

(2009) 12 BOM CK 0101

In the Bombay High Court

Case No : Criminal Appeal No's. 6, 7 and 12 of 2007

Sanjay Gadekar and Shailesh Gadekar

APPELLANT

Vs

The State
 Valeriano Barretto Vs The State

State Vs Valeriano Barretto and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 313, 340

Penal Code, 1860 (IPC) — Section 120B, 302, 34, 342, 364

Citation : (2009) 12 BOM CK 0101

Hon'ble Judges : U.D. Salvi, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Gopal Kanekar, in Criminal Appeal No. 7 of 2007, Arun Bras De Sa, in Criminal Appeal Nos. 6 and 12 of 2007, S.D. Lotlikar and S. Vaidya, in Criminal Appeal No. 13 of 2007, for the Appellant; W. Coutinho, Public Prosecutor in Criminal Appeal Nos. 7, 12 and 13 of 2007 and Arun Bras De Sa, for Respondent No. 1, S.D. Lotlikar and S. Vaidya, for Respondent No. 2, Gopal Kanekar, for Respondent Nos. 3 and 4 and S.G. Dessai and V. Parsekar, for the Respondent

Judgement

1. These are the group of appeals preferred by the aggrieved accused as well as the State against the judgment and order dated 13/14.11.2006 passed by the Additional Sessions Judge-III, South Goa, Margao in Sessions Case No. 2/2004.

2. The appellant accused No. 1 Valeriano Barretto, the accused No. 2 Subhash Krishnan, the accused No. 3 Sanjay Gadekar, the accused No. 4 Shailesh Gadekar have preferred the appeals being Criminal Appeal Nos. 12/2007, 13/2007, and 7/2007 against the judgment and order of their conviction u/s 120B read with Section 302 read with Section 34 of I.P.C., 1860 sentencing them to undergo life imprisonment and to pay fine of Rs. 5,000/- and in default to undergo rigorous imprisonment for a further period of 3 months on each count. The State has preferred the Criminal Appeal No. 6/2008 against the judgment and order of acquittal of the appellant accused from the crime punishable u/s

342, 504, 364 read with Section 34 of I.P.C. as well as against the acquittal of the accused No. 5 Sheela Barretto and the accused No. 6 Vatsala Gadekar in the said case lodged u/s 120-B read with Section 302, read with Section 34, 342, 504 and 364 read with Section 34 of I.P.C., 1860.

3. A violent incident occurred in the vicinity of Saint Anthony High School on the road from Galjibag- Poinguinim within the limits of Canacona Police Station, Canacona, District South Goa around 4.30. p.m. on 10.10.2003. Police were informed of the said incident and the crime at C.R. No. 32/2003 u/s 302, 342, 504, 364, 120-B read with Section 34 of I.P.C. came to be registered against the accused No. 1 Valeriano Barretto, his wife -the accused No. 5 Sheela Barretto, her brother and others at Canacona Police Station in a complaint lodged by one Aveliono Viegas on the same day. The complainant Aveliano Viegas revealed that the accused No. 1 Valeriano Barretto, his wife Sheela Barretto and four to five persons came to the garage of the deceased victim Shanu Komarpant in a white coloured Maruti van making enquiries about Shanu Komarpant, and Alex Viegas, his cousin had informed him of this fact. According to him, Alex Viegas also alerted him about the offensive mood of the persons in the said Maruti van. The complainant further revealed that he proceeded to the residence of the deceased Shanu and on the way to the residence of Shanu, he came across the said persons in the Maruti van. Thereafter, the complaint revealed, he went to the residence of Shanu, met Shanu, talked to him about the developments which had taken place and proceeded with him to the residence of Valeriano on the motorcycle accompanied by Alex Viegas and other on another motorcycle.

4. According to the prosecution, the deceased Shanu was assaulted by the accused persons with sharp edged weapons like knife, stick (danda), fist and kick blows at the said place in the presence of local persons. The accused persons thereafter, the prosecution case reveals, put the injured Shanu in the Maruti van apparently in unconscious condition and left the place in the said Maruti van proceeding towards Talpona side.

5. It is the prosecution case that the said Maruti van was intercepted at Assolna around 5.45 p.m. or 6.00 p.m. on the same day by the police. The appellant / accused No. 1 Valeriano was found driving the said van with all other appellant/ respondent accused persons in the van. Knife, sword, one bamboo stick (danda), the right foot chappal, blood were noticed in the said van. The appellant /accused No. 4 Shailesh Gadekar with injury on his forehead was found in the van. The Maruti van was detained and the appellant / the accused No. 4 Shailesh Gadekar was sent to Primary Health Centre, Bali in the company of the respondents / accused No. 5 Sheela and the accused No. 6 Vastala Gadekar. The Accused No. 4 Shailesh Gadekar was medically examined at P.H.C., Bali.

6. The accused No. 1 Valeriano, the accused No. 2 Krishnan, the accused No. 3 Sanjay Gadekar were arrested and their personal belongings were seized between 00.30 and 2.00 hours on 11.10.2003 at Canacona Police Station. The accused No. 1 Valeriano, according to the prosecution, made discovery of the

dead body of the victim Shanu Komarpant in the morning of 11.10.2003. The deceased Shanu was found hanging to a branch of cashew tree at isolated place on the slope along side of the road at village Onshi. Blood stains were found in the vicinity of the said spot. A left foot chappal with the blood on it was also recovered from the said place. Blood stains, clothes of the deceased and his belongings along with the nylon rope with which the body was hanged by neck, were duly seized.

7. Inquest was held on the body of the victim at Onshi, Canacona and body was sent for postmortem examination. The accused No. 4 Shailesh Gadekar, the accused No. 5 Sheela Barretto and the accused No. 6 Vatsala Gadekar were arrested between 2.30 p.m. and 3.25 p.m. on 11.10.2003 at Canacona Police Station and their clothes were seized.

8. Scene of offence panchanama was duly drawn on 11.10.2003 in the presence of panchas. The police collected blood stained grass, glass pieces with film and rubber tube from the place of incident in the vicinity of Saint Anthony School at Galjibag-Poinguinim. Maruti van bearing registration No. GA02-J-7230 along with the Articles noticed therein, was seized at Canacona Police Station on 11.10.2003. The Police recorded the statements of the local witnesses and sent the seized Articles for further scientific investigation to Forensic Science Laboratory. The accused No. 2 Subhash Krishnan, the accused No. 3 Sanjay Gadekar, the accused No. 4 Shailesh Gadekar and the accused No. 6 Vatsala Gadekar were identified by the local witnesses in the T.I. Parade conducted by Mr. Suresh Audi, the Special Executive Magistrate on 03.11.2003, 05.11.2003 and 06.11.2003.

9. Autopsy report dated 12.10.2003 gave the cause of death of the deceased Shanu Komarpant as asphyxia due to hanging by nylon rope. Human blood was detected on the clothes of the appellants / accused as well as on the weapons and articles recovered from the Maruti van used by the accused persons. Human blood was also found at the place of incident as well as the place where the body of the deceased Shanu Komarpant was found hanging. Human blood of group - A, which was detected on the clothes of the deceased and chappal found at Onshi the place where the body was found hanging was also detected on the clothes of the accused No. 1 Valeriano, the accused No. 2 Krishnan and the accused No. 3 Sanjay Gadekar. In the course of the investigation, the police found involvement of two more absconding accused. On completion of the investigation, the chargesheet was duly lodged against the appellants/ accused as well as the absconding accused in the Court of the Judicial Magistrate, First Class at Canacona. In due course, the case was committed to the Court of the District and Sessions Judge, South Goa, Margao.

10. The charges were framed u/s 120-B, 342, 504, 364, 302 read with Section 34 of the I.P.C., 1860 against the appellants/ accused and the accused No. 5 Sheela Baretto and the accused No. 6 Vatsala Gadekar on 28.01.2005 vide Exh.79/C by First Additional Sessions Judge, South Goa, Margao. The

prosecution examined in all 35 witnesses including the complainant Aveliano Viegas, the other eyewitnesses, panchas, Medical Officers and investigating officers. None was examined on behalf of the defence.

11. Generally, the appellants/ respondents accused denied their involvement in the crime. The appellant/ accused No. 4 Shailesh Gadekar disclosed in his examination u/s 313 of Criminal Procedure Code that four to five persons and two motorcyclists assaulted him with swords while he was waiting for a bus at Canacona for going to the house of the accused No. 5 Sheela at about 4.30.p.m. on 10.10.2003 and as a result of sword blow on head, he fell unconscious at the spot and regained consciousness at Hospicio Hospital at Margao. The accused No. 3 Sanjay Gadekar, the accused No. 5 Sheela and the accused No. 6 Vatsala revealed in their examination u/s 313 of Criminal Procedure Code that on knowing about the assault on the accused No. 4 Shailesh Gadekar in the evening on 10.10.2003, they went to see the accused No. 4 Shailesh Gadekar at Hospicio Hospital and the Police had accosted them at the hospital and took them in their custody to be involved in the present crime.

12. Learned Advocate Lotlikar for the appellant in Criminal Appeal No. 13/2007 took the Court through all material evidence to say that incongruities between the evidence of so called eye witnesses betrayed non-occurrence of the incident as deposed by them or their inability to witness the facts as deposed. He further pointed out from the medical evidence of P.W.9 - Dr. Fernandes, who had performed postmortem examination of the deceased Shanu, that the death was caused due to asphyxia as result of hanging and not as a result of the assault as deposed by the prosecution witnesses. In his view, the evidence of P.W.9 - Dr. Fernandes did not disclose any injuries on the body of the deceased with sharp weapons and, therefore, the story put up by the prosecution was concocted.

13. Learned Advocate Lotlikar for the appellant/ accused No. 2 Subhash Krishnan further submitted that the evidence of the complainant P.W.2 - Avelino Viegas remained incomplete in as much as the prosecution did not offer witness for cross-examination and made no sincere efforts to bring him before the Trial Court for the purpose of cross13 examination. This failure to produce the material evidence styled by the prosecution as an eye-witness account left gaping loopholes in the prosecution case and on this count alone, the prosecution case deserved to be thrown out.

14. Referring to the evidence of P.W.11 - Joaquim Dias, he further submitted, the witness exhibited incredible conduct in as much as he left his residence immediately without knowing where the incident was going on and yet claimed to have witnessed the incident. His testimony, he submitted, made no specific allegations qua individual accused and weapons except the allegation of the accused No. 2 Krishnan the appellant making assault on the victim on Shanu with big knife. This allegation pinpointing the accused No. 2 Krishnan, he submitted, was not to be found in a statement recorded by the police and as such his testimony lost credibility. In context with the sketch of the place of

offence annexed to the scene of offence panchanama Exh.131 collectively, he argued that the distances between the alleged place of offence and the witnesses allegedly witnessing the incident from the vicinity of the Mariano Stores, Bela's House were sufficient to reveal the fact that the incident could not have been witnessed by the witnesses muchless the accused persons. From the testimony of P.W.14 - Sebastiano Fernandes, he pointed out that the witness was making reference to 12 persons at the spot assaulting the victim and yet, who were those six more persons other than those figuring in the present case had remained a mystery. Equally mysterious, he further submitted, was the cause of bleeding injuries sustained by the accused No. 4 Shailesh Gadekar. He further submitted that P.W.14 - Sebastiano Fernandes made improvements in her testimony regarding the place of incident simply to involve the accused No. 2 Krishnan. No other witness, he argued, made reference to 12 assailants. The Story revealed by the P.W.14 - Fernandes regarding the assault on the victim with knife and danda, he submitted, found no corroboration in the medical evidence. According to him, 12 persons to whom P.W.14 - Fernandes referred in her testimony may be the supporters of the deceased and the truth regarding how the incident had started was not brought out by the prosecution in the evidence.

