
(2012) 08 BOM CK 0009
In the Bombay High Court
Case No : Criminal Appeal No. 274 of 1992

Gulab Dashrath Ohol and Others	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37(1)
Penal Code, 1860 (IPC) — Section 109, 302, 307, 324, 34

Citation : (2013) 3 BomCR(Cri) 245

Hon'ble Judges : Oka A.S., J; Davare Shrihari P., J

Bench : Division Bench

Advocate : V.T. Tulpule assisted with Prakash Naik, Ganesh Bhujbal and Pawan P. Mali instructed by Deepak R. More, for the Appellant; H.J. Dedhia, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Davare Shrihari P., J.—Heard learned Counsel for the appellants/accused and learned APP for the respondent State. By the present appeal, appellant Nos. 1, 2 and 3 (i.e. original accused Nos. 1, 2 and 3) take exception to the conviction and sentence imposed upon them by way of judgment and order dated 18th May, 1992 rendered by the learned Additional Sessions Judge, Pune, in Sessions Case No. 652 of 1988 thereby convicting them for the offences punishable u/s 302 read with section 34 of Indian Penal Code and sentencing them to suffer imprisonment for life.

2. It is to be noted that the Criminal Appeal No. 285 of 1992 preferred by accused No. 4 Mahesh Phadatare, was abated and disposed of by an order dated 24th February, 2012, since he expired during the pendency of the appeal.

3. Brief facts of the prosecution case giving rise to the present appeal can be summarized as under:

It is the case of the prosecution that on 20th March, 1988 at about 2.15 p.m.

when the complainant was purchasing some medicines near Hotel Samrat, accused No. 2 Vijay, accused No. 4 Mahesh and one Mathya Sakat arrived there and threatened the complainant to kill him on the point of Koyta and he had lodged a complaint about the said incident with the police personnel. Moreover, on 13th May, 1988 also there was a function of releasing Ramzan fast by Hindu people at Dias plot and in that function deceased Balekhan Bargir had taken active part and made the said function successful. The Corporator Ramesh Khanna was also present there but did not like the active participation of the deceased. Then it is alleged that Ramesh Khanna in collusion with goondas, namely, accused No. 3-Jaya Tribhuvan with one Mathya Sakat, accused No. 2-Vijay Kolhapure and accused No. 1-Gulab Ohol and accused No. 4-Mahesh Phadtare, assaulted them as aforesaid and since then they were having grudge with the family of deceased whereas accused No. 1 Gulab used to give reports to the Corporator Ramesh Khanna.

The first informant i.e. PW-2 Mohammed Bargir is the nephew of Balekhan Bargir who is the victim, had started a floor mill in Indira Nagar Zopadpatti, Gultekadi, Pune, for about four months back prior to the incident and he was looking after its affairs. It is alleged that on 16th May, 1988 at about 11.00 a.m. while deceased was standing in Dias Plot Chowk, near a pan shop along with Rasulbhai Pansare, the accused No. 3 Jayant Tribhuvan, one Malhari Sakat and accused No. 4 Mahesh Phadtare, armed with knife arrived there and accused No. 3 made an assault upon the deceased by knife but deceased avoided it and snatched the knife from his hands and assaulted him for which the deceased was prosecuted.

The incident in question occurred on 22nd June, 1988 at about 7.00 p.m. when the complainant returned from his duty at about 5.30 p.m. to his house and learnt that his uncle Balekhan Bargir has gone to the floor mill of Indira Nagar, therefore, he proceeded there to meet him. However, while he was going to floor mill, he saw victim coming on the scooter and behind him accused No. 2 Vijay Kolhapure, accused No. 3 Jaya Tribhuvan, accused No. 4 Mahesh Phadtare and accused No. 1 Gulab Ohol, were following him in speed. According to the complainant, when he was at the distance of about 25 to 30 feet, accused No. 1 Gulab gave a forcible blow with the handle of shovel, wooden wrafter (Tikav) on the head of the victim, whereas accused No. 2 Vijay assaulted the victim by Koyta on his head and also gave a blow on the left side neck of the victim and thereby he fell down from the scooter as well as accused No. 3 Jaya and accused No. 4 Mahesh also gave blows of Koyta on legs and hands of the deceased. Thereupon, the complainant raised alarm for help and ran away and thereafter accused persons also ran away, but while going they threatened that if anybody reports the matter against them, they would see that he would also face the same consequences. The persons assembled there removed the injured by auto-rickshaw to Sassoon Hospital and one Noor Mahamad Momin went to Maharshi Nagar Police Chowki at about 7.20 p.m. to 7.25 p.m. and reported the incident orally.

PW-11 PSI Abdul Latif Shaikh, directed the Duty Amaldar to record the information in the Khabari Book and as per the information of Momin, PW-11 PSI Shaikh went to Sassoon Hospital immediately at about 7.50 p.m. but noticed that victim Balekhan Bargir was already declared dead. Hence, the inquest panchanama of the said dead body of the deceased was prepared by the police personnel belonging to Bandgarden Police Station and the dead body was sent for postmortem examination. Accordingly, PW-6 Dr. Shashikant Shripad Sabane, Associate Professor, Forensic Medicine at Sassoon Hospital, performed the post-mortem on the said dead body on 23rd June, 1988 and produced the post-mortem report at Exh. 24. He opined that death of the victim was due to shock as a result of multiple injuries. Moreover, the blood sample from the dead body of the victim was collected and was handed over to police personnel. In the meantime, PW 1 PSI Shaikh recorded the complaint of PW-2 Mohd. Bargir which was treated as F.I.R. (Exh. 18) and a copy thereof and report Exh. 39 were forwarded to the Police Station for registration of crime. Accordingly, the offence was registered under C.R. No. 394 of 1988 u/s 302, 506(2) and 109 read with section 34 of Indian Penal code and also section 37(1) read with section 135 of Bombay Police Act, against the accused persons.

