
(1980) 11 SC CK 0016
In the Supreme Court Of India
Case No : Criminal Appeal No. 422 of 1976

State of Maharashtra

APPELLANT

Vs

Krishnamurti Laxmipati Naidu

RESPONDENT

Date of Decision : 12-11-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 300, 302, 307

Citation : AIR 1981 SC 617 : (1981) CriLJ 9 : (1981) SCC(Cri) 364

Hon'ble Judges : R. S. Sarkaria, J; O. Chinnappa Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Sarkaria, J.—This appeal by special leave is directed against a judgment, dated December 6, 1975, of the High Court of Bombay, allowing the appeal of the accused-respondent, Krishnamurti Laxmipati Naidu, and acquitting him of the charge u/s 302, Penal Code, in respect of the murder of one Mahadev Sidhuji Kale at Gondia.

2. The deceased was a retired Railway Guard, aged about 65 years. After his retirement, he constructed a house in Civil Lines, Gondia and started living in it along with his six sons, including Shivaji (P. W. 10), Satyanarayan (P.W. 18) and his wife, Shakuntala (P. W. 7). The families of his married sons were also living in the same house.

3. The respondent (hereinafter referred to as the accused) was at the time of this incident a Railway Khalasi serving in the Loco Shed, Gondia. He was an unmarried person and was joint in residence with his brothers, Vyenkat and Gajpati. One Madhukar Ramanna Bhongirwar (P. W. 13) was also living in the house of the accused along with his wife, Kamalabai, and four children till about January or February, 1973. Bhongirwar then left that house and came to reside in the half portion of the first floor of the house of the deceased, as a tenant paying a monthly rent. The accused used to visit the house of the P. W. 13 in the

latter's absence and meet his wife Kamalabai. This gave cause for quarrels between Bhongirwar on the one hand and the accused on the other. The deceased and his family members also disliked the visits of the accused to Kamalabai in the absence of her husband, as they apprehended that this might have a bad environmental effect on the daughters and daughter-in-laws of the deceased. Consequently, the deceased and his family members asked the accused to desist from paying visits to Kamalabai. The accused started nursing a grudge against the deceased and his family members. On March 1, 1973, he assaulted Chandrakant (P. W. 22) in the Chowk situated to the north of the house of the deceased. Thereafter, the accused and his elder brother, Vyenkat, went to the apartment in the occupation of Bhongirwar (P. W. 13), after nightfall. Bhongirwar confronted them and demanded an explanation as to why the accused was visiting his house in his absence. The accused retorted that he was visiting at the invitation of Kamalabai. Kamalabai refuted this insinuation. The accused then demanded that the photograph showing him in the company of Kamalabai, be returned to him. The photograph was returned.

4. On March 8, 1973 at about 7 p. m., while Shivaji (P. W. 10) was entering his family house, the accused came there. Brandishing an open knife, he challenged Shivaji to come out and started hurling abuses. On account of fright, Shivaji went into his house. Before Shivaji could come out armed with a stick, Mahadeorao deceased came out and tried to pacify the accused. A loud exchange of hot words between the accused and the deceased ensued. On hearing this altercation, Shakuntala, the mother of Shivaji also came out and stood by the side of her husband. The accused stabbed Mahadeorao twice in his abdomen. The deceased uttered the word "Ah", bent down and pressed his wounds with the corner of his Dhoti. In the meantime, Shivaji had come out with a stick. The accused pushed and threw down Shakuntalabai to the ground and started running away. Shivaji then gave blows with the stick to the accused and chased him. Shivaji's brothers, Chandrakant and Ramkrishna also joined in the chase, but the accused escaped.