15. As regards P.W.16 - Raju Bhandari, learned Advocate Lotlikar for the accused No. 2 Krishnan submitted that his presence at the place of incident was doubtful. Looking to the working hours as disclosed by P.W.16 - Bhandari, and the material omission in the statement regarding the reason for his presence at the spot, learned Advocate Lotlikar submitted, made the testimony of P.W.16 - Bhandari incredible. Referring to the testimony of P.W.23 - Anita Pinto, he submitted that her testimony revealed improvements in her deposition as regards the accused No. 3 Sanjay Gadekar, accused No. 4 Shailesh Gadekar, accused No. 5 Sheela Barretto, accused No. 6 Vatsala Gadekar and offered no explanation regarding the material omissions in her statement. Her evidence too, he argued, found no support in the medical evidence. He further submitted that P.W.23 - Anita Pinto could not explain as to how the accused No. 2 Krishnan had sustained injuries and her evidence showed that she had been to the spot belatedly and could not have witnessed the actual incident. P.W.26 - Charles Fernandes, learned Advocate Lotlikar for the accused No. 2 Krishnan pointed out, had not given description of the accused before the police and from the distance of 70 meters as claimed by him, he could not have witnessed the incident. No explanation regarding the injuries on the accused, he argued, was forthcoming from the testimony of P.W.26 - Charles Fernandes. Commenting on the testimony of P.W.27 - Bela Rebello, learned Advocate Lotlikar for the accused No. 2 Krishnan submitted that her evidence was sketchy, evasive and vague about the assault and offered no explanation about the injuries sustained by the accused despite claiming to have witnessed incident for 5 minutes. He argued, P.W.27 - Rebello could only name the accused No. 1 Valeriano Barretto and accused No. 5 Sheela Barretto before the police and had referred to accused No. 2 Krishnan as a

person with red shirt and sword in the hand. In his view, the witnesses were selective about the assault and their testimonies deserved to be disbelieved. As regards P.W.31- D'Costa, he submitted, the witness had merely referred to taking of victim in the Maruti Van. Likewise, he submitted, P.W.33 - Munna Rebello, P.W.34 - Afonso despite claiming to be an eye-witnesses failed to throw light on the facts relating to the genesis of the incident.

16. Learned Advocate Lotlikar for the accused No. 2 Krishnan further argued, with reference to the testimony of P.W.4 - Agnes, wife of the victim Shanu Komarpant that it was unlikely for the victim to have gone unarmed in the background of strife between him and the accused No. 1 Valeriano Barretto to accost him and others. He further pointed out from the testimony of P.W.4 - Agnes that despite the claim being made by Alex, Avelino to having witnessed the incident of assault and taking away of the victim Shanu in unconscious state, there was no whisper in her testimony regarding they telling her the said facts. These facts revealed in the testimony of P.W.4 - Agnes, according to learned Advocate Lotlikar, make it unreliable. According to him, witnesses were not disclosing the truth.

17. Learned Advocate Lotlikar for the accused No. 2 Krishnan further submitted that failure of the police to draw panchanama immediately upon the seizure of the Maruti Van at Asslona check post around 23-30 hours on 10.10.2003 denuded the relevant evidence of its reliability. Lack of complete version due to non-examination of material witnesses and non-explanation of injuries on the accused persons in the evidence divested the prosecution witnesses of credibility. To further his arguments, he relied upon the judgments reported in 2009 All M R (Cri) 1581 (S.C.) - State of U.P. v. Gajey Singh and Anr. Babu Ram and Others Vs. State of Punjab, - Babu Eam and Ors. v. State of Punjab, Sivaraman alias Gopi and etc. Vs. State of Kerala, Siddique and etc. Vs. State of Kerala, Ravishwar Manjhi and Others Vs. State of Jharkhand, .

18. Relying on the judgment reported in Koli Trikam Jivraj and Another Vs. The State of Gujarat, , learned Advocate Lotlikar for the accused No. 2 Krishnan sounded a note of caution regarding the use of suggestion put in the cross-examination to fill in the gaps in the prosecution evidence. As regards the force of circumstantial evidence in the present case, he submitted that onus to prove the complete chain of circumstances incompatible with the innocence of the accused was on the prosecution. In this connection, he relied on the judgment reported in Sujoy Sen @ Sujoy Kr. Sen Vs. The State of West Bengal, Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, Ramreddy Rajesh Khanna Reddy and Anr. v. State of A.P.

19. Citing judgment reported in Badam Singh Vs. State of Madhya Pradesh, , learned Advocate Lotlikar for the accused No. 2 Krishnan argued that consistency of the testimonies as regards the material incident is not a sure guarantee of their truthfulness and it is open to the Court to reject their evidence if the Court comes to the conclusion that conduct of the witnesses is such that it renders the

case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye-witnesses is suspect.

20. Learned Advocate Arun Bras De Sa for the accused No. 1 Valeriano Barretto the appellant in Criminal Appeal No. 12/2007 at the outset adopted the arguments made on behalf of the appellant/ accused No. 2 Krishnan. According to him the role ascribed to the accused No. 1 Valeriano Barretto of catching the Alex did not spell out any common intention to participate in the culpable act. According to him, P.W.35 - Serafin, I.O. before calling the panchas was aware of the fact allegedly disclosed by the accused No. 1 Valeriano Barretto and, therefore, the statement allegedly made by the accused No. 1 Valeriano Barretto before the Pancha did not lead to any discovery as envisaged by law. In support of these submissions he relied on the judgment reported in Ramashish Yadav and Others Vs. State of Bihar, and 2003 SCC 106 Bharat v. State of M.P.

21. Learned Advocate Kanekar for the appellant/ accused No. 3 Sanjay Gadekar and accused No. 4 Shailesh Gadekar in Criminal Appeal No. 7/2007 besides adopting the submissions made on behalf of the accused No. 2 Krishnan and accused No. 1 Valeriano Barretto made further submissions that the failure of the prosecution to furnish explanation regarding injuries on the person of the accused generated serious doubt about the prosecution case. Nonexamination of eye-witnesses referred to by P.W.35 - Serafin in his cross-examination namely Alex Viegas, Pedro Fernandes, Carmina Barretto, Seby Carvalho, Milagres Fernandes further compounded this doubt as a result of adverse inference that can be drawn by such nonexamination. He further submitted that non-description of the clothes of the accused in the arrest panchanama resulted in missing links in the prosecution case and the question as to what happened to other accused also remained unanswered due to lack of further investigation in the case. According to him, it was inconceivable even to imagine that the accused No. 5 Sheela Barretto, a pregnant lady, and accused No. 6 Vatsala Gadekar, a old lady of 55 years, could have possibly participated in the alleged crime. He, therefore, vehemently urged for the acquittal of all the accused persons.

22. Initially, learned Public Prosecutor Coutinho made brief submissions referring to the testimonies of the eye-witnesses. She commented that the eye-witnesses not only had seen the accused, identified their clothes and weapons wielded by them but had also corroborated each other. Reins of the prosecution were then taken over by learned Public Prosecutor C.A. Ferreira. He opened his arguments with the fact concerning the motive of the crime disclosed through testimony of P.W.4 - Agnes. He thereafter proceeded to make submissions as regards the testimonies of the eye-witnesses. He submitted that the witnesses were villagers and their expressions regarding the crime in question need not be construed literally. According to him, the prosecution case was one of group assault and in such eventuality even the victim would not have been in position to exactly narrate the role of every assailant muchless of the assailants from the distance. He further submitted that nobody was keeping a watch with anticipation of the

incident; and the attention of the local witnesses was drawn on hearing the commotion and as such it was not expected of these witnesses to have narrated the genesis of the incident. In his view, the genesis of the incident thus lost its importance. Likewise, he argued, it was not possible for the witnesses to have witnessed how the accused No. 4 Shailesh Gadekar had received injury. However, he submitted, the material assertions made by the witnesses regarding the assault on the victim Shanu Komarpant remains unshaken in the cross-examination.

23. Learned Public Prosecutor Ferreira further pointed out from the evidence of P.W.10 - Dalal that the scene of offence panchanama Exh.131 was duly recorded and a sketch Exh.131 collectively recording the situation obtaining at the scene of offence in terms of actual measurements taken at the spot was duly proved in the evidence. Circumstances thus furnished corroboration to the ocular testimonies. In his view, the evidence did not disclose anything to doubt the presence of eye-witnesses at the scene of offence at the material time.

24. Initially, he submitted, the police believed it to be a case of kidnapping and not of murder, and only after apprehension of the accused in the Van at Assolna outpost shortly after the incident, the statements of witnesses came to be recorded. He further submitted that previous and subsequent conduct of the accused in the present case was significant. If the accused were assaulted, he submitted, normally there would have been a complaint lodged by them regarding such assault, but there had been no such complaint and the accused had chosen to run away only to get caught at Assolna Outpost. The evidence on the other hand, he argued, revealed that the victim Shanu was lifted bodily from the ground and put in a dickey of the Maruti Van and thereafter, the Van had proceeded towards Talpona side with the accused and victim Shanu Komarpant. He refuted the submissions made on behalf of the accused that presumably Shanu Komarpant was expected to go armed to the spot situate at 5 minutes distance from his residence, when someone was searching for him.

25. Commenting on the testimonies of P.W.7- Poinguinkar, P.W.12 - Haralkar, P.W.13 - Gosavi, P.W.17 - Manjunath Dessai, P.W.18 - Dikaladkar, P.W.22 - Sanjay Dessai and P.W.29 - Pandit, he submitted that their testimonies were / are credible, and are sufficient to disclose the interception of the accused with weapons in the Maruti Van with a broken glass. Circumstances such as leaving the scene of offence with the victim and the accused, detection of human blood stains, recovery of blood stained weapons, right leg chappal of the deceased and pieces of broken glasses from inside the said Maruti Van, according to the prosecution, are sufficient to nail the fate of the accused in the present case.

26. Learned Public Prosecutor Ferriera further submitted that the independent credible evidence of P.W.5 - Barretto regarding the recovery of the dead body from unfrequented place at Onshi in the morning of the day following the date of incident at the instance of the accused No. 1 Valeriano Barretto clinched the issue in favour of the prosecution. He pointed out from the evidence that the

dead body was found hanging at the said spot and blood stains as well as left leg chappal of the deceased were detected at the said spot. Evidence of P.W.5 - Barretto, he submitted, was further corroborated by P.W.8 - Bhandari, who had not noticed handcuffs on the person of the accused No. 1 Valeriano Barretto at the time of discovering the said facts.

27. Learned Public Prosecutor Ferreira submitted that the medical evidence had clearly given the cause of death of the victim Shanu as asphyxia due to hanging and revealed 36 antemortem injuries on the deceased. According to him, correlation between the weapons identified by the witnesses as those used in the crime and the injuries noticed on the person of the deceased was established with the forensic investigation. He further pointed out from the forensic evidence that the blood of the victim belonging to A group was detected on the clothes of the accused No. 1 Valeriano Barretto, accused No. 2 Krishnan, accused No. 3 Sanjay and human blood was found on the clothes of the accused No. 4 Shailesh Gadekar, the accused No. 5 Sheela Barretto and accused No. 6 Vatsala Gadekar. He further pointed out from the evidence that P.W.2 - Avelino Viegas, P.W.14 - Sebastian Fernandes, P.W.33 - Munna had identified the accused No. 2 Krishnan, accused No. 3 Sanjay Gadekar, accused No. 4 Shailesh and accused No. 6 Vatsala Gadekar in the T.I. Parades.