It is also the case of the prosecution that the further investigation was taken over by PW-12 P.I. Dattatray Khotkar-in-charge of Swargate Police Station, on 22nd June, 1988 itself who visited the scene of offence and complainant showed the place of incident, and PI Khotkar prepared spot panchanama Exh. 14. He also recorded the statements of the concerned witnesses. On 23rd June, 1988 PC Zade produced the clothes of the deceased after collecting from Sassoon Hospital and same were seized under the panchanama Exh. 15, Moreover, PW-12 PI Dattatray Khotkar also recorded statements of other witnesses. The accused came to be arrested on 23rd June, 1988. Thereafter PW-13 PSI Vijaykumar Bhoite belonging to Swargate Police Station, interrogated the accused persons on 23rd June, 1988 and accused No. 2 made disclosure statement in presence of PW-7 Mobin Ansari-panch witness, which was recorded in memorandum panchanama (Exh. 26) and thereafter accused No. 2 Vijay led the panchas and police personnel to a place of dilapidated wall and recovery of three Koytas was made from the heap of mud thereafter and the said weapons were seized under the recovery panchanama Exh. 27.

Thereafter the further investigation was taken over by PW-14 PI Narayanrao Daphale on 24th June, 1988 who seized the clothes on the persons of the accused on 25th June, 1988 in presence of panch witness PW-10 Dilawar Shaikh under the panchanama Exh. 35. He also recorded statement of the concerned witnesses. Thereafter he handed over the further investigation to PW-15 PI Ahmed Khan Pathan. He sent the entire seized articles to the Chemical Analyzer for examination purpose along with forwarding letter dated 19th July, 1988 (Exhs. 46 and 47), and report thereof was received on 22nd October, 1988 which is produced at Exh. 48. Accordingly, after completion of the investigation, PW-15 Ahmed Khan filed the charge-sheet against the accused on 12th December, 1988

before the learned J.M.F.C., Pune, under Regular Criminal Case No. 430 of 1988. However, since the offence alleged was exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the said case to the Court of Sessions at Pune. Accordingly, the learned Additional Sessions Judge, Pune, framed the charge against accused Nos. 1 to 4 on 19th July, 1991 (Exh. 4) for the offences punishable u/s 302 read with section 34 of Indian Penal code and u/s 135 read with section 37(1) of Bombay Police Act. Accused Nos. 1 to 4 pleaded not guilty to the charges and claimed to be tried. Hence, to substantiate said charges, the prosecution examined as many as 15 witnesses as mentioned below:-

PW-1 Yunus Shaikh-eye-witness who accompanied with the victim Balekhan Bargir on his scooter on the day of the incident on 22nd June, 1988. PW-2 Mohd. Bargir-eye-witness and nephew of the deceased who lodged the complaint-i.e. the complainant.

PW-3 Babytai Appa Londhe-eye-witness and neighbour of the deceased, who turned hostile.

PW-4 Nazir Shaikh-relative of the deceased-hearsay evidence.

PW-5 Salim Bargir-eye-witness and son of the deceased.

PW-6 Dr. Shashikant Sabane-who performed post-mortem on the dead body of victim and produced the post-mortem report at Exh. 24.

PW-7 Mobin Ansari-panch to recovery of weapons i.e. three Koytas at the instance of accused No. 2 under memorandum and recovery panchanama.

PW-8 Mohd. Ansari-who saw Ramesh Khanna sitting in Maruti Car at 6.00 p.m. on 22nd June, 1988.

PW-9 Allah Baksh Ibrahim Shaikh-who saw the deceased on scooter with PW-1 Yunus Shaikh.

PW-10 Dilawar Shaikh-panch to recovery panchanama of the clothes of accused Nos. 1 to 4-turned hostile.

PW-11 PSI Abdul Shaikh-who recorded the complaint i.e. F.I.R.

PW-12 PI Dattatray Khotkar-who prepared the spot panchanama and panchanama of the seizure of the clothes of the victim and arrested the accused.

PW-13 PSI Vijaykumar Bhoite-who interrogated the accused and made recovery of weapons at the instance of accused No. 2 under memorandum and recovery panchanama.

PW-14 PI Narayanrao Daphale-PI, DCB, Pune-who seized the clothes from the persons of the accused in the presence of panchas under the panchanama Exh. 44.

Exh. 15 Ahmed Khan-who sent the seized articles to Chemical Analyzer's office

for examination purpose and filed the charge-sheet against the accused.

5. The defence of the accused Nos. 1 to 4 is that of total denial and they submitted that they have been implicated in this case falsely, and therefore, claimed to be innocent. However, the accused neither examined themselves on oath nor examined any defence witness. After scrutinizing and assessing the evidence on record, the learned trial Court convicted and sentenced the accused Nos. 1 to 4 as aforesaid by judgment and order dated 18th May, 1992. Being aggrieved and dissatisfied by the said conviction and sentences, accused Nos. 1 to 3 preferred the present appeal challenging the same and prayed for quashment thereof and their consequent acquittal.

6. The learned Counsel for the appellant accused canvassed that although the prosecution has examined as many as 15 witnesses to substantiate the charges levelled against the accused and although out of the said witnesses, four witnesses alleged to be the eye-witnesses, not a single witness therefrom is a trustworthy witness who can be relied upon to base the conviction against the accused persons. He submitted that there are omissions and contradictions in the testimonies of prosecution witnesses, more particularly, in the depositions of alleged eyewitnesses and even the evidence of eye-witness does not corroborate with each other, and therefore, such a shaky evidence cannot be construed as the basis for the conviction against the accused persons. He also pointed out that, although statements of neighbours were recorded, they were not examined as independent witnesses for the reasons best known to the prosecution and the alleged eye-witness PW-2 Mohammed Refique is a nephew of the deceased, whereas another alleged eye-witness PW-5 Salim Bargir is the son of the deceased and testimonies of such interested witnesses i.e. PW-2 and PW-5 are required to be viewed with close scrutiny. In the said context, he submitted that there are variances in the testimonies of PW-2 who is the first informant and PW-5 who is the son of the deceased and even it is surprising that he and his mother were at home in midnight, after the incident of assault upon Salim's father and statement of PW-5 was recorded at the midnight, whereas the testimony of PW-2 i.e. the complainant is hit by the vital omissions and contradictions. He further pointed out that there are over-writings and alterations in F.I.R. and PW-2 Mohd. Bargir who is the complainant, and he has accepted the said position. Moreover, copy of F.I.R. was sent to the Magistrate after one week and there is no explanation for the said delay which creates suspicion about manipulation in the F.I.R. Besides, he submitted that another eye-witness i.e. PW-3 Babytai Appa Londhe did not support the case of the prosecution and she was declared hostile, and hence, her evidence is not of any avail to the case of the prosecution. As regards the testimony of PW-4 Nazir Shaikh, it is submitted that his evidence is hearsay evidence, and therefore, same cannot be relied upon.

