
(1991) 04 BOM CK 0014
In the Bombay High Court
Case No : Criminal Appeal No. 172 of 1990

Mahadeo Narayan Sakhare and Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 11-04-1991

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302

Citation : (1991) 4 BomCR 516

Hon'ble Judges : M.S. Vaidya, J; D.W. Dhabe, J

Bench : Division Bench

Advocate : S.S. Choudhary and C.V. Thombre, for the Appellant; G.R. Ghuge, Assistant Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

M.S. Vaidya, J.—The appellants were tried in Sessions Case No. 74/89, by the Sessions Judge, Osmanabad, for offences punishable under sections, 147, 148, 302 read with 149, 302 read with 34, 325 and 323 read with 149 of the Indian Penal Code. Under judgment and order dated 18th June, 1990, the learned Sessions Judge had found all the appellants guilty of offences under sections 147, 148, 302 read with 149, 325 read with 149, 323 read with 149 and 302 read with 34 of the Indian Penal Code. For offences u/s 302 read with 149 each of the appellant was sentenced to suffer imprisonment for life. No separate sentences were awarded for rest of the offences.

2. Deceased Vasant Zingare lived with his wife (P.W. 2) Prayagbai, son (P.W. 1) Chandrakant, two other sons Shashikant and Hemant and a daughter (P.W. 3) Sangita in his house at village Chivri, tq. Tuljapur. Shashikant used to drive an auto rickshaw formerly at Pune, but at about the time of the offence he used to drive an auto rickshaw at Sholapur. All the appellants are neighbours of the aforesaid family. Appellant Nos. 2 to 4 are the sons of appellant No. 1 Mahadeo and the husband of appellant No. 5 Trivenibai. All was not very well between the

aforesaid families and about 8 or 9 months prior to the date of incident of the offence, there was some quarrel between Shashikant, son of the deceased and appellant No. 4 Rajendra at Pune. The hostility had assumed a different edge since the date of that quarrel. The incident in question is alleged to have taken place on 3rd of August, 1989 at about 9.00 p.m. Shashikant, the son of the deceased, had come to Chiwri from Sholapur about a week before the incident of the offence. Appellant No. 4 Rajendra also had come to Chiwri about a month before the date of the incident. The deceased and his son Shashikant had gone for dinner to the house of a brother of the deceased and (P.W. 1) Chandrakant was listening to his tape-recorder in front of the grocery shop of one Shivanand Shankar Patil. One Gajendra Londhe came in hurry to (P.W. 1) Chandrakant to tell him that appellant No. 4 Rajendra and his groupmen had assaulted and beaten his younger brother Shashikant and that they were abusing deceased Vasant and his sons. On hearing so, (P.W. 1) Chandrakant rushed to the house of appellants. It is alleged that appellant No. 2 Kalyan, then, hit a stone on the head of (P.W. 1) Chandrakant. Some neighbours, who were following him, intervened and separated them. By that time (P.W. 3) Sangita had reported the incident to her father and her mother (P.W. 2) Prayagbai, who had just returned from a flour mill, came to know of the incident. They rushed towards the house of the appellants to see who had assaulted Chandrakant and Shashikant. It is alleged that on seeing deceased Vasant and (P.W. 2) Prayagbai arriving on the scene of the offence, appellant No. 1 Mahadeo and appellant No. 5 Trivenibai instigated their sons, appellant Nos. 2 to 4 to assault them saying that at least one of them must be finished on that day. Appellant No. 2 Kalyan, appellant No. 3 Maruti and appellant No. 4 Rajendra, who were armed with a stick, axe and a gupti, respectively had then assaulted deceased Vasant. Appellant No. 2 Kalyan is also said to have assaulted the deceased with a pick-axe on the head of the deceased. Deceased sustained bleeding injury and fell down. (P.W. 2) Prayagbai attempted to save him but in doing so she was caught hold of by appellant No. 5 Trivenibai and was fallen down. Appellant No. 5 Trivenibai is said to have given kicks and blows to Prayagbai. Appellant No. 4 Rajendra is said to have given a stick blow on the hand of Prayagbai, as a result of which she had sustained a fracture on her arm and had fallen down. Appellant No. 5 Trivenibai is also alleged to have hit a stone on the leg of deceased Vasant. Finding that deceased Vasant and his partymen were thus dealt with, the appellants are said to have ran always from the place. The pick-axe was, however, left on the scene of the offence itself while running away, but other weapons were carried by the assailants with them. (P.W. 1) Chandrakant was then taken to the Police Station at Naldurg, where he had lodged his First Information Report (Exhibit 33) before Senior P.S.I. Jemes (P.W. 13). The entry was taken in the Station Diary at 11.30 p.m. and the offence was registered at Crime No. 32/38 for the offences as stated at the out set.

3. P.S.I. Jemes, then, proceeded to the scene of offence and apprehended the appellants Nos. 1 to 5 under panchanamas Exhibits 60 to 63 and 58,

respectively. Prosecution witnesses Prayagbai, Chandrakant and the appellants were simultaneously sent to the Medical Officer, Naldurg for medical examination in the next morning. Inquest on the dead body was made vide Exhibit 48 and the dead body was sent to Dr. Jarasand Wadne (P.W. 4) Medical Officer, Naldurg, for postmortem examination. Panchanamas of the scene of offence was drawn at Exhibit 49 and blood stained soil, sample soil three stones, pick-axe, etc. were seized from the scene of offence. The postmortem examination was conducted by Dr. Wadne between 11.40 a.m. onwards and after recording the injuries on the person of the deceased, he had opined that the probable cause of death was shock due to cerebral laceration. Medical certificates about the injuries of the injured witnesses as well as injured accused persons were collected. While arresting the accused, blood stained clothes were seized from appellant No. 1 Mahadeo, appellant No. 2 Kalyan, appellant No. 3 Maruti, appellant No. 4 Rajendra and appellant No. 5 Trivenibai. Statements of witnesses were recorded in course of time and the items were seized on the scene of offence. The items seized from the person of the deceased and the items seized from the injured witnesses and the injured appellants were sent to the Chemical Analyser for the chemical examination. After receiving the reports, the appellants were charge-sheeted for the offences as stated at the out set before Judicial Magistrate, First Class, Tuljapur. In the course of time the case was committed to the Court of Sessions.

4. The defence of the appellants at the trial was generally of total denial. They had denied that blood stained clothes were seized from their persons. They had contended only that at about the dinner time deceased Vasant and his two sons had entered their house, broken open the door and had assaulted them. It was not a specific contention that the appellants had sustained injuries in the course of that alleged assault. They denied that any fighting as alleged had taken place outside the house of the appellants and that in that fight deceased Vasant had sustained fatal injuries. They denied that they had caused any hurt to Prayagbai and other injured witnesses. Contending that they had not committed any offence, the appellants played for an acquittal. They did not examine any witness in defence nor did they examine themselves on oath.

