

(1982) 02 BOM CK 0054
In the Bombay High Court
Case No : Criminal Appeal No. 235 of 1981

Shahaji Dattu Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-02-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (1982) 1 BomCR 418

Hon'ble Judges : S.C. Pratap, J; R.D. Tulpule, J

Bench : Division Bench

Advocate : Shamrao G. Samant, for the Appellant; N.M. Kachare, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pratap, J.—In Sessions Case No. 29 of 1980, Sessions Court, Kolhapur, original accused Nos. 1 to 3 were charged with the offence of having committed murder of one Rama Govinda Patil, being offence punishable u/s 302 read with section 34 of the Penal Code. Original accused No. 1 was, in the alternative, charged for the substantive offence of murder of the said Rama Govinda Patil, punishable u/s 302 of the Penal Code and accused Nos. 2 and 3 were in the alternative, charged with having shared common intention of accused No. 1 for committing the murder of the said Rama Govinda Patil and thereby committing an offence punishable u/s 302 read with section 34 of the Penal Code. Accused Nos. 2 and 3 were further alternatively charged with having voluntarily caused simple hurt to the said Rama Govinda Patil by means of sticks and thus committing offence punishable u/s 323 of the Penal Code. By judgment dated 19th January, 1981, the Sessions Court acquitted accused Nos. 2 and 3 of the charge u/s 302 read with section 34 of the Penal Code. These two accused persons were, however, convicted for offence u/s 352 read with section 34 of the Penal Code and were sentenced to suffer simple imprisonment for one month. Since they were under trial prisoners for more than the aforesaid period of one

month, they were ordered to be released forthwith. So far as accused No. 1 is concerned, he was convicted u/s 302 of the Penal Code and sentenced to suffer imprisonment for life. It is against the order of his conviction and sentence u/s 302 of the Penal Code that original accused No. 1 Shahaji Dattu Patil has preferred this appeal therefrom.

2. Case of the prosecution, briefly stated, has been that relations between the deceased Rama Govinda Patil and his brother Hindurao Govinda Patil and the accused were strained. On the morning of 11th February, 1980, at about o'clock Rama was returning from his northern field and was going homewards southwards by the village road known a road. That very time, the original three accused suddenly emerged from being some house and came in front of Rama. Rama started running towards the east, i.e. towards the field of one Tanubai. The accused chased him. He was caught in the field. Accused Nos. 2 and 3 gave stick blows on Rama, but Rama averted the same by catching the sticks by raising his hands. At that moment accused No. 1 Shahaji gave a knife blow just below the left armpit of Rama. Rama shouted and fell down. The accused immediately ran away with their weapons. This incident, so proceeds the prosecution case, was actually witnessed by Rama's brother Hindurao who also per chance happened to be near about the scene at that time. According to the prosecution, the incident was also witnessed by three other persons viz., Shripati, Sakharam (P.W. 3) Shripathi Dashrath (P.W. 4) and Vithabai Dattu (P.W. 6), the latter being the sister Rama. All these four persons then gathered near the dead body and were there for about an hour. A few other persons also are alleged to have come there, witnessed the dead body and left. One amongst these persons asked as to why police complaint was not being filed. It was then that P.W. 2 Hindurao, the brother of Rama, went for the purpose of filing police complaint. He went by bus to the Police Station which was at a distance of about sixteen Kilometres. A complaint was lodged with the Karvir Police Station at 2 o'clock in the afternoon. An offence of murder was registered against the accused persons. The police arrived at the scene of offence soon thereafter. Statements of several person were recorded on the same day. On the next day, statements of some other persons were also recorded. After the requisite panchnamas and after completion of investigation, all the three certain accused were made to stand their trial on the charges indicated above.