28. As regards the acquittal of the accused persons, particularly the acquittal of the accused Nos. 1,2,3 and 4 of the offence under Sections 342 and 364 of I.P.C., 1860 and the acquittal of the accused Nos. 5 and 6 of all the charges, he submitted that previous and subsequent conduct of the accused persons as revealed through the evidence ought to have been considered by the Trial Court in assessing the culpability of the said accused in the crimes from which they were exonerated. He pointed out from the evidence that victim was assaulted and was incapacitated as a result of the blows given by the accused persons in the assault. Medical evidence showed, he argued, the death of the victim not due to the assault at the spot but as a result of asphyxia due to hanging, and this fact is sufficient to prove that the victim was removed alive from the spot against his will by the accused persons in the Maruti Van and thereafter murdered by hanging. These facts, he argued, are sufficient to convict the accused of the offences punishable under Sections 342 and 364 of I.P.C. 1860.

29. Learned Public Prosecutor Ferreira further submitted, with reference to the judgment reported in Bahal Singh Vs. The State of Haryana, , that even if the genesis or the motive of the occurrence was not proved, the ocular testimonies as to the occurrence could not be discarded only on that count, if otherwise found reliable. Relying on the judgments reported in Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others, . Ram Avtar and Others Vs. The State of U.P., . Amar Malla and Others Vs. State of Tripura, Dashrath Singh Vs. State of U.P., , learned Public Prosecutor Ferreira further argued that merely because the prosecution failed to explain injuries on the accused persons, the same ipso-facto cannot be taken to be a ground for discarding the prosecution case. According to

him, the prosecution evidence is reliable one though it comprises of the evidence coming forth from relations of the victim or from chance witnesses. In this connection, he drew the attention of the Court to the judgments reported in Rana Partap and Others Vs. State of Haryana, State of Uttar Pradesh Vs. Farid Khan and Others, . He further submitted that the prosecution was not under obligation to examine all witnesses to occurrence and this can be seen from the judgment reported in State of U.P. Vs. Anil Singh, .

30. Learned Public Prosecutor Ferreira further argued that for proving the criminal conspiracy between all the accused including the accused Nos. 5 and 6 circumstances and conduct of the accused without there being any overt act were sufficient to rope in all the accused persons in one criminal conspiracy. He pointed out that all the accused persons were intercepted together at Assolna outpost in a Maruti Van carrying imprints of gory crime namely blood stains, weapons of assault and broken glass. He invited the attention of the Court to the judgments reported in Noor Mohammad Mohd. Yusuf Momin Vs. The State of Maharashtra, Bhagawan Swaruplal and four Ors. v. State of Maharashtra V.C. Shukla and Others Vs. State (Delhi Administration), . in support of his submissions.

31. Learned Public Prosecutor Ferreira for the State further submitted that even in the appeal from acquittal as in appeal from conviction, the High Court is empowered to come to its conclusion as to the guilt or innocence of the accused by reappraising the evidence, and the reliable prosecution evidence paved the way for dismissing the appeal against the conviction preferred by the accused Nos. 1 to 4 and allowing the appeals against the acquittal of the accused Nos. 5 and 6.

32. Rejoining the submissions of the prosecution, learned Advocate Lotlikar for the appellant/ accused No. 2 Krishnan virtually brushed up his earlier submissions and further submitted that the testimony of the first informant remained a material link in the chain of circumstances required to be established by the prosecution for procuring conviction of the accused. He placed reliance on the judgment reported in Sujoy Sen @ Sujoy Kr. Sen Vs. The State of West Bengal, in that regard.

33. He further argued that F.I.R. made no mention of the assault with sword and, therefore, the application of Section 27 of the Arms Act was not invoked and these circumstances created a doubt about the use of sword by the accused No. 2 Krishnan in the alleged assault. At the best, he submitted, the accused No. 2 Krishnan had brought the Van and this act was not sufficient to involve the accused in present crime. He further argued that it was improbable that after the victim had fell he was lifted in the Van to be taken to some other place as alleged. He further submitted that the exact time of death of the victim Shanu Komar was not ascertained and it could not be said that time was sufficient to hang the victim at Colva-Onshi and then move to Assolna. In this connection, the prosecution, in order to highlight the geographical situation of various places

referred to in the prosecution case, placed before the Court Goa Tourist Map published by Goa Tourism Development Corporation.

34. Learned Advocate De Sa and Kanekar likewise brushed up their submissions while rejoining the prosecution submissions.

35. Learned Advocate Sardessai for the accused Nos. 5 and 6 submitted that the learned Trial Court had given benefit of doubt to the accused Nos. 5 and 6, and the exercise of appeal before this Court would involve reappraisal of the evidence led before the Trial Court. Before such exercise is done, he argued, one should not ignore that the presumption of innocence which exists in favour of the accused persons has been reinforced by the verdict of the Trial Court, and if two views are possible upon reappraisal of such evidence, the benefit of the view favourable to the accused needs to be given to the accused. He further submitted that the Trial Court's findings as to the credibility or incredibility of the witnesses needs to be maintained unless found perverse while undertaking the scrutiny of the evidence led before the Trial Court. For reinforcing his submissions, he relied upon the judgment reported in 2007 Criminal Law Journal 36 Samappaji Haribhai Patil v. State of Karnataka Chandrappa and Others Vs. State of Karnataka, Syed Peda Aowlia Vs. The Public Prosecutor, High Court of A.P., Hyderabad, Dappili Verma Reddy and Others Vs. State of Andhra Pradesh, , Bahal Singh Vs. The State of Haryana, . He further pointed out from the F.I.R., the first utterance of the prosecution case that the accused Nos. 5 and 6 were not at the spot when the incident had began, and the allegation about the accused Nos. 5 Sheela giving kicks on the private parts of the victim met with no corroboration in the medical evidence. According to him, it is only for the reason of involvement of the relations that the accused No. 5 wife of the accused No. 1 Barretto and accused No. 6, the mother of the accused No. 2 Krishnan and the accused No. 3 must have come to the spot. In his view, sweeping statements made about all the accused assailing the victim were highly suspect, particularly when reference was made to 12 persons as assailants. He further pointed out from the evidence of P.W.16 - Bhandari that there were material omissions in the statement regarding the alleged roles of the accused Nos. 5 and 6 in the crime. Identification of their clothes by the witnesses, he argued, remains doubtful as the witnesses were not in a position to describe them in the evidence. He further pointed out from the evidence that the accused No. 5 looking to the injury on accused No. 4 was shouting for removing him to the hospital, and it was with this intention to remove the injured accused persons the accused Nos. 5 and 6 had boarded the Maruti Van. He further pointed out that after interception of the vehicle/ van, the accused Nos. 5 and 6 were not arrested as they were mere occupants of the van. According to him, the blood found in the forensic investigation on the clothes of the accused Nos. 5 and 6 was the human blood, which could be of injured accused No. 4 Shailendra Gadekar and, therefore, the Trial Court had rightly given the benefit of doubt to the accused Nos. 5 and 6.

36. While rejoining the submissions made on behalf of the respondents/ accused

Nos. 5 and 6 in Criminal Appeal No. 6/2008, learned Public Prosecutor Ferreira rhetorically posed the question as to why the injured victim was not taken to local doctor or to Primary Health Centre at Balli on the National Highway. He assailed the Trial Court's finding as perverse one as it completely ignored the previous and subsequent conduct of the accused persons in arriving at such finding despite established legal proposition that no overt act is necessary to interpret the role of the accused in criminal conspiracy. As regards the possibility of reaching Assolna, he argued, nothing can be inferred in absence of factual matrix. As regards the place where P.W.27 - Bela Rebello stood and witnessed the incident, he submitted, nothing was put to P.W.27 - Bela in that regard and, therefore, nothing can be inferred as to the view the P.W.27 - Bella could have had of the incident. As regards the exclusion of Section 27 of the Arms Act, he argued that the Investigating Officer was not questioned regarding such exclusion and such exclusion need not be fatal to the prosecution case. Non-mentioning of the names of the witnesses or of all the accused and the details of injuries in the F.I.R. in light of the judgments cited, he argued, would not be fatal to the prosecution case. He laid emphasis on the fact that the accused persons were last seen together with the victim at the place of incident and thereafter seen proceeding to Onshi-Colva, and thereafter, were intercepted at Assolna outpost. All these facts in the evidence together, he argued, were sufficient to rope in the accused in the present crime.

37. At the outset, it is necessary to deal with a material contention of the appellants that failure on the part of the prosecution to tender material evidence of the complainant, the accused No. 2 Avelino Viegas has left gaping loopholes in the prosecution case and on this count alone the prosecution case deserves to be thrown out. Evidence of P.W.35 - Serafin Dias reveals that on 10.10.2003 while he was posted at Canacona Police Station as P.I., he had recorded the complaint Exh.96 of P.W.2 - Avelino Viegas, resident of Galjibag, Canacona as per his say and upon registration of the complaint, search to trace out the Maruti Van was commenced and for that purpose wireless messages were dispatched to all the police stations. The record reveals that P.W.2 - Avelino Viegas was examined by the prosecution, but his evidence remained incomplete as he did not make himself available for the purpose of cross-examination . It is for this reason, the learned Trial Court did not look into his evidence. However, it observed that the prosecution had made futile efforts to procure the presence of the complainant, and had even got sanction of the Under Secretary Home to pay the bill of the complainant for journey to the Court from abroad. Nothing has been shown by the appellants to controvert these facts. The prosecution, therefore, cannot be blamed for failure to produce the complainant before the Court to face cross-examination and complete his evidence. As the evidence of complainant remained incomplete, the approach of the learned Trial Court of not looking into his evidence also cannot be faulted with. Only question that survives for consideration is whether the prosecution case deserves to be thrown out for this reason only.

38. F.I.R. Exh.96 is not a substantive piece of evidence and it can only be used to corroborate or to contradict the evidence of the complainant. Evidence of P.W.35 - Serafin Dias reveals that following the recording of the complaint Exh.96 the law was set in motion and he had sent the record of the complaint to Canacona Magistrate in the morning of 11.10.2003. He further disclosed in his cross-examination that he had received telephonic message regarding the occurrence of the assault at Galjibag without there being reference to either victims or the accused persons involved in the assault and following this telephonic message, he had deputed his staff to verify the truth of the message and in response thereto his staff had returned to the Police Station with the complainant P.W.2 - Avelino Viegas and the investigation had commenced upon the complaint at Exh.96. On the backdrop of this evidence, the learned Trial Court rightly concluded that lack evidence of the complainant P.W.2 - Avelino Viegas did not persuade him to hold the non-existence of the complaint Exh.96.

39. It is correct that the complainant posed himself as an eye-witness and had lodged the complaint Exh.96 in such capacity. However, the fact cannot be ignored that the incident had occurred in the open place and there were other eye-witnesses too, who were examined by the prosecution. Under these circumstances, deletion of evidence of the complaint from the arsenal of the prosecution would not render the prosecution case without any force. It would, therefore, be hasty, that too without going into the merit of the other evidence, to reach a conclusion that incomplete and consequently ineffective evidence of the complainant has left gaping loopholes in the prosecution case and, therefore, the prosecution case deserves to be thrown out.

