as they are residents of the same vicinity where he resides. His evidence further shows that his brother

was having license for doing the contract work and accused No.1 was always threatening the informant by saying that accused No.1 wanted to take

contract in the name of informant and that he was ready to give 5% commission, but the informant refused for the same. His evidence further

discloses that rest of the accused were working with accused No.1. His evidence

further discloses that on the day of incident i.e. on 18th June, 2009 at about 9.00 a.m. he was proceeding for work at which time all the accused persons were sitting on the Katta in Indiranagar and were saying that they would kill Anil Pawar and Bhagwan Pawar in the evening. His evidence further discloses that he has neglected the said fact as the accused always used to threaten him in the like manner. His evidence further discloses that he has received phone call from the informant Bhagwan at about 3.00 p.m., informing that accused Nos. 1 to 7 assaulted Anil by sword and sticks and Anil was admitted in the hospital. Thereafter, he went to the hospital and seen that Anil was unconscious and friends of Anil were present in the Hospital. Thus the evidence of PWÂ2 Mahadeo lends support to the evidence of PWÂ1 informant that on the issue of contract, accused persons were threatening his brother Bhagwan (informant) and deceased Anil.

16. To prove the fact that accused No.1 was insisting the informant to allow him to take the contract work in the name of informant, the prosecution has also examined PWÂ11 Vyankat Dattu Waghmare. His evidence shows that he was doing mason work for the informant and was constructing house of Bhagwan Pawar at Chikhali. His evidence further shows that one month prior to the incident, accused No.1 came on the sight of construction at which time informant Bhagwan was also present there. Accused No.1 asked Bhagwan to take work in his name and allow accused No.1 to do the said work as informant Bhagwan was having license. Accused No.1 also agreed to give 5% remuneration to informant Bhagwan. Bhagwan refused for the same and therefore accused No.1 threatened the informant to face the consequences. His evidence further shows that one month thereafter he came to know that son of Bhagwan Pawar was killed. Thus, through the evidence of PWÂ11 Vyankat, the prosecution has proved that relations between the accused and informant were strained on the issue of contract work.

17. The prosecution has examined PWÂ3 Raju Vyankatesh Palle, who has witnessed the incident. His evidence shows that he knows the accused persons. The incident took place on 18th June, 2009 at about 2.30 p.m. in Shivaji Chowk, near Chinchwad Station. His evidence further shows that he himself, deceased Anil Pawar, Santosh Khillare, Firoz Irani and Salman Irani were

proceeding to Shivaji Chowk. They sat in the rickshaw which was parked on rickshaw stand. Accused No.3 Arun More, Accused No.4 Vilas More, Accused No.5 Datta More and other two persons came there from Kunal Plaza Building. Accused No.3 Arun called Anil Pawar and therefore Anil went towards them. His evidence further shows that at that time, accused No.3 Arun stabbed knife on the left side of the chest of Anil and accused No.4 Vilas gave blow of sword on the leg of Anil. Accused No.5 Datta More and other two persons beat Anil by sticks. He rushed to Anil Pawar, but accused No.4 Vilas threatened that if he will try to intervene, he would be killed. His evidence further shows that then the accused persons ran away in rickshaw towards Telco road. He himself and Firoz Irani took Anil Pawar in auto rickshaw and brought him to Niramay hospital, Chinchwad. Anil was admitted in the hospital. Bhagwan Pawar, father of Anil came there. His evidence further discloses that he narrated the incident to the informant. Anil Pawar died in the hospital. On the same day, his statement was recorded by the Police. Police visited the place of incident. He has shown the place of incident to the Police, which situate at Shivaji Chowk Chinchwad. There were blood stains, cover of sword and cover of knife on the spot. His evidence further shows that on 14th July, 2009, his statement (Exhibit-69) under section 164 of Code of Criminal Procedure came to be recorded before the J.M.F.C. Pimpri.

18. During the course of cross-examination, PW-3 Raju stated that Shivaji Chowk situate on the old Mumbai-Pune Highway, Pimpri Police Station situate in front of Shivaji Chowk. There is always traffic in Shivaji Chowk. There are two rickshaw stands on the chowk, one is at the right side and another is at the left side. He further stated that on the day of incident, he met Anil Pawar and others incidentally. He has no personal acquaintance with accused Nos.1 and 2 but he knows them. He further stated that Police came on the spot within 10 to 15 minutes after the incident. Police thereafter came to Niramay Hospital immediately, but he has not narrated the incident to police in the Hospital.

