

(2015) 03 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 124 of 1996

State of Maharashtra

APPELLANT

Vs

Maheboob Khan and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2015) 2 BomCR(Cri) 35

Hon'ble Judges : A.M. Badar, J.; S.S. Shinde, J.

Bench : Division Bench

Advocate : M.S. Patni, APP, for the Appellant; V.G. Sakolkar and Ramraje Pawar, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This appeal is filed by the State of Maharashtra, aggrieved by the judgment and order passed by the 3rd Additional Sessions Judge, Nanded on 22nd December, 1995, in Sessions Case No. 129 of 1995, thereby acquitting the Respondents for the offence punishable under section 302 read with 34 of the Indian Penal Code.

2. The case of the prosecution, in brief, is as under:-

(a) That, the complainant Keshav Chavan is the resident of village Sangvi Bk. Taluka and District Nanded. He earns his livelihood by doing the work of labourer. Village Sangvi is located close to Nanded City. He had two younger brothers namely (1) Narayan and (2) Yadav (deceased). Yadav, the brother of the complainant was residing separately from the complainant. The age of Yadav at the relevant time was 20 years. He was also earning his livelihood by doing labour work.

(b) Accused Nos. 1 to 3 are real brothers. They are residing at village Sangvi. Accused No. 1 is the tricycle rickshaw puller. Accused No. 2 at the relevant time

was in the services of Grampanchayat Sangvi, working as waterman. Accused No. 3 is labourer by occupation. The name of the mother of accused Nos. 1 to 3 is Jamrunbee. Vatchlabai Uttam Rathod resident of village Sangvi was residing adjacent to the house of accused No. 2 Faruq. Uttam, the husband of Vatchalabai was addicted to liquor and hence in order to avoid that, Uttam should not spend the earnings of Vatchalabai, she used to deposit her earnings with Jamrunbee, the mother of accused Nos. 1 to 3. About 3 to 4 months prior to the incident, Vatchalabai deposited the amount of Rs. 200/- with Jamrunbee, with a view that, she should get the money back in case of financial difficulty. On 12.06.1995, Vatchalabai demanded the amount deposited by her from Jamrunbee in order to pay medical expenses. Jamrunbee informed Vatchalabai that, accused No. 2 Faruq Khan had spent the amount and asked Vatchalabai to demand the amount from accused No. 2. On 12.06.1995 at about 8 p.m. to 9 p.m. Vatchalabai demanded money, as stated by Jamrunbee from accused No. 2. Accused No. 2 got annoyed and he questioned Vatchalabai as to with whom, and when she had given the money. He also abused Vatchalabai. During the time accused No. 2 was abusing Vatchalabai, Uttam, the husband of Vatchalabai intervened. Accused No. 2 also abused Uttam who intervened in the dispute and rushed to hold him, and assaulted him by giving 4 to 5 stick blows. Due to stick blows Uttam fell on the ground and received injuries. Vatchalabai sought assistance of one Gangaram, who on the contrary, advised to take Uttam on the next day morning in the police station. Vatchalabai alone went to the Police Station for lodging the report against Faruq.

(c) One Pralhad Sakole, resident of village Sangvi Bk., runs hotel under the name and style as "New Ganesh Hotel" opposite to forest Naka, on Nanded-Hingoli Road, on the eastern side of the road. At that place Nanded-Hingoli road runs north-south. Forest Naka is located on the western side close to said road. Pralhad with the help of his wife Gayabai runs the hotel. The working hours of the hotel are from 6 a.m. to 10 to 11 p.m. Behind the hotel of Pralhad, there is country liquor shop of one Kadam. In front of the hotel by one side there is Pan Shop. There is also one tyre repair shop near the Hotel of Pralhad. Forest Naka and Hotel of Pralhad are situated opposite to each other.

(d) It is prosecution case that, at about 9 to 9.30 p.m. on 12.06.1995, there was quarrel between accused No. 1 and the deceased. Both were in drunken condition. There was beating to each other by them. After about 15 to 20 minutes of quarrel, quarrel automatically stopped. Thereafter, accused No. 1 and deceased went in tricycle towards Sangvi village.

(e) It is further the case of the prosecution that, at about 10 to 10.30 p.m. on same day accused Nos. 1 to 3, had brought Yadav (deceased) by the side of the hotel of Pralhad. They started beating him. Due to the noise of quarrel, attention of the persons present in the vicinity was invited towards the dispute. Accused No. 2 had iron chain having length of 2 to 2 1/2 feet. Accused Nos. 1 to 3 mercilessly beaten the deceased. Accused No. 2 Faruq assaulted the deceased

with iron chain. Due to beating by the accused Nos. 1 to 3, Yadav fell on the ground. Accused took water from the tyre repair shop and sprinkled on face of Yadav, however, he did not awake. On seeing that deceased was not awakening, even after sprinkling of water, accused No. 2 Faruq said that, Yadav is pretending.

(f) In between, Vatchalabai came from Sangvi side and was proceeding towards Nanded side, so as to report the matter to the Police Station regarding the incident of beating to the husband of Vatchalabai by accused no. 2. However, accused Nos. 1 to 3 went near her, and took her back to village Sangvi. She did witness the presence of accused Nos. 1 to 3 near deceased.

(g) On 12.06.1995, Keshav Chavan was returning to his house after day's work and at about 11 p.m., he reached near the forest Naka. Pralhad, Forest guard and watchman informed Keshav that, his brother Yadav is lying on the other side of the road, by the side of Hotel of Pralhad, and asked him to go and see Yadav (deceased). On receiving such information, Keshav went near Yadav, who was lying facing towards sky, having baniyan and pant on his person. By touching to the body of deceased, Keshav Chavan tried to wake up deceased, but he found that, Yadav is not alive. Deceased Yadav had injuries on his person. Pair of Slipper was lying by his side. Thereupon, Keshav Chavan inquired with Pralhad, as to how his brother died, who in turn narrated the incident.

(h) On 13.06.1995, at about 1.30 a.m., Keshav reached at Police Station Bhagyanagar, where PI Chate was present. Keshav was accompanied by his wife. The incident was orally reported by Keshav, which was reduced into writing by PI Chate. The report of Keshav is at Exh. 11, on the basis of which C.R. No. 100/1995 under Section 302 r.w. 34 of the Indian Penal Code was registered against the accused.