40. The prosecution examined P.W.11 - Joquiem Dias, P.W.40 - Sebastian Fernandes, P.W.16 - Raju Bhandari, P.W.23 - Anita Pinto, P.W.26 - Chalse Fernandes, P.W.27 - Bela Rebello, P.W.31 - Gariti D"Costa, P.W.33 - Munna and P.W.34 - Angela in order to adduce eye- witness account of the incident in the evidence. Cross-examination of P.W.-35 Serafin Dias points out a fact that there were other persons namely Alex Viegas, Pedro Fernandes, Carmina Barretto, Seby Corvalo and Milagre Fernandes whose statements were recorded to add to the list of the eye-witnesses. He denied a suggestion that these persons were not brought before the Court in order to suppress the correct version of the incident. At this juncture, it needs to be noted that none amongst them was examined as a defence witness. The defence could have done so if at all there was real anxiety to bring before the Court so called correct version of the incident. Such suggestion put to P.W.35 - Serafin Dias, therefore, fails to make any sense. Material facts which go into the making of the prosecution case have been placed in the evidence of witnesses examined by the prosecution. Truth does not depend upon number of witnesses, but the quality of the evidence of the witnesses examined to establish such truth. Non-examination of such witnesses, therefore, makes no dent in the prosecution case.

41. Evidence of P.W.11 - Joaquim Dias, a resident of Galjibag, reveals that he

knew the victim Shanu and the accused No. 1 Valeriano and his wife, accused No. 5 Sheela and he happened to rush to the place of incident on a bicycle within two minutes of getting a telephone call at his residence from one Anita Barretto informing him that the accused No. 1 and others were assaulting the victim Shanu. He proceeded to depose that when he reached near the house of Anita in the proximity of the house of Bela and others, he had seen all the accused persons assaulting the victim Shanu on the road and Shanu falling down with bleeding injuries. His cross-examination reveals that his residence was at the distance of about 5 minutes walking distance from the place of assault and soon after receiving a phone call, he had left his residence on his bicycle. Walking distance of 5 minutes can very well be covered on a bicycle within two minutes or so. His cross-examination further reveals that he was not informed about where the incident was going on. A question, therefore, is legitimately asked by the defence in the argument as to how the P.W.11 - Joaquim could lead himself to the place of incident. The answer to this question is found embodied in the testimony of P.W.11 - Joaquim himself. P.W.11 - Joaquim knew that one Anita Barretto had spoken to him on the telephone about the incident of assault near her home and thereupon he naturally proceeded towards her home, eventually to witness the incident.

42. P.W.11 - Joaquim further deposed that he had also seen Anita and Bela at their respective gates watching the incident. P.W.23 - Anita Pinto nee Rebello, however, in her cross-examination categorically averred, even at the risk of contradicting her statement recorded by the police vide portion marked "A" of her statement, that she did not telephone P.W.11 - Joaquim Dias. Though she was confronted with her statement portion marked "A", the defence did not bring on record from the mouth of I.O. P.W.35 - Serafin Dias the veracity of the fact of P.W.23 - Anita Pinto making a statement about making of a telephone call to P.W.14 - Joaquim Dias. It is also not understood from the evidence that the person to whom P.W.11 - Joaquim Dias referred as one Anita Barretto was none else than P.W.23 - Anita Pinto nee Rebello. There is no cross-examination of P.W.35 - Serafin Dias as to elicit from him whether or not there was a person named Anita Barretto in the vicinity of Anita and Bela, the eye-witnesses referred to by P.W.11 - Joaquim. Significantly, however, P.W.23 - Anita Pinto made reference to P.W.11 - Joaquim as the person, who tried to help the victim Shanu. Her cross-examination further reveals that she had seen P.W.11 - Joaquim Dias going to "Marina Stores" on being threatened. Presence of P.W.11 - Joaquim at the place of incident at the material time also figures in testimony of P.W.14 - Sebastino Fernandes, a lady running "Marina Stores".

43. P.W.14 - Sebastiano deposed that one Joaquim Dias had reached the place of incident on his bicycle and tried to stop the accused persons and others from assaulting Shanu. However, when the accused No. 2 proceeded to assault P.W.11 - Joaquim Dias, P.W.11 - Joaquim Dias had returned back to her shop out of fear, and told her that he was feeling giddy, and thereupon she had given soda to P.W.11 - Joaquim. On this background, one cannot dismiss the presence of P.W.11

- Joaquim from the place of incident at the material time.

44. P.W.11 - Joaquim Dias deposed that the accused No. 2 Krishnan wearing red shirt - Article 4B carried big knife (identified by him as sword - Article 12) and proceeded towards him in order to assault him. He further deposed that he had questioned the accused No. 2 as to why they were assaulting Shanu. He added that one of the accused persons had a danda. According to him, he felt giddy and, therefore, he went to Marina Stores where one lady Smt. Sebastiano (PW.14 - Sebastino) gave him soda to drink and he had seen all the accused persons putting Shanu in the dickey of white Maruti Van, and proceeding towards Talpona side. He further revealed in the cross-examination that he had seen bleeding injuries on the left side on the face of one of the male accused persons.

45. Only material omission that the defence could succeed in bringing on record through the evidence of P.W.35 - Serafin Dias is that the P.W.11 - Joaquim did not question the accused No. 2 regarding the reason for the assault on Shanu and ask the accused No. 2 to stop assaulting Shanu. However, in the cross-examination, P.W.11 - Joaquim Dias explained that all the accused were present when he had questioned the assault on Shanu. His explanation is not in conflict with the statement recorded by the Police. Though P.W.11 - Joaquim had not described the accused Nos. 3, 4, 5 and 6 physically, he declined to accept that the said accused were not at all present at the spot. According to him, the incident had occurred in front of the gate of the house of Bela and one of the accused persons was seen with bleeding injuries on the face. His testimony, thus, offers a credible view of the following facts:

(i) The accused No. 1 Valeriano and his wife accused No. 5 Sheela, one accused person wearing red shirt - Article 4B and holding sword - Article 12 and one more accused with danda, were present at the place of incident along with the other persons,

(ii) Shanu Komarpant was being assaulted, and Shanu fell down with bleeding injuries and was removed from the said place by the said accused persons in a white Maruti Van, and the Maruti Van with the said persons proceeded towards Talpona side and;

(iii) The incident was witnessed by Anita, Bela and one Smt. Sebastiano and other persons. In the given set of facts P.W.11 - Joaquim could not have witnessed the genesis of incident and, therefore, cannot be blamed of suppressing the facts.

46. P.W.14 - Sebastiano deposed that she was at "Marina Stores", a shop run by her and her husband opposite her residence across the road at Galjibag. She further deposed that she had seen the accused before the Court amongst 12 persons gathered near St. Anthony High School around 4.30 p.m. on 10.10.2003, and the accused Krishnan wearing red shirt - Article-4B was holding a big knife (sword)- 12, and the accused No. 4 Shailesh wearing black shirt - Article 25 was holding knife- - Article 13 and the accused No. 3 Sanjay was

holding Danda - Article 14. He further deposed that the victim Shanu was assaulted by the said 12 persons with weapons in their hands and as a result of the assault Shanu fell down and became unconscious and thereafter, the accused No. 2 with red shirt brought white coloured Maruti Van bearing registration No. GA-02-J-7230 having rear tinted glass with a writing "Rolcy" near the spot where Shanu had fallen, and all the accused persons had removed Shanu in the said Van and proceeded towards Talpona side. She further identified the accused No. 1 Valeriano as the person wearing green T Shirt - Article 1 and the accused No. 5 wearing blouse and skirt- Article 28 and the accused No. 6 Vatsala Gadekar wearing pinkish saree (Kapad khas). She further deposed that on 03.11.2003, she had identified the accused No. 2 Subhash, the accused No. 3 Sanjay in the T.I. Parade, and the accused No. 4 Shailesh and the accused No. 6 Vatsala were identified by her in the T.I. Parade held on 05/11/2003 and 06/11/2003 respectively.

47. In her cross-examination, P.W.14 - Sebastian deposed that two amongst six others had come along with the accused persons and other four were initially at the football ground of the said Saint Anthony High School. She deposed that she had seen Avelino Viegas and Shanu Komarpant on motorcycle proceeding toward Poinguinim i.e. towards the place where the said 12 persons were standing on the road and, thereafter, she had heard the noise and seen the said 12 persons assaulting Shanu. According to her, some 5 minutes after the motorcycle on which Avelino and Shanu passed her shop, she had heard the noise and the distance between her shop and the place of assault was about 30 metres. She further deposed in her cross-examination that she had seen Shanu falling unconscious and the shirts of the accused Nos. 2, 3 and 4 smeared with blood, presumably of Shanu. She further deposed that she had seen injury on the forehead of the accused No. 4, but had not seen as to how the accused No. 4 had sustained injuries.

48. Cross-examination of P.W.14 - Sebastiano further reveals that upon hearing commotion, particularly the shouts of the victim Shanu, she had come on the road abutting her shop and witnessed the incident. Her evidence reveals that there was confusion at the place of incident and she did not minutely notice which part of the body Shanu was assaulted with sword, knife and danda. Besides this, she referred to the presence of her daughter Munna and Bela in the vicinity of the place of incident. She deposed that Bela was standing outside the compound of her house. She categorically asserted in her testimony that she has seen the faces of all the accused persons. Her testimony, despite the fact that she spoke about the presence of 12 persons on the spot and the omissions in her statement, offers a credible picture of the involvement of the accused Nos. 1 Valeriano to accused No. 4 Shailesh in the present crime.

49. P.W.23 - Anita Pinto deposed that she was in the house of her mother at Galjibag due to her pregnancy on 10.10.2003, and on hearing noise near the gate of their house around 4.30 p.m. on that day she came out of the house and

had witnessed the incident from the place near the gate. According to her, she was knowing the accused No. 1 Valeriano Barretto and his wife the accused No. 5 Sheela as they were her neighbours. She added that her neighbour Bela had witnessed the incident and one Sebastian was also present at her shop. She deposed that the accused No. 1 Valeriano caught hold of P.W.2 - Avelino Viegas, who was trying to help Shanu Komarpant and had seen the accused No. 2 Subhash wearing red shirt - Article 4, Sanjay wearing gray shirt, the accused No. 4 Shailesh wearing black shirt- Article 24/ A holding sword - Article 12 and danda- Article 14 and knife - Article 13 respectively assaulting Shanu, and after the assault the accused No. 2 Subhash had brought a white coloured van and taken Shanu in the said Van towards Talpona side with the help of all the accused persons. She further deposed in her cross-examination that from the time she came out till the time Shanu was put in the Maruti Van, she was at her gate. She added that she had not seen as to how Joaquim Dias came to the spot. This fact, it is argued, reveals that P.W.23 - Anita Pinto had belatedly been to the place of incident. Assuming this fact to be true one thing still remains that she had seen Shanu being removed in a Maruti Van from the place of incident by the accused following a violent incident.