5. The learned Sessions Judge believed the prosecution witnesses so far as the incident of assault was concerned and held that the evidence of eye witnesses was also corroborated independently by finding of blood stained clothes on the persons of the appellants and the recovery of weapons i.e. gupti and one stick from appellant No. 4 Rajendra and one axe from appellant No. 3 Maruti. Accepting the prosecution story as a whole, the learned Sessions Judge, therefore, held the appellants guilty of the offences as stated above and awarded them the sentence as stated at the outset.

6. Having felt aggrieved by this decision, the appellants preferred this appeal maintaining that the learned Sessions Judge had committed serious error in appreciating the evidence of the prosecution witnesses and in believing the story

narrated by the prosecution witnesses as a whole. In particular, it was submitted that the prosecution had done nothing to explain the injuries which were found on the persons of the appellants and that, therefore, as per law, it was necessary to draw the inferences that the prosecution witnesses were suppressing the genesis of the story and that they were not worthy of safe-reliance. Reliance was placed on the Rulings in Lakshmi Singh and Others Vs. State of Bihar, in the case of Union Carbide India Limited Vs. Union of India (UOI) and Others, , in the case of The Union Carbide India Ltd. v. Union of India and others, in support of the aforesaid proposition and it was submitted that when the appellants had put up their defence to the injured eye witnesses and had shown from the evidence on record that they had sustained injuries, the lower Court ought not to have believed the evidence of the injured witnesses as well as the two independent witnesses examined by the prosecution. It was submitted that in such an event, the worst that could be thought in the case of the appellants was absence of an intention to commit murder of deceased Vasant. As regards offences punishable under sections 147, 148 and the offences of murder and causing hurt, etc. read with section 149 of the Indian Penal Code, it was submitted that the evidence on record lacked in showing the participation of appellant No. 1 in the entire affair. It was submitted that the story about the instigation by appellant Nos. 1 and 5 was a concoction for the purposes of falsely implicating the appellants in more serious offences than those which could be said to have constituted on the given set of facts. It was submitted that all of the appellant were entitled to clean acquittal of the offences punishable under sections 147, 148 and the other offences coupled section 149 of the Indian Penal Code. It was, therefore, prayed that the appeal be allowed and that, finding the appellants not guilty of the offence they should be acquitted of all the offences charged against them.

7. The learned A.P.P. Shri Ghuge submitted that the Rulings cited by the learned Advocate for the appellants were not applicable to the facts of the present case and that, in the circumstances of the present case, when the prosecution had succeeded in establishing beyond doubt guilt for the offences committed by the appellants, it was not a burdened duty of the prosecution to explain all the minor and trifling injuries which were found on the persons of the appellants. He invited out attention to the Rulings in Bhaba Nanda Sarma and Others Vs. State of Assam, , in the case of Bhaba Nanda Sarma and others v. The State of Assam AIR 1979 SC 1000 , in the case of Hare Krishna Singh and Others Vs. State of Bihar, , in the case of Hare Krishan and others v. State of Bihar, and submitted that the law as was finally settled down by the Supreme Court, was to the effect that it was not that in every case the prosecution was bound to explain the injuries which were found on the persons of the accused persons. He submitted that the cases in which the prosecution had successfully brought home the guilt to the accused on the basis of strong and cogent evidence, there was no such a legal obligation on the prosecution to explain the injuries which were found on the person of the accused. It was submitted, further, that it was more so if the injuries found on the person of the accused were minor injuries. It was,

therefore, submitted that the evidence of the prosecution witnesses did not deserve to be discounted on any such a technical ground and that on careful scrutiny of the evidence, it was necessary to arrive at proper conclusions about the guilt of the appellant. As regards the conviction for offences punishable under sections 147 and 148 of the Indian Penal Code and some offences coupled with section 149 of the Indian Penal Code, it was submitted that there were some lacunae in the prosecution evidence, the benefit of which, can possibly go to the appellants. It was, therefore, submitted that the appeal cannot be allowed wholly and that, on consideration of the evidence and the facts and circumstances of the case, appropriate orders may be passed.

7-A. It was not in dispute that the appellants and the family of the deceased Vasant were neighbours in the village Chiwri and that their respective residence were at a very short distance from each other. It was not in dispute that on the night of 3rd August, 1989, deceased Vasant was assaulted in front of the house of the appellants, at a distance of about 15 or 20 ft. from the entrance of their house, and that in that assault, he had sustained fatal injuries, as a result of which he had died there on the scene of offence. It was also not in dispute that (P.W. 2) Prayagbai also was assaulted at the same place at about the said time and that she had sustained, apart from some simple hurts, one grievous hurt namely fracture of ulna, which was proved by Dr. Wadne (P.W. 4). (P.W. 1) Chandrakant also had sustained injuries in the course of that assault, one being a contused lacerated wound on scalp occipital region 2" x 1 1/2" x 1/4" and the other being contusion of left shoulder 2" x 2". As regards the deceased, (P.W. 4) Dr. Jarasand Wadne proved that deceased had following external injuries.

- "1. Penetrating injury on scalp on occipital region 1/2 x 1/2" x 2 inches.
2. Incised wound on scalp on left parietal region 3" 1/2" x 2".
3. Contusion on scalp on right parietal region 3" x 2".
4. Contusion on upper and lateral aspect, of right thigh, oblique in direction 4" x 2" subcutaneous haemorrhage present.
5. Contusion on upper eye-lid 2" x 1".
6. Contusion on left lower eye-lid 1" x 1/2".
7. Abrasion on right knee 1/2" x 1/2".
8. Abrasion on right leg size 1/2" x 1/2".

He also proved that the deceased had three fractures namely fracture of occipital bone of scalp, fracture of left parietal and temporal bone and thirdly fracture of right parietal and temporal bone.

On internal examination, as proved by Dr. Wadne, the deceased was found to have sustained the following injuries.

- "1. The meaning over right and left parietal temporal and occipital lobe of

cerebrum torn.

2. Laceration of left parietal and temporal lobe of left cerebrum of brain size aboard 2" x 1/4" x 1/8.

3. Laceration of right parietal and temporal lobe of right cerebrum of brain size 1" x 1/4" x 1/8".

4. Laceration of occipital lobes of both these cerebrum 1/4" x 1/4" x 1/8".

Dr. Wadne opined that all the injuries were antemortem and caused within 24 hours. Dr. Wadne told further that the external penetrating injury on the scalp on occipital region corresponded to internal injury of fracture of occipital bone and laceration of occipital lobe of brain. He added, further, that the external incised wound on scalp on left parietal region corresponded to the internal injuries fracture of left parietal and temporal bone and laceration of left parietal and temporal lobe of brain. Again he told that the external injury to contusion on scalp on right parietal region corresponded to the internal injury of fracture of right parietal and temporal bone and laceration of right parietal and temporal lobe of brain. He had found subcutaneous haemorrhage at right parietal and temporal region.