7. Insofar as recovery of the weapons is concerned, it is submitted that three Koytas were allegedly recovered at the instance of accused No. 2 as stated by PW-7 Mohd. Ansari-panch witness, but the PW-13-the Investigating Officer, has

stated that the said recovery of weapons was effected at the instance of accused No. 1 and there is variance in respect of the person at whose instance the alleged recovery was effected, and therefore, suspicion is created about the said recovery of weapons. Moreover, it is curious to note that the accused was handcuffed while making the said recovery of weapons which is against the settled norms. In the said context, he further submitted that even the said recovery was effected from heap of mud and bricks in a lane, which is the open place accessible to public at large, and therefore, also the said recovery of weapons cannot be construed as an incriminating evidence against the accused persons. Moreover, the learned Counsel also invited our attention to the vital lacuna in the prosecution case since PW-8 Mohd. Ansari stated in his deposition that on 22.6.1988 at about 6.00 p.m. he saw a white Maruti car and Corporator Ramesh Khanna was sitting inside the said car, and the car was parked opposite to the Zopadpatti on the Market Yard Road, Pune, whereas, the Investigating Officer PW-13 Stated in his deposition that it was revealed during the investigation that said Ramesh Khanna was in General Meeting of Pune Municipal Corporation on the day of the incident between 5.00 p.m. and 7.00 p.m. and the said contradiction was fatal blow to the case of the prosecution.

8. It is further submitted that PW-10 Dilawar Shaikh i.e. panch to the recovery of clothes of the accused persons, did not support the case of the prosecution, and therefore, he was declared hostile, and hence, the recovery of clothes of the accused has not been proved by the prosecution through the independent witness. Hence, it is submitted that although the Chemical Analyzer's report discloses that the blood group of deceased as "O" which was found on the clothes of accused No. 3 and although human blood stains were found on the clothes of the other accused, the Chemical Analyzer's report Exh. 48 cannot be tacked with the said clothes since the said recovery of clothes itself is doubtful, and hence consequently, nexus cannot be established between the accused and the crime. Besides, it is submitted that there are criminal antecedents against PW-7 Mobin Ansari who is the panch for the recovery of weapons at the instance of accused No. 2 and he has admitted that a criminal case for the offence u/s 307 of Indian Penal Code i.e. an attempt to murder is pending against him, and hence, it is pertinent to note that the investigation agency has chosen the said panch with having criminal back ground, and therefore, the alleged recovery of weapons at the instance of said accused No. 2 comes under the cloud of suspicion.

9. Insofar as medical evidence is concerned, it is submitted that the prosecution examined PW-6-Dr.Shashikant Sabane who performed the post-mortem on the dead body of the deceased. He gave the cause of death of the victim as shock as a result of multiple injuries and accordingly prepared the postmortem notes which is produced at Exh. 24. Referring to Chapter 15 of book of Dr. Mody's Medical Jurisprudence, 21st Edition, that a scalp wound by blunt weapon may resemble an incised wound. In the said context, it is submitted that the weapon (wrafter) which was allegedly used while assaulting the victim, has not been recovered and same has not been produced before the Court. Moreover, it is also

canvassed by the learned Counsel for the appellants that the testimony of PW-1 Yunus Shaikh i.e. the alleged independent eye-witness to the occurrence of the incident, is not conceivable since although he was pillion rider when victim was driving the scooter at the time of alleged assault upon him by accused Nos. 1 to 4, surprisingly, he did not sustain any abrasion leave aside an injury and even he did not fell down, and therefore, it is submitted that the theory put-forth by the prosecution is not believable. Accordingly, the learned Counsel for the appellants submitted that considering the infirmities and deformities in the prosecution evidence, the accused Nos. 1 to 3 deserve the benefit of doubt, and therefore, urged that present appeal be allowed and convictions and sentences imposed upon the accused Nos. 1 to 3 be quashed and set aside and they be acquitted thereof.

10. Per contra, the learned APP countered the said arguments and opposed the present appeal vehemently and submitted that the prosecution has examined as many as 15 witnesses to substantiate the charges levelled against the accused persons. He further submitted that out of 15 witnesses, four witnesses are the eye-witnesses, namely, PW-1 Yunus Shaikh, PW-2 Mohd. Bargir, PW-3 Babytai Appa Londhe and PW-5 Salim Bargir, and their testimonies corroborate with each. Moreover, it is also submitted that the said witnesses have given detailed description in respect of weapons used by the accused in the alleged assault upon the victim and also ascribed specific roles to the said accused persons, during the occurrence of the incident. Moreover, it is also submitted that the incriminating weapons i.e. Koyta were recovered at the instance of accused No. 2 under memorandum and recovery panchanama in presence of PW-7 Mobin Ansari and also clothes of the accused persons were recovered after their arrest under the panchanama. It is submitted that the said weapons i.e. Koyta and clothes of the accused were blood stained and the said articles were sent to the Chemical Analyzer's officer for examination purpose. In the said context, it is submitted that, admittedly, the blood group of deceased was "O" and blood stains of same group were found on the clothes of accused No. 3 and blood stains of human blood were found on the Koyta and clothes of the other accused persons, and the accused have not given any explanation in that respect. Absence of any explanation from the accused connect them with the crime. The learned APP also submitted that the learned trial Court has scrutinized and assessed the evidence in proper perspective and thereafter convicted and sentenced the accused persons. The medical evidence adduced by the prosecution through PW-6 Dr. Shashikant Sabane who prepared the post-mortem on the dead body of victim and post-mortem notes Exh. 24 and the ocular evidence adduced by the prosecution, cumulatively connect the accused persons with the crime, and there is no glaring mistake therein, and hence, urged that present appeal be dismissed.

11. We have perused the oral, documentary and medical evidence and also the evidence of forensic science laboratory and heard the submissions advanced by learned Counsel for the parties anxiously.

12. At the outset, the prosecution evidence can be divided into five compartments i.e. (i) ocular evidence of eye-witnesses; (ii) evidence of recovery of weapons and recovery of clothes of the accused; (iii) medical evidence; and (iv) evidence of forensic science laboratory; and (v) Police witnesses.