50. P.W.27 - Bela Rebello, the resident of Galjibag deposed that on hearing noise near the gate of her house at about 4.30 p.m. on 10.10.2003, she rushed towards the gate and thereupon had noticed a group of 7 to 8 persons assaulting the victim Shanu with Talwar, dandas and knives and also with kicks. She identified the accused No. 1 Valeriano and his wife the accused No. 5 Sheela by name as a persons amongst the assailants. She deposed that the accused No. 2 Subhash wearing red shirt and holding sword - Article 12, the accused No. 3 Sanjay wearing grey shirt and holding danda - Article 14, and the accused No. 4 Shailesh wearing black T-shirt holding knife - Article 13 were amongst the eight assailants. She deposed that Shanu had sustained bleeding injuries and was put in the Maruti Van, and the Maruti Van proceeded towards Talpona side. She revealed in the testimony that many others from the vicinity were present, some of them being P.W.23 - Anita Pinto, P.W.11 - Joaquim Dias, P.W.14 - Sebastiano and her daughter. Her cross-examination reveals that when she reached the spot, she had seen Shanu assaulted and thrown down, and had seen the incident for about five minutes.

51. It is in the cross-examination of P.W.27 - Bela Rebello that there exists another gate facing the road where the incident had taken place and that gate was about 100 metres from her house. However, her cross-examination does not indicate that she was at another gate and could not have witnessed the incident therefrom. What P.W.27 - Bela refers to is the gate which she referred to in her examinationin- chief from where she happened to notice the incident. A fact, therefore, clearly emerges from her evidence that she had seen injured Shanu being taken after the assault in a Maruti Van by the accused persons. Her presence at the place of incident sounds natural. It appears that she might not have witnessed the entire incident from very beginning. However, whatever she

clearly disclosed in the evidence needs to be believed.

52. P.W.16 - Raju Bhandari, a passer by at the material time revealed in his examination in chief facts consistent with the facts disclosed by other eye-witnesses. However, in the cross-examination, P.W.16 - Bhandari deposed that he was working in a mushroom factory at Bhatpal some 15 kilometers away from his residence at Galjibag and normally his work gets over at 5.30 p.m. and he does not come early to home. He could not reveal as to why he had come early on that day. From the evidence, it is seen that he did not state before the police that he was going to Sanatan Store for closing the same. It is, therefore, difficult to place reliance on his testimony.

53. P.W.26 - Charles Fernandes deposed that he happened to witness the incident at about 4.30 p.m. on 10.10.2003 near Anthony High School, Galjibag when he was proceeding towards Canacona from Galjibag on his motorcycle. He further deposed that he had noticed a group of 7 to 8 persons, two of them ladies the accused No. 5 Sheela and the accused No. 6 Vatsala assaulting the victim Shanu Komarpant. He pointed out to the accused No. 2 Subhash, the accused No. 3 Sanjay, the accused No. 4 Shailesh amongst the persons present in the Court as the assailants and further deposed that he has seen the accused No. 1 Valeriano Barretto holding Avelino Viegas at the material time. Significantly, he further deposed that bleeding unconscious Shanu was put in a dickey of a white coloured Maruti Van and taken away from the said place. He added that after the Maruti Van had gone away, he went with Avelino Viegas to the house of the victim Shanu Komarpant at Talpona to search for him and met Agnes wife of Shanu there. He added that the P.W.2 - Avelino Viegas thereafter went to police station to give a complaint. According to him, he had noticed P.W.23 - Anita Rebello, P.W.27- Bela Rebello, P.W.16 - Raju Bhandari, P.W.14 - Sebastian, her daughter Marina @ Munna near the place of incident. He identified sword - Exh.12 as the weapon in the hand of the accused No. 2 Subhash and knife - Article 13 in the hand of the accused No. 4 Shailesh. He deposed that the accused No. 3 Sanjay Gadekar was armed with danda - Article 14.

54. In his cross-examination, he explained that he was proceeding to Chawdi to purchase medicines for his mother, but he could not purchase medicine on that day. No reason emanates from the cross-examination of P.W.26 - Charles Fernandes to disbelieve his presence at the place of incident at the material time.

55. P.W.31 - Goretti D"Costa a resident of Galjibag, Canacona deposed that around 4.30 p.m. on 10.10.2003 while she was at her residence, she heard noise coming from the side of Saint Anthony High School, and when she came near the gate of her residence, she saw 6 to 7 persons lifting one person and putting him in a white Maruti Van and thereafter, proceeding towards Talpona side in the van. She identified the accused No. 2 Subhash as the driver of the Van and the accused No. 1 Valeriano and his wife the accused No. 5 Sheela occupying front seats. She deposed that after the Maruti Van had gone away, she went closer near Marina Stores and had found PW.14 - Sebastiano, P.W.33 - Munna, P.W.23 -

Anita, P.W.11 - Joaquim and others gathered there and could learn from them that the person taken in the Maruti Van was Shanu Komarpant. Her cross-examination makes no serious dent in her evidence. There is no reason why she should not be believed. A fact clearly emerges from her evidence that she had seen the accused No. 1 Valeriano and the accused No. 5 Sheela Barretto in a white Maruti van, which was used for removing one person, whom she happened to learn from others as Shanu Komarpant towards Talpona side and Sebastiano, Munna, Anita and Joaquim and others were present at that time there.

56. P.W.34 - Angelo Afonso similarly deposed that on hearing noise, she came out of the residence of her mother next to Marina Stores and had noticed the assault on Shanu Komarpant near the gate of Bela's house. She further deposed that she had recognised the accused No. 1 Valeriano Barretto and his wife the accused No. 5 Sheela Barretto in the group of the assailants. According to her, there were three other men and one lady amongst them and those were the accused persons before the Court. She clearly revealed in her testimony that she had noticed the assailants putting Shanu Komarpant in Maruti Van and taking him away; and thereafter she had made telephone call to Shanu's wife. There is nothing in her cross-examination to doubt her presence at the place of incident. Nothing has come in her cross-examination to disbelieve her testimony that she had seen the accused No. 1 Valeriano Barretto and his wife the accused No. 5 Sheela amongst the assailants and the victim Shanu Komarpant being removed in a Maruti Van from the place of incident.

57. P.W.33 - Munna Rebello, the daughter of P.W.14 - Sebastian deposed that around 4.30 p.m. on 10.10.2003, she was at her mother's house at Galjibag and on hearing some noise, she came out of the house and could notice the group of 6 to 8 persons assaulting Shanu Komarpant near the gate of the house of Bela and had further noticed that the accused No. 1 Valeriano Barretto, the accused No. 5 Sheela Barretto were amongst the said group of assailants. She identified the accused No. 2 Subhash wearing red shirt - Article 4 and holding sword - Article 12 as well as the accused No. 3 Sanjay and the accused No. 4 Shailesh wearing shirts - Article 8 and 24/A respectively and carrying arms i.e. danda - Article 14 and knife - Article 13 respectively as the assailants. She further identified the accused No. 1 Valeriano as the person holding Avelino Viegas by his arms at the material time. She added that one P.W.11 - Joaquim Dias had gone to the rescue of Shanu Komarpant when the accused No. 2 Subhash ran towards him. She further deposed that Shanu fell unconscious in bleeding condition and thereafter was put in a white coloured Maruti Van bearing registration No. GA-02-J-7230 with a rear glass bearing writing "Rolcy" and taken towards Talpona side in the said van driven by the accused No. 2 Subhash. She named P.W.27 - Bela Rebello, P.W.23 - Anita, P.W.26 - Charles, P.W.16 - Bhandari as the persons witnessing the incident. She deposed that Joaquim came to the shop of her mother out of fear where her mother gave him Soda to drink. According to her, she had identified the accused No. 2 Subhash and the accused No. 3 Sanjay in T.I. Parade conducted on 03/11/2003 at Canacona and had also

identified the accused No. 4 Shailesh and the accused No. 6 Vatsala in the T. I. Parade held on 05/11/2003 and 06/11/2003 respectively. Holding of T.I. Parades and identification of the accused No. 2 Subhash Krishnan, the accused No. 3 Sanjay Gadekar and the accused No. 4 Shailesh Gadekar by the eyewitnesses - PW.14 - Sebastiano, P.W.33 - Munna therein did not attract any comment in the defence argument. No flaw in the holding of T.I. Parades was pointed out by the defence. Valid identification of the said accused persons in the T.I. Parades by the concerned witnesses, therefore, can be safely believed.

58. Likewise, the evidence of pancha witnesses to the scene of offence panchanama Exh.131 collectively was spared from any adverse comment by the defence. On the contrary, sketch annexed to the scene of offence panchanama Exh.131 collectively was pressed in service in the course of arguments to point out the distances between the place where the blood stains were found i.e. in the vicinity of the gate to the compound of Bela's house and other places referred to in the testimony of the witnesses to the incident namely Saint Anthony School, Marina Stores, Sanatan Store. Evidence of P.W.10 - Dalal panch witness to the panchanama Exh.131 reveals that he had noticed blood stains and disturbed grass at the place of incident shown by one Avelino Viegas and the said place was situate on the right side of the road proceeding from Galjibag to Poinginim. He further deposed that he had noticed a police man already guarding the place of offence when they happened to visit it on 11.10.2002 and there was no traffic on that road as the road was closed. Existence of house of one lady named Bela with a gate in the vicinity of that place shown to him was also testified by P.W.10 - Dalal. P.W.10 - Dalal further revealed that samples of mud and grass - Article 30 and blood - Article 32 were collected from the said spot. He added that measurements were taken and sketch of the scene of offence Exh.131 was drawn at the said spot. Forensic investigation revealed that presence of human blood was detected in the samples collected from the spot.

59. From the sketch Exh.131 collectively, the defence argued, it can very well be seen that the testimonies of so called eye-witnesses were far from reality and it was not possible for the eye-witnesses to have had the view of the incident at the material time. Witnesses have unmistakably referred to Marina Store, Bela's House, Sanatan Store and Saint Anthony School. It is correct that the distances narrated by them between these places may not be matching with the distances revealed through the sketch Exh.131, however, while appreciating their evidence, the background from which these witnesses have come cannot be ignored. Concept of distances for expressing proximity and farness between the objects amidst rural locale is likely to vary from one individual to another and there is always a tendency amongst the person with rural background to give lower estimate of the distances. From the sketch and the evidence, it can be seen that the witnesses could have witnessed the place where the blood stains were found without any obstruction from the place/s they claimed to have seen the incident. The relevant arguments in defence, therefore, deserve to be rejected.

60. Evidence thus clearly reveals that the victim Shanu Komarpant was removed from the place of incident in injured condition in a Maruti Van bearing registration No. GA- 02-J-7230 with a rear tinted glass with a writing "Rolcy" and occupied by the accused persons. Seizure of glass pieces with sun control film - Article 33 from the distance of one and half kilometers from the place of incident towards Sadolxen side figures in the testimony of P.W.10 - Dalal, pancha to the panchanama Exh.131. P.W.10 - deposed that he could read the word "Rolcy" to some extent on the damaged glass recovered from the place towards Sadolxen side. There is nothing to disbelieve the testimony of P.W.10 - Dalal. What happened to these Maruti Van, thereafter, is significant. 61. Evidence of P.W.18 - Rajaram Juwatkar reveals that pursuant to a phone call from Agonda Police Outpost about the movement of a white coloured Maruti Van bearing registration No. GA-02-J-7230 and its role in crime , he and his colleague had started checking vehicles at Assolna Police Outpost, and at about 17.55 hours the said Maruti Van driven by the accused No. 1 Valeriano Barretto and five other occupants, two of them ladies and one injured arrived at the Assolna Outpost. He further deposed that he had noticed blood stains on the clothes of all the occupants of the said Maruti Van as well as on the matting - Article 16 in the dickey of the said van. He further deposed that there was one sword - Article 12, knife - Article 13, Bamboo stick - Article 14 and right leg chappal - Article 15 in the dickey. On questioning them, he deposed, the occupants of the said van disclosed their names. He added that the accused No. 4 Shailesh Gadekar had injury on his forehead and was, therefore, sent for medical examination along with the accused No. 5 Sheela and the accused No. 6 Vatsala to Medical Officer, P.H.C., Balli with memo Exh.141 and Maruti Van was detained inside the compound of Assolna Outpost. As regards the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay, he deposed, P.W.17 - P.I. Manjunath Dessai of Cuncolim Police Station had taken them in his custody. Except the facts that he -P.W.18 - Rajaram Juwatkar was not informed of registration of any crime in the present case and no panchanama was drawn by him, nothing much is elicited in his cross-examination. P.W.18 - Juwatkar, however, referred to making of a station diary entry regarding interception of the said van with six occupants and sending of one of the copies to P.H.C., Balli.