19. PW-3 Raju further stated that on the day of incident, he met Anil Pawar at about 12.30 p.m. He further stated that one can reach Shivaji chowk from Jayashree Cinema theater within 2 to 3 minutes by walk. There are shops on both sides of the road in Shivaji Chowk and it is residential zone.

There were two to three auto rickshaw in the rickshaw stand. Some persons were passing the road at that time. Rickshaw driver were standing ahead

of the rickshaws. He saw the accused persons 10 minutes after sitting in the rickshaw. Kunal building situate at the distance of 10 feet from the

rickshaw stand. Anil Pawar was called at the distance of 25 feet from the rickshaw stand. One has to cross the road while going to Shivaji chowk

from rickshaw stand. There is traffic on both side of the road. The incident was going on for about 10 to 15 minutes. He further stated that Anil

Pawar has crossed the road and came to him after disappearance of the accused. Anil fell on the ground behind the rickshaw. They reached to

Niramay Hospital within five minutes by rickshaw. He himself and Firzo Irani lifted Anil Pawar and admitted him in Niramay Hospital. Anil was not in

a condition to speak. PWÂ³ Raju was further extensively crossÂ³examined by the defence, but nothing contrary was elicited from him.

20. Thus the evidence of PWÂ³ Raju shows that he has witnessed the actual incident of assault. On the day of incident, since prior to the incident, he

was accompanying with deceased Anil. His presence at the spot was natural. PWÂ³ Raju has specifically stated that accused No.3 Arun stabbed

knife on the left side of the chest of Anil and accused No.4 Vijay gave blow of sword on the leg of Anil. The evidence of PWÂ³ is reliable,

trustworthy and inspiring confidence.

21. The prosecution has examined PWÂ³ Firoz Jafar Irani, who is another eye witness to the incident. His evidence shows that he knows the

deceased Anil Pawar. The incident took place on 18th June, 2009, at about 2.30 p.m. at Shivaji Chowk in front of Kunal Plaza on PuneÂ³Bombay

highway. His evidence further shows that on the date of incident he himself, Raju Palle, Santosh Khillare, Salman Irani and deceased Anil Pawar

came from Jayashree Talkies to Shivaji Chowk by foot and they occupied one rickshaw, which was parked at Shivaji Chowk and they were

chitchatting. His evidence further shows that at that time accused No.3 Arun, accused No.4 Vilas, accused No.5 Datta and two other persons, aged

22 and 24 years came there. His evidence further shows that accused No.3 Arun called Anil Pawar to the other side of the road near circle. Accused

No.3 took out knife and gave blow on the left side of the chest of Anil Pawar. His evidence further shows that accused No.4 took out sword and gave

blow on the left leg of Anil Pawar. Rest of the persons assaulted Anil by sticks. When PWÂ5 rushed to rescue Anil along with Raju, Santosh and

Salman, accused No.4 by showing sword threatened them that he would kill them if they would try to intervene in the quarrel. Then accused persons

ran away towards Telco road. His evidence further shows that he himself and others took Anil to Niramay Hospital by auto rickshaw and admitted

Anil in the said Hospital. Father of Anil came there. He himself and Raju Palle narrated the incident to the father of Anil. Anil Pawar died on the

same day. His evidence also shows that the police recorded his statement on the same day. His evidence further shows that he could identify accused

Nos.3 and 4.

22. The evidence of PWÂ5 Firoz further shows that on 14th July, 2009, his statement (Exhibitâ"76) was recorded before the Judicial Magistrate First

Class, Pimpri. His evidence further shows that he identified the sword (ArticleÂ? A) and knife (ArticleÂ? B), which were shown to him.