13. The evidence of eye-witness comprises the testimony of PW-1 Yunus Shaikh, PW-2 Mohd. Bargir-nephew of the victim and the complainant, PW-3 Babytai Appa Londhe-turned hostile, and PW-5 Salim Bargir-son of the victim. Coming to the testimony of PW-1 Yunus Shaikh, he has stated that he knew deceased Balekhan Bargir who had a floor mill in the area of India Nagar Zopadpatti where he resided and he also knew the accused persons. Since there was a quarrel between the accused and the victim since prior to the date of occurrence of the incident and the incident of assault took place prior to the incident. As regards the occurrence of incident is concerned, he stated that at about 7.00 p.m. to 7.15 p.m. on the date of incident, the deceased was sitting on his own parked scooter in front of mill and PW-1 also went there and chitchatted with each other and on the request of deceased he accompanied with him on the scooter and PW-1 was the pillion rider and they proceeded to the main road from the lane which was narrow and reached near some dispensary in a lane. At this juncture, accused No. 1 Gulab suddenly came from the right of the scooter and struck a blow with wooden rafter on the head of the deceased and thereafter he fell down from the scooter and rest of the accused came from the same direction and they were armed with Koyta and they also attacked upon the deceased and repeatedly gave blows of Koyta on the neck, arms and legs of the deceased. PW-1 immediately got down from the scooter after deceased fell down and he was frightened, and therefore, ran towards his house and narrated the incident to his sister Mumtaz. After lapse of about 10 to 15 minutes, he visited the place of incident and found that victim Balekhan Bargir succumbed to the injuries. The police personnel approached him in the same night at about 9.00 p.m. to 9.30 p.m. and recorded his statement. He identified Articles 1 to 3 which were in the hands of accused Nos. 2 to 4 during the aforesaid assault upon the deceased.

14. During cross-examination, he stated that he did not go to the police on his own accord before he was called and he was not aware when the police visited the spot in that evening. He also did not notice the scooter of the deceased lying on the spot while going to police chowky and he also stated that he does not know about it. He further stated that the spot of the incident is visible from front side of his house. As regards the weapons, he stated that he known Koyta as a means of cutting instrument and he has seen it even prior to the incident, however, he has never seen Vila and does not know about it. He also admitted that he referred Vila in the police statement as the weapon by which the assailants were armed and assaulted the victim but omitted the word Koyta in his statement. He further stated that, while he was sitting on the scooter along with the deceased, at that time he did not notice PW-2 i.e. the complainant and even he did not recollect whether he saw PW-2 after he occupied the scooter till the arrival of police personnel. As regards the assault, he stated that all the

blows were inflicted upon the deceased by the assailants and then he fell down from the scooter. A contradiction in respect of contents of the portion "A" of Exh. 45 was taken out in the cross-examination that he started to run away while going to his house when the deceased fell on the edge of the gutter. Moreover, an omission in his police statement amounting to improvement in his deposition was taken out in respect of the alleged assault by accused Nos. 2 to 4 upon the deceased by Koyta on his neck, arms and legs.

15. Considering the evidence of PW-1 Yunus, although he was an independent witness, who was pillion rider on the scooter of the victim, while victim was driving the said scooter on the date of incident, allegedly witnessed the occurrence of incident. The version of PW-1 as regards the main attack by accused Nos. 2 to 4 on the victim by Koytas on his neck, arms and legs is a proved omission in his police statement and improvement in his testimony. The said vital omission goes to the root of the matter and creates suspicion in respect of role of accused Nos. 2 to 4 in respect of their presence at the place of incident and at the occurrence of the incident. As regards the alleged assault made by accused No. 1 Gulab by way of wooden rafter on the head of the deceased while he was driving scooter, it is pertinent to note that the said attack was made only on the deceased and PW-1 Yunus Shaikh was the pillion rider did not sustain even any abrasion leave aside the injury. Moreover, it is also material to note that, as per the version of PW-1, after the said attack, victim fell down from the scooter and it is surprising that how the PW-1 got down from the scooter after deceased fell down and in fact, in the natural course of events, PW-1 would also fall down from the scooter and would sustain some injury/abrasion but so did not happen, and therefore, the theory put-forth by the prosecution in that respect is not convincing, and hence, the alleged attack made by accused No. 1 Gulab upon the deceased, comes under suspicion. As regards the blow given by accused No. 1 on the head of the victim by wooden rafter, it is important to note that the said wooden rafter has not been recovered during the course of investigation and same has not been produced before the Court and the said vital link in the prosecution case is missing. Moreover, the contents of portion marked "A" in Exh. 45 that PW-1 started running away towards his house when deceased fell down from the scooter, amount to contradiction in his police statement and the deposition. Moreover, PW-1 admitted that he did not go to police on his own accord before he was called, which also exhibits the conduct of PW-1. So also, he did not notice the scooter of the victim lying on the spot while going to the police chowky and even he was not aware of it, although the spot of the incident was visible from the front side of his house. Besides, he referred to Vila although he was aware what Koyta was and he omitted the word "Koyta" while narrating the incident before the police personnel that the three assailants were armed with Vila and not referred to Koyta and the said conduct of PW-1 also speaks for itself. Apart from that, he categorically stated in his deposition that all the blows were inflicted upon the deceased by the assailants when he fell down from the scooter and if that is the position, suspicion is created about the assault by the accused

No. 1 Gulab by giving blow by the wooden rafter on the head of the deceased which was allegedly given by him upon the victim before felling down from the scooter.

16. Coming to the deposition of PW-2 Mohd. Rafiq Bargir, who is the nephew of the deceased and the complainant in the present case and also the alleged eye-witness in respect of the occurrence of the incident, who gave prelude to the incident i.e. the instances occurred prior to the incident i.e. on 13th May, 1988 the deceased had arranged fast breaking ceremony of Ramzan with Hindu brothers and Muslim and social workers of all parties including Corporator Ramesh Khanna had attended it and thereafter on 16th May, 1988 at about 11.00 p.m. when deceased and Rasulbhai Pansare were standing in front of pan shop in square of Dias plot and when PW-2 was present there, accused No. 3 Jaya and Malhari Sakat armed with knife arrived there and assaulted the deceased and said accused No. 3 gave knife blow on the chest of the deceased but deceased snatched the said knife from him and assaulted him with the same and police case was filed in that respect. He also narrated another incident which occurred on 20th May, 1988 at about 2.30 p.m. when he had gone to the chemist near Samrat Hotel, Market Yard Road, accused No. 2 Vijay, accused No. 4 Mahesh and one Mallya came in auto-rikshaw and they were armed with knife and Koytas and they intended to assault PW-2 but he ran inside the Chandan Hotel, and therefore, was saved and the assailants ran away by auto-rikshaw. According to PW-2, he lodged complaint in that respect at Maharshi Nagar Police Chowki. As regards the occurrence of incident on 22nd June, 1988, he stated that at about 6.30 p.m. to 7.00 p.m., he saw that deceased and PW-1 coining on scooter towards his direction and they reached near the place of deceased, but at this juncture, accused No. 1 Gulab suddenly came from the side lane armed with rafter and gave blow on the head of deceased who fell down from the scooter immediately, whereas accused Nos. 2 to 4 assaulted the deceased on his neck and legs. Accused persons also tried to assault PW-1 with Koyta but he ran away. After seeing that PW-2 approached the spot by running but by that time accused persons ran away, but while leaving the spot they uttered that if somebody makes complaint and would come forward to depose against them, they shall make his similar fate. Thereafter, PW-2, his brother Rashid and one Nazir Shaikh and Yunus lifted the deceased and put him in the auto-rickshaw and asked one Momin to report the said incident to police and they proceeded to Sassoon Hospital but the doctor declared him dead. He further stated that PW-11 PSI Shaikh from Maharshi Nagar Police Chowky rushed to the hospital and made enquiry with Momin and recorded his complaint (Exh. 18). He also stated that at the instigation of Ramesh Khanna, the Corporator, the accused persons killed his uncle.

