

(2002) 07 BOM CK 0023
In the Bombay High Court
Case No : Criminal Appeal No. 313 of 1986

State of Maharashtra

APPELLANT

Vs

Lahu Laxman Pabale and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 27, 45
Penal Code, 1860 (IPC) — Section 300

Citation : (2003) BomCR(Cri) 400 : (2003) CriLJ 1174

Hon'ble Judges : D.G. Deshpande, J; A.S. Aguiar, J

Bench : Division Bench

Advocate : Pravin Singhal, app, for the Appellant; Smita Mane and P.B. Shah for Respondent No. 11, Prakash Naik, for Amicus Curie for Respondents Nos. 1 to 10, 12 to 14 and 16 to 29, for the Respondent

Judgement

A.S. Aguiar, J.—By this appeal u/s 378(1) of the Criminal Procedure Code, 1973, the State of Maharashtra has impugned the judgment and order dated 4th February, 1986 passed by the Additional Sessions Judge, Pune in Sessions Case No. 16 of 1985 acquitting all the accused persons of the offences under Sections 147, 148, 149, 302, 449, 427 read with Sections 120-B and 34 of the Indian Penal Code.

2. The prosecution case, which is elaborately set out in the judgment at paragraph Nos. 2, 3, 4, 5 and 16, in short, is as under :

There were disputes between the residents of Pabalewadi on one hand and Kachare family on other hand over the use of well belonging to one Hinge, located in the Pabalewadi which is the only source of potable water for the residents of the Wadi. These differences culminated in segregation of Keru Kachare and his family members by other residents of Pabalewadi who prevented Keru Kachare and his family members from taking water from the said well. This often led to clashes between the two groups resulting in several cross-criminal

proceedings against each other including cases of assault and attempt to commit murder. Some of the accused persons were convicted of the offence of murder. However, some cases arising out of the said rivalry between the two groups were still pending in the Criminal Court at Junnar.

3. On the evening of 3rd August, 1983, the deceased Namdeo brother-in-law of the complainant P.W. 2 came to stay for the night at P.W. 2's house as he had to attend the Court proceedings the next day at Junnar. The next morning at about 8.00 a.m. i.e. on 4th August, 1983 while the deceased and other occupants including P.W. 2 and his family members were having tea, suddenly, Digambar the son of deceased-Namdeo came running and informed them that some persons from Pabalewadi had come armed with wooden sticks and iron rods. Thereupon the complainant Pandurang Wani and others came out of the house on to the courtyard. However, Namdeo remained in the house and looked the entrance door from inside. 25 to 30 assailants came in the courtyard and started kicking at Pandurang Wani's door and asked Namdeo to come out of the house. Some of the assailants climbed over the roof and started hitting pieces of roof tiles and stones on Namdeo in order to force him to come out. The embattled Namdeo thereupon informed the assailants that he was ready to come out provided they did not assault him. When Namdeo opened the door and came out, carrying an axe in the hand and a bucket covering his head, he was set upon and attacked by the assailants. P.W. 2 and others tried to stop the attack on Namdeo but to no avail. Thereupon Sonabai, wife of Namdeo rushed to the nearest police station to fetch help. In the meantime the assault on Namdeo by the assailants who were armed with wooden sticks and iron rods continued. The assailants left only after Namdeo fell unconscious to the ground. Namdeo was injured due to assault on all over his body and within a few minutes succumbed to the injuries.

4. After Sonabai reached Junnar Police Station she informed the police of the incident. However, she was directed to approach Narayangaon Police Station as the Junnar Police Station had no jurisdiction in the matter. It appears that a wireless message was sent by Junnar Police to the Narayangaon Police Station pursuant to which Police Sub-Inspector (P.S.I.) Shinde rushed to the place of offence on his vehicle. When P.S.I. Shinde reached the place of incident at 10.55 a.m. he found that Namdeo was already dead. He recorded the complaint of Pandurang Wani on the spot and thereafter sent it to Narayangaon Police Station for registration. After preparing the inquest panchanama of the dead body, it was sent for post-mortem examination to the nearest hospital. Photographs of the scene of incident were taken in the course of preparation of panchanama. The broken pieces of tiles as well as scrapping of plain earth and blood stained earth from the courtyard were obtained. Clothes and other articles from the person of the dead body of Namdeo were also seized. On the same day, accused Nos. 19 and 24 were arrested and blood stained clothes on their person were seized under panchanama. The statements of 12 witnesses were recorded on the same day. Most of the accused were arrested between the period 4th August, 1983 to 9th August, 1983. However, accused Nos. 27, 28 and 29 were arrested in the

month of December of that year. Blood stained clothes of some of the accused were seized under panchanama and statements of several other witnesses were also recorded during the said period.

5. It is the prosecution case that a plot was hatched by the accused persons at Bombay as well as Pabalewadi to commit the murder of Namdeo. In furtherance of the said conspiracy, wooden sticks were purchased at Bombay and several accused, who were residing at Bombay due to their employment, came in a truck to Pabalewadi to join the other assailants who were residing there. According to the prosecution, the conspiracy is revealed from the correspondence found in the course of searches conducted at the houses of accused Nos. 26, 27 and 28. The weapons used in the assault were wooden sticks and iron rods which were recovered from accused No. 1 under panchanama. Blood samples of the accused persons were obtained. All the articles seized in connection with the said incident were sent to the Chemical Analyser, Pune for scientific examination and reports received. Charge came to be framed against the said accused persons vide Exh. 53.