5. On receiving a message from P. W. 18 at 7.40 p. m., Laxmikant (P. W. 23), the Circle Police Inspector made an entry (Ex. 23) in the Daily Diary and then immediately proceeded to the K. T. S. Hospital. Reaching there, he found that the condition of Mahadeorao was serious. He lost no time in sending a message to the Taluqa Executive Magistrate through his Sub-Inspector. Thereupon, Shri Girdhari Singh Thakur, the Taluqa Executive Magistrate arrived at the Hospital at 8.05 p. m. The Medical Officer certified that Mahadeorao was fit to make a statement. The Magistrate then recorded the dying declaration (Ex. 18) of Mahadeorao. The Sub-Inspector then, primarily on the basis of that dying declaration, recorded the report (Ex. 42) in the First Information Register, whereby a case u/s 307, Indian Penal Code was registered against the accused at 21.00 Hours, the same day.

6. The deceased succumbed to his injuries at about midnight. The offence was

thereupon altered to one u/s 302, Indian Penal Code.

7. To prove its case, the prosecution examined six eyewitnesses, namely, Shakuntalabai (P. W. 7), Shivaji (P. W. 10), Bhudhram (P. W. 11), Ramesh (P. W. 20), Beniram (P. W. 21) and Chandrakant (P. W. 22). Shakuntalabai is the widow of the deceased. At the trial, she was examined as P. W. 7. As in the High Court, here also, a good deal of argument pivots round her testimony. Therefore, it will be worthwhile to extract material portions of the same, in extenso. In examination-in-chief, she stated:

The incident took place at about 7.30 p. m. on one Thursday about a year back. My husband had gone out after taking meals. At that time, I was inside the kitchen room. I heard turmoil of some quarrel outside our house on the road. Hence, I came out. My husband and the accused were having a verbal quarrel. I told my husband to come inside the house. At about that time, my husband uttered "Bap-re" and then the accused gave me a push and I fell down on the ground. I received an injury on my knee due to the fall. I then fell unconscious. When I regained consciousness after a short time, I found myself inside the house and my husband on a cot. I saw that all his intestines had come out. My husband was then taken to the Hospital. At about 11.00 p. m., I learnt that my husband was no more

In cross-examination, she stated:

On the day of the incident when I came out both accused and my husband were talking each other in a loud tone. My husband was telling the accused as to why he was coming and quarrelling with my son. I did not hear what the accused replied, as within that time the incident had happened. At that time my sons, Ramkrishna, Shiva, and Chandrakant were in the house. We run a Hotel. My son Satyanarain was in the Hotel. Gopalkrishna runs a Hotel in I. T. I. He was there. Shridhar had gone out for a walk.

...When I saw my son Ramkrishna present along with my husband near the accused. It is true that Ramkrishna also was talking in a loud tone. My sons Shivaji and Chandrakant came at the place after the incident with sticks, after I fell down. They inflicted stick blows on the accused. Accused did not fall on the ground but he ran away. It is not true to say that when I came out I saw my husband and Ramkrishna holding the accused and my three sons, Chandrakant, Shivaji and Shridhar giving stick blows to the accused. It is true that as I went near, I got a push and I fell down. It is not true to state that the members of my family had taken knife with them at the time of the incident....I do not know how my husband received injuries or at whose hands.

8. The other eyewitnesses, P. W. 10, P. W. 11, P. W. 21 and P. W. 22 supported the prosecution story as to now following an altercation, the accused fatally stabbed the deceased. They further, more or less, supported the prosecution version that the accused was given blows after the deceased had been stabbed. There are, however, some discrepancies in their evidence, which have been made

a ground, for rejecting their evidence by the High Court. In variance with the statement in cross-examination of P. W. 7, Shakuntalabai's. P. Ws. 10, 11, 21 and 22 denied the immediate presence of Ramkrishna at the scene of occurrence before the stabbing. According to them Ramkrishna came on the scene when the accused was about to run away after stabbing the deceased.