(i) Thereafter, PI Chate proceeded to the spot where corpse of Yadav was lying. As there was insufficient light to draw the panchanama, by keeping PC B. No. 2041 for guarding the corpse, PI Chate proceeded to village Sangavi to trace the accused, but he could not trace them. He saw Uttam lying in the injured condition to whom he had taken to Police Station and, thereafter, sent him for medical examination.

(j) Again at morning time PI Chate went to village Sangavi to effect the arrest of the accused persons but he could not trace them. Inquest panchanama was drawn as per Exh. 32 describing in detail the condition of the dead body. There were injuries present around the neck, on the chest and the testicles. Corpse was sent for postmortem examination along with the requisition letter in the Civil Hospital, Nanded. The scene of offence panchnama describing in detail the situation in existence on the spot and location of the spot was drawn as per Exh. 33. At the time of scene of offence panchnama pair of slipper, normal earth and earth mixed with reddish colour and wet earth were seized. During the course of investigation, the statements of the witnesses were recorded.

(k) On 13.06.1995, between 11 a.m. to 12.15 p.m. postmortem on the corpse of

deceased was performed by Dr. Punpale. Dr. Punpale noticed five abraded contusions, five abrasions and four contusions, described in detail in column No. 17 of the P.M. Report, present on the person of the deceased at the time of postmortem. Said injuries were described as ante mortem. He noticed two contusions, one on the scalp mid-frontal region and another on left partial region. Dr. Punpale noticed internal injuries mentioned in column No. 21, namely both the testicles bruised anteriorly, reddish, swelling. In the opinion of Dr. Punpale the death of the deceased was due to testicular trauma with multiple contusions. In the opinion of Dr. Punpale, injuries mentioned in column No. 15 alone were sufficient in the ordinary course of nature to cause death. Abraded contusions could be caused due to beating with iron chain.

(l) On 13.06.1995, the Police Constables, who were deputed for arrest of the accused persons, produced accused Faruq and Maheboob before PI Chate. Arrest Panchnamas by calling two panchas were prepared. There were injuries present on the face and on the middle of forehead of accused Maheboob. There were blood stains present on the shirt of accused. The shirt and pant on the person of accused Maheboob were seized by drawing seizure panchnama as per Exh. 34. Accused Nos. 2 and 3 were arrested by the Investigating Officer on 13.06.1995. The arrest panchnama and seizure panchnama of the clothes of the accused persons was drawn. There was one iron chain tied around the waist of accused Faruq same was seized.

(m) Blood samples of the blood of accused Nos. 1 to 3 was collected. The clothes on the person of deceased were seized by drawing seizure panchnama, Exh. 30.

(n) On 17.07.1995, Muddemal articles including the blood sample of the accused were sent to C.A., Aurangabad along with requisition letter Exh. 37. The C.A. Reports of the analysis of the property sent are at Exhibit 38 to 42. On 18.07.1995, after due investigation accused have been charge sheeted.

3. The trial Court framed charge against the accused as per Exhibit - 5, which was read over and explained to the accused nos. 1 to 3 in Hindi language. Accused pleaded not guilty and claimed to be tried. The trial Court after framing points for its determination and recording the evidence and hearing the parties, acquitted the respondents-accused from the charge of offence punishable under Section 302 read with 34 of I.P. Code. Hence this appeal filed by the State of Maharashtra.

4. The learned Additional Public Prosecutor appearing for the State submits that, PW-2 Pralhad, eye witness to the alleged incident, though turned hostile, has admitted in his cross examination that death of deceased Yadav was caused due to the assault by the accused. It is submitted that, PW-5 Gayabai and PW-4 Baba have also admitted having seen the accused assaulting deceased Yadav. It is submitted that, PW-7 Vithal, eye witness, though declared hostile has admitted in his examination in chief that, there was a quarrel between deceased Yadav and accused Meheboob, and that, after some time he had seen the deceased

lying on the ground while three accused were going away from the spot. It is submitted that, PW-8 Vatchalabai has stated that, she saw accused pouring water on the deceased and accused Meheboob kicking the deceased while he was lying on the ground. It is further submitted that, PW-9 Madhav has admitted seeing accused beating the deceased in front of the Hotel owned by Pralhad. It is further submitted that, the medical evidence as testified by PW-3 Dr. Punpale, shows that the cause of death of deceased was testicular trauma due to multiple contusions, which was sufficient in the ordinary course of nature to cause death. The learned Additional Public Prosecutor for the appellant-State therefore, submits that, the appeal deserves to be allowed.

5. On the other hand, the learned counsel appearing for the original accused invited our attention to the findings recorded by the trial Court and submits that, after appreciation of entire evidence brought on record by the prosecution, the trial Court has taken a plausible view, and therefore, this Court may not interfere in the acquittal order. It is submitted that, the evidence of the prosecution witnesses is inconsistent, suffers from material contradictions, omissions and improvements. It is submitted that, though the prosecution claimed that, there were eye witnesses to the incident, none of the witness has supported the prosecution case, in as much as, no witness has actually seen assault by the accused persons on the person of deceased. Therefore, the learned counsel appearing for the accused submits that, the appeal may be dismissed.

6. We have given careful consideration to the submissions advanced by the learned Additional Public Prosecutor and the learned counsel appearing for the Respondents-accused. With their able assistance perused the entire evidence. The following charge was framed by the trial Court, which is as under:-

"That, you accused Nos. 1 to 3 on or about 12.6.95 at about 10.30 p.m. opposite to Forest Naka at Sangvi committed following offences in furtherance of your common intention.

That, you on aforesaid date, time and place did commit murder by intentionally or knowingly causing the death of Yadav Amarsingh Chavan and thereby committed offence under Section 302 r.w. 34 of the Indian Penal Code and within my cognizance.

And, I hereby direct that you be tried on the said charges by me."