In the opinion of Dr. Wadne the death was caused due to cerebral laceration.

He was shown gupti (Article "C" before the Court). He opined that the penetrating injury on the scalp on the right occipital region and the corresponding internal injury found on the person of the deceased could be caused by such a gupti. When he was shown axe (Article "D") before the Court, he told that external injury, namely, incised wound on the scalp on left parietal region and the corresponding internal injury could be caused by such an axe. When he was shown pick-axe (Article "E") before the Court, he told that the external injury namely contusion on the scalp on the right parietal region and the remaining external contused injuries found on the person of Vasant were possibly by the butt-end of the pick-axe. The doctor opined that the penetrating injury on the scalp occipital region by itself was sufficient to cause the death of the deceased in ordinary course of nature. Likewise, he told that the incised wounds on the scalp, as stated above, were singularly as well as jointly sufficient in the ordinary course of nature to bring about the death of the deceased. There was hardly anything in the cross-examination of Dr. Wadne, which could displace the aforesaid findings and the opinion recorded by Dr. Wadne. The facts recorded in inquest report (Exhibit 48) and spot panchanama (Exhibit 49) coupled with the evidence of (P.W. 8) Dhanaji go long way to prove that incident in question had taken place at a short distance from the entrance of the house of the appellants, and that it was in that incident that the deceased had sustained the fatal injuries. This evidence by itself, as well as coupled with the evidence of the eye witnesses as discussed below, is sufficient to prove that deceased Vasant had died a homicidal death and that witnesses Chandrakant and Prayagbai had sustained injuries due to violence inflicted on them.

8. The incident in question is said to have taken place soon after 9.00 p.m.. Deceased Vasant is said to have gone to the house of his brother for taking food and it was within a very short while after his dinner was over that there was fatal attack on him. This fact finds some corroboration in the medical evidence, because Dr. Wadne found on opening of the abdomen that the stomach of deceased Vasant was full of food, particles of rice and jawar roti. According to Dr. Wadne the death of the deceased was caused within three hours of taking the meals. Three hours was the outer limit but the other evidence on record shows that the death was caused almost immediately after the dinner of deceased Vasant was over. Though the first information was lodged by Chandrakant who had come on the scene of offence little later, it may be worthwhile to deal with his evidence after the evidence of other eye witnesses is dealt with. It was (P.W. 5) Namdeo, a person occupying a house just in front of the house of appellant No. 1 Madadeo, who was on the scene of offence since about 8.30 to 9.00 p.m. This witness told that while he was standing in front of entrance of his own house, appellant Nos. 1 to 5 had gone abusing towards the house of deceased Vasant and that finding that none was there in the house of deceased Vasant, they had returned towards their house. He told that he had, then, approached the appellants and had advised them not to abuse. According to him, (P.W. 1) Chandrakant came to that place running from a distance and asked appellant No. 1 Madadeo why they were abusing his parents. The reply does not appear to have been given verbally by anyone, but according to witness Namdeo, appellant No. 2 Kalyan had come out of the house and had hit a stone on the head of Chandrakant. According to (P.W. 5) Namdeo, one Apparao Hingmire and one Lingappa and Bhaurao who were on the scene of offence had then separated the appellants from Chandrakant and the witnesses himself had also intervened to persuade the appellants not to quarrel. The witness told that he had himself reached the appellant to their house. He added, then, that while this was happening deceased Vasant, his wife Prayagbai (P.W. 2) and his son Shashikant appeared on the scene of offence from the side of their house and made enquiries why their sons were abused. Again, there was probably no verbal reply from any of the appellants because the witness told that appellant No. 2 Kalyan armed with a pick-axe, appellant No. 3 Maruti, armed with an axe and appellant No. 4 Rajendra, armed with a gupti, came out of their house. What is most important in the evidence of this witness is the fact that according to this witness, it was at that juncture that appellant No. 1 Mahadeo had asked the witnesses where he had gone at the time of the non incident. According to the witnesses, without waiting for any reply to this query, appellant No. 4 Rajendra ran ahead and pierced the gupti in the head of deceased Vasant. Appellant No. 3 Maruti had followed Rajendra near deceased Vasant and had hit an axe on the head of Vasant. The witnesses told that as a result of this Vasant had fallen down, but then appellant No. 2 Kalyan who had also by that time followed his brothers near the place where Vasant lay on the ground had hit a pick-axe on the head of Vasant. It was at that juncture that Prayagbai (P.W. 2) came forward, according to the witness, to save her husband, but then, she was hit with a stone

by appellant No. 5 Trivenibai and with a stick on her arm by appellant No. 4 Rajendra. According to the witness, Vasant had died and there was commotion and shouting on the scene of offence. He told that appellants then withdrew themselves towards their own house but in doing so they had dropped on the scene of offence the pick-axe which Kalyan appellant No. 2 had with him. He told that the appellants then remained close doors in their house. He identified the weapons, gupti, axe and pick-axe, which were Articles "C", "D" and "E" respectively before the Court. He explained how there was visibility on the scene of offence on account of the electric bulb burning on the pole in the vicinity.

9. In the cross-examination, it was suggested to this witness that he was related to Shashikant a son of the deceased, because his brother's daughter was given in marriage to Shashikant. The witness denied that suggestion. He had also denied the suggestion that on account of some contest in the Grampanchayat election, he had strained relations with the appellants. On the whole, therefore, the witness appeared to be a fairly independent witness. When he was cross examined about the incident in question, he told that appellant Maruti had hit an axe from Vasant's backside (marathi version is ik Bhekxqu though the English version is "on the backside of the Vasant"). He did tell that he had tried to separate the accused persons from Vasant. Indeed, there was hardly anything in the cross examination about the incident which could enable one to look with suspicion on the evidence of this independent witness. His evidence is corroborated by the medical evidence as well as by other evidence on record as discussed below. There was only one omission from his police statement brought on record and that was pertaining to a sentence addressed by appellant No. 1 Mahadeo to him asking him where he had gone at the time of the incident at the noon time. We do not think that this omission was a material omission so as to shake the veracity of the witness. Indeed, such a query to the witness by appellant No. 1 had hardly anything to do with the main incident of assault on the deceased and his family members. The sentence was not directed towards any of the persons assailed upon. Therefore, the fact that the witness had omitted to tell this sentence in the police statement could not mean necessarily that no such question was ever asked to him by the appellants. If so, there is reason to suppose that there was some incident between the rival parties in the afternoon. Unfortunately, though this witness had referred to it in his examination-in-chief, neither the prosecution nor the defence had explored the point further to understand what was the incident which had taken place in the noon, but the sentence leaves a room to suppose that there was some. This is not to say that there was any attempt on the part of the prosecution to suppress any material fact connected with this offence, but this is only to point out that if such a sentence was uttered by appellant No. 1, there is room to suppose that the appellants were aggrieved by some Act of family members of the deceased committed in the noon.