9. Examined at the trial u/s 342, Cr.P.C. the accused denied the prosecution case and gave his own version of the incidents of March 1, 1973 and March 8, 1973. He admitted that he used to visit the house of Bhongirwar (P. W. 13) but added that he used to do so irrespective of whether Bhongirwar was present or not. He further admitted that he had given his photograph to Kamalabai wife of Bhongirwar but added that he had done so in the immediate presence of Bhongirwar. He contended that Mahadeorao deceased and his family members wanted Bhongirwar to vacate the house. The accused took up the cause of Bhongirwar and remonstrated with the deceased and his family members as to why they wanted to evict Bhongirwar from the house which they had given to him on rent only a month before. The accused further admitted that Mahadeorao and his family members told him not to pass by the road in front of their house. In regard to the occurrence on March 8, 1973 the accused said:

On that day I was passing by the house of Mahadeorao, when Shivaji who was standing near his compound asked me as to why I had come by that road. He also abused me as "Sala". Shivaji told me that he would show it to me and then he went inside the house. Shivaji came out with a stick followed by Mahadeorao and Ramkrishna. Out of them Ram-Krishna and Mahadeorao caught me. Ramkrishna held me by the neck (collar?) of the shirt', while Mahadeorao had held me by my left arm. Shivaji gave a blow on my head. I tried to extricate myself. Then Chandrakant came with a knife and Shridhar came with a stick. Then Shridhar and Shivaji started beating me with sticks. Ramkrishna was beating me from the back. I struggled to save myself. And I do not know how Mahadeorao got the injury in his stomach. After Mahadeorao got injured all the brothers left me and I ran away to Gadgha-kuli to the house of a friend.

He further admitted that he had received the injuries mentioned in the medical certificate (Ex. 9). He denied that he had given any blow with a knife to the deceased.

10. The trial Court found that the evidence of Shakuntalabai in her examination-in-chief was reliable; that in cross-examination, her statement to the effect, that when she came out she saw her son, Ramkrishna, by the side of her husband quarrelling with the accused, was due to some slip of tongue and confusion and could not be preferred to that of the other eye witnesses, namely, Shivaji (P. W. 10), Bhudhram (P. W. 11), Beniram (P. W. 21) and Chandrakant (P. W. 22). In regard to Ramesh (P. W. 20), the trial court said that he was a young boy of 16 to 17 years, and had given a confused statement in regard to the sequence of events. The evidence of Ramesh did not impress the trial court very much. The court, therefore, did not find it prudent to rely on it. Nevertheless, the court did

not go to the extent of holding that what the witness had stated was false. The trial court was deeply impressed by the testimony rendered by Bhudhram (P. W. 11). According to it, Bhudhram was a "natural" witness, his residential house being situated in the vicinity on the back of the house of the deceased. It found that Bhudhram's evidence did not suffer from any taint, infirmity or bias and was fully reliable. The trial court did not reject Beniram's evidence. Beniram (P. W. 21), in the opinion of the trial court, can, in a sense, be called a chance witness, nonetheless he has given all the minute details of the incident as it happened; that the only slur on his evidence is that he could not see in what direction the accused and Shivaji and others, who were following him, had gone after the occurrence. The evidence of Chandrakant (P. W. 22) also impressed the trial court as true. The trial court also relied upon the Dying Declaration (Ex. 18) of the deceased, which in its opinion, supported the account given by the aforesaid eyewitnesses, and did not mention about the presence or participation of Ramkrishna in the quarrel between Mahadeorao, deceased and the accused. The trial court after a survey of the entire evidence on record rejected the version of the accused. In the result, it convicted the appellant u/s 302, Penal Code, and sentenced him to imprisonment for life.

11. On appeal by the accused, the High Court found as follows:

- (i) The dying declaration (Ex. 18) did not explain how the accused had sustained the injuries. Therefore, the dying declaration itself would not suffice to hold the accused guilty.
- (ii) The defence of the accused to the effect, that Mahadeorao and his sons, Ramkrishna, Shivaji, and Chandrakant beat him with lathis and were the aggressors, could not be ruled out beyond reasonable doubt.
- (iii) On account of the failure of the prosecution to examine Ramkrishna, "It was possible for the accused to say that an adverse inference should be drawn against the prosecution narration".
- (iv) Several independent persons from the locality had admittedly gathered at the scene of occurrence and none of them had been examined, by the prosecution as to how the occurrence started.
- (v) The story of Ramkrishna coming to the spot just after the accused had stabbed the deceased and the giving of stick blows by Shivaji to the accused when the accused was running away, stood contradicted by the statement of Shivaji in the committal court, wherein he had said that at the time of the stabbing, his mother and Ramkrishna were both present near Mahadeorao.
- (vi) At the trial, Shivaji was deliberately evading to admit the presence of Ramkrishna at the scene. The evidence of Shivaji falls short of explaining all the injuries on the person of the accused. He was therefore, an unreliable witness. Since, Shivaji was the only witness who gave evidence as to the origin and start of the occurrence, in the absence of "clear and clinching evidence coming