7. The complainant Keshav Amarsingh Chavan is the brother of the deceased Yadav. The prosecution examined him as PW-1. His evidence is at Exhibit 10. In his examination-in-chief, he has stated that, the deceased Yadav was his brother. Deceased Yadav was residing at village Sangavi, separately from him. He knew accused Nos. 1 to 3 sitting in the dock, who are also residents of village Sangavi. He further stated that, incident took place about 5 to 6 months ago. Incident took place on 12.06.1995. For labour (Hamali) work, usually he leave his house in the morning by 9.00 a.m. and return to his house after work is over by 10 to 11 p.m. On the day of incident, he was returning to Sangavi from Nava Mondha

by 10.30 to 11 p.m. The village Sangavi is situated on Nanded-Hingoli Road. Forest Naka is located on Nanded-Hingoli Road. From Forest Naka, one road goes towards workshop i.e. towards Taroda. There are guards on duty at the said Forest Naka. Near Forest Naka, on Nanded Hingoli Road, there is hotel of one Pralhad. Forest Naka is situated on the left hand side while going towards Hingoli from Nanded. On his way to Sangavi, he reached at the forest Naka. At that time, forest guard who is known by name Malkari and hotel owner Pralhad were sitting near forest Naka. They informed him that, quarrel had taken place, and that, his brother Yadav was lying near the hotel of Pralhad on Nanded Hingoli road. The hotel of Pralhad is situated on the right hand side of Nanded-Hingoli road while going towards Hingoli, opposite to Forest Naka. He went near the place where Yadav was lying. He found that, Yadav is dead. On seeing his body, he found that, there were injuries in front of the neck, on left hand side arm, right hand side arm, and on other parts of the body.

8. He further stated that, Malkari and Pralhad informed him that, the quarrel took place between Yadav and three brothers namely; Accused Nos. 1 to 3. Thereafter, he went to his residence and reported the matter to his grand mother. After receiving information about the incident, his grand mother, his wife went near Yadav. He himself and his wife went to Bhagyanagar Police Station and filed complaint. From the spot of offence, Bhagyanagar Police Station is at a distance of about 3 K.M. He himself and his wife went on foot to the Police Station to file the complaint. He reported the incident orally in the Police station, which was reduced into writing by the Police. He signed on the report. He identified the said report which is at Exhibit - 11 and signature thereon. It is further stated that, at the place where Yadav was lying, there were two slippers lying. The same slippers were of his brother Yadav. When his brother Yadav was lying on the spot, he had full pant and baniyan on his person.

9. During his cross examination, the defence tried to bring on record the distance between Sangavi village Bus stop to residence of PW-1 and also the distance from Forest Naka to Bus stop. It appears that, this witness has stated that, his residential house is at a distance of about half k.m. from Sangavi village bus stop. The bus stop of village is situated on Nanded-Hingoli road. The bus stop of Sangvi is at a distance of about half kilometers from Forest Naka. Therefore, it appears that, from Forest Naka the residential house of this witness is about one kilometer. This witness has also stated in his cross examination that, the deceased Yadav often used to sit at Pralhad's Hotel. He has denied the suggestion that, deceased Yadav was addicted to liquor. He stated that, the dead body of Yadav was lying to the west of Hotel of Pralhad. Said body was lying at a distance of about 10 ft. from the Hotel. The liquor adda is situated at the backside of the Hotel of Pralhad and the dead body was lying in front of the Hotel of Pralhad. He further stated that, the area of Nanded City is almost extended to Sangvi village.

10. Upon careful perusal of his examination-in-chief it appears that, after

returning from his work in between 10 to 11 p.m. on way to Sangvi, he reached at Forest Naka. At that time, the forest guard, who is known by name Malkari and hotel owner Pralhad were sitting near forest Naka. They informed him that, quarrel had taken place and that, his brother Yadav was lying near the hotel of Pralhad on Nanded-Hingoli road. The hotel of Pralhad is situated on the right hand side of Nanded-Hingoli road, while going towards Hingoli, opposite to Forest Naka. He further stated that, he went near the place where Yadav lying and he found him dead. On seeing his body, he found that, there were injuries in front of the neck, on left hand side arm, right hand side arm, and on other parts of the body. This witness further stated that, Malkari and Pralhad informed him that, there was quarrel between Yadav and three brothers namely accused nos. 1 to 3. Then he went to his residence and reported the matter to his grand-mother. Then, his wife alongwith grand-mother went near Yadav. He himself and his wife went to Bhagyanagar Police Station where he filed complaint. He stated that, from the spot of offence Bhagyanagar Police Station is at a distance of 3 Kms and they went on foot to Police Station for filing the complaint. He narrated the incident of assault and Police Station Officer reduced the same into writing. He further deposed that, at the place where Yadav was lying, there were two slippers lying. The same slippers were of his brother Yadav. He noticed Yadav lying on the spot. He has full pant and baniyan on his person.

11. Upon careful perusal of his version in examination-in-chief, it clearly emerges that, the First Information Report was lodged promptly within few hours from happening of incident. It appears that, the said First Information Report was lodged at about 1.30 a.m. on 13.06.1995 and alleged incident as per prosecution case had taken place at about 10.30 p.m. on 12th June, 1995. It appears that, the complainant along with his wife and grand-mother went to the Police Station on foot even then there is prompt lodging of First Information Report by him, which rules out possibility of implicating wrong persons. He has specifically named accused no. 2 in the complaint namely Faruqkhan S/o Galib Khan and then he stated his younger brother, but he has specifically stated that, Faruqkhan Galib Sab drives auto-rickshaw and he along with his younger brother killed his brother Yadav.

12. After registering the First Information Report, PW-11 - Manikrao Baburao Chate started investigation. The inquest panchanama is at Exhibit - 18. It appears that, same inquest is proved by the prosecution through Investigating Officer. It appears that, the said inquest panchanama is signed by two panchas namely Shivaji Govindrao Suryawanshi and Anandrao Gangaramji Pawar. Upon perusal of the contents of the inquest panchanama, it is abundantly clear that, all over body of the deceased, there were injuries. The other details are also given in the inquest panchanama. The prosecution has also proved spot through Investigating Officer. The spot panchanama is at Exhibit 33. It appears that, Investigating Officer visited the spot on 13th June, 1995, in presence of panch Shivaji and Ananda and the said panchanama was signed and attested by the Investigating Officer. On perusal of the spot panchanama, it appears that, the

dead body was lying to the east of Nanded-Hingoli road, in front of Gujrath Road Ways, transport shop, by the side of the hotel of Gayabai and Pralhad. From the spot of offence, pair of slipper, normal earth and earth mixed with reddish colour and wet were seized and sealed by the Investigating Officer. The spot of incident is proved by the prosecution through Investigating Officer.