3. Defence of the accused was one of total denial. They claimed to be innocent and prayed to be acquittal.

4. The learned Sessions Judge who tried the accused came to the conclusion that the prosecution proved that Rama died a homicidal death. That this was so is no longer in dispute. The learned Sessions Judge further held that the prosecution had established that accused No. 1 Shahaji had committed murder by intentionally or knowingly causing the death of Rama by means of a knife. It was further held that the prosecution failed to prove that accused No. 2 Lakhu Ganu and accused No. 3 Vasant Dattu shared common intention with accused No. 1

Shahaji to commit the aforesaid murder and that they took part in the said crime so as to rope them in for offence of murder by attracting the provisions of section 34 of the Penal Code. Consistent with his finding, the charge of murder against accused Nos. 2 and 3 and was held not established. It was, however, held that accused Nos. 2 and 3 had committed offence punishable u/s 352 read with section 34 of the Penal Code. Consistent with the finding of their respective guilts, each of the accused was convicted and sentenced as already indicated earlier in this judgment. Against their conviction and sentence, neither accused No. 2 nor accused No. 3 has preferred any appeal. This appeal is one by original accused No. 1 challenging his conviction and sentence u/s 302 of the Penal Code.

5. In support of the appeal, we have heard Mr. S.G. Samant, learned Counsel for appellant-accused No. 1. The State is represented by the learned Public Prosecutor Mr. N.M. Kachare.

6. Before proceeding further, it may be relevant note that apart from the testimony of purported eye-witnesses to the incident in question, the prosecution also sought to rely upon discovery of a knife (Article 17), motive and finding of a blood stained shirt on the person of accused No. 1 at the time of his arrest. Of these three circumstances, the learned Sessions Judge has rejected the circumstances of motive as also the discovery of knife (Article 17) but has relied upon the finding of a blood stained shirt on the person of the accused No. 1 at there time of his arrest. However, so far as this last circumstance is conserved, we find ourselves unable to agree with the learned Sessions Judge. In this context, it may be noted that the incident took place on the morning of 11th February, 1980 and accused No. 1 was arrested on 19th February, 1980, i.e. on the ninth day after the day of the incident. He was, at that time, wearing a shirt which was seized from his person. Report of the chemical analyser shows that the said shirt contained a few blood stains ranging from 0.1 to 0.5 cms. in diameter on right hand sleeve near cuff. The said blood was found to be human blood, but it was not possible to find out the blood group in that behalf, the result in that behalf being inconclusive. Now, in the very nature of things, it is difficult to accept this as a cogent circumstance against accused No. 1. The considerable lapse of time between the date of the incident and the date of the arrest of accused No. 1 along with the inconclusive result of the Chemical Analyser along with the nature of the stains all lead to a reasonable inference that the said circumstance cannot be considered to be a circumstance against the accused. This is all the more so when this accused denies that he had the said shirt on his person at the time of his arrest and when the eye-witnesses to the incident are also not sure whether that was the very shirt worn by the accused at the time of the incident, their testimony being that accused No. 1 wore shirt similar to the shirt in question. It would, therefore, not be safe to hold this circumstance as one satisfactorily established against the accused and we would, therefore, exclude the same from consideration. Even otherwise and at the highest, the aforesaid circumstance, considered in the context the other evidence on record, become an extremely weak circumstance and if, as we shall, presently show, the

testimony of the purported eye-witnesses is itself unreliable failing to inspire any confidence in the mind of the Court this singular aforesaid circumstance cannot come to the aid of the prosecution.

7. The prosecution case mainly come to the testimony of Hindurao Govinda Patil (P.W. 2), the brother of the deceased Rama; Shripati Sakharam Patil (P.W. 3), Shripathi Dasharath Patil (P.W. 4), and Vithabhai Dattu Mole (P.W. 6), the sister of the deceased Rama. Case of the prosecution is that all these four persons were eye-witnesses to the incident in question. However, on going through the said evidence and considering the various inconsistencies contradictions and improvements therein, we find the said evidence extremely unreliable. We consequently find it extremely unsafe to base any conviction of accused No. 1 on such evidence. Before proceeding to an analysis of the evidence of these witnesses, it may be noted that two of these alleged eye-witnesses are close relations of the deceased Rama, Hindurao (P.W. 2), being the brother of the deceased and Vithabai (P.W. 6) being his sister. The other two alleged eye-witnesses Shripathi Sakharam and Shripathi Dashrath are themselves very close to each other but are also on direct inimical terms with the accused as their own admissions show. Though a number of other persons do appear to be present at or about that time the incident took place and though statements of as many as eighteen persons at and nearabout the locality were recorded on the very day of the incident, the prosecution was not chosen to examine a single independent witness.