23. During the course of crossÂexamination, PWÂ5 Firoz stated that on 18th June, 2009, he returned from Mumbai by Tavera Jeep which was

belonging to one Nayar. Jayashree Talkies and Kunal Building are on the same side. Police Station situate at short distance from Shivaji chowk. Auto

rickshaws and four wheelers are always parked near Kunal building. He further stated that there is always traffic in Shivaji Chowk. He further stated

that on the day of incident, he came to Pimpri at about 12.30 p.m., and parked his Jeep near Kunal building. He met Anil Pawar on 18th June, 2009, at

about 12.30 p.m. On the day of incident, Tavera Jeep belonging to Anil Pawar had been at Mumbai. He further stated that, he along with Raju Pille,

Santosh Khillare, brother of Salman Irani along with Anil Pawar had been near to Jayashree Talkies for about half an hour. While coming from

Jayashree talkies firstly, there is Shivaji chowk and thereafter there is Mahaveer Chowk. He has further stated that he has occupied rickshaw for

about 10 to 20 minutes and thereafter Anil Pawar was called near circle. They came from Jayshree Talkies, crossed Shivaji chowk and then occupied

the rickshaw which was parked at rickshaw stand. There is big circle at Shivaji chowk. PWÂ5 Firoz was further extensively crossÂexamined by the

defence, but regarding witnessing the actual incident of assault, nothing contrary has been brought on record by the defence.

24. Thus the evidence of PW⁵ Firoz shows that he has actually witnessed the incident as he was present on the spot at the relevant time along with

deceased Anil. His presence at the spot was natural and he was accompanying with Anil since prior to the incident. His evidence shows that accused

No.3 Arun took out knife and gave blow on the left side of the chest of Anil. His evidence further shows that accused No.4 Vilas took out sword and

gave blow on the left leg of Anil. On conjoint reading of the oral testimony of PW³ Raju and PW⁵ Firoz, who are the eye witnesses, it is clear that

they have corroborated with each other. The evidence of both these witnesses is consistent, trustworthy and reliable. As observed earlier, their

presence at the spot was natural as since before the incident, they were accompanying with deceased Anil. Thus prosecution has conclusively and

convincingly proved that accused No.3 and accused no.4 had mercilessly attacked Anil with dangerous weapons like sword and knife and killed Anil.

25. The prosecution examined PW⁷ Sunil Shivaji Thorat. His evidence shows that incident took place on 18th June, 2009 in Shivaji Chowk at about

2.30 p.m. His evidence shows that he has parked his auto rickshaw in rickshaw stand and went to video game center. He heard the shouts and came

in Shivaji Chowk. He had seen that Anil was kept in his rickshaw by 4⁵ boys. His evidence further shows that Anil had sustained bleeding injuries.

Firoz Irani and his friends along with Anil had been in his rickshaw. Then he took the rickshaw to Niramay Hospital and Anil was admitted in the said

hospital. His evidence further shows that subsequently he came to know that Anil died. Thus, the evidence of this witness lends support to the

prosecution case.

26. PW⁴ Chandu Shankar Jadhav is the panch to the spot panchanama (Exhibit⁷³). His evidence shows that on 18th June, 2009 police called him

in Mahaveer Chowk for acting as a panch for preparing spot panchanama. The said place is situate in front of Kunal Plaza and on Old Pune^{Mumbai}

Highway. His evidence further shows that Raju Palle has shown the place of incident. He noticed the blood stains, cover of sword, cover of knife and

one faint colour cap, two buttons on the spot of incident. His evidence further shows that the police seized the earth having blood stains from the spot,

with the help of cotton swab. Police attached the cover of sword and cover of knife. Labels having his signature and signature of another panch were

affixed on the same. The cap and buttons were also attached and sealed with the labels of signatures of panch witnesses. The detail

panchnama was prepared and he has signed the same along with another panch Kale. Thus he proved spot panchanama (Exhibit-73). During the

course of cross-examination, PW-4 Chandu was asked and he has specifically stated that Mahaveer Chowk and Shivaji Chowk are one and the

same. Thus, the evidence of this witness shows that incident took place at Shivaji Chowk.