13. It further appears that, accused Meheboob Khan was absconding and he was arrested on 13th June, 1995 by arrest panchanama at Exhibit - 37 in presence of two panchas namely Maruti Balaji Suryawanshi and Bhujanga Tukaram Kamble. Upon perusal of the contents of the said panchanama, it appears that, some blood stains on the shirt of accused Meheboob were found. Investigating Officer in his evidence before the Court has stated that, in presence of panch Suryawanshi and Kamble arrest panchanama of accused Faruq was drawn. He identified his signature and attestation on the panchanama when he was confronted with the same. He further stated that, some buttons of the middle portion of the shirt were broken. On the backside portion of the shirt there was stain like blood. Iron chain was tied around the waist of accused Faruq. The iron chain was seized. Dust was also present on the clothes of Faruq. He further points out the arrest of another accused Rashid. He stated that, the dust was present on the clothes on the person of accused Rashid and then his clothes were seized. Police custody remand of accused nos. 1 to 3 was obtained on 14.06.1996. Blood was present on the person of accused Meheboob and therefore, he was sent for medical examination. It further appears that, the Investigating Officer sent blood samples of the accused to C.A. for analysis. Accordingly, the prosecution has proved the spot panchanama/inquest panchanama and seizure panchanama of the clothes of the accused.

14. In order to find out whether, the death of deceased Yadav was homicidal, accidental or suicidal, it is necessary to make reference to the evidence of Medical Officer. Dr. Satyanarayan Badrinarayan Punple, who was examined as PW-3. His evidence is at Exhibit - 15. Upon medical examination of the deceased, this witness stated that, in the ordinary course of nature injury mentioned in column no. 15 alone is sufficient to cause the death. If beating is given with the iron chain, which was before the Court, then injuries mentioned in column Nos. 15 to 17 could be caused. He noticed as many as 15 external injuries and 5 internal injuries and he opined that, the death of deceased was caused due to testicular trauma with multiple contusions. Upon careful reading of the Medical Report and the medical evidence, it is abundantly clear that, death of deceased Yadav was homicidal.

15. In order to prove the guilt of accused, the prosecution examined as many as 11 witnesses. Already the evidence of PW-1 i.e. complainant is discussed. The prosecution examined Pralhad Ramrao Sakole as PW-2. In his examination-in-chief he stated that, he runs hotel named and styled as "New Ganesh Hotel" situated opposite to Forest Naka on Nanded-Hingoli road. In between his hotel and Forest Naka, there is Nanded-Hingoli road. At the time of incident by the

side of his hotel, there is tyre repairs shop. At the time of incident, there was name board by name "Maha Gujrath" to the shop by the side of his hotel. Adjacent to his hotel, on front side there is Pan shop. He himself and his wife Gayabai looks after the transactions in the hotel. He knew the deceased Yadav and he also knew brother of deceased namely Keshav PW-1. He further stated that, the accused nos. 1 to 3 are resident of village Sangvi. He stated that, the incident took place about 4 to 5 months ago. It was about 10.30 p.m. He was taking rest in the back side portion of his hotel. His wife Gayabai was present in the hotel. He was sleeping in the side portion of the hotel. On hearing the noise of quarrel, he woke up from the sleep. He went out side the hotel and saw Yadav lying on the ground by the side of his hotel. One person by name Amdurya residing at the backside of his hotel was giving water to Yadav. When he went near Yadav, Amdurya reported him that, due to beating, Yadav was not drinking water. He was so beaten by Faruq. He further stated that, he did not remember the names of two more persons, who also beaten Yadav. He identified the said two persons sitting in the dock. Accused Faruq had iron chain in his hand. He stated that, when he reached near Yadav three aforesaid persons went away after beating. He further stated that, persons by name Malkari and Gaikwad, both Forest Guards were inside the Forest Naka. Besides his wife and a person by name Amdurya, no other person was present at the spot. Amdurya reported him that, Yadav was dead. Thereafter, he went to the forest Naka and sat there. Thereafter the complainant came there and this witness along with Forest Guards reported the complainant that, go and see his brother who was lying by the side of the hotel. Keshav accordingly went near Yadav and tried to make movement, but Yadav did not make any movement. Thereafter, Keshav went weeping towards his house and then he went to Police Station.

This witness was declared hostile and the learned Additional Public Prosecutor prayed for his cross examination. It appears that, in his cross-examination he stated that, he did not witness the actual incident of assaulting. It appears that, he stated in his cross-examination that, it is true that, when he came outside the hotel, he saw that, accused Faruq had iron chain of the length of 2 to 2 1/2 ft. in his hand. However, he stated that, it did not happen that accused nos. 1 to 3 were standing near Yadav Chavan. Therefore, he specifically stated that, it is not correct that, he has witnessed accused nos. 1 to 3 beating Yadav, however, he stated that, it is true that, due to beating by accused nos. 1 to 3 to Yadav, Yadav died.

This witness stated that, portion marked "A" and "B" from his statement dated 13.06.1995 recorded by the police was not stated by him, but he admitted that, portion marks "C" and "D" read over to him before the Court was stated by him to police. Portion marks "C" and "D" from his statement dated 13.06.1995 recorded by police read thus:-

Upon careful reading of portion marks "C" and "D" reproduced hereinabove, it is crystal clear that, PW-2 saw that, Yadav was lying on spot without movements,

accused Faruq, Maheboob and Rashid took water from the drum of a person who repairs bicycle, and thrown it on the face of Yadav (deceased), even then Yadav did not get up or shown any movements. Then accused Faruq stated Yadav is pretending.

16. Upon reading the evidence of this witness in his examination-in-chief and in cross-examination his evidence is useful to the prosecution to the extent of proving the spot of incident and also he knew accused persons and also deceased. However, this witness was declared hostile and he stated in his cross-examination that, he did not see the accused standing near Yadav or beating Yadav, and therefore, his evidence to the extent of spot of incident, persons present there and fact that, Yadav was lying in injured condition and Amdurya offering him water and that, the person was giving water to deceased Yadav told this witness that, Faruq assaulted deceased Yadav is useful to the prosecution. He saw accused Faruq holding iron chain in his hand. It is true that, when chain was shown to him before the Court, he could not identify it as the same chain. Since he did not support the prosecution case of actual witnessing the incident, he cannot be termed as eye witness to the incident.

17. The prosecution examined Dr. Satyanarayan Badrinarayan Punple as PW-3. In his examination-in-chief, he stated that, his educational qualifications are M.B.B.S., M.D. He is in Government service since 1980. Since 1991, he was working as Associate Professor in Medical College, Nanded. On 13.06.1995 dead body of Yadav Amarsingh Chavan was received by him for postmortem from Police Station, Bhagyanagar. In the postmortem, he was assisted by another doctor Shri. H.V. Godbole. The postmortem was started on 13.06.1995 by 11 a.m. and the same was completed by 12.15 p.m. on the same day. At the time of postmortem he found following antemortem injuries present on the person of Yadav:-

"1) Abraded contusion over scrotum anteriorly 6 x 4 c.m. reddish in colour."