10. What is most important to be noted from the evidence of this witness (P.W. 5) Namdeo is that though he had stated in his deposition about the presence of

appellant No. 1 and appellant No. 5 on the scene of offence, no overt-act on the part of appellant No. 1 is told by this witness, so as to indicate that he had shared with anyone an intention to make an assault, muchless a fatal assault, on deceased Vasant. Again the witness has not said anything against the appellant No. 5 Trivenibai to indicate that she had assaulted deceased Vasant or had taken any step in that direction. Again there is nothing in the evidence of this witness to show that deceased Vasant, (P.W. 2) Prayagbai or any of their sons had come armed with any weapon with the intention to assault the appellants or any member of his family. Further, this witness did not tell that deceased Vasant or any member of his family had ever entered the house of the appellants or had assaulted any member of the family of the appellants. Indeed, in the cross-examination of this witness, such a theory was not at all put on behalf of the defence to the said witness, though in the cross examination of the witnesses examined earlier, such a theory was put to those witnesses. It is to be noted in this context, that the presence of witness Namdeo on the scene of offence at the relevant point of time was very natural and so was his intervention more than once, in persuading the appellants not to indulge in giving abuses and not to make any affray at the relevant point of time. The learned Advocate for the appellants pointed out from the deposition of (P.W. 8) Shinde, who was panch for the panchanama of the scene of offence, that at the time of drawing the panchanama of the scene of offence a door at the entrance of the house of the appellants was found removed. It was, therefore, submitted that this circumstance coupled with the injuries found on the persons of the appellant could afford a ground to suppose that deceased Vasant and his family members had in fact broken the door of the entrance of the house of the appellants and has assaulted the appellants. Indeed, in the face of the evidence of (P.W. 5) Namdeo, there is no footing to suppose that anything of that kind had happened at least at the time of the occurrence of the present offence. If at all any incident had occurred in the noon and if the appellants had felt aggrieved on that count, that was not necessarily a part and parcel of the incident which had resulted into the commission of the present offence. There is, therefore, no reason whatsoever so disbelieve the evidence of (P.W. 5) Namdeo. The incident of offence is proved to have been an unilateral attack on deceased Vasant and the members of his family.

11. (P.W. 6) Shankar Hingmire is another natural independent witness, who had deposed to the incident of the offence. This witness told that, at about 9.00 p.m. when he was standing in front of Maruti temple after his meals, he had heard a commotion from the side of Mahadeo temple (Which was in the vicinity of the house of the appellants). The witness told that, therefore, he had run towards the place of commotion and had found appellants 1 to 5 giving kicks to (P.W. 1) Chandrakant. He told that appellants No. 2 Kalyan had then struck a stone on the head of (P.W. 1) Chandrakant. Like Namdeo, this witness also told that he had intervened to separate the appellants from Chandrakant and to require the appellants to withdraw to their own house. He also told that he had asked (P.W.

1) Chandrakant to go towards his own house. The witness, then, added at that juncture, deceased Vasant, his wife (P.W. 2) Prayagbai and Shashikant came there to make enquiry as to who had assaulted Chandrakant. According to this witness, at that juncture appellant No. 2 Kalyan armed with pick-axe (Article "E"), appellant No. 3 Maruti armed with axe (Article "D") and appellant No. 4 Rajendra, armed with gupti and a stick, arrived at the scene of offence. As regards the active role played by each of them he told that appellant No. 4 Rajendra struck a blow of gupti on the neck of deceased Vasant, appellant No. 3 Maruti gave an axe blow on the head of deceased Vasant and when deceased Vasant had fallen down thereafter appellant No. 2 Kalyan had hit on the head of deceased Vasant with the butt-end of the pick-axe. He added that (P.W. 2) Prayagbai, had the, rushed towards deceased Vasant and when deceased Vasant had fallen down thereafter appellant No. 2 Kalyan had hit on the head of deceased Vasant and then appellant No. 5 Trivenibai had hit her with a stone and appellant No. 4 Rajendra had hit her with his stick on the head. He added that thereafter, appellant No. 5 Trivenibai hit stones to Prayagbai. According to this witness also the appellants had withdrawn from the scene of offence when there was a cry that Vasant was dead. It was suggested to this witness in his cross examination that (P.W. 1) Chandrakant used to attend the work in a grapevine of the said witness. The suggestion was denied by the witness, but it is also to be noted that the suggestion was as vague as it could be, because it did not contain the time at which he was allegedly working there and how long. The witness admitted that his residence was about 150 ft. away from the Maruti temple which was near Shivanand Patil's grocery shop and that the house of the appellants was at a distance of 250 ft. from Maruti temple. It is pertinent to note that the directions in which the distance was mentioned, were not put to the witness. Therefore, it could be that both his house as well as the house of the appellants were at different distance in the same direction from the Maruti temple. The material on record, therefore, does not enable one to say that at the relevant point of time the witness was far a war from the scene of offence and that, therefore, he could not be a natural witness to the incident. An omission was brought on record in his cross examination about the kicks allegedly given by appellant Nos. 1 to 5 (P.W. 1) Chandrakant. On account of that omission it was possible for the learned Advocate for the appellants to contend that the said detail was an innovation introduced by the witness. This submission gains a ground in view of the fact that (P.W. 5) Namdeo had also not stated that (P.W. 1) Chandrakant was kicked by all the five appellant. To that extent, the alleged participation of the appellant Nos. 1 to 5 in the assault on Chandrakant can be excluded from consideration. It was, then, contended that according to this witness, the assault on Chandrakant was going on about 10 to 15 minutes, which could not, in the circumstances of the case, be true. Wrong estimate of the time cannot be a ground, in the circumstances of the case, to discard the evidence of the said witness. This witness also make it clear that appellant No. 3 Maruti had given the blow of axe on the head of deceased Vasant from his backside. Indeed, there is no material discrepancy or infirmity in the evidence of this witness,

which could enable the learned Advocate for the appellants to submit, with force, that the evidence of this witness was not worthy of self reliance. If the evidence of this witness also is believed like that of Namdeo, it is clear that in making attack on deceased Vasant, there was no participation of appellant Nos. 1 to 5, and that attack on deceased Vasant was made only by appellant Nos. 2 to 4. Appellant No. 5 Trivenibai had beaten Prayagbai, but that too, not with any weapon. It can at the most, be held that she had fallen her down and had hit her with stones. It is also to be noted from the evidence of this witness that this witness did not support the defence version that deceased Vasant and his family members had entered the house of the appellants, or that they had assaulted the appellants at the time of the occurrence of the present offence. Indeed, in his cross-examination, such a story was not even put to the witness. The omission to put such defence to the two independent witnesses in their respective cross-examination is really inexplicable in the facts and circumstances of the case, except by saying that the appellants had their own reservations in not putting any suggestions on the point to the said witnesses.