through all other witnesses as to the occurrence of the whole incident, the prosecution cannot succeed to bring home the guilt beyond reasonable doubt".

(vii) P. W. 7 Shakuntalabai (in cross-examination) does not support the first part of Shivaji's testimony inasmuch as she stated in cross-examination that a quarrel between her husband and her son Ramkrishna on the one hand, and the acidised on the other was going on when she came out to the scene of occurrence; that her unfolding of the beginning of the incident is too simple to be accepted. The evidence of Shakuntalabai shows that when she had come out on hearing the turmoil, in all probability, her sons, i. e. Chandrakant, Shivaji, and Ramkrishna were present on the scene along with their father. In fact, according to her, Chandrakant as well as Shivaji had sticks with them and by these they had beaten the accused and as she tried to intervene, she had got the push.

(viii) The evidence of Chandrakant is not creditworthy. His evidence "bristles with contradictions with the testimony of Shakuntala" inasmuch as the latter states that Chandrakant was armed with a stick. On the other hand, Chandrakant asserts that it was only Shivaji who gave blows to the accused with a lathi.

(ix) Beniram (P. W. 21) is also unreliable. Although he was present in the Hospital when the police came there yet he did not even disclose to the police that he was an eyewitness to the incident, and his statement was recorded by the police in the afternoon on the day following the occurrence. His evidence does not inspire confidence because on his own showing he was not remembering a single word that passed between Mahadeorao and the accused,

(x) The testimony of Bhudhram (P. W. 11), was also not "helpful on the question as to how the incident started." The testimony of this witness is not acceptable for these reasons: (a) His statement was recorded by the police at 6 p. m. on March 9, 1973, though he admits that he was in the Hospital along with Mahadeorao. He did not, of his own accord, make a statement to the police when the latter came to the Hospital soon after the occurrence, (b) In fact, he could not witness the beginning and did not describe the incident and that he might have seen the chasing, that is, the last part of the incident, (c) He appears to be a neighbour and appears to be concerned with Mahadeorao and his family, (d) P. W. 11 has a tendency to deny obvious facts in that he goes to the extent of saying that he did not see Shivaji beating the accused, which fact Shivaji himself contradicts.

(xi) As regards the plea of private defence set up by the accused, the High Court has observed:

There may be or may not be truth in what the accused asserts indicating infliction of the injuries in exercise of his right of private defence. By mere fact that this type of defence has not been established, it does not follow that the prosecution has fully and credibly disclosed and unfolded the whole occurrence. In the present case, there is to our mind, only a partial unfolding and disclosure made by the prosecution witnesses of the whole incident.