He further stated that, this injury is mentioned in column No. 15 of the postmortem report. This witness also noticed the following antemortem injuries mentioned in column no. 17. They are as follows:-

- 1) Abraded contusion over nose, anteriorly (right ala) 2 x 1 c.m. reddish.
- 2) Abrasion over nose, anteriorly, semicircular 3 x c.m. reddish.
- 3) Abraded contusion over neck right side 7 x 3 c.m. reddish.
- 4) Abraded contusion over neck right side Posteriorly 5 x 3.5 c.m. reddish.
- 5) Abraded contusion over neck, sternal notch, 3 x 2 c.m., reddish.
- 6) Abrasion over right shoulder, posteriorly 1 x 1 and 1 x 1 c.m. with 1 c.m. gap in between reddish.
- 7) Abrasion over right scapular region 2 x 1 c.m. Reddish.

- 8) Linear contusion over right arm middle third, laterally, oblique, 10 x 1/2 c.m. reddish.
- 9) Contusion over right arm upper third laterally 7 x 5 c.m. reddish.
- 10) Abrasion over right forearm M/3 laterally, 3 x 1 c.m. reddish.
- 11) Two linear abrasions, chest right side, laterally, midaxillary line oblique 11 x 1/2 c.m. and vertical - 16 x 1/2 c.m. reddish.
- 12) Linear abrasion over chest (right) laterally upper aspect, 7 x 1/2 c.m. reddish.
- 13) Linear contusion over left arm, laterally, 20 x 1 c.m., reddish.
- 14) Contusion over back (right), lumbar region, laterally, 6 x 1 c.m., reddish.
- 15) Contusion over back (right) lower scapular region 6 x 5 c.m. reddish.

This witness on opening the dead body on internal examination found following injuries mentioned in column No. 19 of the report as follows:-

- 1) Contusion under scalp-mid-frontal region 2 x 2 c.m., reddish, swollen.
- 2) Contusion on left parietal region 2 x 2 c.m. reddish swollen.
- 3) Right parietal region 3 x 3 c.m., reddish swollen.
- 4) Left parietal temporal region 3 x 3 c.m. reddish swollen.
- 5) On dissection of neck, subcutaneous tissue and muscles showed ecchymosis
(i) correspondent to injury No. 3 in column No. 17 5 x 3 c.m. reddish.
(ii) corresponding to injury No. 5 in column No. 17 2 x 2 c.m. reddish.

This witness also noticed internal injury in column No. 21 mentioned in front of organs of generation:

Both testicles bruised anteriorly, reddish, swelling.

18. According to this witness, the death of Yadav was caused due to testicular trauma with multiple contusions. This witness prepared postmortem report. They are written by Dr. Godbole under his supervision as Dr. Godbole is junior to him. The said postmortem report was signed by this witness and also Dr. Godbole. This witness further stated that, the stomach was empty and no abnormality was detected. In the ordinary course of nature injury mentioned in column no. 15 alone is sufficient to cause the death. If beating is given with the iron chain which was before the court then injuries mentioned in column no. 15 and 17 could be caused. This witness further stated that, if beating is given with fist and kicks blows then plain contusions could be caused.

(Underline supplied)

19. In cross-examination of this witness, the defence brought on record that, he did not notice any blood stains on the clothes of the deceased. Except little blood

present on the injuries, there was no oozing of blood. None of the injuries mentioned in column no. 17 was bone deep. This witness voluntarily stated that, collectively all the injuries on the person of deceased are serious. Even in absence of injury over scrotum, injuries mentioned in column No. 17 collectively were sufficient to cause the death. He specifically denied the suggestion that, neither the injuries mentioned in column No. 15 nor the injuries mentioned in column No. 17 are sufficient in the ordinary course of nature to cause the death. He further stated that, he noticed abraded contusion over scrotum. This injury was oozing blood slightly and hence the colour was reddish. He has also further stated details about the injuries. He denied that, deceased Yadav had immediately prior to his death consumed alcohol and he was under influence of alcohol. He denied the suggestion that, since the dead body was brought after lapse of considerable period, effect of alcohol could not be noticed by him. The evidence of Medical Officer inspires full confidence and same is trustworthy. There is no slightest doubt that, deceased Yadav died homicidal death as a cumulative results of injuries inflicted on his person.

(Underline supplied).

20. The prosecution examined Babu Pochal Gaikwad as PW-4. His evidence is at Exhibit - 20 and in his examination-in-chief he stated that, he was working as forest guard. On the date of incident, he along with one watchman were on duty from 8 p.m. to 8 a.m. at the said forest Naka. The name of another watchman is Vithal Kokate. The incident took place on 12th June, 1995. It was Wednesday. On that night, at about 8.30 p.m. there was quarrel between accused Maheboob and Yadav. They were quarreling in front of hotel of one Pralhad named as "Ganesh Hotel". The watchman Kokate went near Yadav and Maheboob and asked them not to quarrel and go away. However, they did not listen and continued to quarrel. Watchman Kokate returned to forest Naka and then this witness and Kokate sat in the Naka. Due to long quarrel between them, they themselves tired. Maheboob took Yadav in his tricycle to village Sangvi. The said rickshaw was owned by accused Maheboob. When they went, this witness and other forest guards thought that, the dispute between them was over, and they sat in the Chowki.

21. He further deposed that, at about 10.30 p.m. when they came outside forest Naka for checking the vehicle, they saw Yadav was lying behind Pan shop by the side of the hotel of Pralhad. When Yadav was so lying, accused Maheboob and Rashid sitting in the dock were standing on the other end of Nanded-Hingoli road. Accused Faruq was sprinkling water on the face of Yadav by saying "Ye Hamesha Pike Dhong Karta". Thereafter, accused Nos. 1 to 3 went away. They again returned in their Chowki. This witness stated that, when accused nos. 1 to 3 were returning to Sangvi, one woman, to whom he was not knowing, met them. Accused Faruq took back that woman by saying that, Yadav was often behaving in that manner after consuming liquor. This witness further stated that, by 11 to 11.30 p.m. Keshav went to hotel from Nava Mondha side and thereafter,

came to forest Naka and informed them that, Yadav was dead. Pralhad had informed Keshav that, Yadav was dead. This witness denied that, in his presence accused Faruq, Rashid and Maheboob were together beating deceased Yadav Chavan. He also denied that, in his presence accused Faruq was beating deceased Yadav with iron chain of the length of 2 to 2 1/2 ft. to the deceased Yadav. He further denied that, in his presence accused nos. 1 to 3 after beating the deceased fell him on the ground.