17. In the cross-examination, he admitted that he was one of the accused in respect of the incident dated 16th May, 1988 and he was arrested in the month of August, 1988 about the said incident. He also stated that he attended his duty during the period from 16th May, 1988 till 20th June, 1988 and his duty hours

were from 7.00 a.m. to 5.00 p.m. He further stated that neither he approached the police nor the police came to him from 16th May, 1988 till 19th June, 1988. He also admitted that accused No. 2 Jaya was the complainant in that case. He further admitted that he was prosecuted for the offence punishable u/s 324 of Indian Penal Code in the year 1985 on the complaint of said Accused No. 2 Jaya. As regards the complaint, he stated that he put his signature thereon but had not put the date below his signature. He categorically stated that it did not happen that he put the date below his signature on the complaint and the same was over-written and changed. When the complaint was confronted to him, he admitted that there appears some over-writing in the date given below his signature and so is the position on the other pages of the complaint. He was unable to give any reason about the so-called over-writing and the change of the date. He further stated that he does not know the names of persons who reside adjoining to the place of the incident. He is not acquainted with persons named with Shaikh Hasan Shaikh Gani and Amir Khan Ibrahim Khan. He also stated that he did not point out the place of incident to the panchas or police at the time of spot panchanama. He denied that, on the same night of the incident between 10.40 p.m. to 11.30 p.m. the scooter involved in the crime was handed over to him by the police. However, he stated that a receipt was obtained from him 7 to 8 days after the incident in that respect. He also stated that police did not collect blood stained earth in his presence from the spot. As regards the contents of the complaint, he stated that he had seen the pillion rider of the scooter but he does not know whether the same was disclosed by him in the complaint. He further stated that he does not know whether he disclosed in his complaint that the accused persons tried to assault PW-1 Yunus with a sickle and that he ran away and further he did not recollect whether he had stated before the police or not that PW-1 was the person sitting on the scooter along with the deceased and that accused persons had tried to assault him and that he ran away since he was mentally disturbed, causing a suspicion in respect of very presence of PW-1 Unus Shaikh at the place of incident and alleged attempt of assault upon him by the accused. Further, as regards the contents of the complaint, he stated that it did not happen that he reached his house from duty at about 5.30 p.m. and the mention in his complaint that he has reached to the house from duty at 5.30 p.m. is incorrect. In the said context, he further stated that he had not asked the police to correct the timing of his reaching home as 4.30 p.m. instead of 5.30 p.m. He further stated that it did not happen that deceased had already left flour mill before he reached to the house from duty and the mention in the complaint that when he reached from the house from duty, he came to know that deceased had already gone to his flour mill in Indira Nagar Zopadpatti amounting to contradictions in his police statement and testimony. Besides, he has stated that he did not remember whether he has stated in his complaint that when he returned to him from duty, his uncle asked him to come to flour mill at 7.00 p.m. to 7.15 p.m. and also he does not remember whether he stated in his complaint that when he saw deceased on the scooter near the dispensary, at that time, accused No. 1 suddenly came from the side lane and could not give any reason

for such absence in his complaint, amounting to omission in the police statement and improvement in his testimony. He further admitted that Jawaharlal Nehru Road is heavily trafficked at about 7.00 p.m. and it is the pick hours of the traffic. He also admitted that he did not intervene to rescue the deceased when he first noticed assault.

18. Accordingly, PW-2 Mohd. Rafiq Bargir narrated the instances prior to occurrence of incident i.e. prelude to the main incident and also stated about the occurrence of incident of 22nd June, 1988. However, there are vital omissions and contradictions in the testimony of PW-2 which go to the root of the matter. Moreover, PW-2 also admitted that he did not put date below his signature on the complaint and there are over-writings in the date below his signature on the F.I.R. Moreover, it appears from his deposition that one criminal case was filed against him and he was even arrested therein. Moreover, he categorically denied that scooter of victim was handed over to him on the night of the incident. So also his testimony creates suspicion even about the presence of PW-1 at the place of incident as mentioned herein above. Besides, he also admitted that the road on which the incident occurred i.e. Jawaharlal Nehru Road is heavily trafficked at about 7.00 p.m. which is the peak hour of the traffic. Apart from that, the Investigating Officer admitted that copy of the F.I.R. was sent to the Magistrate after one week and there is no explanation for the said delay put-forth by the prosecution, and therefore, submission advanced by learned Counsel for the appellants that possibility of manipulation of therein cannot be ruled out, bears substance and consequently creates suspicion about the same. Hence, all the said factors lead to suspicion in respect of the occurrence of the incident and involvement of the accused therein and the variance in the testimony of PW-2 and the contents of F.I.R. strengthens the said suspicion.

19. That takes us to the eye-witness i.e. PW-3 Babytai Appa Londhe, who admittedly, did not support the case of the prosecution and turned hostile and even the questions were put to her by the learned APP in the form of cross-examination but nothing beneficial to the case of the prosecution could be elicited therefrom, except the contents of portions marked A to C respectively, and therefore, her said deposition cannot be of any aid and assistance to the case of the prosecution. Moreover, the evidence of PW-4 Nazir Shaikh who is the relative of the victim also appears to be hearsay evidence in respect of the very occurrence of the incident, and therefore, the same is also of no help to the case of the prosecution.