8. Taking up first the testimony of Hindurao (P.W. 2), he states that on the day of the incident 11th February, 1980 at about 7.30 in the morning while he was returning home from his field, accused No. 1 Shahaji met him on the way. This witness Hindurao accosted Shahaji asking him why did he (Shahaji) damage the adjoining crops in the field while baking his own rations (part of sugarcane crop). To this, Shahaji retorted that why should Hindurao talk like this when he (Hindurao) had not suffered any loss. This was the exchange that took place between this witness Hindurao and accused No. 1 Shahaji in the morning at about 7.30 on 11th February, 1980. The witness states that at this time when this exchange took place, Police Patil was present. He separated the two. Accused No. 1 then went away but threatening "I will see how your brother gives evidence in our case against us". The police Patil who was present heard this threat. That was the end of the said incident. It is then further evidence of this witness Hindurao that about two hours thereafter Rama who had gone to another field early morning was returning southwards, while this witness Hindurao who had, in the meanwhile, already gone home had, after his lunch, started going to Kolhapur and he was proceeding northwards towards the S.T. Stand. This was about 10.00 am. Thus, while these two brothers were coming in opposite directions, witness Hindurao states that when he saw his brother Rama coming from about a distance of about 200 feet and crossing the road, the three accused persons suddenly came out of a hut very near the house of one Rayappa Bhimrao and went in front of Rama. On seeing him, Rama started running away. The

accused, however, chased him. Hindurao also raised an alarm. While Rama went in the field of Tanubhai on the eastern side, accused Nos. 2 and 3 gave him stick blows. That very moment accused No. 1 Shahaji raised his hand and gave a knife blow on the left side chest of Rama. This incident was witnessed by Hindurao from a distance of around eighty feet. All the accused ran away. Rama fell in a coma and succumbed to the injury. Witness Hindurao then proceeds to say that when he went near Rama, Shripati Dashrath and Shripati Sakharam also came there. At about 11 o'clock, witness Hindurao left for Kolhapur and reached Kolhapur at about 12 noon. He then went to the Karvir Taluka Police Station and at 2 p.m. filed his complaint which exhibit 13 on the record. Thus, in, substance, is the evidence of this witness in his examination-in- chief. Coming to his cross-examination, he admits that he did not, while filing the complaint, tell the police that in the early morning incident at about 7.30 on the same day 11th February, 1980 when he met Shahaji there was any talk of Rama being a witness. He then admits that though Shripati Dashrath and Vithabai Dattu were also present at the time of the incident and thus were eye-witnesses, he has not mentioned the names of those two persons in his complaint. He then also admits that though the Police Patil was present at the time of the first incident in the morning at about 7.30 and had actually separated the witness Hindurao and accused No. 1 Shahaji, this witness Hindurao did not, after the attack on Rama, go to the Police Patil and inform him of the incident. Indeed, even after one hour, the witness has chosen to travel sixteen kilometres to file a complaint at the Karvir Police Station but not to approach the police Patil in the same village and who was, according to this very witness, present in the morning incident. He also admits that at the time of the incident, he was at a distance of eighty feet from the scene of offence and yet he is supposed to have seen accused No. 1 taking out a pen-knife and attacking Rama. He further admits in his cross-examination that though he shouted when the incident took place, nobody came out from the houses of nearby residents such as Dhondiram, Rayappa Bhimrao, Pandurang Khandu or from the houses situated nearby the S.T. stand. He has also given further damaging admission viz. that Shripati Sakharam and Shripati Dashrath came out at the time of the incident in question but"..... after the accused persons ran away from the place". He further admits that after these two persons came, only thereafter witness Vithabai Dattu came. Thus, all these three persons whom the prosecution has set up before the Court as eye-witness to the incident in question were, according to Hindurao (himself a star prosecution witness), not even present at the time of the incident. Witness Shripati Sakharam and witness Shripati Dasharath came after the accused ran away and witness Vithabai Dasharath came still later on after Shripati Sakharam and Shripati Dasharath had come. This damaging admission of prosecution witness Hindurao thus casts a serious doubt on the basic fact whether the aforesaid three persons were really eye-witnesses to the aforesaid crime in question. In this context, it may once again be noted that though Hindurao who is the first informant and has filed a detail complaint before the Karvir Police Station has failed to mention either Shripati Dasharath or even his own sister Vithabai as being eye-witnesses to the