12. It is one the background of the evidence of the aforesaid two independent natural eye witnesses that the evidence of (P.W. 1) Chandrakant, who is an injured eye witness needs to be appreciated. In the medical examination of (P.W. 1) Chandrakant two injuries were proved to have been caused to him. They are described in certificate (Exhibit 38) as follows :

"1. Contused lacerated wound on scalp occipital region 2" x 1/2" 1/4".

2. Contusion of left shoulder 2" x 2".

Both of the said injuries were simple hurts cased by hard and blunt objects within 12 hours of their examination which had taken place at about 12.15 noon on 4-8-1989. The nature of the injuries to (P.W. 1) Chandrakant suggests that he was, probably, not the main target of appellant Nos. 2, 3 and 4 at the time of the attack. As told by the two independent witnesses, (P.W. 5) Namdeo and (P.W. 6) Shankar a stone was hit on the head of (P.W. 1) Chandrakant before the main incident had started. In the main incident Chandrakant appears to have received only one injury, that was probably on his shoulder. According to the deposition of (P.W. 1) Chandrakant, on the right of the offence, he was sitting in front of the grocery shop of one Shivanand Patil and he was told there by one Londhe that his brother was assaulted and abused by appellant No. 4 Rajendra and his group men. The witness told that therefore he ran away towards his house and that while on his way, he was in front of the house of one Sakhare appellant No. 2 Kalyan had hit him with a stone on his head. He told that (P.W. 5) Namdeo, (P.W. 6) Shankar one Lingappa and some others, who were in the vicinity, had intervened and had separated him from appellant No. 2 Kalyan. He added that, by that time, his parents had arrived on the scene of offence to see who had assaulted him. According to this witness, appellant No. 1 Mahadeo and appellant No. 5 Trivenibai had then instigated the remaining appellants to assault them saying that they must liquidate at least one of them. As already started above,

the two independent witness (P.W. 5) Namdeo and (P.W. 6) Shankar have not supported this version of (P.W. 1) Chandrakant and, therefore, this version is required to be disbelieved. The witness further narrated that appellant No. 4 Rajendra, armed with a gupti, appellant No. 3 Maruti, armed with a pick -axe, arrived on the scene of offence and appellant Rajendra had pierced gupti from the backside of the head of his father on the neck. He added that appellant Maruti had hit the axe on the head of his father and appellant Kalyan had hit a pick-axe with its butt-end on the head of his father. On this detail, the two independent witnesses (P.W. 5) Namdeo and (P.W. 6) Shankar corroborate. (P.W. 1) Chandrakant then added that when his brother had intervened, appellant No. 1 Mahadeo had caught hold of him and had started abusing him. This is, again, a detail on which there is no corroboration from the independent witness (P.W. 5) Namdeo and (P.W. 6) Shankar. Chandrakant, then, told that his father then collapsed on the ground and when his mother had rushed at him to help him, appellant No. 5 Trivenibai had caught hold of her and had fallen her down and had hit her with a stone. He also told that appellant No. 4 Rajendra had given a stick blow to his mother, as a result of which she had failed down. To this extent, the independent witnesses corroborate (P.W. 1) Chandrakant, but the next detail narrated by him namely, that appellant No. 5 Trivenibai had hit his father with a stone thereafter is not corroborated by the independent witnesses. Therefore, that detail has got to disbelieved. Then he told that his father lay in a pool of blood and had died on the spot. He proved the First Information Report, Exhibit 33, which was lodged by him. The F.I.R. (Exhibit 33) generally supported the version of the witness as narrated in his deposition, but as indicated above, certain details thereof are not corroborated by the evidence of the independent witnesses. The witness told in his cross-examination, when he was questioned about the incident in question, that appellant No. 3 Maruti had hit the axe on the head of his father from his backside. He admitted that he himself did not raise any cry on seeing on gupti being pierced on the body of his father. He told that the axe blow was given on the head of his father thereafter and that on seeing his father falling down, he had raised a cry. According to him, the entire incident lasted for 10 to 15 minutes.

13. His further cross-examination was mainly directed to suggest the witness that every detail narrated by him was not true. The defence of the appellants was put rather vaguely to the witness in his cross-examination but the witness had categorically denied the suggestion put to him. The suggestions put to the witness were vague because they did not indicate what was the reason for which said witness, his brother and his father had rushed to the house of the appellants and had pelted stones, and further, had broken the door of the house of the appellants open. Again, the suggestion was vague because it did not indicate whether or not, according to the appellants, the deceased Vasant and his two sons were armed with any weapons while making such an entry in the house. Further the suggestion was vague also because it did not contain any particulars as to who out of the three, had inflicted injuries to each of the appellants. The