6. The defence of the accused is one of the total denial. According to the defence, the accused are not concerned with the alleged incident in any manner and are falsely implicated in the case on the basis of fabricated documents due to the fierce rivalry existing between them and the Kachare family. It is suggested that Namdeo was not assaulted at the place and in the manner as suggested by the prosecution but he died on account of assault on him by his unknown enemies at a nearby place with different types of weapons and that Namdeo was found by the police in the courtyard of the complainant's house where he had collapsed after he came there staggering due to the injuries sustained by him in an assault at a nearby place.

7. The learned trial Judge in an elaborate judgment has come to the conclusion that the prosecution has failed to prove the charges against the respondents and consequently acquitted them of the same by the impugned judgment. Hence this appeal by the State.

8. It is submitted by of the learned A. P. P. Shri Singhal for the State that the judgment of acquittal of the trial Court is based on surmises, conjectures and assumed contradictions and that the findings given by the trial Judge are therefore erroneous and a result of misreading of the evidence on record and hence deserves to be set aside and the respondents convicted for commission of offences punishable under Sections 302 and 149 of I.P.C. and sentence be awarded accordingly.

9. The learned A. P. P. mentioned before us that none of the accused-respondents except accused-respondent No. 11 are represented before us. We have therefore appointed Advocate Shri Naik to defend the unrepresented accused and Advocate Shri Naik, has valiantly defended the unrepresented accused.

10. We have heard the learned A.P.P. and Advocate Ms. Smita Mane for respondent No. 11 and Advocate Naik for the unrepresented respondents. We have also gone through the judgment of the learned trial Judge and we are constrained to observe that the trial Judge in arriving at his conclusions has failed to deal with the evidence on record of the eye-witnesses on material aspects of the case and has disregarded the evidence of the doctor, who has opined about the injuries sustained by the deceased, and substituted the expert medical opinion with his own. No doubt, the learned trial Judge has given detailed reasons for rejecting the evidence on various aspects of the case such as the nature of the eye-witnesses, nature of injuries etc. The trial Judge, however, has not dealt with the evidence of the eye-witnesses or appreciated the evidential value thereof and discarded the same on the assumption that they are interested parties.

The fact that other independent eye-witnesses such as neighbours, though available, were not examined seems to have weighed heavily on the trial Judge in rejecting the testimony of the eye-witnesses as that of interested witnesses. Furthermore the learned trial Judge has observed that the so called eye-witnesses examined on behalf of the prosecution knew each of the accused persons by full name and that is why all the eye-witnesses have named all the accused persons fully and, in fact, seriatim as appearing in the charge-sheet. On the basis of the aforesaid inference, the trial Judge has rejected the ocular testimony of the witnesses implicating the accused in the aforesaid offence.

11. Again, the learned trial Judge has proceeded to discard the evidence of the eyewitnesses on the assumption of existence of rivalry and enmity between the two groups viz. the accused group on one side and the Kachare family on the other. Further the learned trial Judge also seems to have been influenced by the fact that the deceased-Namdeo was a known bully who used to harass the womenfolk of village Pabalewadi and was involved in several criminal activities and, therefore, he had other enemies who were interested in eliminating him. Basing his reasoning on these assumptions, the learned trial Judge has rejected the testimony of all the eye-witnesses, including P.W. 2 to P.W. 9 whose presence at the site of the incident at the time of drawing panchanama of the place of incident has not been disproved.

12. As stated earlier, the learned trial Judge has not dealt with the evidence of the said eye-witnesses whose testimony, though similar to each other, could not have been rejected if the witnesses were otherwise found to be truthful witnesses whose veracity has not been challenged. The cross-examination of these witnesses has not shaken their testimony. They are all natural witnesses as their presence at the scene of offence was natural having stayed the previous night in the house of P.W. 2 Pandurang Wani, the complainant, in the courtyard of whose house the incident took place. The aforesaid eye-witnesses i.e. P.W. 2 to P.W. 9 are consistent in their version of the incident.

13. As per the testimony of the complainant P.W. 2 Pandurang Wani, the incident

took place on 4th August, 1983. That since there was a matter to be attended in the Junnar Court on 4th August, 1983 his brother-in-law Namdeo, the deceased, had come to his house on 3rd August, 1983 in the evening at 5.00 p.m. and stayed with him at night. P.W. 5 Sonabai is the wife of Namdeo and sister of the complainant-Pandurang Wani. She was staying with her brother Pandurang Wani as her husband Namdeo was plying rickshaw in Bombay. The other witnesses are all related to Pandurang Wani. According to the complainant-Pandurang Wani, the next morning, at 8.00 a.m. while P.W. 2, his wife Indumati and brother-in-law Namdeo were having tea in his house, his sister's son Digamber came weeping and told them that people from Pabalewadi had come armed with sticks and rods and assaulted him. Hence the P.W. 2, his wife and children along with his sister Sonabai, brother Vithoba, Gopinath and sister-in-law Babubai and Vanubai came out of the house. Namdeo locked the door of the house and stayed inside. At that time the said persons from Pabalewadi, namely. Kashinath Dattatraya Kachare (accused No. 10), Baban Vishnu Datkhile (accused No. 12), Popat Kisan Pable (accused No. 4), Shankar Maruti Kachare (accused No. 13), Tukaram Haribhau Hinge (accused No. 15). Gopal Laxman Pable (accused No. 22). Bajirao Bapu Pable (accused No. 17), Kashinath Bhikaji Pable (accused No. 6), Chandrakant Dattatray Kachare (accused No. 8), Vital Savalaram Pable (accused No. 19), bajirao Shivram Pable (accused No. 2), Lahu Laxman Pable (accused No. 1), Baban Dattatraya Kachare (accused No. 24), Shivaji Bapu Pable (not accused before Court), Haribhau Raghu Hinge (accused No. 20), Vishnu devba Datkhile (accused No. 25), Dilip Gangaram Kachare (accused No. 7), Gopinath alias Kundlik Shivaji Pable (not accused before Court), Dhondur Hari Pable (accused No. 18), Bhagwan Baban Pable (accused No. 16), Bapu Laxman Pable (accused No. 21), Bhanudas Tulshiram Kachare (accused No. 5), Ramdas Vishram (accused No. 11) came to the place of offence. Some other persons also accompanied them. The said persons from Pable Wadi were armed with sticks. Baban Datkhile and Tukaram Hinge were armed with iron rods. The said persons started kicking at the door of the house and some others started calling out Namdeo asking him to come out of the house. But Namdeo did not open the door. Therefore, some of the youngsters, namely, Baban Datkhile, Tukaram Hinge, Dilip Kachare, Shankar Kachare climbed on the roof of Pandurang Wani's house by first climbing on the lower adjacent cattle shed and started pelting the roof with stones and breaking the roof tiles. Thereupon Namdeo shouted from inside the house informing the assailants that he would completely surrender to them provided they did not assault him. Namdeo opened the door of the house and came out with an axe in his hand and a plastic bucket over his head. The assailants who had climbed on the roof then climbed down and started assaulting Namdeo with sticks and iron bars whereupon Namdeo fell down. P.W. 2 complainant and others tried to rescue Namdeo but accused persons kept them back. Thereupon the sister of P.W. 2 Sonabai i.e. wife of Namdeo rushed to Pimpalgaon to inform the police. At that time Namdeo was moaning with pain. After the assailants left, the complainant and his brother lifted Namdeo and kept him in the "Padvi." After 10 to 15 minutes Namdeo died. It is pertinent to note