20. PW-5 Salim Bargir i.e. son of the victim, who is also the alleged eye-witness, testified that he was staying with his mother, sisters and father who was conducting flour mill in Indira Nagar Zopadpatti area. On the date of incident at about 7.00 p.m., he was sitting in front of the flour mill and at that time his father came on the scooter on the flour mill and also in the meantime PW-1 Yunus Shaikh came there and they had some talk. Thereafter his father and PW-1 proceeded towards Dias plot by scooter and his father drove the scooter

and PW-1 was the pillion rider. He heard hue and cry, and therefore, ran towards the side of commotion and saw that accused Nos. 2 to 4 were assaulting his father with Koyta and accused No. 1 was holding handle of shovel and was standing there and after hearing the said commotion from the distance of about 25 ft. PW-1 came running from his opposite direction i.e. from the place of incident. Thereafter the accused persons ran away from his right side. His father was lying near the edge of the gutter near the dispensary and there was bleeding from his body and he became unconscious. The maternal uncle Nazir was in his pan shop to whom he informed about the aforesaid incident. Thereafter he rushed to home and reported the incident to his mother. He further stated that police came to his house and he and his mother accompanied them to the police chowky.

21. In cross-examination, portion mark "A" of his statement was brought on record that when he went to house from the place of incident, his maternal uncle i.e. PW-4 Nazir and Nazir Hasan were at the house, amounting to contradiction in his police statement and deposition and omission was also brought about the fact that he went to shop of his maternal uncle and reported the incident saying that accused assaulted the deceased, amounting to improvement in his deposition. Moreover, omission was also brought in respect of his father and PW-1 Unus Shaikh proceeding on scooter and his father starting scooter and PW-1 being a pillion rider, amounting to improvement in his testimony. Pertinently, he stated that there was no crowd at the spot where the incident had occurred. Moreover, portion mark "B" of his statement was brought out during the cross-examination that crowd of persons had gathered at the spot while his father was being assaulted, amounting to contradiction in his police statement and deposition. Pertinently, PW-2 Mohd. Rafiq Bargir has stated in his deposition that Jawaharlal Nehru Road i.e. the road on which incident had occurred was the heavy trafficked road and it was the peak hour at 7.00 p.m., and therefore, in the natural course of events if the incident had occurred on the said road, certainly nearby people would assemble but PW-5 has stated that there was no crowd at the spot when the incident occurred which is not conceivable and considering the contents of portion mark "B" amounting to contradiction in his police statement and the testimony confirms the said position. He further stated in the cross-examination that he did not go close to his father but remained at the distance of about 20 feet while he was being assaulted. Even he did not go to the spot on the following day or thereafter and also he did not go to the Sassoon Hospital, even his mother did not go to the said hospital. He further stated that, he slept by 11.00 p.m. and his mother was in the house at that time. Moreover, police personnel had come to their house by that time and went back but they came again at the midnight and then he and his mother accompanied them to police chowky. A suggestion was given to him that he himself, his maternal uncle and complainant conspired to implicate the accused persons falsely in the present case, but the same was denied by him and even suggestion was given to him that he did not watch the incident, but the same was also denied by him. He also

categorically stated that he did not state before the police that accused No. 1 was seen armed with Danda in his hand. He also admitted that he has not stated before the police specifically that accused Nos. 2 to 4 were armed with Koytas while assaulting the deceased. An omission was brought that accused Nos. 2 and 4 were seen moving in the company of accused Nos. 1 and 3, amounting to improvement in his testimony.

22. The very omissions and contradictions as detailed herein above diminish the credibility of testimony of PW-5 Salim since they are vital and go to the root of the matter. It is curious to note that PW-5 Salim who is the son of the victim Balekhan Bargir, ventured to state that he did not go close to his father and remained at the distance of 20 feet when his father was being assaulted and even he did not go to the spot on the following day or thereafter. In the natural course of events, when a father was being assaulted, son would have gone to rescue him and even he would have gone to the spot later on but so did not happen. He further stated that even he did not go to Sassoon Hospital as well as his mother did not go to the Sassoon Hospital and he slept by 11.00 p.m. and his mother was in the house at that time and police personnel came their house and went back and again they came in the midnight. The said conduct of PW-5 Salim is suspicious and in the natural course of events when father of PW-5 Salim is admitted in Sassoon Hospital, he and his mother would rush to the said hospital, but they did not even visit the said hospital immediately and simply slept at home by 11.00 p.m. and although police personnel visited their house, they went back and again police personnel were required to go back in the midnight and thereafter they accompanied with them to police chowky. In the ordinary course of events, when father of a person is assaulted, son would rush to the hospital to give him medical treatment and would not sleep at home and even would assist the police personnel in the investigation but so did not happen in the instant case and the said very conduct of PW-5 Salim is suspicious.

23. That takes us to the recovery of the weapons allegedly caused at the instance of accused No. 2 Vijay in presence of PW-7 Mobin ansari and in the said context PW-7 deposed that, on 23rd June, 1988 he was called by police personnel of Swargate Police Station to act as a panch and another panch was also present. Accused No. 2 Vijay was in the custody of police and he was interrogated by police in his presence and thereupon he agreed to point out the place and to make the discovery of the weapons being kept near his house and near a wall. Accordingly, the memorandum panchanama was prepared at Exh. 26 and thereafter accused Vijay led the police to the locality of Guruwar Peth, Pune, near his house and further led to a dilapidated wall and he took out three weapons i.e. Koytas from a heap of mud and bricks in the lane and the said weapons bore blood stains and same were seized under the recovery panchanama after sealing (Exh. 27).

24. He admitted in the cross-examination that a criminal case was pending against him in respect of offence punishable u/s 307 of Indian Penal Code and

even the another panch Rasul was also involved in the said case. He also attended the funeral procession of the deceased since he was acquainted with the deceased. He did not remember whether he himself and co-panch acted as panchas prior to the said panchanama, but stated that they might have acted in some case from Swargate Police Station, and therefore, a constable from the said Police Station approached them and called them as panch in the present case. He further stated that, accused No. 2 Vijay was inside the lock up but does not remember as to whether he was handcuffed or otherwise, however, he stated that he did not hear the talk which took place between P.S.I. And accused Vijay when he was in lock up. He admitted that there is no specific mention in the panchanama that the weapons were recovered from the heap of mud and stones and bricks. He further admitted that accused Vijay was handcuffed throughout.