62. P.W.12 - Ladoba Narulkar deposed that while he was on duty at Cuncolim Police Station a telephone call from Head Constable P.W.18 - Juwatkar of Assolna Outpost about the detention of a Maruti Van and some persons was received and around 8.00 p.m. on 10.10.2003, he, P.W. 17 - Manjunath Dessai and P.W.22 - P.C. Sanjay Dessai went to Assolna Outpost. At the Assolna Outpost, he deposed, they had seen a Maruti Van with a rear glass missing and blood spilled inside. He added that one sword - Article 12, knife - Article 13 and Bamboo stick - Article 14 were also noticed in the said Van. P.W.12 - Ladoba Narulkar thus lend corroboration to P.W.18 - Juwatkar.

63. Evidence of P.W.22 - Sanjay Dessai, Police Constable, Cuncolim Police Station further lends corroboration to the evidence of P.W.18 - Juwatkar concerning

detention of the said Maruti Van carrying the aforesaid incriminating Articles and the accused persons, particularly the accused No. 1 Valeriano, the accused No. 2 - Subhash Krishnan, the accused No. 3 Sanjay Gadekar at Assolna Outpost in the evening of 10.10.2003. His evidence further reveals that on instructions from P.W.17 - P.I. Manjunath, he drove the said Van with incriminating Articles therein to Cuncolim Police Station and P.W.17 - P.I. Manjunath brought the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay to Canacona Police Station from Assolna Outpost in a police jeep. His evidence further revealed that they were at Canacona Police Station around 23.30 hours and on 10.10.2003 and P.W.35 - P.I. Dias came to Canacona Police Station at about 00.30 hours that day.

64. The fact of finding the said Maruti Van with the said incriminating Articles and the accused Nos. 1 Valeriano, 2 Subhash, 3 Sanjay at Assolna Outpost following a phone call from P.W.18 - Juwatkar, Head Constable Assolna Outpost in that regard finds place in the evidence P.W.17 - Manjunath Dessai, P.I. Cuncolim Police Station. Evidence of P.W.17 - Manjunath Dessai further reveals that the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay were taken from Assolna Police Station to Cuncolim Police Station by a police jeep and thereafter, the said van and the accused persons were sent to Canacona Police Station after making station diary entry at Cuncolim Police Station. Cross-examination of P.W.18 - Juwatkar, P.W.12 - Narulkar, P.W.22 - Sanjay Dessai, P.W.17 - P.I. Manjunath Dessai does not anywhere reveal anything to suggest that the incriminating Articles were procured and planted in the said Van in order to make out a false case. On the contrary, their cross-examination reveals that complete facts regarding the said case were not known to them and a futile search for the victim Shanu Komarpant was made in the night between 10/10/2003 and 11/10/2003. Failure to draw panchanama immediately on detention of the said van by itself is not sufficient to diminish the value of the evidence of P.W.18 - Juwatkar.

65. Evidence of P.W.15 - Dr. Poonam Vernekar, M.O., P.H.C., Balli Reveals that the accused No. 4 Shailesh Gadekar was brought to P.H.C., Balli from Assolna Outpost at about 7 p.m. on 10.10.2003 for medical examination with a request letter Exh.141 bearing signature of P.W.18 - Juwatkar. This fact is sufficient to corroborate the testimony of P.W.18 - Juwatkar about the detention of the said Maruti Van, as deposed, at Assolna Police Station. Further corroboration to the testimony of P.W.18 - Juwatkar can also be found in the evidence of P.W.13 - Nandkishore Gosavi, P.C. Cuncolim Police Station. P.W.13 - Gosavi averred that he had taken the accused No. 4 Shailesh for medical examination to P.H.C., Balli along with the accused No. 5 Sheela, the accused No. 6 Vatsala and brought them back to Cuncolim with medical certificate. There is no reason to disbelieve his evidence.

66. P.W.29 - Gaurish Pande, Police Constable at Canacona Police Station deposed that on instructions from P.W.35 - P.I. Serafin Dias, he guarded the white

coloured Maruti Van bearing No. GA-02-A-7320 with a rear glass broken from 00.30 hours till holding of the panchanama at about 6.00 a.m. on 11.10.2003 in the garage at Canacona Police Station. He added that he had noticed rubber matting with blood stains - Article 16, sword - Article 12, knife - Article 13, bamboo stick - Article 14 and right leg chappal - Article 15 lying in the dicky of the Van; and at about 6.00 a.m. on 11.10.2003, P.I. along with some witnesses and one photographer approached the Van and had drawn one attachment panchanama. The fact of having seen the said incriminating Articles in the Van remains undisturbed in his crossexamination.

67. P.W.7 - Satish Poinginkar deposed that at about 5.45 a.m. at about 11.10.2003, he acted as a panch at Canacona Police Station and happened to witness the seizure/ attachment of sword - Article 12, knife - Article 13, bamboo stick - Article 14, rubber matting - Article 16, all stained with blood and a right leg "quo vadis" No. 7 chappal - Article 15 from the dicky of one Maruti Van bearing registration No. GA-02-J-7230 with no rear glass parked in the garage of Canacona Police Station under panchanama Exh.114 between 6.25 hours and 7.20 hours of 11.10.2003. He further revealed that one photographer had clicked the photographs of the said vehicle as per Exh.110 collectively, and he had noticed key of the vehicle in the ignition hole and blood stains on the bumper of the Van as well. He added that the Articles seized were packed and sealed under his signatures at the spot of seizure. The fact of taking photographs has not been disputed in the cross-examination of P.W.7 - Satish Poinginkar. The photographs are not in conflict with the material facts revealed in the testimony of P.W.7 - Satish Poinginkar and in fact lend further corroboration to his testimony. It appears from the crossexamination of P.W.7 - Satish Poinginkar that he was prompted to make baseless utterances with reference to para two of the panchanama Exh.114 that P.I. Serafin had disclosed to them that panchanama was in connection with a murder case and the body of the deceased Shanu was at Agonda and the Maruti Van was brought to the garage from Agonda. Such facts do not find place either in the evidence or the statements of the accused persons.

68. Further link in the circumstantial evidence is provided by P.W.21- Rosario Quadros, the owner of the said Maruti Van. He deposed that his driver Dias had taken the Maruti Van to Margao in the morning of 10.10.2003 and the said driver had disclosed to him on 11/10/2003 that the Van was taken by his friends Elie and the accused No. 2 Subhash on the promise of returning the same in the evening. As the Van was not returned, he deposed, he went to the house of Elie with driver and thereafter to the house of the accused No. 2 Subhash only to find that Elie and the accused No. 2 Subhash had just vanished without leaving any information about their whereabouts. Ultimately, he deposed, he lodged complaint with Maina-Curtorim Police Station and thereupon he was informed about the seizure of the Van by Canacona Police. Nothing much turns on the cross-examination of the P.W.21 - Quadros. A fact, therefore, can clearly be seen that the said Maruti Van was not with his owner P.W.21- Rosario Quadros since

morning of 10.10.2003.

69. Seizure of blood stained clothes and belongings from the person of the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay followed by packing and sealing of the said Articles in the early hours of 11.10.2003 by P.I. Serafin Dias at Canacona Police Station is disclosed through the evidence of P.W.3- Namdeo Bagi. He made reference to blood stained T-shirt - Article 1, Pant - Article 2, Sandals - Article 3 of the accused No. 1 Valeriano, blood stained baniyan - Article 4A, shirt - Article 4B, pair of shoes - Article 5, Belt - Article 6, Pant - Article 7 of the accused No. 2 Subhash and blood stained shirt - Article 8, Belt - Article 10, Pant - Article 11 of the accused No. 3 Sanjay in his testimony. His cross-examination reveals that it was his maiden event to act as a pancha witness and he made his living from the business in cold drinks. A fact revealed in his cross-examination about proximity of his residence to the police station and he knowing P.I. Serafin Dias and one Police man from the Police Station is not sufficient to malign his evidence in view of the fact that he did not live on the favours shown by the police. A credible fact, therefore, comes out from his evidence that the accused Nos. 1 Valeriano, 2 Subhash, 3 Sanjay had blood on their person at the time of their arrest at Canacona Police Station.

70. Seizure of blood stained clothes from the person of the accused Nos. 4 Shailesh, the accused No. 5 Sheela and the accused No. 6 Vatsala at the time of their arrest at about 14.30 hours on 11/10/2003 at Canacona Police Station likewise emerges from the evidence of P.W.6 - Nandi Bhagat. He referred to packing and sealing of the said Articles at Canacona Police Station in his testimony. He was candid in revealing a fact that he knew P.I. Serafin since last about 4 to 5 years, but had never acted as a pancha witness in any other case. Nothing has been brought out in his cross-examination to show that he was under obligation of P.I. Serafin so as to become a pliable witness in the present case.

71. P.W.5 - Jose Barretto and P.W.8 - Janardan Bhandari panch witnesses unanimously supported the discovery of dead body of the victim Shanu Komarpant from the place known as Onshi-Khola, a sloppy place off the road at Agonda-Molre in the morning of 11.10.2003 at the instance of the accused No. 1 Valeriano Barretto. They averred that the accused No. 1 Valeriano made a statement as recorded in the memorandum Exh.109 and volunteered to show the place at Agonda-Molre where the victim Shanu was kept; and thereafter the accused No. 1 Valeriano had led the police to a place at Onshi-Khola initially in a jeep and thereafter on feet, and had shown the corpse of the victim Shanu Komarpant hanging to a cashew tree by neck with nylon rope. In the vicinity of the said place, they deposed, the police had collected blood stains - Article 18, blood stained belt - Article 19, left leg "quo vadis" make Bata chappal - Article 20. Evidence of P.W.5 - Barretto and P.W.8 - Janardan Bhandari further reveals that grey long pant and grey shirt were on the body of the deceased and the body was taken down after cutting nylon rope. They testified to the making of

the panchanama regarding the events and observations made at the spot. They identified recovery panchanama - Exh.109. P.W.8 - Janardan Bhandari deposed that one Photographer was also along with them and the photographer had taken the photographs Exh.110 at the spot of discovery of the body of the victim at Onshi-Khola. He also identified a pant with belt - Article 21 and shirt - Article 24, which were on the person of the deceased. The photographer P.W.28 - Vishal Dessai further corroborated the testimonies of the panchas to the discovery panchanama - Exh.109. He deposed that after taking photographs of the Maruti Van at Canacona Police Station Exh.110/A, he proceeded with the police party and the accused No. 1 Valeriano Barretto in the jeep and the accused No. 1 Valeriano Barretto led them to the spot where the body of the deceased hanging to the cashew tree was shown to them by the accused No. 1 Valeriano barretto. He averred that he had taken the photographs of the body of the deceased as well as the Articles recovered from the said spot. He identified the said photographs Exh.110/A collectively. The fact of taking photographs and the accused No. 1 Valeriano Barretto leading to the place of discovery of the body of the deceased is not rendered incredible in his cross-examination. He deposed that after about an hour's run in a jeep, they had reached the spot, where the accused No. 1 Valeriano had asked the driver to stop the jeep. P.W.28 - Prabhu Dessai further deposed that the area where the jeep was stopped was not an open space, but it was a dense cashew cultivation with no houses around the place. His evidence shows that there were no persons around the spot when they reached the said place. One can clearly gather from his testimony that the place was unfrequented one away from the human habitation.