that the statement of the complainant-Wani, who had witnessed the entire incident, was recorded on the same day at 11.00 a.m. at place of offence itself by the P.S.I. Shinde. In his complaint (F.I.R.), Pandurang Wani has implicated the assailants by name.

14. P.S.I. Shinde P.W. 29 has deposed that he reached the place of offence at about 10.55 a.m. At that time Namdeo was already dead, Namdeo had received bleeding injuries on his person and his clothes were blood stained. He immediately recorded the complaint (F.I.R. Exh. 61) of Pandurang Wani. Inquest panchanama (Exh. 71) on the dead body of Namdeo was prepared at the spot. The clothes on the body and other articles including 2 S.T. tickets found on the person of the dead body were taken charge of under panchanama. A photographer was called at the scene of offence and photographs taken as per the instructions of P.S.I. The photographs were taken from different angles of the scene of offences. The panchanama was drawn and Articles 2 to 7 were seized under the said panchanama. Two accused persons, namely, accused Nos. 19 and 24 were arrested on the same day. Their clothes, namely, Articles 14 and 15 or No. 19 and Article 16 of accused No. 24, were seized under panchanama. The statements of 12 witnesses including P.W. 3 Indumati, P.W. 4, Shankar, P.W. 5 Gopinath, P.W. 6 Vithoba and P.W. 9 Balu were recorded on the spot. The P.S.I. Shinde has further deposed that the accused No. 23 was arrested at Junnar on next day i.e. 5th August, 1983 at 9.00 p.m. and then accused Nos. 25 and 26 were arrested. There were blood stains on the shirt of accused No. 26 and it was seized under panchanama. On 7th August, 1983, accused No. 26 was sent for medical treatment as there were injuries on his head. On the same day i.e. on 7th August, 1983 accused Nos. 1 to 12 and 15 to 18 were arrested at Junnar Police Station. The clothes of accused Nos. 5, 6, 15 and 18 were blood stained and were seized under panchanama. Articles 21 and 22 are the clothes of accused No. 5 and Arts. 19 and 20 are the clothes of accused No. 6. Articles 23 and 24 were seized from accused No. 15 and articles. 25 and 26 were seized from accused No. 18. On 8th August, 1983, 21 accused persons arrested till then were sent to Narayangaon Medical Officer for obtaining their blood samples. On the same day accused Nos. 20 and 21 were arrested at Junnar Police Station and their blood stained clothes were also seized under panchanama. Articles 27 and 28 are the clothes recovered from accused No. 20 and Article 29 was seized from accused No. 21. Accused No. 26 was referred to Sasoon Hospital for obtaining blood samples on 9th August, 1983. There were blood stains on the stick i.e. Article 41. Thereafter the police searched other sticks and 10 other wooden sticks and one iron rod were recovered from the field with standing Bajra crop. All the said articles were blood stained. The same were recovered under panchanama Exh. 82.

15. Perusal of evidence of the aforesaid eye-witnesses, namely, P.W. 2 to P.W. 9 would show that all the accused persons except accused Nos. 26, 27 and 28 have been named in their statements recorded by the Police and also identified by the witnesses in the Court. It is pertinent to note that though blood stains were