crime. It is, of course, true that a first information need not contain all meticulous details. Want of particulars here or there may not be enough to cast any doubt on the veracity of there information lodged. A first information report is not and need not necessarily be the be all and end all. But when, in the facts such as here, the complainant has waited near the dead body for an hour or so, has met witnesses Shripati Sakharam, Shripati Dasharath and Vithabai Dattu and has been in their for company for an hour or so and has only thereafter gone to file a complaint sixteen kilometres away from the scene or offence and when he has filed a detail complaint giving the background of enmity between the two rival factions, his omission to mention two important eye-witnesses in the said compliant cannot be brushed aside lightly. Indeed, this omission is consistent with his evidence on oath before the Court that both these witnesses came after the accused had run away. Evidence of this witness on oath, corroborated as it is on the aforesaid by the first information report, weakens the prosecution case when it seeks to set up as many as four eye-witnesses to instant crime. This is not a small circumstance but a major circumstances which has to be borne in mud while considering and appreciating the prosecution evidence on record and particularly when the guilt or otherwise of the accused has to be determined basically and mainly on the basis the testimony of these four persons. Other circumstances also belittle one's confidence in the testimony of this witness Hindurao. Though Hindurao states in no uncertain terms that in the first incident which took place at about 7.30 in the morning the Police Patil was very much present and though it is undisputed that the Police Patil has also come to the scene of offence after the incident and though the Investigating Officer also admits that statements of the Police Patil was recorded, the prosecution has not chosen to examine the Police Patil as a witness in this case. His testimony would have considered helped the Court in adjudging the truth of the prosecution case, also the veracity of the testimony of the aforesaid witness Hindurao. But that has been so. Next circumstance is that though the Police Patil was in the village itself and though he was the person who separated Hindurao and accused No. 1 in the morning, Hindurao even after the ghastly incident on Rama within two hours of the first incident, does not go to the Police Patil at all. Record shows that Hindurao is a person experienced in criminal matters, he himself being involved in murder cases, chapter cases and other criminal offences. Familiar, therefore though he is in this field, he has yet not chosen to go and file his complaint with the Police Patil. In fact, for more than an hour or so after the incident he does not even think of filing any complaint. His testimony shows that it is only when a passenger got down from a S.T. bus, came to know of the incident in question and inquired why complaint was not being filed that witness Hindurao woke up in that regard. But even so, even at that stage, he does not go to the Police Patil but travels a distance of sixteen kilometres away to lodge a complaint at the Karvir Police Station. It is also significant to note witness Hindurao's statement that at the time when the incident took place, no person came out from the nearby houses and only after the incident took place, witnesses Shripati Dasharath and Shripati Sakharam came. According to the further testimony of