learned A.P.P. took us through the statements of the appellants made u/s 313 Criminal Procedure Code in this respect and pointed out how the appellants were vague in narrating about this defence even when they were questioned by the Court on various incriminating circumstances. It was pointed out that none of them had ever said that they had sustained any bleeding injuries, that the stains of their own blood had fallen on their own clothes and that they had ever reported the incident of house trespass and assault on them, to the Police Officer for an action against the members of the family of the deceased Vasant. It was rightly submitted by the learned A.P.P. that when the appellants were so vague about their own defence and the particulars thereof and when even the injured witnesses had categorically denied the suggestions put to them in respect of this incident and further, when no such suggestion also were put to the independent witnesses, there was hardly any ground to infer, even remotely, that there was a by lateral fight or an unilateral attack by deceased Vasant and his family members on the appellants as contended by them. It is not that any of the appellants had sustained any mentionable serious hurt. All the injuries were minor injuries as proved by (P.W. 4) Dr. Wadne. Appellant No. 1 Mahadeo had one contusion on the right forearm 1" x 1" caused within 12 hours of the examination by a hard and blunt object. Appellant No. 2 Kalyan had one contused lacerated wound on scalp on left parietal area 1" x 1/4" x 1/8" a contused lacerated wound on scalp on occipital region 1/2" x 1/4" x 1/8" and one contusion on left tibia size 1" x 1" simple in nature and caused by hard and blunt object and within 12 hours. Appellant No. 3 Maruti had only a contusion on gluteal region 1 " x 1" simple in nature and within 12 hours and caused by hard and blunt object. Appellant No. 4 Rajendra had a contusion on his neck 3" x 2" simple in nature and caused by hard and blend object and within 12 hours and appellant No. 5 Trivenibai had one contused lacerated wound on forehead of size 1/2" x 1/4" x 1/8", one contused lacerated wound on left ear 1/2" x 1/4" x 1/8", one contusion on left back 7" x 1" and contusion of left shoulder 2" x 1". All these injuries were also simple, caused by hard and blunt object and within 12 hours of the examination. It is not that it cannot be said that the said injuries could be a result of attack but in the absence of evidence on that point and in view of the circumstances discussed at length so far, there is hardly any reason to suppose, broadly on the background of the alleged incident that had taken place in the noon, that all those injuries were caused at the time of or in the course of the occurrence of the incident of offence. It is pertinent to note, in this context, that in the arrest panchanama Exhibits 60, 61, 62, 63 and 58 drawn while arresting accused Nos. 1 to 5 respectively, no injuries were noted on the persons of the appellant Mahadeo appellant No. 3 Maruti and appellant No. 4 Rajendra. Injuries on the heads of appellant No. 2 Kalyan and appellant No. 5 Trivenibai only were noted. If at all, all the injuries noted by the Medical Officer on the persons of the appellants had occurred in the alleged fight in the course of the occurrence of the incident of present offence, the appellant would have mentioned that fact to the Police Officer and would have pointed out all those injuries to the panchas. In view of these circumstances, we find ourselves unable

to accept the contention of Mr. Choudhary, the learned Advocate for the appellant, that there was reason to suppose that deceased Vasant and his family members had assaulted the appellant in the course of the occurrence of the incident of the offence.

14. One of the main contentions of the learned Counsel for the appellants was that as the injuries on the person of the appellants were not explained by the prosecution and that, therefore, the accused were entitled to a benefit of doubt. He had relied upon the rulings in Lakshmi Singh and Others Vs. State of Bihar, and State of Assam Vs. Bhelu Sheikh and Others, . The learned A.P.P., however, relied upon the rulings in Bhaba Nanda Sarma and Others Vs. State of Assam, , Jagdish Vs. State of Rajasthan, and Hare Krishna Singh and Others Vs. State of Bihar, . In the last mentioned case almost all the earlier cases decided by the Supreme Court till then have been considered and the following propositions emerge out of the discussion therein and out of the ruling which were referred to before us :

(I) The plea of private defence taken by the accused, expressly or on the basis of the evidence on record, may mean that the deceased or the injured person was the aggressor and in order to defend himself from being the victim of the aggression, he had inflicted injury on the aggressor or in exercise of the right of private defence. The burden of proving the plea of private defence is on the accused and the same can be discharged by showing the preponderance of probabilities in favour of that plea on the basis of material on record. It, therefore, follows that simply because the accused has received injuries in the same occurrence, it cannot be taken for granted that the deceased or the injured person was the aggressor and that the accused had to defend himself *Munshi Ram v. Delhi Administration AIR 1968 SC 702* of *Hare Krishna Singh and Others Vs. State of Bihar*, .

(II) It cannot be laid down as an invariable proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand *prima facie* and the burden would shift on the prosecution to prove that those injuries were caused to the accused in self defence. *Bankey Lal and Others Vs. State of U.P.*, , *Onkarnath Singh and Others Vs. The State of U.P.*, and *Bhagwan Tana Patil Vs. The State of Maharashtra*, .

(III) Each case is to be decided on facts and circumstances on the record of that case. The prosecution is not bound to explain the injuries on the person of the accused in all cases and in all circumstances. The question is whether or not, on the facts and circumstances of the case, the prosecution case becomes reasonably doubtful for its failure to explain the injuries in the accused *Bhaba Nanda Sarma and Others Vs. State of Assam*, . It is for the defence to put questions to the witnesses regarding the injuries on the person of the accused. *Ramlagan Singh and Others Vs. State of Bihar*, .

(IV) If the prosecution witnesses have been believed by the Court in respect of the guilt of the accused, the non-explanation of the injuries on the person of the accused by the prosecution witnesses would not affect the case, *Hare Krishna Singh and Others Vs. State of Bihar*,

(V) The non-explanation of injuries by the prosecution will not affect the case of the prosecution where the injuries sustained by the accused are minor superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of omission on the part of the prosecution to explain the injuries *Lakshmi Singh and Others Vs. State of Bihar*, .

(VI) Where serious injuries are found on the person of the accused, it becomes obligatory on the part of the prosecution to explain them, so as to satisfy the Court as to the circumstances under which the incident originated. But before this obligation is placed on the prosecution, two conditions must be satisfied :

(i) that the injuries on the person of the accused must be very serious and severe and not superficial;

(ii) that it must be shown that those injuries must have been caused at the time of the occurrence in question *Jagdish Vs. State of Rajasthan*, .

(VII) If so, the non-explanation of the injuries sustained by the accused at the time of the occurrence of altercation is a very important circumstance from which the Court can draw the following inferences :

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

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

(iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case. *Mohar Rai and Bharath Rai Vs. The State of Bihar*, .

In *Hare Krishna Singh*'s case the prosecution witnesses were not believed by the courts on the point that the accused had caused the fatal injuries to the victim and the trial Court had also recorded a finding that the injury found on the person of the accused had been deliberately introduced by him and that he was not injured at the occurrence in question. Hence, the conviction of *Hare Krishna Singh* was maintained by the Supreme Court. In *State of Assam v. Bhelu Singh*, which was relied upon before us by the learned Counsel for the appellant, the prosecution witnesses were disbelieved even otherwise and hence the non-explanation of the injuries on the person of the accused was also held to be a circumstance in favour of the defence.

In the present case, we have, for the reasons stated above, believe the evidence

of the prosecution witnesses and have found that the injuries on the person of the accused were minor, superficial. They were not even put to the independent prosecution witnesses. Hence, the prosecution was not under an obligation to explain the injuries on the person of the appellants and the non-explanation cannot be a circumstance that could come to the help of the appellants.