found on the clothes of the accused persons which were recovered under panchanama, all the accused persons have failed to explain the presence of the blood stains on their clothes. Apart from the ocular testimony of the witnesses, the presence of blood stains on the clothes of the accused remaining unexplained coupled with the evidence of their presence at scene of offence, which is uncontroverted, gives rise to a strong inference implicating the accused in the assault and murder of the deceased-Namdeo. All the eye-witnesses i.e. P.W. 2 to P.W. 9 have identified accused No. 1 Lahu Laxman Pable, accused No. 7 Dilip Gangaram Kachare, accused No. 11 Ramdas Vishram Kachare, accused No. 12 Baban Vishnu Datkhile, accused No. 14 Sawarkar Laxman Hinge, accused No. 20 Haribhau Raghuji Hinge, and accused No. 23 Pundalik alias Gotiram Bhikaji Pabale. However, none of the eyewitnesses Nos. 2 to 9 have identified accused No. 26-Shripat Ganpat Pabale, accused No. 27-Chandrakant Janaji Walunj and accused No. 28-Sahadeo Dagadu Pable. The said three accused, namely, accused Nos. 26, 27 and 28 are only identified by P.W. 15 Digambar Namdeo Kachare, Accused No. 3-Shankar Pundalik Pabale, though named by P.W. 6, P.W. 7, P.W. 8 and P.W. 9, has not been implicated by the complainant P.W. 2 Pandurang Wani. Similarly, accused No. 4-Popat Kisan Pabale, who has been named by P.W. 3, P.W. 4, P.W. 6, P.W. 7, P.W. 8 and P.W. 9, has not been named by the complainant P.W. 2. So also accused No. 5 Bhanudas Tulshiram Kachare, who has been named by P.W. 3, P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 9, has not been named by the complainant P.W. 2 and accused No. 6-Kashinath Bhikaji Pabale and accused No. 19-Vithal Sawalaram Pabale, who have been named by P.W. 3, P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 8, have not been implicated by the complainant P.W. 2. Accused No. 16-Bhagwan Baban Pabale, who has been named by P.W. 3, P.W. 5, P.W. 6, P.W. 7, P.W. 8 and P.W. 9, has not been implicated by P.W. 2 in Court. It is thus seen that some of the accused persons, though identified by some witnesses, have neither been named in the F.I.R. nor identified by the complainant P.W. 2 in Court. Accused No. 3-Shankar Pundalik Pabale, accused No. 4-Popat Kisan Pabale, accused No. 5-Bhanudas Tulshiram Kachare, accused No. 6-Kashinath Bhikaji Pabale, accused No. 16 Bhagwan Baban Pabale and accused No. 19-Vithal Sawalaram Pabale though named in the F.I.R. have not been implicated by P.W. 2 in his evidence. In the F.I.R., although, P.W. 2 has named 21 accused persons, before the Court he has identified only 19 accused including one Gotiram Pabale whose name does not figure in the F.I.R. So far as accused No. 3-Shankar Pundalik Pable is concerned, his name is neither in F.I.R. nor has P.W. 2 implicated him in his evidence before the Court, though he has been named by other witnesses, namely, P.W. 6, P.W. 7, P.W. 8 and P.W. 9. So far as accused No. 4-Popat Kisan Pabale is concerned, he has been identified in the Court by all the witnesses except the complainant P.W. 2. Similarly, accused No. 5-Bhanudas Tukaram Kachare has been implicated by all the witnesses except P.W. 2 and P.W. 8. Accused No. 6-Kashinath Bhikaji Pabale has been named by all the witnesses except P.W. 2. Accused No. 16-Bhagwan Baban Pabale has been named by all the witnesses except P.W. 2 and accused No. 19 Vithal Sawalaram Pabale has also been named by all the witnesses except P.W. 2 complainant. In

view of the fact that the accused Nos. 3, 4, 5, 6, 16 and 19 have not been implicated before the Court by the complainant, although, they have been implicated by some other witnesses, they have to be given benefit of doubt.

16. The complaint was recorded at the spot immediately after the police arrived and prior to the preparation of the panchanama of the scene Of offences. The statements of the other eye-witnesses were recorded later on. The F.I.R. may be taken as the basic document implicating accused, as it was recorded immediately at the spot soon as the police arrived there leaving no scope for concoction or addition of any name. The statements of the other eye-witnesses implicating some more accused besides those named in the F.I.R. being recorded later in point of time, it may be argued that there was time for consultation amongst the witnesses and, therefore, scope for addition of some of the accused persons not implicated by the complainant P.W. 2. Therefore, accused No. 9-Bharat Jairam Kachare and accused No. 14-Sawarkar Laxman Hinge, who have not been named in F.I.R., ought to be given benefit of doubt. So far as accused Nos. 26, 27 and 28 viz. Shripat, Chandrakant and Sahadeo respectively are concerned, they have neither been named in F.I.R. nor been implicated by P.W. 2 in his evidence nor have been identified by any of the other eye-witnesses except P.W. 15. Hence the said accused Nos. 26, 27 and 28 will have to be given benefit of doubt and acquitted. Accused No. 29-Dattatraya Gajanan Pabale, though identified by P.W. 2 in Court has not been named in the F.I.R. He will, therefore, have to be given benefit of doubt. As pointed out earlier, accused No. 3-Shankar Pundalik Pabale has been neither named in the F.I.R. nor identified by P.W. 2 in Court. He will, therefore, have to be given the benefit of doubt and acquitted.

17. All the accused persons were arrested within a short span of time after the incident. In fact, accused No. 20-Haribhau Raghuji Hinge, and accused No. 25-Vishnu Devba Datkhile were arrested on the date of incident itself i.e. on 4th August, 1983 and blood stained clothes from their persons were recovered. Accused Nos. 1 to 12 and 15 to 18 were arrested on 7th August, 1983, their blood stained clothes were recovered. Accused Nos. 13, 14. 22 and 23 were arrested on 9th August, 1983 and blood stained clothes were recovered from them. Accused No. 21 was arrested on 8th August, 1983 and blood stained clothes were recovered from him. Accused No. 24 was arrested on 5th August, 1983 and blood stained clothes were recovered from him. Accused No. 29 was arrested on 20th December, 1983. All the arrested accused were found with blood stained clothes except accused No. 28. Further all the aforesaid accused had no injuries on their person except accused No. 26. The arrested accused have failed to explain the recovery of blood stained clothes. The trial Judge has not dealt with the evidence on record pertaining to the recovery of blood stained clothes which have been recovered under panchanama, and there is no challenge to the recovery of blood stained clothes. There is also no explanation forthcoming from the accused persons on the recovery of blood stained clothes. No doubt, it is in evidence that blood group of the victim Namdeo was "A" while the blood group of some of arrested accused was "O," "B" or "AB." Non-explanation of

blood stains on the clothes recovered from the accused in absence of injuries on the person of the arrested accused is an incriminating circumstance.