12. We have heard counsel on both sides and have very carefully scrutinised the judgments of the courts below and the evidence on the record. It appears to us that the reasons given by the High Court for rejecting the testimony of the eye-witnesses, particularly Beniram (P. W. 21) and Bhudhram (P. W. 11) are manifestly unsustainable. Bhudhram, as the trial court has rightly held, was a wholly independent and disinterested witness. His house is situated close to the house of the deceased. His coming to the spot on hearing the turmoil, was quite natural and probable. His evidence was almost impeccable. In examination-in-chief, P. W. 11 clearly stated that he was taking meals inside his house at about 7 p. m. He heard a turmoil at the back of his house. Thereupon, he came out without finishing his meals and saw at a distance of about 40 feet from him, Mahadeorao, his wife and the accused. There were loud verbal exchanges between Mahadeorao and the accused. Shakuntalabai was also standing by the side of Mahadeorao. The witness could not follow all the talk between Mahadeorao and the accused. He remembered and could reproduce only one utterance of Mahadeorao: "What is the matter"? At that time, the witness saw one weapon the blade portion of which was shining like a knife in the right hand of the accused. Within 5 to 10 seconds, the witness saw Shivaji (P. W. 10) coming out of his house. Just at that moment, the witness saw the accused stabbing the deceased twice in the stomach with that shining weapon. Bhudhram also deposed to the fact as to how the accused then pushed Shakuntalabai and threw her to the ground. Just after the stabbing, Mahadeorao uttered "Ah!" and pressed his stomach with his dhoti and bent over. It was at this juncture, that Shivaji armed with a bamboo stick assaulted the accused who had started running away. Shivaji and his brother, Chandrakant chased the accused. Thereafter, Ramkrishna ran after the accused followed by his brothers.

13. We find that the observation of the High Court that Bhudhram (P. W. 11) had not stated about the fact of Shivaji assaulting the accused with a stick, is factually incorrect. Furthermore, it is not a fact that the accused (or Bhudhram P. W. 11?) could not reproduce even a single word of the verbal exchanges that were going on between Mahadeorao and the accused. To the extent, he remembered, he reproduced the same in his examination-in-chief. The mere fact that he could not remember every word that passed between the accused and the deceased was hardly a ground to discard his testimony. The third argument, too, employed by the High Court for rejecting his testimony is clearly untenable. True, that in cross-examination, the witness admitted that he had also gone to the Hospital on a cycle after Mahadeorao had been taken there; but he asserted that he did not see the Police Sub-Inspector there. Nothing was brought out further in cross-examination to show that he had met the Police Sub-Inspector in the Hospital. The Police Sub-Inspector also was not asked as to whether he had met this witness in the Hospital. There was absolutely no reason to reject his sworn word on this point. The witness had thus no opportunity of making a statement to the police in the Hospital, about the occurrence. The mere fact that he did not, of his own accord, go forthwith to the Police Station and tell them

that he had also seen the occurrence, was no ground to brush aside his evidence. There is absolutely nothing in his statement to show that he was related to the deceased or his sons, or was in any way interested in the prosecution or had any axe of his own to grind against the accused. In cross-examination, he denied that Ramkrishna and Mahadeorao had both caught the accused and the latter was trying to extricate himself. He also denied the suggestion that Ramkrishna and Mahadeorao had loudly called out the other members of the family. He further denied the presence of Shridhar at the scene of the incident. According to the witness, he saw a stick in the hand of Shivaji. He added that he did not see him actually beating the accused, but saw him trying to assault the accused with that stick. He clarified that Shivaji was about 20 to 30 feet from the accused and Mahadeorao and the latter's wife when the accused stabbed Mahadeorao.

14. The High Court was not right in saying that Bhudhram (P. W. 11) might have seen only the last part of the incident. The witness has given an account of the whole incident, from the start to the finish. The occurrence was preceded by a loud altercation. The witness being a neighbour was naturally attracted to the spot by the noise of that turmoil. Further, it is not correct that the witness had a tendency to deny obvious facts. He first stated that he saw Shivaji giving blows with a stick to the accused and later diluted it by saying that he had seen Shivaji "trying" or attempting to hit the accused with a stick when the latter had just started running away after stabbing the deceased. There was a melee after the stabbing, and the witness saw this from a distance of 30 feet or so. Such a minor variation between what he said on this point in examination-in-chief and cross-examination did not affect his credibility, when the witness was consistent as to the point of substance, namely, these stick-blows to the accused were given or attempted by Shivaji after the accused had stabbed the deceased twice in the abdomen and was running away or about to run away from the scene.