15. Under the aforesaid panchanama Exhs. 60, 61, 62, 63 and 58, one blood stained dhoti and one shirt seized from the person of the appellant No. 1 Mahadeo. They were Articles 12 and 13 before the Chemical Analyser and the report of C.A. Ex. 76 proved that the dhoti bore stains of human blood of "A" group, whereas the shirt bore the stains of human blood. One blood stained baniyan and one blood stained trouser, Articles 16 and 17 before the C.A., were seized from the person of appellant No. 2 Kalyan at the time of his arrest and the C.A. report Ex. 76 proved that both of them contained "A" group human blood in the stains. One blood stained baniyan and one blood stained towel were seized from the person of appellant No. 3 Maruti (Articles 18 and 19 before the C.A.) and the report of the C.A. at Ex. 77 proved that human blood was found on towel, whereas human blood with un detectable group was found on the baniyan. When appellant No. 4 was arrested, one sweater, one baniyan and one trouser which were Articles 20, 21 and 22 before the C.A. were seized under the panchanamas and the report of C.A. Ex. 76 proved that each of those Articles bore stains of human blood of "A" group. One Sari and one Choli (Articles 14 and 15 before the C.A.) were seized from the person of appellant No. 5 Trivenibai at the time of her arrest and the report of the C.A. Ez. 76 proved that the choli bore human blood of "A" group, whereas sari bore human blood of "A" and "O" group. The clothes of the deceased were also sent for analysis of the stains of human blood found thereon and it was found that these clothes bore stains of human blood of "A" group. Blood stained clothes of (P.W. 2) Prayagbai, namely, a sari and blouse were seized under panchanama Ex. 65 and the report of the C.A. (Articles 10 and 11 before the C.A.) showed that they bore stains of human blood of "O" group as well as "A" group. The clothes of (P.W. 1) Chandrakant namely a Nehru shirt and a trouser (Articles 8 and 9 before the C.A.) were found bearing, vide Ex. 76, stains of human blood of "A" group. All these persons were in the vicinity of the deceased Vasant when the deceased was attacked. There is, therefore, reason to suppose that the stains of blood on the persons of the appellants as well as the witnesses had occurred when the fatal attack was made on the deceased. The contention of Shri Choudhary, the learned Advocate for the appellants was that though the blood of the appellants was collected and sent to the C.A. for analysis. It was reported that their groups of blood could not be determined. He submitted, therefore, that no inference could be drawn against the appellants on the basis of stains of blood found on their clothes. This contention cannot be sustained, particularly because the appellants have failed to explain in their statements u/s 313 Cri.P.C. how the stains of blood had occurred on their respective persons, especially when the injuries noticed on their persons were not found to be bleeding injuries it was pointed out by the learned A.P.P. in

this context, that the appellants had gone to the length of even denying under their statements u/s 313 Cri.P.C. that there were stains of blood. In the circumstances of the case, and in view of the evidence of the eye witnesses, which unmistakably connected the appellant Nos. 2, 3 and 4 with the incident of attack on deceased Vasant, the circumstance that the clothes of the appellant Nos. 2, 3 and 4 did bear the stains of human blood group of the blood group of deceased Vasant becomes a strong corroborating circumstance. In respect of appellant Nos. 1 and 5, though this circumstance could not establish their attack on the deceased in view of the absence of direct evidence on that point in the depositions of independent witnesses (P.W. 5) Namdeo and (P.W. 6) Shankar. Thus, the evidence regarding the blood stains on the clothes of the appellants does corroborate the evidence of (P.W. 1) Chandrakant in respect of attack made by the appellant Nos. 2 to 4 on the deceased Vasant.

16. The next important eye witness is (P.W. 2) Prayagbai. Her evidence is required to read on the background of the evidence of yet another eye witness (P.W. 3) Sangita, daughter of Pray agbai. It appears from the evidence of (P.W. 3) Sangita that after 8.00 p.m. Sangita, a girl aged 14 years, was alone in her house, as her father deceased Vasant and her brother Shashikant had gone for dinner to her uncle's place and her mother (P.W. 2) Prayagbai had gone to the grinding mill to get the flour done. She told that her elder brother Chandrakant also was not in the house. According to the witness, all the appellants had come to her house abusing and that (P.W. 1) Chandrakant had come there some time thereafter. She told that when Chandrakant was beaten, she had gone to call her father and that the father had, therefore, proceeded towards the house of the appellants. Her mother had arrived in the meanwhile and she had also gone there. Sangita then told that the appellants had then assaulted her father with a gupti, an axe and a stick and that her mother and brother also were assaulted by the accused. She did not give any further particulars. Therefore, her evidence is mainly on the point of general corroboration to the occurrence of the incident. In her cross-examination, she had told that the incident had lasted for about an hour but that was obviously a wrong estimate of the duration. At the end of her cross-examination, she told that Dr. Wadne, the Medical Officer, who performed the post-mortem examination and who had examined the prosecution witnesses as well as the appellants, was their family doctor. It was, therefore, sought to be submitted that Dr. Wadne also was an interested witness, merely because a Government Medical Officer had treated the family, it cannot be said that the Medical Officer was an interested witness. There are no discrepancies in the evidence of (P.W. 3) Sangita.

17. (P.W. 2) Prayagbai, then told that when she had returned from the flour mill to her house, Sangita had informed her that Chandrakant was being assaulted and that, therefore, she (Prayagbai) had left her house to go to the scene of offence. She told her husband Vasant and son Shashikant also were with her and that they had proceeded towards the house of appellant while Chandrakant was being assaulted. Prayagbai told that on their arrival there at the house of the

appellants, appellant No. 1 Mahadeo had instigated all of his sons to make and attack. As already stated above, this detail is not corroborated by the two independent witnesses (P.W. 5) Namdeo and (P.W. 6) Shankar. The same cannot, therefore, be believed. She, then, added that when the appellants came out of the house, appellant No. 2 Kalyan had a pick-axe, appellant No. 3 Maruti had an axe and appellant No. 4 Rajendra had a gupti and that each of them had attacked deceased Vasant with the instrument, which each of them had carried with him. She added, further, that when she herself went to rescue her husband, appellant No. 5 Trivenibai had hit her with a stone and appellant No. 4 Rajendra had hit her with a stick on her head. She told that she became unconscious on receiving the blows and that the persons who had gathered in the vicinity had then given her some water to drink. She added further, that he had fractured injury on her hand and that her hand was in plaster. She told of five stitches required for sewing her injury but the medical evidence did not support on that point.