18. The learned trial Judge in his reasoned judgment has taken the view that there is a fatal flaw in the prosecution case since the medical evidence does not support the case of the prosecution of assault on the deceased by so many persons at the same time in the manner and with the weapons stated. It is pointed out that P.W. 20 Dr. Sankpal, Medical Officer, Primary Health Centre, Narayangaon who did the postmortem on the body of deceased stated before the Court that there were in all 26 external injuries on the body of the deceased-Namdeo. There were fractures found during the internal examination of the body. The external injuries Nos. 7, 22, 23 and 24 are punctured wounds with lacerated edges and the cause of the death of deceased Namdeo is shock due to rupture of left lung and multiple injuries. The left lung was ruptured apparently due to fractured ribs from 8th to 10th on left side. The learned trial Judge has noted Dr. Sankpal's opinion that the punctured wounds were caused with hard and blunt object, such as, wooden sticks and iron rods and that Dr. Sankpal has identified the wooden sticks (Article No. 44) and iron rod (Art. No. 42) to be the weapons which could have inflicted the punctured wounds on the body of Namdeo. The learned trial Judge has rejected the opinion of the Medical Officer P.W. 20 that the punctured wounds must have been caused either by the wooden sticks (Article UU) or by iron rods (Article UZ) and has observed that since the iron rod has clean end with hollow centre it could not have caused the punctured wounds at Sr. Nos. 22 and 23. It is further observed by the learned trial Judge that since according to the prosecution case only one iron rod and several wooden sticks were the only objects of assault, used by the accused persons, the presence of four punctured wounds has not been explained legally and logically. We are constrained to observe that the learned trial Judge was wrong in substituting the expert opinion of the Medical Officer, by his own and, therefore, his findings to the contrary are unjustified and unwarranted. Dr. Sankpal, P.W. 20 in his deposition before the Court, in para 6 of his evidence, has opined that injury Nos. 7, 23 and 25 are punctured wounds with lacerated edges. That these injuries could be caused with the rough end of the iron pipe shown to him. He has further stated that the said injuries can be caused with the wooden sticks and iron bar shown to him before the Court. Dr. Sankpal further opined that considering the nature and number of injuries the same must have been caused due to several strokes and the injuries are found to have been caused all over the body from head up to toe. Nothing has been brought in the cross-examination of Dr. Sankpal to discredit his expert opinion that the punctured wounds could have been caused with the wooden sticks and iron rod, namely, Articles 44 and 42. In fact, in his cross-examination, Dr. Sankpal has reiterated that the punctured wounds mentioned in column 17 of the notes could have been caused by Arts. 42 and 44 and in order to inflict such wounds, those articles must have been thrust with sufficient force in the body. That the punctured wound with its rough and lacerated edges could be caused by edges of Articles

42 and 44. Thus nothing has been brought in the cross-examination to reject the expert opinion of Dr. Sankpal that the punctured wounds were caused by thrust of wooden sticks and iron rods and that the several injuries on the body of the deceased invest have been caused due to several strokes inflicted by the accused with wooden sticks and iron rods. That the puncture wounds were caused by wooden sticks and iron rods and the severe nature of injuries caused by several strokes all over the body from head up to toe of the deceased resulted in the death of Namdeo due to shock and rupture of left lung and multiple injuries has been established beyond doubt. The conclusion of the learned trial Judge based on his personal opinion in the face of expert opinion is not only unwarranted but also indicative of lack of appreciation of the evidential value to be attached of expert medical evidence.

19. It is established beyond doubt that Namdeo's death was homicidal in nature and not suicidal or accidental. The inquest panchanama on the body of Namdeo was performed at the scene of offence itself where the body was lying when the police arrived there. The statements of the complainant and other eye-witnesses were recorded on the spot on the same day, albeit a few hours after the incident, but it cannot be said that the F.I.R. of the complainant P.W. 2 was recorded belatedly. Photographs were taken at the scene of offence at the time of inquest panchanama. The photographs show the dead body with multiple injuries and bleeding. The photographs also show the tell tale signs of attack on the house viz. broken roof and stones and roof tiles scattered all over the courtyard. The accused (except accused No. 13 who has taken the plea of alibi) have not denied their presence at the scene of offence at the time of the incident. The article No. 1 S.T. tickets Exh. 71 and article Nos. 2 to 7 Exh. 72, namely, samples of pieces of broken tiles as well as scrapping of plain Earth and Earth mixed with blood recovered from courtyard under panchanama. All this indicates that Namdeo was assaulted at the scene of offence i.e. house of P.W. 2 on 4th August, 1983.

20. P.W. 2 Pandurang Wani cannot be treated and considered as an interested witness though he is related to the deceased. His evidence is corroborated by the evidence of P.W. 3 to P.W. 9 and P.W. 15 the son of the deceased. All of them are the eye-witnesses to the incident. There is no reason to disbelieve the evidence of P.W. 2 though he is related to the deceased. There is no reason why the said witnesses, who are related to the deceased and to each other, would want to falsely implicate (he accused and allow the guilty persons to go scot-free. There is nothing in the cross-examination of the said eye-witnesses to discard their testimony. We find no merit in the defence contention that since independent witnesses like neighbours, though available, were not examined the testimony of the eye-witnesses, who are related to the deceased. should be disbelieved. There could be several reasons why the neighbours would not want to testify in the case. The severe enmity between the two families of Kachare and the accused who belonged to Pabalewadi has been brought on record. In fact, the entire village of Pabalewadi were inimical to the members of the Kachare family to which Namdeo belonged. It is, therefore, understandable why none of the

neighbours is examined as witness.