15. Similarly, we find no substance in the reasons for which the High Court has discarded the evidence of Beniram (P. W. 21). The shop of Beniram was located at a distance of about 120 feet from the scene of occurrence. Although he could not see the occurrence while sitting at his shop, he could have easily heard the loud altercation that preceded the occurrence between the deceased and the accused. The house of the witness is also situated at a distance of two houses away from that of Mahadeorao. At the time of occurrence, the witness was proceeding to his house for taking meals. The occurrence took place at about 7 or 7.30 p. m. It was dinner time. This is clear from the evidence of P. W. 11, also, who was taking his meals when he heard the turmoil near the house of the deceased. Beniram also claimed to have seen the accused stabbing the deceased in the stomach. According to him, Shivaji also came immediately after the stabbing of the deceased. Shivaji was then carrying a stick with which he gave one or two blows to the accused who, after pushing aside the wife of Mahadeorao, started running away. The witness deposed how Ramkrishna, Chandrakant and Shivaji then came out from the house and started chasing the

accused, who however, escaped towards the loco-shed. It is true that the witness was in the Hospital with Mahadeorao till the latter's death, and the witness did not then and there tell the police as to what he had seen of the occurrence. But no pointed question was put to the Investigating Officer (P. W. 23) as to whether he had met P. Ws. Beniram and Bhudhram in the Hospital. Nor was any specific question put to P. W. 23 as to why he did not record the statements of Bhudhram and Beniram on the very night of occurrence. This being the case, no capital could be made out of the omission on the part of the Investigating Officer to record the statements of these witnesses on the night of the occurrence. Similarly, the inability of the witness to reproduce any words of the altercation that was going on between the deceased and the accused was hardly a ground to dub him unreliable.

16. The crucial point for determination, was, whether the accused had received the injuries while running away from the scene of occurrence after stabbing the deceased, or prior to the stabbing. All the eyewitnesses, namely, P. W. 10 Shivaji, P. W. 11 Bhudhram, P. W. 21 Beniram and P. W. 22 Chandrakant were unanimous in testifying that the accused was given stick-blows after he had stabbed the deceased and was about to run or had started running away.

17. The medical evidence furnished by the Injury Report (Ex. 9) of the accused shows, that apart from seven simple abrasions, which according to the Doctor were sustained by friction, the accused had only three injuries caused with a blunt weapon. One of them was a simple lacerated wound on the mid parietal region of the head, slightly oblique from upwards to downwards the right ear. The other two injuries were contusions located on the left and right shoulder blade regions. These three injuries had in the opinion of the Doctor, been caused with a blunt object, which would include a stick. Witnesses may lie, but circumstances cannot. The very circumstance that these two contusions were located on the back of the accused, lent valuable assurance to the testimony of Shivaji, P. W. 10, and the other eye-witnesses, that these blows were given to the accused when he was running away or about to run away with his back towards the assailant. As regards the lacerated wound on the right side parietal region, this could also be sustained by him at the hands of an assailant at the back of the accused. It is not strictly correct to say that Shivaji did not give any explanation of all the injuries found on the deceased. We have already observed that there were only three real injuries worth notice, on the accused that could be caused with a stick, the rest being abrasions caused by friction against hard-surface etc. Shivaji stated that he had given 3 or 4 stick-blows to the accused after the accused had stabbed his father and pushed and thrown down Shankuntalabai, and was about to run away. Shivaji thus fully accounted for the three real injuries found on the accused.

18. It is true that in cross-examination, Shakuntalabai (P. W. 7) stated that when she came out, she saw her son Ramkrishna present along with her husband near the accused, and Ramkrishna had also joined in the altercation with the accused.

Even so, it is not possible to hold that Ramkrishna or the deceased first gave blows to the accused and, as such, were the aggressors. None of the eyewitnesses not even Shakuntalabai, has stated that Ramkrishna or the deceased had any weapon with him. Even the accused did not allege in his statement u/s 342, Cr.P.C. that the deceased was armed. It is true that according to Shakuntalabai, both her sons Shivaji and Chandrakant had come out armed with sticks, but she said in the same breath that these two came out when she had been pushed and thrown down by the accused. Even if both Shivaji and Chandrakant came out and gave stick-blows to the accused, that was, according to her version, only immediately after the deceased had been injured. Furthermore, if any of the three sons of the deceased had given any of the three injuries with a stick to the accused before the stabbing, then the natural instinct of the accused should have been to strike any of those assailants, and not the deceased, who was unarmed. All these circumstances vouched by the eyewitnesses unerringly and irresistibly led to the conclusion that the two contusions and the head injury were received by the accused after he had stabbed the deceased. Once it is found that the accused received these contusions and the head injury after the stabbing, the non-production of Ramkrishna as a witness loses its significance much less could it afford a ground for drawing an adverse inference against the prosecution.