18. In her cross-examination, a contradiction is brought on record from the police Statement as to whether or not, the incident was reported to her on her arrival from the flour mill and whether or not Sangita had come home running from out-side to report the incident to her. The discrepancy is not at all material to the core of what the witness had narrated about the incident of attack on her husband with a gupti, she told that the gupti was hit from the backside of the neck, that the axe was hit on the forehead, that the pick-axe was hit on the shoulder and that the husband had fallen on the ground on one side of his body. It was sought to be submitted that there were some discrepancies about the blow given by the axe and the pick-axe. The discrepancies cannot be said to be material so as to affect the veracity of the witness. The witness was put the defence of the appellants as regards the alleged assault by deceased Vasant and his family members on the appellants at their house, but as already explained in the context of such suggestions while discussing the evidence of (P.W. 1) Chandrakant, the suggestions were vague and incomplete. The witness had categorically denied all those suggestions. On the whole, therefore, the evidence of this witness appears to be reliable on all points except on the point of alleged instigation by Mahadeo (accused No. 1) to the remaining appellants to make attack on the deceased Vasant. In any event, she did not state, like Chandrakant, that appellant No. 5 Trivenibai also had participated in the instigation. To that extent, she did not even corroborate (P.W. 1) Chandrakant. On carefully studying the evidence of this witness, we find nothing which could enable us to disbelieve the evidence of this witness totally. We find her evidence worthy of safe-reliance in respect of the attack made by the appellant Nos. 2, 3 and 4 on deceased Vasant and the attack made by appellant No. 5 Trivenibai on the witness Prayagbai herself.

19. The evidence of eye witnesses is further corroborated by the evidence adduced by the prosecution regarding the recovery of the gupti and one stick at the instance of accused No. 4 Rajendra. Memorandum Ex. 54 is proved by (P.W.

10) Syed Khader showing the disclosure made by the appellant No. 4 and panchanama Ex. 56 is also proved by him to show that the gupti and the stick were recovered at his instance from corn bin which was on the backside of his house. The report of the C.A. at Ex. 76 proved that both of those Articles (which were Articles Nos. 23 and 24 before the C.A.) bore stains of human blood. (P.W. 10) Syed Khader was examined by the prosecution, to prove the recovery of one axe at the instance of appellant No. 3 Maruti. Memorandum Ex. 53 and panchanama Ex. 54 are proved by the said witness. They show that appellant No. 3 Maruti had produced the axe, which was concealed behind a pile of clay pots which was kept in the house. The report of C.A. at Ex. 77 proved also that the said axe did bear a stain of human blood. The concerned appellants did not make any efforts to explain the stains of human blood on the aforesaid weapons. The spot panchanama Ex. 49 proved that the pickaxe (Article No. 26 before C.A.) was found left on the scene of offence and the report of C.A. Ex. 76 proved that it also did bear the stains of blood of human. The independent eye witnesses have stated that the appellant No. 2 Kalyan had left the pick-axe on the scene of offence while withdrawing from that place after the fatal attack on the deceased Vasant.

20. Thus, on the whole, we find, the evidence of the prosecution witnesses quite satisfactory to enable us to hold that the fatal attack on the deceased Vasant was made by appellant No. 2 Kalyan, appellant No 3. Maruti and appellant No. 4 Rajendra. The medical evidence proved that the injuries inflicted by the said appellants were serious enough so as to bring about the death of deceased Vasant instantaneously. The eye witnesses did proved that Vasant died on the spot instantaneously. The very fact that the aforesaid three appellants had come out of their house armed with the said weapons and had, one after another, inflicted injuries on the person of the deceased till he had fallen on the scene of the offence and a blow, even thereafter, indicates that they all had a common intention in inflicting the injuries to deceased Vasant, which were sufficient in the ordinary course of nature of bring about his death. Therefore, we hold that there is a clear cut case established by the prosecution for the offence u/s 302 read with section 34 of the Indian Penal Code against the appellant No. 2 Kalyan, appellant No. 3 Maruti and appellant No. 4 Rajendra and that they deserve to be convicted for that offence. No such offence is proved against appellant No. 1 Mahadeo and appellant No. 5 Trivenibai. They are, therefore, entitled to be acquitted of the charges of murder.

21. All the appellants deserve an acquittal of the offences punishable under sections 147 and 148 of the Indian Penal Code as well as any of the offences charged read with section 149 of the Indian Penal Code in view of the fact that, for the reasons stated above, we have come to the conclusion that appellant Nos. 1 to 5 did not share any intention muchless a common object, which was averred in the charge framed by the learned Sessions Judge, they had committed any offence such as inflicting hurts, etc. to the other eye witnesses. Therefore, none of the appellants can be held guilty of the offences of rioting and the consequent

liability flowing therefrom.

22. As regards appellant No. 1 Mahadeo, it is not proved that he had shared any common intention in inflicting injuries either to deceased Vasant or to (P.W. 2) Prayagbai or to witness (P.W. 1) Chandrakant. It is not proved that he had himself inflicted any injury to anybody. The case of instigation, made out by (P.W. 1) Chandrakant and (P.W. 5) Prayagbai has been already disbelieved by us. Under these circumstances, appellant No. 1 Mahadeo cannot be held guilty of any offence and he would be entitled to a clean acquittal.

23. As regards the appellant No. 5 Trivenibai, it is proved that she had inflicted hurt on (P.W. 2) Prayagbai, but it is not proved that she had inflicted any grievous hurt. Prayagbai has been assaulted by others also. It is not known which blow had been the cause of inflicting the grievous hurt on her. It cannot be certainly said that the grievous hurt inflicted on her was an outcome intention of appellant Nos. 2 to 5 or any one of them. Therefore, Trivenibai will have to be convicted only of the offence punishable u/s 323 of the Indian Penal Code. In the light of these findings, the appeal will succeed in part. The convictions will have to be modified accordingly and appellant No. 1 Mahadeo will have to be acquitted completely. All the appellants will have to be acquitted of the offence punishable under sections 147, 148, 302 read with 149, 325 read with 149 and 323 read with 149 of the Indian Penal Code. The appellant No. 5 Trivenibai will have to be convicted only of the offences punishable u/s 323 of the Indian Penal Code.

24. Turning, then, to the question of quantum of punishment, the appellant Nos. 2, 3, and 4 will have to be sentenced to imprisonment for life for the offences of murder punishable u/s 302 read with section 34 of the Indian Penal Code committed by them. The appellant No. 5, who now stands convicted of an offence punishable u/s 323 of the Indian Penal Code, in view of the findings recorded by us, will have to be sentenced to the imprisonment which she had already undergone so far. She is already on bail.

25. In result, the appeal is partly allowed.

The appellant No. 1 Mahadeo is acquitted of the offences charged against him.

The appellant Nos. 2 to 5 are found not guilty of offences punishable under sections 147, 148, 302 r/w 149, 325 r/w 149 of the Indian Penal Code. They are acquitted of the aforesaid charges.

The appellant No. 2 Kalyan, appellant No. 3 Maruti and appellant No. 4 Rajendra are convicted of the offence punishable u/s 302 read with section 34 of the Indian Penal Code. Each of them is sentenced to suffer imprisonment for life.

The appellant No. 5 Trivenibai stands convicted only of the offence punishable u/s 323 of the Indian Penal Code and she is sentenced to suffer imprisonment, which she has already undergone.