25. Accordingly, the testimony of PW-7 Mobin Ansari reveals that accused No. 2 made voluntary disclosure statement which was recorded under memorandum panchanama and weapons i.e. three Koytas were recovered at his instance from the heap of mud and bricks in a lane near his house in presence of panch witness PW-7 Mobin Ansari and co-panch Rasulbhai. However, there appears to be criminal background of both the said panchas. Moreover, it also appears that they acted as panch for Swargate Police Station earlier also and PW-7 Mobin Ansari did not hear the talk between PSI and the said accused in respect of the very disclosure. Moreover, accused No. 2 was handcuffed throughout. Thus, the panchas appears to be regular panchas of Swargate Police Station who have criminal antecedents and the alleged recovery of blood stained weapons was made at the instance of accused No. 2 from the heap of mud and bricks in a lane i.e. the open place which is accessible to the public at large and even accused No. 2 was handcuffed throughout. Pertinently, PW-13 PSI Vijaykumar Bhoite stated in his deposition that the said recovery of weapons i.e. Koytas was made at the instance of accused No. 1 and his testimony is silent in respect of the said recovery of Koytas at the instance of accused No. 2 as stated by PW-7 Mobin Ansari-panch witness, and hence, due to the said deformities and infirmities and even contradiction between panch witness and PW-13 PSI Vijaykumar Bhoite, suspicion is created that whether the said recovery was made at the instance of accused No. 2 or at the instance of accused No. 1, and hence, the very recovery of weapons i.e. Koytas, comes under the doldrums.

26. Insofar as recovery of clothes of the accused are concerned, the prosecution examined PW-10 Dilawar Shaikh in that respect, but the said panch witness did not support the case of the prosecution and turned hostile, and hence, the said recovery of clothes of the accused has not been established by the prosecution through an independent witness. Moreover, PW-12 PI Dattatraya Khotkar stated that clothes of deceased were collected from the hospital and the same were seized under the panchanama Exh. 15 in presence of two panchas but the prosecution has not examined the said panch witnesses. Admittedly, the clothes of the accused and the clothes of the victim were sent to the Chemical Analyzer's office for examination purpose but since the seizure of clothes of

accused was not proved and established through independent panch witness since PW-10 Dilawar Shaikh turned hostile, and as the prosecution has not examined the panch witness to the seizure of the clothes of the victim, both the said recoveries of clothes have not been established through an independent panch witness, and hence, the Chemical Analyzer's report thereof is of no consequence to connect the accused with the crime. Pertinently, although PW-15 Ahmed Khan has stated in his deposition that seized articles were sent to Chemical Analyzer's office along with forwarding letters on 19th July, 1988 (Exhs. 46 and 47) and Chemical Analyzer's report was received on 22nd October, 1988 which is at Exh. 48. However, the Chemical Analyzer's report has not been produced on record at Exh. 48 and Exh. 48 is an application preferred by the Advocate for the accused on 26th March, 1992. Accordingly, the fact remains that the Chemical Analyzer's report dated 30th September, 1988 pertaining to seized articles and clothes has not been produced on record and same has not been proved and exhibited, which amounts to vital lacuna in the prosecution case since the said corroborative piece of evidence to connect the accused persons with the said clothes and weapons is lacking.

27. Moreover, there is glaring defect in the prosecution case since PW-8 Mohd. Ansari stated in his deposition that after attending the evening prayer at the said mosque he came out of the Zopadpatti on the main road on 22nd June, 1988 at about 6.00 p.m. and at that time he saw a Maruti white car wherein Corporator Ramesh Khanna was sitting and the said car was parked opposite to the Zopadpatti of the Market Yard Road. Further PW-15 PI Ahmed Khan categorically stated in his cross-examination that it was revealed that said Ramesh Khanna was present in General Body meeting of Pune Municipal Corporation on the day of the incident between 5.00 p.m. to 7.00 p.m. Accordingly, both the versions of said witnesses are contradictory to each other in respect of presence of Ramesh Khanna, which also creates suspicion in respect of theory put-forth by the prosecution.

28. That takes us to the medical evidence adduced/produced by the prosecution through PW-6 Dr. Shashikant Sabane, who stated that he was attached and working as Associate Professor, Forensic Medicine in B.J. Medical College, Pune, at the relevant time and on 22nd June, 1988, the dead body of deceased Balekhan Bargir was received by him at about 11.00 p.m. for the post-mortem examination. Accordingly, he conducted the post-mortem on the said dead body from 11.05 p.m. to 00.30 hours on 23rd June, 1988. Paragraph 2 of his examination-in-chief reads as under:-

2. On examination I found the following external injuries on the person of the deceased which I described in the separate list attached to the post-mortem report.

(1) Incised wound:-On the left side of neck, extending from the angle of mandible left extending posteriority to C5, C6 body. Transversally situated 6" x 2" x 2" oval in shape. Margins, angles clear. 2" below the left mastoid process.

Internally there is fracture of left ramus of mandible. Cutting the C6 of C5 spinal vertebrae, and cutting the spinal cord on left side. The Carotid vessels cut with blood clots near vessels.

(2) Incised wound: 1/2" below the wound No. 1. Transversally situated extending from ramus of mandible to posteriority 1" lateral to spinous process of C 6, measures 5" x 1" x 1/2" cutting the transverse process of C7. The muscles and small vessels cut transversally, margins and angles clear cut.

(3) Incised wound: 5" above the glabella (bridge of nose) posteriorly. Anterior direction 3 1/2" x 1/2" bone deep, with linear fracture of frontal bone 3" in length.

(4) Incised wound: Transverse in direction, oval in shape, joining to serial No. 3, extending 1/2" right lateral and 3" above right pinna, bone deep, measures 3 1/2" x 1/2", depressed fracture of the left parietal bone, wound oval in shape, margins and angles clean cut.

(5) Incised wound-oblique in direction. 6" above right mastoid measures 2" x 1/2" oval in shape, margins angles clear cut, bone deep, linear fracture right occipital bone 2" in length. Margins angles clear cut of the incised wound, oval in shape.

(6) Incised wound-2" behind serial No. 5, oval in shape, measures 2" x 1/2", bone deep, margins, angles clean cut on right side.

(7) Lacerated wound 2" below right lat. Epicanthion, irregular, 1/2" x 1/2" muscle deep.

(8) Abrasion-oblique 6" above the right lateral epicanthion measures 3" x 1/4" reddish.