72. Discovery of the fact of keeping the body at the aforesaid place at the instance of the accused No. 1 Valeriano Barretto has been assailed on the ground that the police were knowing about the said place prior to making of the memorandum panchanama Exh.109. For appreciating the worth of this discovery, it is necessary to understand how and where this vital fact in the evidence was discovered. Nowhere in the evidence of either P.W.17 - Manjunath Dessai and P.W.35 - Serafin Dias there is whisper of the fact that they were knowing the exact place from where the body of the deceased Shanu was discovered. Cross-examination of P.W.35 - Serafin Dias simply reveals that at about 8.10. a.m. on 11.10.2003, he had recorded the statement of the accused No. 1, and thereafter, the accused No. 1 Valeriano Barretto had narrated the sum and substance of what was recorded by him earlier at the time of drawing of the panchanama Exh.109 in the presence of the panchas. Only, thereafter, the evidence discloses the accused No. 1 Valeriano Barretto had led the police and the panchas to the aforesaid spot not visible from the road where the vehicle was stopped. Thus, it can safely be gathered from the evidence that the exact place from where the body of the deceased Shanu was discovered could not have been known to anybody except the person/s, who had taken Shanu in unconscious state to the said place. It is not the case of the defence that some other person had disclosed such fact to the accused No. 1 Valeriano Barretto and, therefore, he could make

such discovery. There is no reason to disbelieve P.W.5 - Jose Barretto, P.W.8- Janardan Bhandari, Ex-Sarpanch of village Poinganim, P.W.28 - Vishal Dessai, Photographer, who were unanimous in saying that the place where the body of deceased Shanu was found hanging was discovered at the instance of the accused No. 1 Valeriano Barretto.

73. Evidence of P.W. 1 - Walter Affonso discloses that inquest was conducted over the dead body of Shanu Komarpant and inquest panchanama was drawn at Onshi- Khola as per Exh.89. P.W.1 - Walter Affonso deposed that he had seen injuries on the face, legs, chest and back of the deceased, and blood stained gray coloured pant with belt - Article 21, short pant - Article 23, shirt - Article 24, cash amount of Rs. 1,801/-, a wrist watch, pocket note book and driving licence and loose papers - Article 22 collectively were duly seized from the person of the deceased. Evidence of P.W. 4 - Agnes Komarpant wife of the deceased Shanu Komarpant reveals that she had identified the aforesaid belongings of her husband Shanu Komarpant. More particularly she identified the left foot bata chappal - Article 20, which matched with its counterpart the right leg chappal - Article 15 recovered from the Maruti Van. There is no serious challenge to these facts appearing in her evidence. Her evidence corroborates ocular versions regarding her husband's last journey in the van.

74. P.W.4 - Agnes Komarpant hinted at the motive behind the crime. She deposed that she was apprehensive about the future of her brother Melwyn, who was unemployed and whiling away time in the company of the accused No. 5 Sheela, wife of the accused No. 1 Valeriano Barretto; and on 09/10/2003, she had questioned the accused No. 5 Sheela on telephone as to why she was moving with her brother, and had also told her that their conduct had become talk of the town. She further deposed that around 3.30 p.m. on 10.10.2003 P.W.2 - Avelino and Alex Viegas friends of her husband had made enquiries about her husband on telephone, and soon thereafter, Alex had again made enquiries as to whether Shanu had come home, and further disclosed to her in response to her counter query that the accused No. 1 Valeriano and the accused No. 5 Sheela along with many other were searching for Shanu and had gone towards Canacona side. She further deposed that P.W.2 - Avelino Viegas and another friend of her husband had likewise informed her on the telephone around 4.00 p.m. and, thereafter, P.W.2 - Avelino had been to their residence, met Shanu, talked with him and left with Shanu, Alex and another on motorcycles for Galjibag at about 4.45 p.m. on that day. She deposed that one Angela Barretto informed her on telephone from Galjibag about the assault on Shanu and his removal from the place of assault in Maruti Van. Her evidence reveals that P.W.2 - Avelino, Alex and one person had been to the residence, and asked her whether Shanu had come home.

75. The fact that nothing much was disclosed by the P.W.2 - Avelino, Alex and the third person to P.W.4 - Agnes immediately after the incident, it is argued, is not compatible with natural course of the events. However, it is more plausible

that immediately after the incident, the said persons, who were close to the family of Shanu Komarpant could not have thought it fit to disclose the gory incident to the wife of the deceased to avoid mental trauma and thought it fit only to enquire as to whether Shanu had returned home.

76. A fact that the accused No. 1 Valeriano Barretto was searching for the victim Shanu Komarpant in the afternoon of 10.10.2003 gains further credence from the evidence of P.W.25 - Anand Pednekar a mechanic working in the garage of the victim Shanu Komarpant at Gulem- Canacona at the material time. P.W.25 - Anand Pednekar also made reference to the fact that the accused No. 1 Valeriano Barretto had come to the garage in Maruti Van with some other persons and had made enquiries about Shanu in the loud voice.

77. P.W.9 - Dr. Andrea Fernandes, Assistant Professor, Forensic Medicine, G.M.C. as his testimony reveals, had performed postmortem examination over the body of the deceased Shanu between 9.40 a.m. and 12.45 p.m. on 12.10.2003 at G.M.C., Bambolim, Goa. Postmortem examination conducted by him revealed ligature mark with dark brown pressure abrasion all around the neck as well as lacerations, abrasions, bruises, multiple abrasions, totally numbering 36 injuries spread over head, face, wrist, hand, loin, chest, shoulders, legs of the deceased. His testimony reveals that he did carry out internal examination of organs and could finally opine that the death of the victim Shanu was due to asphyxia as a result of hanging and all injuries were ant-mortem and fresh at the time of death vide postmortem examination report Exh. 121. He further expressed in his cross-examination that collectively the injuries besides nylon rope ligature on the neck of the deceased were fatal and there were no signs of decomposition. He further revealed that there was no evidence of dragging of the deceased. Cross-examination of P.W.9 - Dr. Fernandes reveals that from number and nature of the injuries, he could see that the deceased was incapacitated as a result of unconsciousness and, therefore, he could not defend himself at the time he was hanged and it was homicidal hanging. The fact of unconsciousness of the deceased Shanu as a result of assault on him very well figures in the ocular version of the incident. There is no reason apparent from the evidence to brush aside the evidence of P.W.9 - Dr. Fernandes. The medical evidence unerringly points out that the death of the victim Shanu was due to homicidal hanging. No fault, therefore, can be found in the finding of the learned Trial Court as regards the demise of the victim Shanu Komarpant.

78. P.W.9 Dr. Fernandes deposed that injury No. 1 showing ligature mark on the neck was caused by nylon rope and injury Nos. 2 to 20, 24 to 31,35,36 comprising of lacerations, abrasions, bruises were caused by hard and blunt weapon; and the injury Nos. 21,22,23,32,33,34 comprising of railroad pattern bruises and one laceration with contused margin parallel to injury No. 21 were caused by blunt elongated object.

79. P.W.9 - Fernandes further deposed that on 31.10.2003 weapons, sword -Art.- 12, knife - Article 13, bamboo stick (danda)- Article 14 were received by him in

sealed condition with letter dated 31.10.2003 Exh.127 for the purpose of examination and his opinion vis-a-vis the injuries noticed following the examination carried out by him and on examination of the said weapons, he had drawn the sketches of the weapons, described the weapons in his report and given his opinion regarding the injuries noticed on the body of the deceased Shanu in relation to the said weapons as follows : vide report Exh.127 collectively: injury Nos. 2 to 36 except injury Nos. 21,22,23,32,33 & 34 found on the dead body of the victim Shanu could have been caused by sword - Article 12, knife -Art.13 and injury Nos. 21,22, 23, 32,33 and 34 found on the body of the deceased could have been caused by bamboo stick (danda) Article 14. There is no cross-examination of P.W.9- Fernandes as regards this weapon's report and his earlier version for the cause of injuries on the body of the deceased. Medical opinion, therefore, is not in conflict with the ocular version of the incident.

80. Examination of the accused persons also figures in the testimony of P.W.9 - Fernandes. P.W.9- Fernandes deposed that he had examined the accused persons on 13.10.2003 after taking their consents and had noticed the following injuries :

Accused No. 1- Valeriano Barretto:

- i. Abrasion obliquely placed 5.5 cm x 0.3. cm with dark brown scab on the back of the neck talling down towards right side of the neck.
- ii. Abrasion obliquely placed 5 cm x 0.2 cm parallel and outward towards previous injury with dark brown scab.
- iii. Abrasion 1 cm x 0.2 cm with dark brown scab on the left side front side of the chest.
- iv. Abrasion 2.5 cm x 0.2 cm with dark brown scab on front portion of the neck.

All the above injuries were 5 to 6 days old. Accused No. 2 - Subhash Krishnan:

- (i) One multiple abrasions five in number in the area of 3 cm x 2 cm. with reddish brown scab on the back of left forearm, lower fourth 4 cm above left wrist.
- (ii) Abrasions 3 in number of 0.7 cm. X 0.3 cm and 0.2 cm x linear with reddish brown scab on the knuckle of middle finger of left hand.

All the injuries were 3 to 4 days old.

Accused No. 3 - Sanjay Gadekar:

- i. Abrasion 3 cm x 0.5 cm with reddish brown scab on right forearm.
- ii. Abrasion obliquely placed 2 cm x 0.2 cm with reddish brown scab on the inner aspect of the left forearm.
- iii. Grazed abrasion 2.5 cm x 2 cm with reddish brown scab on front of the abdomen.

iv. Grazed abrasion 3 cm x 2 cm with reddish brown scab on front of the abdomen.

All the injuries were 3 to 4 days old.

Accused No. 4 - Shailesh Gadekar -

- i. Bandaged injury over left side frontal region of the head.
- ii. Superficial incised wound 5 cm x linear with inflamed borders on left forearm.
- iii. Abrasion 1.3 cm x linear reddish brown scab on mid front of left arm.
- iv. Grazed abrasion with reddish brown scab on middle aspect of left elbow.
- v. Abrasion 0.5 cm x linear with reddish margin with reddish brown scab of dorsum of right hand on knuckle of ring finger.
- vi. Grazed abrasion 2 cm x 2 cm on dorsum of right foot.
- vii. Abrasion obliquely placed 2 cm x linear with reddish margins with reddish brown scab on left side mid neck.

All the above injuries were 3 to 4 days old.