21. Coming to the assailants who participated in the assault on Namdeo, out of 29 accused only 21 accused have been named in the F.I.R. by the complainant P.W. 2-Pandurang Wani and only 19 of the accused have been identified by him in his evidence in Court. Out of 29 accused, accused No. 3-Shankar Pundalik Pabale is neither named in the F.I.R. nor identified by P.W. 2 in Court. Accused Nos. 4, 5, 6, 16 and 19, though named in the F.I.R., have not been identified by P.W. 2 in the Court. Accused Nos. 8, 14, 23 and 29 are not named in the F.I.R. (by P.W. 2 complainant). Furthermore accused No. 26-Shripat Ganpat Pabale, accused No. 27-Chandrakant Janaji Walunj and accused No. 28-Sahadeo Dagadu Pabale are neither named in F.I.R. nor identified by P.W. 2 in his evidence.

22. Thus it is seen that out of 29 accused only 16 accused have been named in the F.I.R. as well as identified by the complainant P.W. 2 in the Court. However, out of these 16 accused, accused No. 13-Shankar Maruti Kachare has taken the plea of alibi. It is the case of accused No. 13 that he is serving in the State Government office in the office of the Additional Collector, Encroachment and Controller of Slums, Bombay. Two defence witnesses were examined on behalf of accused No. 13, who have produced number of documents on record in order to establish that accused No. 13 was actually and physically present in the office at Bombay on 4th August. 1983 during working hours. The daily muster roll for the relevant period Exh. 180 was produced to show that accused No. 13 has signed the muster roll on 4th August, 1983. The learned trial Judge has held the plea of alibi to be reasonably established despite the fact that it has been brought on record that said muster roll has not been made strictly according the rules and procedure. However, considering all material aspects, the learned trial Judge has held that the evidence led by accused No. 13 is sufficient to establish that the accused No. 13 was not at the scene of offence at the relevant time and place and this, according to the learned trial Judge, is fortified by the fact that some of the witnesses, other than P.W. 2, have not implicated accused No. 13. Some doubts have been raised regarding the entries in the muster roll and it is submitted that even if the muster roll is taken as genuine and that the said muster roll has been signed by accused No. 13 that does not rule out the possibility that the accused No. 13 could have participated in the assault which took place in the morning at 8.00 a.m. and returned to Bombay on the same day before closing hour and signed the muster roll. No doubt, this possibility cannot be ruled out but in view of the fact that the learned trial Judge has taken a reasonable view on the basis of material placed before the Court and accepted the plea of alibi, we see no reason to interfere with his finding. Accused No. 13 will therefore have to be given benefit of doubt.

23. It may here be noted that accused No. 15 Tukaram Haribhau Hinge, who had been named in the F.I.R. as well as implicated by P.W. 2 in Court expired pending trial. Therefore, the case against him has abated.

24. Thus only the following accused can be held guilty of the offence of murder u/

s 302 of I.P.C. namely, accused No. 1 Lahu laxman Pabale, accused No. 2-Bajirao Shivram Pabale, accused No.7-Dilip Gangaram Kachare, accused No. 8-Chandrakant Dattatraya Kachare, accused No. 10-Kashinath Dattatraya Kachare, accused No. 11-Ramdas Vishram Kachare, accused No. 12-Baban Vishnu Datkhile, accused No. 17-Bajirao Babu Pabale, accused No. 19-Vithal Sawalaram Pabale, accused No. 20-Haribhau Raghuji Hinge, accused No. 21-Bapu Laxman Pabale, accused No. 22-Gopal Laxman Pabale, accused No. 24-Baban Dattatraya Kachare and accused No. 25-Vishnu Devba Datkhile.

25. According to the learned trial Judge, the complaint of P.W. 2 (Exh. 61) is not the F.I.R. but a document fabricated after due deliberation in view of enmity between the rival groups. The learned trial Judge appears to have taken the view based on the testimonies of P.W. 8 Sonabai (Exh. 68). P.W. 22 Head Constable Joshi of Narayangaon Police Station and P.W. 28 Head Constable Shivale working at Junnar Police Station (Exh. 141). Head Constable Mr. Shivale has stated that at about 10.00 a.m. on 4th August, 1983. Sonabai came to Junnar Police Station and informed him about the incident and, accordingly, he recorded everything stated by Sonabai. In support of this he has produced the police station diary and the extract of the relevant entry (Exh. 142). On the basis of the aforesaid statement, the learned trial Judge concluded that the document at Exh. 142 being earlier in point of time would be the authentic First Information Report regarding the incident. It is contended that Sonabai had stated to Head Constable Shivale that she had actually witnessed the assault on her husband but she did not mention the names of the assailants although she knew fully well the full names of all the accused persons as can be seen from the fact that she has named all the accused persons in her deposition before the Court. According to the learned trial Judge, this has seriously clouded the authenticity of the document (complaint) at Exh. 61 which categorically mentions the names of 23 accused persons to be the assailants.