this witness Hindurao, neither of these two persons has any land or house near the scene of offence. It is, therefore, rather strange that at about 10 o'clock in the morning when an incident occurs almost in front of a main road which is a big road going from Gaganbavda to Kolhapur with vehicles running to and fro and people moving to and fro, none respondents to the cries except the aforesaid two persons Shripati Sakham and Shripati Dasharath who have neither any field nor any residence in the area in question and who strangely happened to be there at the nick of time. Also significant is the strange coincidence that Hindurao should be moving northwards after taking meals for going to Kolhapur and his brother Rama should be coming southwards after his work in the field and both of them should be within a short distance from each other list at the time when the incident is alleged to have occurred. It is equally strange that all the three accused person should be as if waiting for Rama to come at some time or the other from his field so as to be able to attack him. Also strange is the fact that the motive for killing Rama is that he was cited as a witness in a Court complaint filed by Shripati Dasrath (P.W. 4) against the father of accused No. 1 and others. Now, that complaint was filed as long back as in the year 1979. It does not stand to reason that several months thereafter the mere fact that Rama was cited as a witness in that complaint which was still pending most probably on a dormant file should have become a cause or a motive for the incident in question. But if that was the motive, then that was equally so motive qua Hindurao (P.W. 2) who was also cited as a witness in that complaint. Therefore, if that was the motive, there was no reason for the accused to let off Hindurao whom they had actually accosted in the morning and then waited for the uncertain arrival of Rama for an uncertain encounter with him. Also pertinent to note is the fact that though Hindurao in supposed to have actually witnessed the incident in question and has sought to give details thereof to the Court in the course whereof he states that accused Nos. 2 and 3 gave stick blows to Rama, neither the inquest Panchanama nor the post-mortem notes nor does the evidence of the Medical Officer give any remotest indication of any such blows having been received by Rama. All this material is consistent to the effect that there was only one injury on Rama and that was the fatal injury likely to be caused by a Rampuri knife.

9. While appreciating the evidence of this prosecution witness Hindurao, it would not be irrelevant to notice the fact that the learned Sessions Judge has himself, in the course of recording the testimony of this witness, observed at one place that this witness "takes very long time to give reply even to simple questions" and at another place :

"The witness is finally warned to give reply to questions without undue delay. The witness is also warned in case he takes inordinate time to give reply he is liable to fine,"

Nor would it be irrelevant to note the statement of this witness that :

"It is true that from 1977 to 1980 there was enmity between we people of Patil community and people of Desai community of Bhamte.

It is true that there was a fight between these two groups where axes were wielded. Both parties were acquitted. In one or those 2 counter cases, the deceased Rama, my brother Pandurang, and I myself were accused persons."

Such being the nature and quality of the testimony of this witness, we find it extremely unsafe to rely thereon. The story set forth by this witness sounds highly improbable. In any event, the witness does not appear to be speaking the whole truth. His story is also at variance in material respects with the one set forth in his complaint. Previous faction fights, subsisting enmity and the comments on this witnesses testimony by he learned Sessions Judge while recording the testimony are factors which cannot be ignored while adjudging the truth or otherwise of the story he seeks to set forth before the Court and wants the Court to accept. The testimony of his witness also does not receive requisite corroboration of a consistent nature and one which can be accepted with confidence from the other evidence on record. Indeed, the testimony of Shripati Sakharam (P.W. 3), Shripati Dasharath (P.W. 4) and Vithabai Dattu (P.W. 6) is inconsistent and in certain respects contradictory to the testimony of this witness Hindurao.

10. Coming to the evidence of Vithabai Dattu (P.W. 6), though she states that she witnessed the incident, her own brother Hindurao (P.W. 2) states that Vithabai was not there at the scene at the relevant time but came much later after the accused had run away. The house of Vithabai appears to be situated about a furlong or two away from the scene of offence. Though she states that it is only at a distance of one hundred feet, her testimony in that behalf is belied by the Panchnama of the scene of offence which gives measurements also and the distances also of the areas nearby. That she had not seen the incidents is not only admitted by witness Hindurao but is also corroborated by the fact that her name also does not appear as an eye-witness in the complaint lodged by Hindurao sometime after the incident in question. The circumstance that she is not likely to have been and eye-witness receives further corroboration from the circumstance that though the police arrived at the scene in the afternoon of the day, of the incident and though statements of as many as eighteen persons were recorded on the same day the statement of Vithabai was not recorded on that day at all. It was only on the next day that her statement happened to be recorded. Such then are the basic infirmities relating to prosecution witness Vithabai. Going through the evidence also, we do not find the same inspiring any confidence in the mind of the Court. Looking at the location of her house and considering the same in conjunction with the map of the scene of offence and the surrounding areas, it is extremely doubtful whether this witness standing near the cattle shed in front of her house could have at all been able to witness the incident that took place. Indeed, in her examination-in-chief itself she states that she did not see what was the weapon in the hand of Shahaji (accused No. 1). She also does not say that accused Nos. 2 and 3 gave any stick blows to Rama and/or that Rama avoided the said stick blows. She admits in her cross-examination that before she went to the scene of offence Shripati Sakharam and