Accused No. 5 Sheela Barretto:

No external injuries.

Accused No. 6 Vatsala Gadekar:

Single abrasion reddish 1.5 cm x 0.5 cm with reddish brown scab.

81. In cross-examination, P.W.9 - Fernandes revealed that injuries on the person of the accused No. 1 Valeriano could have been caused by finger nails of human beings ; and injuries on accused No. 2 Subhash Krishnan could have been caused by hard and blunt weapon and could be either offensive or defensive injuries. The accused No. 4 Shailesh could have been caused by sharpened pointed object. Medical evidence thus, points out to some violence caused to the accused.

82. On this background, learned Advocate Lotlikar for the accused No. 2 Subhash Krishnan in course of his argument, hinted at the plea of self-defence and cited judgments reported in Raghbir Singh and Others Vs. State of Haryana, , Ravishwar Manjhi and Others Vs. State of Jharkhand, , Mohar Rai and Bharath Rai Vs. The State of Bihar, in support of his plea of private defence. It is true that the accused taking such plea is not necessarily required to call evidence in support of such plea and he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. However, the accused did not take such plea in their statement recorded u/s 313 of Cr.P.C. Despite this fact, the Court can consider such plea from material on record. The Hon''ble Apex Court in Raghbir Singh's case however, observed that where the right of private defence is pleaded, the defence must be of reasonable and probable version

satisfying the Court that harm caused by the accused was necessary for either warding off the attack or for forestalling further reasonable apprehension from the side of the accused. Taking of such plea connotes occurrence of some violent incident between the rival parties. It is in this context, the evidence in the present case needs to be appreciated.

83. Pertinently, the evidence clearly reveals beyond shade of doubt that the victim Shanu was removed by the accused in the said Maruti Van in unconscious state after the assault. Circumstances brought in evidence further points out that body of the deceased Shanu with 36 injuries was found hanging at a desolate place shown by the accused No. 1 Valeriano. Medical evidence reveals that Shanu died of homicidal hanging. These facts and circumstances in the evidence do point out that the said accused persons, who worked in tandem with common intention to assault the deceased accused had removed the deceased Shanu to the desolate place only to end his life moment the deceased Shanu fell on the ground in unconscious state. Were the said accused persons justified in doing the said Act, is the question, which the accused need to answer. There is no answer to this question coming forth from the said accused. Plea of private defence, therefore, needs to be rejected.

84. It is true that there has been no explanation coming forth from the prosecution witnesses for the injuries found on the person of the accused. However, it needs to be reiterated that there is no plausible defence version explaining such injuries and the witnesses did not deny the existence of injuries on the person of the accused. It is probable that the witnesses did not witness the genesis and origin of the occurrence. No inference, therefore, can be drawn that the prosecution witnesses were not presenting true version of the incident. Facts in the present case differ from the facts in the cases cited on behalf of the defence and, therefore, are of no avail to the defence.

85. As regards the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay, the accused No. 4 Shailesh the prosecution evidence is credible and reliable. Medical evidence reveals that blood grouping test carried on at the blood bank of Goa Medical College on 13.10.2003 lay to the detection of the following facts:

Forensic investigation shows that the blood of the deceased belonged to A Group, a group distinct from the blood groups of the accused persons; and the blood of the deceased was found on the clothes of the accused No. 1 Valeriano, the accused No. 2 Subhash, the accused No. 3 Sanjay. Detection of human blood on the weapons used in the crime, matting in the Maruti Van, clothes of the accused No. 4 Shailesh, the accused No. 5 Sheela and the accused No. 6 Vatsala is revealed from the forensic investigation. This revelation further throws light on the role of the accused persons in the said violent incident.

86. However, as regards the accused No. 5 Sheela and the accused No. 6 Vatsala, the learned Trial Court gave them the benefit of reasonable doubt for the

reason that there was no clear and cogent evidence indicating the participation of the accused No. 5 Sheela and the accused No. 6 Vatsala in the assault on the deceased Shanu and that they were merely accompanying the accused No. 4 Shailesh, their relation in the Van and thereafter, in the ambulance and there was possibility of detection of human blood, may be the blood of the accused No. 4, on their clothes. Medical evidence also does not support the theory of assault by the accused No. 5 Sheela on the private part of the deceased victim. Ocular versions about the incriminating role of the accused No. 5 Sheela and the accused No. 6 Vatsala suffer from material omissions. On the contrary, there is evidence of the fact that the accused No. 5 Sheela was shouting for removal of the accused No. 4 Shailesh to the hospital. Lack of evidence regarding the genesis of the incident has further compounded the issue in favour of the accused No. 5 Sheela and the accused No. 6 Vatsala. No interference in the finding of the learned Trial Court as regards the accused No. 5 Sheela and the accused No. 6 Vatsala is, therefore, warranted.

87. The learned Trial Court, however, erred in acquitting the accused No. 1 - Valeriano Barretto, the accused No. 2 - Subhash Krishnan, the accused No. 3 - Sanjay Gadekar, the accused No. 4 - Shailesh Gadekar under Sections 342, 364 read with Section 34 of I.P.C., 1860. The view taken by the learned Trial Court for acquitting the said accused persons proceeded from the fact that the victim Shanu fell unconscious and thereafter, he was put in a dicky of the Maruti Van. This fact, the learned Trial Court reasoned, did not further materialise into his prevention from proceeding in any direction and or his abduction in order to murder him or to put him in danger of being murdered. Essentially both the offences i.e. wrongful confinement and abduction are the offences which are committed as a result of curtailment of personal liberty. The offence of wrongful confinement as defined u/s 340 of the Code occurs when individual is wrongfully restrained in such a manner as to prevent him / her from proceeding beyond certain circumscribing limits. The offence of abduction u/s 362 of the Code involves use of force or deceit to compel or induce any person to go from any place. Evidence clearly shows that the victim Shanu by use of criminal force i.e. the assault was made to lose his consciousness. Even if the victim would have wished to proceed in any one direction, he would not have been in position to do so for the reason of his unconsciousness. Certainly, Shanu never wished to go with his assailants in the Maruti Van, but was compelled by the said accused persons to go from the place of incident to the place where he ultimately met his death. Deceit involves tricking away of individual from reality. Unconsciousness paralyzed the mental faculties of the victim and froze his perception as regards the place. Virtually, the victim was, thereafter, tricked away from the reality while in unconscious state and made to go from one place to another. Thus, the learned Trial Court grossly misinterpreted the facts and recorded manifestly illegal finding.

88. The prosecution has proved with clear cogent and credit worthy evidence, both oral and circumstantial, the fact of assault on victim Shanu Komarpant, his

removal in unconscious state to desolate place and his murder by hanging at that place. There can be no hypothesis emanating from this chain of events to suggest the innocence of the accused Nos. 1 - Valeriano Barretto, 2 - Subhash Krishnan, 3- Sanjay Gadekar and 4- Shailesh Gadekar. Conviction of the said accused persons is, therefore, warranted on all counts.

89. In the result, Criminal Appeal Nos. 7/2007, 12/2007, 13/2007 are dismissed with no order as to costs. Appeal of the State being Criminal Appeal No. 6/2008 is partly allowed. The accused No. 1- Valeriano Barretto, the accused No. 2- Subhash Krishnan, the accused No. 3- Sanjay Gadekar and the accused No. 4- Shailesh Gadekar are convicted under Sections 342 and 364 read with Section 34 of I.P.C., 1860. Acquittal of the accused Nos. 5 and 6 i.e. Sheela Barretto and Vatsala Gadekar is confirmed.

90. The appellants / accused were produced before this Court to be heard on the point of sentence. They were also assisted by their lawyers. In this connection, the appellant / accused No. 1 Valeriano Barretto submitted that he is supporting pillar of his family comprising of wife, old parents and two kids and had no previous criminal record. The appellants/ accused Nos. 3 and 4 Sanjay Gadekar and Shailesh Gadekar submitted that they were the only earning members of their family and had received injuries in the incident. They added that they also did not have any past criminal record. Likewise, the appellant / accused No. 2 Subhash Krishnan submitted that he was lone supporting member of his family and his mother particularly required his support. Broadly for these reasons, the aforesaid appellants/ accused Nos. 1 to 4 urged for leniency in awarding the sentence for the commission of offences punishable under Sections 342, 364 read with Section 34 of I.P.C., 1860.

91. Learned Public Prosecutor Ferreira for the State resisted the plea for leniency. He opened his submission with reference to the judgments of the Apex Court on the sentencing policy namely judgments reported in State of Madhya Pradesh Vs. Munna Choubey and Another, and State of Madhya Pradesh Vs. Saleem @ Chamaru and Another, . He pointed out from the evidence that the appellants/ accused Nos. 1 to 4, now urging for leniency, had come together well prepared with previous diabolical design in their mind to eliminate the victim Shanu Komarpant and, therefore, they did not halt on falling of the victim unconscious in the incident, but kidnapped him to a desolate place and hung him to the tree in unconscious state till life went out of his body. This act of the appellants/ accused Nos. 1 to 4, he submitted, needs to be considered in light of observations of the Hon''ble Apex Court in the said judgments.

92. The Hon''ble Apex Court in Munna Choubey's case (supra) required the Courts below not to loose sight of impact of the crime on social order and public interest and to handle the matter of sentencing in exemplary manner eschewing liberal attitude in order to care for and strengthen social interest by sting of deterrence inbuilt in sentencing system. The Hon''ble Apex Court exhorted the Courts below to be stern in the matter of sentencing with the following strong

words:

The Court will be failing in its duty "if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with atrocity and brutality with which the crime has been perpetrated, the enormity of crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal".

In the instant case, there is ocular evidence of the fact that the victim fell unconscious as a result of assault with deadly weapon and was thereafter removed from the place of incident. This fact was openly done in broad day light in presence of the members of the public by the appellants/ accused. Certainly, it shocked the people, who witnessed the incident. However, there is no clear eye-witness account as to how exactly the incident began and there is medical evidence of the fact that the appellants/ accused had also received injuries.

93. Medical evidence shows that the victim was hung in unconscious state. However, there is no eye-witness account of the fact of what exactly had happened at the place where the victim was hung by neck to the tree. One does not know whether the victim was hung to the tree to camouflage the murder or to satiate the passion to be more brutal. It is also noticed that individual roles of the appellants/ accused in the process of hanging of the victim to the tree are also not clear. The appellants / accused have been already sentenced to imprisonment for life for taking life of the victim. Extreme punishment of life imprisonment stipulated for the crime punishable u/s 364 would, therefore, make no further sense in the given set of facts and circumstances.

94. Considering the facts and circumstances of the case, the appellants/ accused would be condignly punished if the following sentence is passed:

(i) The appellants/ accused Nos. 1 to 4 i.e. Valeriano Barretto, Subhash Krishnan, Sanjay Gadekar and Shailesh Gadekar respectively are sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/- each and in default to undergo R.I. for further period of 3 months for the commission of offence punishable u/s 364 read with Section 34 of I.P.C.,1860.

(ii) The appellants/ accused Nos. 1 to 4 i.e. Valeriano Barretto, Subhash Krishnan, Sanjay Gadekar and Shailesh Gadekar respectively are sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 5,000/- each and in default to undergo S.I. for further period of 3 months for the commission of offence punishable u/s 342 read with Section 34 of I.P.C.,1860.

(iii) Sentences shall run concurrently.

(iv) Bail bonds of the accused Nos. 5 and 6 shall stand cancelled.