27. PW-6 Maruti Mukunda Gunde is the panch to memorandum panchanama (Exhibit-79) and seizure panchanama (Exhibit-80), regarding seizure

of sword at the instance of accused No.4 Vilas. Evidence of PW-6 Maruti shows that on 20th June, 2009, he was called by Pimpri Police in the

Police Station. Accused Vilas who was in police custody, has stated before him that accused Vilas was ready to produce the sword. Accordingly,

memorandum panchanama was recorded. He proved memorandum panchanama (Exhibit-79). The evidence of PW-6 Maruti further shows that

accused Vilas led the police party to his house and took out the sword which was kept on the tin roof of the house and thus the said sword was seized

under panchanama. When the sword before the Court shown to him, he identified the sword. There were blood stains on the sword. Thus this witness

has proved the seizure panchanama (Exhibit-80) and proved that the sword used in the commission of crime, was seized at the instance of accused

No.4 Vilas, from the spot which was exclusively in the knowledge of accused Vilas.

28. PW-8 Palle Khan Ismile Irani is the panch to memorandum statement and seizure panchanama of knife at the instance of accused No.3 Arun.

His evidence shows that at the instance of accused No.3 knife was seized, which was kept on the roof of tin of the house of accused No.3 Arun.

Thus, this witness has proved memorandum (Exhibit-84) and seizure panchanama (Exhibit-85) of the seizure of knife at the instance of accused

No.3. Thus, through the evidence of PW-8, the prosecution has proved that at the instance of accused No.3 Arun, the knife was seized, which was

used in the commission of crime and the spot from where the weapon was seized, was not visible to general public.

29. PW-9 Sachin Suresh Shinde is a panch to the memorandum statement and seizure panchanama of two wooden logs at the instance of accused

No.6 Ajay Sakat. His evidence shows that at the instance of accused No.6 two wooden logs were seized, which were kept in the iron gate of the compound of Manthan Hall. Thus, this witness has proved memorandum (Exhibit 87) and seizure panchanama (Exhibit 88) of the seizure of wooden logs at the instance of accused No.6. However, during the cross examination PW 6 has specifically admitted that the wooden logs were attached from the open place, accessible to all. Thus, evidence of this witness is not useful to the prosecution.

30. PW 10 Sidhartha Kisan Mhaske is a panch to the seizure panchanama of clothes of accused No.6 "Ajay Sakat, which were worn by him at the time of incident.

31. PW 12 Sachin Hanumant Jadhav is a panch to the seizure panchnama of clothes of accused No.4 Vilas More and accused No.5 Datta More which they had worn at the time of incident. His evidence shows that accused No.4 Vilas was wearing white shirt having yellow lining and white pant and there were blood stains on those clothes. His evidence further shows that another accused Datta More has produced yellow shirt having white lining and Grey colour pant. Thus, this witness has proved seizure panchanama (Exhibit 97) of the seizure of clothes of accused No.4 and accused No.5.

32. PW 13 Shyam Sudhakar Umap is another panch. But this witness turned hostile and did not support the prosecution case. Hence, his evidence is not useful to the prosecution case.

33. Now we will examine the medical evidence brought on record by the prosecution. The prosecution has examined PW 14 Dr.Subhash Chandu

Madane, who conducted post mortem on the dead body of Anil Bhagwan Pawar. He deposed that on 18th June, 2009, during the period from 6.30

p.m. to 7.20 p.m., he conducted post mortem on the dead body of Anil. He deposed that he found following external injuries on the person of Anil:

(1) Stab wound on left side of the chest at lower margin of left Areola. It was obliquely directed. It is 9 cm. Away from the midline. It was spindle shape. It was 3 cm X 2 cm X 9 cm. Deep, directed medially and above. Deepness was measured by blunt probe. Margins were sharply cut and both angles were sharply cut. There were blood clots found at margin of injury.

(2) Stab Injury, left side of chest at anterior axillary line 10 cm. Below the injury

No. 1. It was obliquely directed, spindle shape, 3 cm X 2 cm x 8 cm

deep directed Medially and downward. Both margins and angles were sharply cut. Blood clots were found at margin wound.

(3) Incised wound, left side of forearm, lower 1/3 at medial aspect, directed transversely, dimension was 3 cm X 1 cm. X muscle bone deep. Margin

sharply cut and spindle shape. Multiple small blood clots were found along the margin and base.