26. The reasoning of the learned trial Judge does not appeal to us. According to P.W. 8 Sonabai, wife of deceased-Namdeo, she left the scene of incident after her plea to the assailants not to assault her husband fell on deaf ears. She thereupon rushed to Junnar Police Station, obviously, to seek assistance of the police. When P.W. 8 Sonabai left for the police station, she had not witnessed the entire incident. According to P.W. 8 Sonabai, when she rushed to Junnar Police Station she informed the police there about the incident. However, the police did not record anything but directed her to Narayangaon Police Station as the incident was within the jurisdiction of that police station. But when she reached Narayangaon Police Station she has informed that the police van had just left for Pimpalgaon to the scene of incident. Hence she returned with Balu, son of the complainant to Wanimala. By the time she reached the scene of offence it was 2.30 p.m. There she saw the dead body of her husband and police from Narayangaon Police Station who had already reached the spot. Even if the entry (Exh. 142) was recorded by the P.W. 28 Shivale. Head Constable of Junnar Police Station, the same could not be said to be the F.I.R. as P.W. 8 Sonabai had not

named any of the accused persons as the assailants and had only informed the Junnar Police of the commencement of the incident. P.W. 8 rushed to Junnar Police Station which apparently was nearer to the residence of P.W. 2, as she wanted immediate police assistance. But the Junnar Police directed her to approach the Narayangaon Police Station. When she did reach the Narayangaon Police Station she was informed that the police at Narayangaon Police Station had already got information and the police had left for the scene of offence. The statement, if any, recorded of Sonabai at Exh. 147, therefore, cannot be said to be the F.I.R. In fact, the Junnar Police told Sonabai to go to Narayangaon Police Station as it had no jurisdiction in the matter. Therefore, it is unlikely they would have recorded her statement. It is also not the case of the defence that Narayangaon Police Station has recorded any statement of Sonabai which could be treated as the F.I.R. Moreover, P.W. 8 Sonabai has categorically denied that the police at Junnar Police Station had recorded any statement. That being the position the statement (Exh. 61) of the complainant P.W. 2 Pandurang Wani, the owner of the house where the incident took place and who was very much present and whose presence at the scene of offence is not denied, would be the F.I.R. P.W. 2 complainant knew all the accused as they were known persons. He has, in his statement, named 23 assailants. Apart from Exh. 142 viz. extract of entry at Junnar Police Station, there was no material necessitating the learned trial Judge to doubt the contents of the complaint F.I.R. and veracity of the complainant whose complaint was recorded by the Narayangaon Police Station at the scene of the incident. The complainant P.W. 2 is a natural witness. He is the owner of the house in the courtyard of which the incident took place. His statement is corroborated by the statements of other witnesses, albeit related to him, who were also present and whose presence in the house was also natural.

27. We, therefore, see no reason to doubt the veracity and authenticity of the complaint Exh. 61. We find the evidence of P.W. 2 complainant straight forward and that of a natural and truthful witness with no reason whatsoever to falsely implicate the accused and, therefore, his evidence (Exh. 60) to the extent it is corroborated by the F.I.R. is sufficient to implicate the accused persons who have been named in the F.I.R. as well as identified by him in the Court. At this stage, we must point out that P.W. 2 complainant has named 23 accused. However, subsequently, some more persons were implicated on the basis of the statements recorded of other witnesses. So far as statements and evidence of these other witnesses are concerned, the same could only be of corroborative value. Since they implicate persons who are not named in the F.I.R., the benefit of doubt will have to be given to the said accused persons.

28. Further it is also to be noted that P.W. 2 complainant has named 23 accused persons in his complaint (F.I.R.) including the persons who are not accused before the Court viz. one Shivaji Bapu Pabale and one Gopinath alias Kundalik Shivaji Pabale. However, in his evidence before the Court, he has implicated and identified only 19 accused. Those accused, who are named in the F.I.R. but who have not been implicated by P.W. 2 in his testimony before the Court, will also

have to be given benefit of doubt and acquitted as there is no substantive evidence against them.

29. It is the case of the prosecution that the accused persons assaulted Namdeo with intention to kill him pursuant to a conspiracy which was hatched at Bombay and partly executed at Bombay when the wooden sticks were purchased from a stores at Bombay. In view of the fact that all accused persons named in the F.I.R. have not been implicated in Court by the complainant P.W. 2, the learned trial Judge has posed the question viz. "If all the accused persons could not be arraigned, whether some of them could be so arraigned?" and answered his own question in the negative holding that "no accused person can be saddled with criminal liability with which they are charged since ocular evidence as well as circumstantial evidence is riddled with improbabilities as well as material contradictions and discrepancies which go to the root of the matter." The learned trial Judge has placed reliance on the case of Rewaram and Others Vs. State of Maharashtra, wherein this Court held as follows :

"When the prosecution story is one of a joint and consolidated attack on deceased by all the three accused and when it appears that the involvement of two of them is false and purposeful, the testimony of the witnesses as a whole gets tainted and blemished and it is difficult, nay, hazardous to exercise a part of it as true and dependable. When the evidence, as a whole, is redolent with such grave doubts and suspicion, the benefit of it must go to the remaining accused as well."

Clearly, the facts of the aforesaid case are inapplicable to the case at hand. While there were only three accused in the case cited and evidence against two of them was not believed "as being false and purposeful," in the present case, we have an assault committed by about 25 to 30 persons. P.W. 2 complainant in his complaint has named 23 assailants as accused but has identified only 19 of them in the Court. The other accused have been implicated subsequently on the statement of the witnesses other than P.W. 2. Considering the number of assailants involved, it is possible that P.W. 2 the complainant in the hurry must have forgotten to name all the assailants. But just because some of the assailants have not been named in the F.I.R. or some though named in the F.I.R. not identified by the complainant in the Court, it must be said that the entire evidence of P.W. 2 is discrepant and of no value and must be discarded and all the accused, including those who have been named in the F.I.R. and identified in the Court by P.W. 2, be acquitted just because some of the co-accused cannot be convicted. The case relied upon by the learned trial Judge is not apposite to the case in hand, in view of the fact that the testimony of witnesses showing involving of the other co-accused cannot be said to be false and purposeful just because they are not proved by substantive evidence of P.W. 2 complainant.