22. This witness was declared hostile. His evidence is useful to the prosecution to the extent that, he witnessed the quarrel between Maheboob and Yadav at about 8.30 p.m. and then again 10.30 p.m. It has also come on record that, he knew accused and also deceased Yadav. The spot of incident is also stated by him. However, this witness has not supported the prosecution case that, in his presence accused Faruq, Rashid and Maheboob were together beating deceased Yadav Chavan. Therefore, his evidence to the extent, as discussed hereinabove, is useful to the prosecution. Upon reading his evidence, it appears that, at 8.30 p.m. there was quarrel between Maheboob and deceased Yadav Chavan, and therefore, the incident, which had taken place at 10.30 p.m. was not sudden.

23. During his cross-examination by Additional Public Prosecutor he denied portion mark "A", "B" and "C" from his police statement. Though prosecution has proved his statement in portion mark "A", "B" and "C" from his police statement, same is not useful to the prosecution, in as much as, the portion marks from the police statement of this witness was never part of evidence before the Court. At the most, same can be used to ascertain credibility of the evidence of the witness. He stated that, portion marks "A", "B" and "C" in his police statement has not been stated by him before the police. However, he stated that, the portion mark "D" was stated before the police. The portion mark "D" from his police statement reads thus:-

24. In his cross-examination PW-4 stated that, Vatchalabai was coming from Sangvi side. Rashid first went towards Vatchala and then Faruq and Maheboob followed him in going near Vatchala. Thereafter, accused nos. 1 to 3 together took Vatchala towards Sangvi. This version from the cross-examination of PW-4 proves the presence of three accused in the vicinity of spot of incident. This witness further stated in the cross-examination that, accused nos. 1 to 3 are resident of Sangvi and this witness resides at Nanded. He knew accused nos. 1 to 3 as they often come and go from the road passing nearby Naka. He further stated that, though he denied that, he did not witness accused nos. 1 to 3 beating to deceased, however, he stated that, it is true that, due to beating by accused nos. 1 to 3, Yadav died. He further stated in his cross-examination that, the hotel of Pralhad is at a distance of about 20 feet away from Nanded-Hingoli road. He did not know on what cause exchange of words going on between Yadav and Maheboob. Such exchange of words going on between them in front of liquor den by the side of hotel. He further stated that, he did not know when and how the deceased Yadav and accused again came to the spot. The place where earlier

quarrel took place, at that spot only deceased was lying. He stated that, it is true that, at about 10.30 p.m. this witness and Kokate were taking their meals inside the Naka. When they came outside the Naka after meals, they saw accused nos. 1 to 3 on the road. It appears that, his statement was recorded by the Police on 13.06.1995 at about 8 a.m. at the forest Naka. Therefore, though this witness declared hostile since he stated that, he did not see accused actually assaulting the deceased, however, so far spot of incident, the fact that, he knew accused and deceased and further he saw quarrel between accused Mehboob and deceased Yadav Chavan at about 8.30 p.m. and thereafter, at about 10.30 p.m. accused were seen by him nearby spot of the incident is useful to the prosecution. The evidence of this witness is important, in as much as, Maheboob was seen in the company of deceased Yadav Chavan by this witness at 8.30 p.m. and thereafter also at 10.30 p.m. he saw the accused nearby spot.

25. The prosecution examined Gayabai W/o Pralhad Sakole as PW-5. Her evidence is at Exhibit - 22. In her examination-in-chief, she stated that, her hotel is situated opposite to Forest Naka beyond the road. She herself and her husband runs the said hotel. She knew deceased as well as accused. Hotel remains open depending upon the customers upto 10 to 11 p.m. She stated that, 5 to 6 months back at about 9 p.m., she saw quarrel going on between Maheboob and Yadav. They were beating each other. After quarrel, they both went towards Sangvi.

She further stated that, they returned in front of the Pan shop after about an hour. The Pan shop is situated in front of her hotel. She closed the shutter of her hotel after Maheboob and Yadav went towards Sangvi after earlier quarrel. On hearing the noise of quarrel she awoke her husband. Her husband went near forest Naka and waited there. She heard the noise of quarrel of deceased Yadav and accused Maheboob, Faruq and Rashid. Her husband was sleeping outside the hotel. She came outside the hotel for awakening her husband. When she came out of the hotel on hearing the noise, she saw Faruq and Maheboob beating Yadav. Thereafter, she saw Yadav lying on the ground. Due to beating, Yadav fell on the ground. Such beating was given by Maheboob, Faruq and Rashid. It appears that, APP sought permission of the Court to confront this witness on certain portion from her statement before police without declaring her hostile. Such permission was granted by the Court, however, she stated that, the contents of portion marks "A" and "B" from her police statement are not stated by her.

26. This witness was cross-examined. She stated that, though she saw Yadav lying on the ground near the hotel, she did not witness any beating by anybody to Yadav. Though the APP sought permission of the Court to declare this witness hostile such permission was not given. However, part of her evidence in examination-in-chief which is favourable to the prosecution could have been taken into consideration by the trial Court. So far earlier quarrel at about 8.30 p.m. to 9 p.m. is concerned, he stated in her evidence that, there was quarrel

between Maheboob and Yadav. She further stated about the spot of incident. She further stated that, again on second occasion, there was noise of the quarrel of deceased Yadav and accused Maheboob, Faruq and Rashid. Therefore, aforementioned portion from her examination-in-chief remained unshattered. In her cross-examination, she stated that, she did not witness any beating by anybody to Yadav. Therefore, the part of her evidence which remained unshattered and useful to the prosecution can be taken into consideration.

27. PW-6 is the witness on panch of Seizure of clothes of the accused. He stated that, accused was sitting in the police station. Accused has purple colour pant on his person. There was dust at the knee portion of the pant and also at the seat portion. There was red colour shirt having checks. On the knee portion of the shirt there was dust present. The shirt and pant were tied. Label was put on the clothes so tied on which his signature was obtained. There was also signature of Police Inspector Chate on that label. This witness signed the said panchanama. The witness pointed out that, the accused no. 3, who is present in the Court was the person present in the police station. He identified article 11 and 12 i.e. Shirt and Pant belongs to accused which was seized under panchanama.