(9) Abrasion 5" above right lateral epicanthion laterally, measures 4 1/2" x 1/4", reddish.

(10) Incised wound 3" above left lateral epicanthion transverse, measures 1/2" x 1/4" muscle deep, margins angles clean cut.

(11) Incised wound transverse 1/2" above left lateral malleolus 2" x 1/2" bone deep opening into left ankle joint, crack fracture lower end of left tibia.

(12) Incised wound transverse 2 1/2" above left lateral malleolus 1 1/2" x 1/2", muscle deep.

(13) Incised wound transverse 3" above left lateral malleolus 1" x 1/2", bone deep.

(14) Incised wound 6" above left lateral malleolus, transverse, 2" x 1/4", muscle deep.

(15) Incised wound, 8" above left lateral malleolus transverse, 2" x 1/4" muscle

deep.

(16) Incised wound 9" above left lateral malleolus 2" x 1/4" transverse, muscle deep.

(17) Incised wound, oblique on lateral aspect of left knee 3" x 1/2", muscle deep.

All the external injuries were ante mortem and were recent.

29. Moreover, PW-6 Dr. Shashikant Sabane described the internal damage in the same list and also stated that internal injuries in relation with injury Nos. 3, 4, 5 and 6 subdural and subarachnoid haemorrhage. Haematoma under dura 4" x 4", laceration to the brain. He further stated that external injury No. 4 as per the list on the head consisting depressed fracture was possible by hard and blunt object. It is possible by the hit of thick handle of shovel. The other head injuries as described in the list can be possible by sharp edged heavy weapon. Injury Nos. 7, 8 and 9 can be possible by hard and blunt object. These injuries are possible due to fall on hard and blunt on rough substance. He also stated that injuries 10 to 17 as described in the list can be possible by sharp edged heavy weapon. He was shown Muddemal articles 1 to 3 and he stated that injury Nos. 10 to 17 can be possible by the said weapons by its sharp edge. He also stated that injury Nos. 3, 4, 5 and 6 on head have caused subdural and subarachnoid haemorrhage, haematoma under dura 4" x 4" and lacerations of the brain, each. External injury No. 1 has resulted with internal damage of the spinal cord on left side, carotid vessels cut with blood clots near vessels. External injury No. 2 has caused internal damage of cutting of neck muscles and small vessels. The depth of the injuries to the spinous process. Except external injury No. 11, the other injuries i.e. injury Nos. 10, 12 to 17 are concerned, were muscle deep and bone deep. External injury No. 11 has damaged internally ankle joint deep (left), with crack fracture of the bones. External injuries 1 to 6 by themselves along with the internal damage were sufficient in the ordinary course of nature to cause the death. He also opined that the cumulative effect of all these external injuries together with internal damage would result in instant death. In his opinion, the cause of death was shock as a result of multiple injuries. This includes subdural and subarachnoid haemorrhage of the brain and its laceration. Accordingly, he collected the blood sample from the dead body and the same was handed over to the police personnel. Accordingly, he prepared the post-mortem examination report which is produced at Exh. 24.

30. During cross-examination, he was confronted with Dr. Mody's Medical Jurisprudence, 1972 Edition, page 203, and he agreed with the opinion of Dr. Mody that an incise wound or slash wound is produced by sharp cutting instrument such as, knife, razor, sword, gaddasa (chopper), axe, hatchet, scythe, kukri or any object, such as, broken piece of glass or metal which has a sharp cutting pointed or linear edge and are mostly intentionally inflicted. He also referred to Chapter 15 of the said book of 21st Edition of Dr. Mody and volunteered that a slash wound by blunt weapon may resemble an incised

wound. However, he deferred with the proposition that the incised wound caused by sharp edge weapon and wound caused by blunt object resemble in the incised wound would be different one. He also volunteered that grossly by looking at the particular wound with naked eye, it will resemble with each other in nature. He also admitted that he has not described that injury No. 4 as per the list is resemble incised wound and he has not stated that injury No. 4 is different from injury Nos. 3 and 5. He also deferred with the proposition that the injuries caused by blunt weapon would be similar to the particular object of the weapon or the location of the body. However, he agreed that injury No. 4 was of oval shape. He denied that injury No. 4 would be possible by the hard and blunt object associated with depressed fracture. He also did not agree with the proposition that a person going on the scooter would not receive injury No. 4 if it is caused by hard and blunt object. He also admitted that he has mentioned in his report that injury No. 4 was possible due to hard and blunt object. He further stated that, it is impossible that injury No. 4 would be possible due to fall on the rough and stony substance from the scooter. He was shown Article 3 and he stated that, it is having the front portion and proximal part being sharp and the middle one is blunt, presently. The nonbroken part of the weapon (Article No. 3) can reproduce the incised wound like injury Nos. 12, 13, 14, 15, 16 and 17. As regards injury No. 4 is concerned, he has stated that the margins are clean cut and angles are also clean cut.

31. Considering the testimony of PW-6 Dr. Shashikant Sabane and the contents of postmortem notes (Exh. 24), there cannot be two opinions that cause of death of the victim is shock as a result of multiple injuries, and the external injuries as described in Col. 17 of the post-mortem notes co-relate with the internal injuries as described in Col. Nos. 19, 20 and 21 of the post-mortem notes. Hence, there cannot be any dispute that the victim Balekhan Bargir met with the homicidal death (unnatural).

32. Having comprehensive view of the matter and taking survey of the entire ocular, documentary and medical evidence and also the evidence of Forensic Science Laboratory, we are of the considered view that there are infirmities and deformities in the prosecution evidence and also there are vital omissions and contradictions in the prosecution evidence which go to the root of the matter as discussed herein above and leads to suspicion in respect of theory advanced by the prosecution, and therefore, benefit of doubt deserves to be given to the appellants and authorship of the homicidal death of the victim cannot be crowned upon the appellants, and hence, present appeal deserves to be allowed by quashing and getting aside the conviction and sentences imposed upon the appellants/accused and they are required to be acquitted thereof. In the result, criminal appeal is allowed. The conviction and sentences imposed upon the appellants i.e. original accused Nos. 1, 2 and 3 for the offence punishable u/s 302 read with section 34 of Indian Penal Code by judgment and order dated 18th May, 1992 rendered by the learned Additional Sessions Judge, Pune, stands quashed and set aside and the accused are acquitted thereof.

Appellants 1, 2 and 3 are on bail and their bail bonds stand cancelled.