30. In case of those accused where there is substantive evidence of P.W. 2 implicating them and identifying them in the Court and where such evidence is corroborated by the F.I.R., the said accused will have to be convicted of the

offence of murder. Nothing has come on record to discredit the oral testimony of the complainant P.W. 2. The other eye-witnesses i.e. P.W. 3 to P.W. 9 have also, to a large extent, corroborated the testimony of P.W. 2 in material particulars. The learned trial Judge erred in discarding the entire evidence of P.W. 2 on the ground that the case of conspiracy was not proved. Even if the said case of conspiracy is not accepted the presence of the said accused at the scene of offence has been established beyond doubt. The victim Namdeo's death was due to injuries sustained by him in the assault. The fact that no specific role has been assigned to any particular assailant would not entitle them to any benefit of doubt as in the nature of things in an assault by several persons at the same time, it would not have been possible for the witnesses to have observed the exact role played by each assailant nor could they depose/state as to which accused inflicted which injury and inflicted how many strokes. The observation of the learned trial Judge that since there were over 25 persons all armed with sticks and iron rods, the deceased must have sustained over 100 blows and much more injuries than deposed by the medical officer, is mere guess work and unwarranted in view of the clear medical evidence of Dr. Sankpal whose evidence has not been dislodged in cross-examination.

31. In our opinion, the case against the aforesaid accused, namely, accused No. 1-Lahu Laxman Pabale, accused No. 2-Bajirao Shivram Pabale, accused No. 7-Dilip Gangaram Kachare, accused No. 8-Chandrakant Dattatraya Kachare, accused No. 10-Kashinath Dattatraya Kachare, accused No. 11-Ramdas Vishram Kachare, accused No. 12-Baban Vishnu Datkhile, accused No. 15-Tukaram Haribhau Hinge (deceased), accused No. 17-Bajirao Bapu Pabale, accused No. 18-Dhondur Hari Pabale, accused No. 20-Haribhau Raghuji Hinge, accused No. 21-Bapu Laxman Pabale, accused No. 22-Gopal Laxman Pabale, accused No. 24-Baban Dattatraya Kachare and accused No. 25-Vishnu Devba Datkhile, who have been named in the F.I.R. as well as implicated by P.W. 2 complainant in his evidence before the Court, cannot be said to be one of "may be true" but, in fact, one of "must be true" and hence reliance placed by the learned trial Judge on the decision of Gajendragadkar, J. (as he then was) in the case of Sarwan Singh Vs. The State of Punjab, is misplaced.

32. We are aware that an order of acquittal requires no interference unless it suffers from grossly unreasonable assessment of the evidence of record or is vitiated by any manifest illegality resulting in failure of justice. In the present case, we find that the judgment of acquittal of the trial Court is based on surmises, conjectures and assumed contradictions resulting in misreading of the evidence and also failure in assessing the evidence on record which is clear and cogent. The evidence of P.W. 2 complainant corroborated by the other eye-witnesses and medical evidence has established the fact that the deceased-Namdeo died a homicidal death, that the dead body was at the scene of offence when the inquest panchanama was prepared. The evidence on record clearly establishes that the deceased-Namdeo was attacked at the house of P.W. 2 complainant and that as a result of assault on him by sticks and iron bars by the

assailants numbering over 25 the deceased suffered several injuries including fractures and punctured wounds and that he died due to shock and haemorrhage. This coupled with the fact that the accused have nowhere denied their presence at the scene of offence clearly establishes their involvement in the murder of Namdeo.

33. Before parting, we wish to place on record our appreciation for the valuable assistance rendered by the learned A.P.P. Mr. Singhal for the State who has taken pains to take as through the entire evidence and pin-pointed the role of each accused. Accordingly, we pass the following order :

ORDER

Appeal partly allowed.

The order of acquittal, so far as accused No. 3-Shankar Pundalik Pabale, accused No. 4 Popat Kisan Pabale, accused No. 5-Bhanudas Tulshiram Kachare, accused No. 6-Kashinath Bhikaji Pabale, accused No. 9-Bharat Jairam Kachare, accused No. 13-Shankar Maruti Kachare, accused No. 14-Sawarkar Laxman Hinge, accused No. 16-Bhagwan Baban Pabale, accused No. 19-Vithal Sawalaram Pabale, accused No. 26-Shripat Ganpat Pabale, accused No. 27-Chandrakant Janaji Walunj, accused No,

28-Sahadeo Dagadu Pabale and accused No.

29-Dattatraya Gajanan Pabale are concerned, is confirmed. Their bail bonds to stand cancelled.

The following accused viz. accused No. 1-Lahu Laxman Pabale, accused No. 2-Bajirao Shivram Pabale, accused No. 7-Dilip Gangaram Kachare, accused No. 8-Chandrakant Dattatraya Kachare, accused No. 10-Kashinath Dattatraya Kachare, accused No. 11-Ramdas Vishram Kachare, accused No. 12-Baban Vishnu Datkhile, accused No. 17-Bajirao Bapu Pabale, accused No. 18-Dhondur Hari Pabale, accused No. 20-Haribhau Raghuji Hinge, accused No. 21-Bapu Laxman Pabale, accused No. 22-Gopal Laxman Pabale, accused No. 24-Baban Dattatraya Kachare and accused No. 25-Vishnu Devba Datkhile are convicted of the offence of murder u/s 302 read with Section 34 of I.P.C. and sentenced to suffer imprisonment for life. The said accused to surrender before the trial Court for undergoing sentence within four weeks from the date of this order. On their surrendering their bail bonds to stand cancelled.

Appeal disposed of.