Shripati Dasharath were already there. We have just seen the testimony of Hindurao that these two latter witnesses had themselves come to the scene of offence after the accused ran away. It is thus clear that Vithabai was not eye-witness to the crime at all. She had come to the place of the incident may be soon after its occurrence and along with the other close relations of Rama. We find ourselves unable to accept the testimony of Vithabai as in any way taking the prosecution case any further.

11. Coming then to the testimony of the other two prosecution witnesses Shripati Sakharam (P.W. 3) and Shripati Dasharath (P.W. 4.), we find the some totally unreliable. Their own testimony established direct enmity between them and the party of the accused. There have been complaints and cross complaints. There have been chapter proceedings against each other. Persons from the party of the accused as also persons from the party of these two witnesses have been personally directly involved in most of the criminal cases. Their testimony has, therefore, to be considered with great caution. Both these witnesses admittedly have no land nor any house near the scene of offence. They have not disclosed any good reason why or how they happened to be near the scene of offence just at the nick of time when the incident occurred. It is strange that while persons actually residing nearby have not come before the Court, these two witnesses residing elsewhere, also having land elsewhere and directly inimical to the accused persons happened to be at the scene of offence just at the nick of time and are being set up as eye-witnesses to the crime in question. Inter se also the testimony of both these witnesses conflicts and contradicts. Whereas Shripati Sakharam states that while he and Shripati Dasharath were coming together from north to south Rama was proceeding ahead at a distance of about 150 feet from these persons, the testimony of Shripati Dasharath on the contrary shows that Rama was nowhere seen by him but all of a sudden Rama appeared followed and chased by the accused persons. Now, to such an extent indeed cannot be the variance between the testimony of two eye-witnesses if both of them have really seen the incident in question. Indeed, evidence indicates that the offence took place in the field of Tanubai on the eastern side near the S.T. road and while the same occurred, these two witnesses were still on the northern side of the S.T. road but coming southwards. Looking at the location of the houses, the roads and the streets, we find it extremely doubtful if these two witnesses, even if they are supposed to be coming from north towards south along the road crossing the S.T. road, were at all in a position to see the occurrence in question in the field of Tanubai on the eastern side. Indeed, witness Shripati Sakharam admits in no uncertain terms that when he comes by the foot track (by which track this witness was in fact coming), he cannot see anything going on nearabout the S.T. Stand. Like Hindurao, these witnesses also state that though shouts were given, no one came out of the houses situated nearby the scene of occurrence. None came from the nearby houses of Shankar, Nivrutti; Narayan, Tukaram, Maruti, Rayappa, Pandurang or Dhondi Rama Patil near the scene of occurrence. The testimony of these witnesses shows that at about the time when

the incident occurred, motor crylists, cyclists, bullock-cart men and people owning carts do always go by the main Ganganbavda Kolhapur road which is the same as S.T. Road and yet these witnesses want the Court to believe that at that peak hour when the incident occurred, "no one was passing by the road". Witness Shripati Sakharam further admits the various chapter proceedings, in which he is involved, some of which appear to have been decided and some still pending. He also admits that a criminal proceeding was also pending between him and Dattu Kamble, the father of accused No. 3 in this case and he further frankly admits that in view of the said criminal proceedings he (this witness) and accused No. 3 in this case are on cross terms with each other. The testimony of these two witnesses further shows that after the occurrence these two witnesses and Hindurao (P.W. 2) were near the scene of occurrence sitting together and discussing for about one hour. The possibility of these witnesses chalking out a course of action with a view to involving the accused cannot, in all these circumstances, be said to be ruled out. The testimony of Shripati Dasharath further discloses that he did not see Rama "going towards the village" and yet he states that he has so stated to the police. Further, though he states that he told the police "I saw Rama going towards east" vital omission in that behalf amounting to contradiction has been brought on record with reference to his police statement. Still further, though this witness tells the Court that "the accused persons were chasing Rama" vital commission in that behalf also amounting to contradiction has also been brought on record with reference to his police statement. Witness Shripati Dasharath further states that though the house of the Police Patil was in the village itself, he did not go to the house of the Police Patil to inform him of the incident in question nor did he go even to the house of the Sarpanch to tell him in that behalf and he states that he had no special reason not to do so. Now, if these two persons were really eye-witnesses to the incident, experience as they also were, being involved in several criminal proceedings, they would not have failed to go to the Police Patil and inform him of the incident in question. Several infirmities, inconsistencies and contradictions in the testimony of both these eye-witnesses inter se as also in relation to the testimony of Hindurao make their evidence also wholly unsafe to rely upon. They are brought forth before the Court as eye-witnesses, but in our view, they certainly are not eye-witnesses at all. Coming forth before the Court as eye-witnesses, they yet testify to factors and circumstances inherently probable as also inconsistent with one another as also in certain vital respects contradictory to the police statements as also in certain vital respects inconsistent and contrary to the evidence of P.W. 2 Hindurao Govinda Patil.