19. We further find that the learned Judges of the High Court were not justified in ignoring the dying declaration (Ex. 18) of the deceased merely on the ground that it did not include any statement as to how the accused had received the injuries. This dying declaration, which was recorded by the Taluka Magistrate in the Hospital, is a very brief statement. It is to the effect: "Krishna Laxmipati Madrasi stabbed me with the knife. He was abusing my son, Shivajirao. I objected him. Because of that he stabbed me with the knife....My son Chandrakant rushed (at us). On seeing him Krishna ran away." It may be noted that although the deceased was fit enough to make a statement, yet on account of being in great agony, his words were scarce. He could not be bothered more by the Magistrate in such a condition. It would have been sheer torture to him, if the Magistrate tried to interrogate him at length in regard to all the details. The crux of the whole matter was as to who had stabbed the deceased and why. These crucial facts are to be found in the dying declaration (Ex. 18), in which there is a mention that the stabbing of the deceased by the accused was preceded by abusing of Shivaji by the accused, to which the deceased objected. True, that the dying declaration mentions about Chandrakant's coming to the scene of occurrence (possibly armed with a stick). It is further correct that in the dying declaration, the deceased did not say specifically anything with regard to Shivaji's coming to the spot armed with a stick. But the dying declaration does clearly mention that whosoever came out to intervene, whether it was Chandrakant or Shivaji or both, did so only after the deceased had been stabbed by the accused.

20. The dying declaration supports the substratum of the prosecution case as

narrated by the eyewitnesses, that the accused had following an altercation with the deceased, stabbed the unarmed deceased twice in the abdomen, and caused such injuries as were sufficient in the ordinary course of nature to cause death, and did cause his death. It was therefore, for the accused to establish with a balance of probability circumstances which would bring his case within any Exception. Since the deceased was unarmed and the assault cannot be said to be sudden and unpremeditated, Exception II or any other Exception in Section 300, I.P.C. will not apply. Since the accused had caused the injuries to the unarmed deceased before he received the stick blows given by Shivaji, it cannot be said that the deceased was the aggressor and that the accused caused those fatal injuries to the deceased to ward off any imminent apprehension of death or grievous hurt to himself. On the other hand, the accused came armed with an open knife in front of the house of the deceased and challenged Shivaji in abusive terms to come out and face him. In these circumstances, the accused had miserably failed to make out a plea of private defence. In his statement the accused did not even admit that he had inflicted any wound on the deceased. He asserted that Chandrakant son of the deceased had come out armed with a knife, thereby, obliquely suggesting that it was the son who had stabbed his father. This was a patently false and absurd position taken by him. The accused did not say that Chandrakant had come armed with a stick and beat him. On the other hand, he alleged that both Shivaji and Shridhar had beaten him with sticks. It is manifest from the evidence of all the eyewitnesses that Shridhar was not there. The version of the accused that Shridhar had also beaten him with a stick was false. As already found above, Shivaji (P. W. 10) had beaten the accused after he had stabbed the deceased and was about to run or running away from the scene of offence. He had no justification to cause the stab wounds to the deceased, which as testified by the medical witness were sufficient to cause death in the Ordinary course of nature.

21. For the foregoing reasons, we allow this appeal, set aside the impugned judgment of the High Court acquitting the accused, and restore that of the trial court convicting the accused u/s 302, Penal Code, and sentencing him to imprisonment for life, for the murder of Mahadeorao deceased. The accused shall surrender to his bail-bonds to serve out the sentence inflicted on him.