28. During his cross-examination, he denied the suggestion that, the panchanama was already written and thereafter he was called in the Police Station. He specifically stated that, in his presence the clothes on the person of the accused were seized and taken out. He specifically stated that, the panchanama was drawn in his presence. Therefore, his evidence remained unshattered.

29. The prosecution examined Vithal Bapurao Kokate as PW-7, who at the relevant time was working as Watchman in the Forest Department. In his examination-in-chief, he stated that, he knew deceased Yadav and also accused sitting in dock. On the day of incident, he was on duty from 8 a.m. to 8 p.m. The Forest Guard Gaikwad was also on duty along with him. On that night at about 9 to 9.30 p.m. there took place quarrel between Maheboob and Yadav in front of Ganesh Tea House. Yadav and Maheboob were abusing to each other. He intervened in the quarrel and separated them. He further stated that, even after separating them, they were not listening and continued to quarrel. Thereafter, by sitting in the tricycle both of them went towards Sangvi. He further deposed that, at about 10 p.m. again he heard the noise of quarrel of Yadav and Maheboob. There was discussion between another Forest Guard that, again Yadav and Maheboob have started quarreling. When he came outside Naka, he saw that, Yadav was lying on the ground behind Pan shop. He saw one woman by name Vatchala coming from Sangvi side. He saw Faruq, Maheboob and Rashid proceeding by the road towards that woman. The said three persons took back Vatchala to village. Thereafter, he himself and Gaikwad sat on the bench in front of the Naka. After some time the owner of Ganesh Tea House came near them. He informed them that, Yadav was not wake up and that he was also not talking. He joined them and sat on the bench. He further deposed that, after half an hour

Yadav's brother came from Nanded side for Sangvi. He reached near Naka. This witness had introduced Keshav to Pralhad, he was the brother of Yadav. He himself Pralhad informed Keshav that his brother was lying. Thereafter, Yadav's brother went near Yadav. He gave him call and also tried to wake up him. There was no response and then Keshav went to Sangvi.

30. It is true that, in his cross-examination, he stated that, he did not see accused assaulting Yadav. He denied that, he stated portion mark "A", "B", "C" and "D" in the police statement. However, fact remains that, to the extent of spot of incident, the fact that, there was quarrel at about 8.30 p.m. to 9 p.m. between Maheboob and deceased Yadav is also stated by this witness. He witnessed the presence of these three accused and deceased at spot. Therefore, his evidence, which is not shattered in the cross-examination and useful to the prosecution can safely be relied upon.

31. The prosecution examined Vatchalabai Uttam Rathod as PW-8. Her evidence is at Exhibit-27. In her evidence she stated that, she knew accused nos. 1 to 3 sitting in the dock since they reside adjacent to her house. She has further stated that, quarrel took place between accused Faruk and herself on account of non returning amount of Rs. 200/- by the accused, which was kept with Jamrube, mother of Faruq. She has stated about beating by accused Faruq to her husband. When she was on the way of police station to lodge the complaint, nearby spot of incident she saw accused nos. 1 to 3. She further deposed that, these three accused were prevented her from getting down from the road. They forcibly returned her along with them to village Sangvi. The evidence of this witness is useful to the extent that, the accused were seen in the vicinity of spot of incident by her.

32. The prosecution examined Madhav Devrao Pawar as PW-9. In his evidence, he stated that, he knew Maheboob, Rashid and Faruq. He knew Yadav as well. He also knew Yadav's brother Keshav. He stated that, incident took place about 5 1/2 to 6 months back. There was quarrel between accused Maheboob and deceased Yadav in front of hotel of Pralhad. The dispute was settled with the intervention of some persons. Thereafter Maheboob and Uttam consumed liquor and then went to village Sangvi. Thereafter, accused Rashid, Maheboob and Faruq brought holding Yadav near the hotel of Pralhad. It was about 10 p.m. Thereafter, there started dispute between deceased and accused. There took place scuffle between them. During the period quarrel was going on between them, he went to S.T.D. Booth as he wanted to give telephone call. When he returned from STD booth after about 5 to 10 minutes Yadav was lying on the ground. He felt that, Yadav might have fallen on the ground due to giddiness, he attempted to give him water, but he found that, he is dead. Then Keshav arrived at the spot to whom he informed about the incident. However, he stated that, portion marks "A" and "B" in his police statement was not stated by him. However, he stated that, it is true that, accused Faruq, Maheboob and Rashid took water from the drum of tyre repair and poured water on the face of yadav

and still Yadav did not wake up. However, he denied that, in his presence accused Faruq assaulted Yadav and all three accused fall him on the ground. He stated in his cross-examination that, when the dispute started between the accused and deceased after waiting for a moment, he went for phone call. He specifically stated that, when he saw for a moment at that time accused and deceased were abusing to each other and also beating each other. He did not try to separate accused and deceased. However, he stated that, when he returned to the spot from STD Booth, Yadav was lying on the ground and none of the accused present there. Due to beating Yadav fell on the ground. He specifically stated that, it is not true to say that, under pressure of the police, he is deposing falsely before the Court.

33. If the evidence of this witness is read in its entirety, he stated that, he knew accused as well as deceased and also the complainant. He further stated about the earlier incident between the accused Maheboob and deceased Yadav. He also stated about the second incident. His evidence to the extent that, even on second occasion at about 10.30 p.m., the quarrel was going on between the accused and deceased Yadav has not been shattered in his cross-examination. Then he returned from S.T.D. Booth and he saw deceased Yadav lying on the ground and when he tried to give water, he did not drink the water and he was dead.

Upon careful perusal of evidence of prosecution witnesses, almost all the witnesses have stated the presence of the accused and also the deceased on the spot. It is true that, the witnesses have not stated by which weapon the accused persons were assaulting the deceased. However, the fact remains that, all the witnesses stated spot of incident, presence of the deceased as well as the accused in the said area and also they knew accused as well as deceased. They have also stated about the earlier quarrel which had taken place between accused Maheboob and Yadav at about 8.30 p.m. PW-9 in his evidence has stated about quarrel between accused persons on one hand and Yadav at about 10.30 p.m. on second occasion and he left to S.T.D. Booth and after he returned after five to 10 minutes she saw Yadav lying in dead condition and accused were not present on the spot. Therefore, the evidence of PW-9 if read along with the evidence of all witnesses except PW-6 it is abundantly clear that, it unerringly points out finger to accused persons, who were seen quarreling with Yadav at 10.30 p.m. The fact that, there was quarrel between accused Maheboob and Yadav at 8.30 p.m. has been stated by the prosecution witnesses, is sufficient to hold that, accused Maheboob was in the company of Yadav at least from 8.30 p.m. and not only that but there was quarrel/scuffle between accused and deceased Yadav at 8.30 p.m. Therefore, there was every reason for the accused and in particular Maheboob to assault and cause grievous hurt to Yadav on second occasion with the help of his two brothers i.e. accused nos. 2 and 3, whose presence have been stated by the prosecution witnesses. It is true that, so far recovery of the clothes and iron chain is concerned is from the waist of the accused Faruq Khan. However, the fact remains that, all three accused were seen

in the company of deceased Yadav and to that effect the evidence led by the prosecution unerringly points out fingers to the accused persons.