(4) Incised wound on right side of the knee, directed transversely, 4 cm X 2cm X 1 cm. In dimension. It was spindle shape and margins were sharply

cut. Blood clots were found along the margin.

(5) Abrasion on right wrist, external aspect 2 Cm X 1cmX 1 cm. In dimension and brownish in colour.

. PWÂ14 Dr. Subhash further deposed that above injury Nos.1 to 4 were grievous in nature and injury No.5 was simple and the edge of injuries was

within 24 hours, the type of weapon was sharp. He further deposed that all the injuries mentioned above were ante mortem in nature. PWÂ14 Dr.

Subhash further deposed that on internal examination, he noticed the following injuries :Â?

(1) Injury No. 1 of column No. 18 was direct medially and above, sharply cut 4th rib. Distance from midline to 4th rib was 9 cm. Pleura below it was

obliquely cut and left lung was sharply cut obliquely and left antrum of the heart sharply cut up to left atrial chamber. There was huge haemothorax on

the left side.

(2) Injury No. 2 of column No. 18 was directly medially and downward. Stab passes through 6 and 7 th intercostal space, penetrating lower lobe of

left lung, after penetrating the pleura. Stab then passes left side dome of diaphragm and left side of stomach wall up to lumen of the stomach. Left side

pericardium penetrated with penetrating wound of left antrum. On cross section of the heart both chamber were empty.

34. Upon careful perusal of the evidence of this Medical Officer PWÂ14 Dr. Subhash and multiple internal and external injuries noticed by him on the

dead body of Anil, it shows that death of Anil was homicidal.

35. Then there is evidence of PWÂ15 Dr. Subhash Sadanand Ingale. He deposed that at the time of alleged incident, he was working as visiting

Surgeon at Niramay Hospital, Chinchwad. On 18th June, 2009, he has received a

phone call from ICU Incharge of Niramay Hospital that one serious patient Anil Pawar was admitted in the Hospital. He further deposed that as per the case papers, the people who accompanied the patient gave history that the patient had sustained injuries near chest wall, lower limb due to stabbing. As per the said history, the incident took place at about 2.15 p.m. He further deposed that he attended patient at about 3.15 p.m. The patient was unconscious and was put on ventilator. The body temperature was on lower side. Pulse was not palpable but recordable on monitor. As the patient was put on ventilator, he could not conclude as to whether patient couldÂ respire orÂ not. B.P.Â of the patient was not recordable. Pupils were dilated and were not reacting light.

36. Regarding the injuries sustained by the patient Anil, PWÂ15 deposed that he noticed following injuries:

[1] Stab wound about 1'x1', depth not accessible. In left 4th intercostal space, just inferior and medial to left nipple.

[2] Stab wound about 1 Â½' x 1' depth uncertain. In left 6th and 7th intercostal space. In anterior axillary line. Momentum was protruding to the second wound.

[3] CLW 2 X 1 Â½ inch by bone deep, right left, just below right knee.

37. PWÂ15 Dr.Subhash Ingale further deposed that age of injury was fresh, within 1Â2 hour. Patient died at about 4.20 p.m. Body was handed over to police Department and further referred to YCM Hospital for postmortem. The death of patient was caused due to injury nos.1 and 2.

38. The prosecution has further brought on record the medical evidence in the form of evidence of PWÂ18 Dr.Sunita Binu Varghese. She deposed

that she was attached to Niramaya Hospital of Chinchwad as ICU inÂcharge from the year 2006. On 18th June, 2009, while she was on duty at

Niramay Hospital, as ICU inÂ charge around 3.00 p.m., one 18 years old boy was brought to the Hospital in critical condition. She further deposed

that she was inside ICU and at that time patient was brought in ICU on stretcher. Condition of patient was bad as he was not breathing properly.

They immediately commenced emergency medical treatment. The pulse rate of patient was 40 to 50 per minute. His B.P. was not recordable. She

further deposed that immediately they started doing resuscitation [use of ventilator]. The pupils of patient were midÂdilated meaning thereby he was

in critical condition. When they were giving painful stimuli patient was moving his limbs. The patient had sustained multiple stab injuries at the left side

of chest. He was treated in ICU. Patient was alive when he was brought in ICU but died on the same day at 4.20 p.m.