12. Cumulative effect thus is that we do not, in this case, find any such material or evidence on which one can safely rely upon in order to rest or confirm an order of conviction against accused No. 1. Though a fetish need not be made of the principle of proof beyond reasonable doubt, so far as this case is concerned, not only is it one of reasonable doubt but also of grave and serious doubt about the involvement of the accused in the crime in question. Indeed, if one may say

so, there is hardly any evidence before the Court, from which a safe, clear-cut and categorical inference of proof beyond reasonable doubt could be drawn against the accused. It is a case where one may go a step further and observe that the prosecution has chosen to create eye-witnesses and set them forth as such before the Court in one's anxiety to bring home the charge to one or the other of the accused. All in all, we find it to be utterly unsafe to accept the testimony of these witnesses. Re-appreciating and reconsidering the evidence, through which we have been taken by the respective Counsels, we find ourselves unable to agree with the reasoning and conclusion of the learned Sessions Judge in this behalf. We may also observe that the learned Sessions Judge, on certain vital matters, committed an error in not questioning the accused persons on certain circumstances emerging from the record against them. For example, the circumstance of the accused alleged to be absconding from 11th February, 1980 till 19th February, 1980 when they are themselves surrendered was relevant and an important circumstance but nowhere put to the accused in the course of their examination u/s 313 of the Code of Criminal Procedure. Of course, in the light of the view we are taking of the totality of the evidence on record, the lacuna in this behalf does not matter much, but it is always better and safer and in the interests of better administration of criminal justice that each and every circumstance emerging from the record against the accused is put to him. Another observation we would like to make in this case is that even the other circumstances which were put to the accused have been put in a rather omnibus manner and style. Paragraph after paragraph from the evidence appears to have been culled out and put before the accused. When while hearing the appeal we ourselves found difficult to correctly appreciate the questions put, the difficulty of the accused in understanding the same and explaining the same can well be understood. Justice requires that questions u/s 313 of the Code of Criminal Procedure are put in a manner, style and form so as to be easily comprehensible to persons in a position of the accused as in this case. It is better if each question contains one circumstance alone and not a combination of several circumstances. In order to provide to the accused a proper and adequate opportunity to explain the circumstances against him it is but fair and just that the circumstances are properly put to him in the first place. That will not only the accused but also help the Appellate Court in correctly appreciating an appeal such as this and correctly adjudicating, inter alia, on the basis of the said examination the truth or otherwise of one or the other story.

13. In the view that we have taken of the evidence on record, particularly of the four main prosecution witnesses discussed above in some details, the impugned order of conviction recorded against accused No. 1 by the learned Sessions Judge deserves to be set aside and quashed.

14. In the result, this appeal is allowed. The order of conviction and sentence recorded by the learned Sessions Judge against accused No. 1 u/s 302 of the Penal Code is set aside and quashed and the accused is acquitted of the charge of murder levelled against him. He should be set at liberty forthwith, if not

otherwise required in any other case.