39. Thus, the evidence of PW¹⁴ Dr.Subhash Madane, PW¹⁵ Dr.Subhash Ingale and PW¹⁸ Dr.Sunita establishes that Anil received multiple

stab injuries including another injuries. Thus, prosecution has conclusively proved that death of Anil was homicidal.

40. PW¹⁶ Nandkumar Jaywant Pinjan, Dy.S.P. Khandala, was the investigating officer. He deposed about the manner in which he has carried out

the investigation. His evidence inter^{Alia} shows that during the investigation, he has prepared rough sketch of the spot (Exhibit¹¹²), in which the

spot of incident is shown as ^{Shivaji Chowk}.

41. Thus, as already observed, both eye witnesses i.e. PW³ Raju and PW⁵ Firoz have specifically stated that they were accompanying

deceased Anil when the incident of assault took place. Their presence on the spot of incident was natural. The evidence of both these eye witnesses

is consistent, trustworthy, reliable and inspires confidence of this Court. Both the eye witnesses have specifically stated that accused No.3 Arun

stabbed at the left side of the chest of Anil with the help of knife and accused No.4 given a sword blow at the leg of Anil. The evidence on record

shows that though Anil was taken to the Hospital and treatment was given to him, during the treatment he succumbed to the injuries. Though the

defence has brought on record some contradictions and omissions in the evidence of prosecution witnesses, the said contradictions and omissions are

of a minor nature and do not affect to the core/substratum of the prosecution case that accused Nos.3 and 4 had mercilessly beaten Anil with deadly

weapons and therefore^{the said contradictions and omissions} can be ignored. The Supreme Court in the case of Mukesh and another

vs. State (NCT of Delhi) and others (supra), in Paras 86 to 89 of the Judgment, held as under:

9 ⁸⁶. In this context, we may fruitfully reproduce a passage from State of U.P. v. M.K. Anthony (1985) 1 S.C.C. 505 : (SCC p. 514, para 10)

¹⁰. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a

ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ¶

87. In *Harijana Thirupala v. Public Prosecutor* (2002) 6 S.C.C. 470, it has been ruled that: (SCC p. 476, para 11)

¶11. ¶ In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.¶

88. In *Ugar Ahir v. State of Bihar* AIR. 1965 SC. 277, a three-Judge Bench held: (AIR p. 279, para 6)

¶6. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.¶

89. In *Krishna Mochi v. State of Bihar* (2002) 6 SCC 81, the Court ruled that: (SCC pp. 104-05, para 32)

¶32. ¶ The court while appreciating the evidence should not lose sight of

these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time. In *Inder Singh* (1978) 4 SCC 161, Krishna Iyer, J. laid down that: (SCC p. 162, para 2)

"2. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes."

In *State of U.P. v. Anil Singh* 1988. SCC 686 Supp, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

42. There is overwhelming evidence in the nature of two eye witnesses and other evidence including the witnesses to the seizure panchamas of the weapons at the instance of accused Nos.3 and 4, which were used in the commission of crime. The prosecution has brought on record the motive for the offence showing that there was rivalry between accused and informant and his son Anil, on the count of taking work on contract basis. The prosecution has brought on record that prior to the incident accused Nos.3 and 4 had given threats to the informant and his son Anil of the dire consequences and thus there was motive.

43. The prosecution has proved that accused Nos.3 and 4 have assaulted Anil in broad day light at 2.30 p.m. in Shivaji Chowk, which was the busy spot located in the residential zone. Thus prosecution has conclusively and convincingly proved that accused No.3 Arun and accused No.4 Vilas have committed the offence punishable under Section 302 read with Section 34 of the IPC. The prosecution has further proved that accused Nos.3 and 4 have committed the offence punishable under Section 506 (2) read with Section 34 of the IPC.

44. Learned counsel appearing for the appellants had criticized the evidence of eye witness PW⁵ Firoz on the ground that during the course of cross examination, he stated that Shivaji chowk and Mahaveer Chowk are two separate chowks. It is pertinent to note that another eye witness PW³ Raju has specifically stated that incident took place in Shivaji Chowk. Further in this respect it would be useful to refer to the evidence of PW⁴ Chandu panch witness. PW⁴ has specifically stated in his cross¹ examination that Mahaveer Chowk and Shivaji Chowk are one and the same. Further, the prosecution has brought on record that during the investigation, investigating officer PW¹⁶ Nandkumar has prepared rough sketch of the spot, Exhibit¹¹², which shows the spot of incident as Shivaji Chowk. Therefore, the argument of learned counsel criticizing the evidence of PW⁵ deserves no consideration, as the prosecution has convincingly proved that the incident took place at Shivaji Chowk.

45. Learned counsel appearing for the Appellants referring to the evidence of PW¹⁴ Dr.Subhash Madane who has conducted the postmortem on the dead body of Anil, and submitted that this Medical Officer has opined that the age of injuries was within 24 hours. Learned counsel further submitted that the alleged incident took place at 2.30 p.m. on 18th June, 2009 and on the same day between 6.30 p.m. to 7.20 p.m., Medical Officer PW¹⁴ has carried out the postmortem but mentioned the age of injury within 24 hours and therefore it is difficult to accept that accused Nos.3 and 4 caused those injuries to Anil in the alleged incident and it is possible that Anil might have received those injuries much before 2.30 p.m. It is pertinent to note that the said statement of PW¹⁴ is of insignificant nature. In this context, if the evidence of another Medical Officer PW¹⁵ Dr.Subhash Ingale who treated the patient immediately at 3.15 p.m. of 18th June, 2009 is perused, PW¹⁵ has specifically stated that the age of injury was fresh,

within 1½ hour. Thus, the prosecution has conclusively established that deceased Anil had received the injuries in the incident which took place at about 2.30 p.m. on 18th June, 2009. Therefore, there is no substance in the argument advanced by the learned counsel appearing for the Appellants criticizing the evidence of Medical Officer PW14. Though learned counsel appearing for the Appellant in Criminal Appeal No.645 of 2013, in support of his submissions, has placed reliance upon the exposition of law in the reported cases as referred above, the facts in the present case and the facts of the reported cases are distinguishable.

46. We have carefully perused the entire evidence brought on record by the prosecution. The prosecution has failed to prove that accused Nos.1 to 7 have hatched criminal conspiracy and thereby committed an offence punishable under Section 120B of the IPC. The prosecution also failed to prove that accused Nos.3 to 7 have committed an offence punishable under Section 143, 147, 148 and 149 read with Section 302 of the IPC and Section 4 read with Section 25 of the Arms Act, Section 37 [1] read with Section 135 of the Bombay Police Act. The prosecution also failed to prove that accused Nos.1 and 2 have committed an offence punishable under Section 109 read with Section 302 of the IPC.

47. It is alternatively argued by the learned counsel appearing for the Appellants that there was no intention on the part of the Appellants to kill Anil, and therefore the offence would fall under Section 304 Part II of the I.P. Code.

48. In our considered view, the aforesaid submissions of the learned counsel that the offence would fall under Section 304 Part II of the Indian Penal Code deserves no consideration for the reason that accused No.3 Arun and accused No.4 Vilas came on the spot of incident armed with dangerous weapons like dagger and sword, which are not easily available in the market, with an intention to kill Anil. They have mercilessly assaulted Anil due to which he died. These facts clearly show the involvement and intention of the Appellants in the commission of offence. Therefore, it is not possible to read the mitigating circumstances in favour of the Appellants.

49. Mr.Khamkar, learned counsel by way of an alternate submission, submits that the Appellant Â Vilas has alleged to have used sword in the assault, but even as per prosecution case has not assaulted on the vital part of the body of Anil, and therefore the offence committed by the Appellant â?

Vilas would fall under Section 304 Part II of the I.P. Code. In support of aforesaid submission he placed reliance on the ratio laid down in the case of

Jagpati v/s. State of Madhya Pradesh AIR 1993 SC 1360 and also in the case of Sayyad @ Saidu Ghudubhai Fulari (1992) Mh. L.J. 493. We do not

agree with the said submissions advanced by the learned counsel for the reason that appellant " Vilas has been convicted for the offence punishable

under Section 302 with the aid of Section 34 of the IPC, as it is proved that accused Nos.3 and 4 have mercilessly assaulted Anil and cumulative

effect was that Anil succumbed to the said injuries. Therefore in our considered opinion the case of accused Vilas would also not fall under the

provisions of Section 304 Part II of the IPC.

50. It is pertinent to note that when eye witness account gets support from medical evidence and also recovery etc., the same cannot be criticized on

trifle issues. In the present case, there are two eye witnesses whose evidence corroborates to the evidence of PW1 and other prosecution

witnesses, and also each other. It is well settled that when there is clear, cogent and trustworthy evidence of the eye witnesses, even corroboration is

not necessary. But in the present case, evidence of eye witnesses corroborates each other and also there is other evidence on record like panch

witnesses PW6 Maruti in whose presence sword was seized at the instance of accused No.4 Vilas, and PW8 Palle Khan in whose presence knife

was seized at the instance of accused No.3 Arun. The weapons which were used in the commission of crime, were seized at the instance of accused

Nos.3 and 4 from the places which were in exclusively knowledge of the said accused persons and were not accessible to the general public.

Therefore, the evidence of PW6 and PW8 lends support to the evidence of eye witnesses. The prosecution has brought on record the evidence of

PW7 Sunil in whose auto Rickshaw Anil was taken to the Hospital immediately after the incident. Thus, the prosecution has brought on record

sufficient evidence to prove the offence against accused Nos.3 and 4.

51. We have carefully perused the impugned Judgment. The trial Court has considered all the evidence brought on record and rightly observed that the

prosecution has failed to establish that accused Nos.1 and 2 have hatched conspiracy with rest of the accused and executed the plan. The trial Court

has further observed that presence of accused Nos.6 and 7 was quite doubtful at

the time of occurrence. The trial Court has further observed that accused No.5 Datta is entitled for benefit of doubt for inadequacy of evidence. Due to absence of proof regarding presence of accused Nos.6 and 7 at said place, the charge of unlawful assembly would not sustain. The trial Court has further held that the prosecution has duly proved with convincing, cogent and reliable evidence that accused No.3 Arun and accused No.4 Vilas have committed homicidal death amounting to murder of Anil Pawar, which attracts punishment under Section 302 of the Indian Penal Code. The trial Court has further held that the prosecution has proved the offence punishable under Section 506 [2] of the IPC against accused Nos. 3 and 4. The trial Court has further held that the prosecution has failed to prove the charge of forming unlawful assembly, abetment, charges under the provisions of Arms Act and Bombay Police Act. Thus, the trial Court has held accused No.3 Arun and accused No.4 Vilas guilty for commission of offence punishable under Section 302 read with Section 34 of the IPC and under Section 506 [2] read with Section 34 of the IPC and sentenced them as aforestated.

52. Upon considering the evidence in its entirety, we are of the considered opinion that the findings recorded by the trial Court are in consonance with the evidence brought on record and therefore we do not think it necessary to cause interference in the findings recorded by the trial Court in convicting and sentencing original accused Nos.3 and 4, and therefore, Criminal Appeal No.645 of 2013 and Criminal Appeal No.222 of 2016 are liable to be dismissed.

53. So far as Criminal Appeal No.1178 of 2013 filed by the State challenging the acquittal of original accused Nos.1 to 7 from the offence punishable under Section 120B of IPC, acquittal of accused Nos.3 to 7 from the offence punishable under Section 143, 147, 148, 149, 34 and 149 read with Section 506(2) of the IPC and acquittal of accused Nos.1 and 2 from the offence punishable under Section 109 read with Section 302 of the IPC, is liable to be dismissed. Upon considering and reappreciating the evidence in its entirety, we are of the considered view that, on assessing the entire evidence on record the trial Court has taken a possible view. Assuming that another view is possible, however in view of settled position of law, is no ground on the basis of evidence on record, order of acquittal can not be

interfered. Therefore, we are not inclined to interfere in the said order of acquittal passed by the trial court.

54. In the light of discussion made herein above, we do not find that there is any substance in the Appeals filed by both the Appellants and also the Appeal filed by the State. Accordingly, Criminal Appeal No.645 of 2013, Criminal Appeal No.222 of 2016 and Criminal Appeal No.1178 of 2013 stand dismissed.