34. The prosecution examined Jaihind Shivilal Chavan as PW-10 Head Constable, Police Station, Bhagyanagar. He stated that, on 13th June, 1995 he was performing police station officer duty at Police Station, Bhagyanagar from 8 a.m. to 2 p.m. At that time, Police Constable Gangadhar produced clothes of the deceased. He had called two panchas namely, Shivdas Gangadhar Vishwas of Dharmपुरी and Ananda Gundewar in the police station. He showed clothes to the panchas. Clothes consisted of one cotton banian having blood stains and turned at some places and one full pant sky colour. The clothes were seized by drawing seizure panchanama. He identified signature on the said panchanama and also the articles shown to him before the Court. Nothing useful to the defence has been brought on record during his cross-examination.

35. Manikrao Baburao Chate, who was working as an Officer Incharge of Bhagyanagar Police Station and during the period of incident he was Investigating Officer. He was examined as PW-11. In his examination-in-chief, he stated that, he was working as Officer Incharge of the Bhagyanagar Police station from 21st October, 1994 to 19th July, 1995. On 13th June, 1995 at about 1.30 a.m. he had reached at Bhagyanagar Police station. At that time, complainant Keshav and his wife were present in the police station. He had interrogated both of them. Statement of Keshav is at Exhibit - 11 and same bears the signature of Keshav and same was attested by this witness. C.R. No. 100/1995 was registered under Section 302 read with 34 of I.P. Code. This witness stated that, he had made endorsement on page No. 1 of the complaint Exh. 11 in the left hand side column about registration of crime and he had signed below such endorsement. He took over the investigation. He then proceeded along with the staff at the scene of offence immediately thereafter. The dead body was lying by the side of hotel of Gayabai Sakole, opposite to forest Naka. As there was insufficient light for drawing panchanama, he posted Police Constable for guarding the body.

36. This witness stated that, thereafter he proceeded at the place of residence of accused alongwith the staff, and searched for the accused. None of the accused were found present at the place of their residence. He had searched for the accused at the place of their relatives residing at Nanded, but he did not trace them. At a distance of 25 to 30 ft. to the east of the residence of the accused, he noticed the husband of one Vatchala lying in the injured condition. On enquiry who was found injured by accused Faruq prior to the incident. Hence he took the husband of Vatchala at Police Station, Bhagyanagar by 5 a.m. He recorded statement of the husband of Vatachala and registered public N.C. No. 195 under section 323. He was sent for the medical treatment in CGM Hospital, Nanded. Thereafter, again he went to village Sangvi and searched for the accused. But he did not trace them. Police staff was divided into two parties, one was deputed for the search of the accused and then this witness reached near the dead body. By

calling two panchas at that place where the dead body was lying, inquest panchanama was drawn. The panchas were Shivaji and Ananda. The injuries present on the person of the deceased which included injuries around the neck, on the chest and on the testicles have been mentioned in the inquest panchanama. Inquest panchanama at Exhibit-32 was attested by this witness and he signed the same. Thereafter, the dead body was sent for postmortem with Police Constable along with the requisition letter. He identified the said requisition letter which is at Exhibit - 17 and signature thereon. Thereafter scene of offence panchanama was drawn in presence of panchas Shivaji and Anandrao was drawn. The scene of offence panchanama dated 13.06.1995 and signature of the panchas thereon, which were attested by this witness was identified by this witness. The dead body was lying to the east of Nanded-Hingoli road, in front of Gujrath Road Ways, transport shop by the side of the hotel of Gyanbai and Pralhad. From the spot of offence, pair of slipper, normal earth and earth mixed with reddish colour and wet were seized and sealed.

37. Thereafter, statement of the witnesses Gayabai Sakole, Pralhad Sakole, Ananda Pawar, Madhav Pawar, Vatchala Rathod, forest Guard Gaikwad and his assistance were recorded on 13.06.1995. On 13.06.1995 by 12.15 to 12.20 noon the policemen belonging to D.B. Party brought accused Faruq and Maheboob in the police station. After they were so brought, by calling two panchas the arrest panchanama of arrest and search of accused Maheboob was drawn. There were injury marks on the face and in the middle of forehead of accused Maheboob. So also his clothes were stained with dust. There were blood stains present on the shirt of accused Maheboob. The backside pocket of the pant of the accused was turned. The shirt and pant on the person of accused Maheboob were seized. Arrest panchanama was prepared on 13.06.1995. In presence of panch Suryawanshi and Kamble arrest panchanama of accused Faruq was drawn on 13.06.1995. Some buttons of the middle portion of the shirt were broken. On the backside portion of the shirt there was stain like blood. Iron chain was tied around the waist of accused Faruq. The iron chain was seized. Dust was also present on the clothes of Faruq also. Police personnel for the arrest of accused Rashid was deputed. Accordingly, concern police officer produced accused Rashid before him in the Police Station at about 7 p.m. By calling panch Sidram and Narayan arrest panchanama and search panchanama was drawn. The dust was present on the clothes on the person of accused Rashid and, hence, the same clothes were seized.

38. This witness further stated that, police custody remand of accused nos. 1 to 3 was obtained on 14.06.1995. Blood was present on the person of accused Maheboob and, hence, he was sent for medical examination. At the same time, Police Sub-Inspector Shaikh was deputed with a request to Medical Officer to take blood sample of accused Nos. 1 to 3. Prior to that, Head Constable Chavan produced the clothes on the person of the deceased, which were seized by drawing seizure panchanama at Exhibit - 30. On 15.06.1995 and 16.06.1995 accused were interrogated, but nothing fruitful could come out. Again on

16.06.1996 extension of P.C.R. was sought, but he could not get the P.C.R. This witness stated that, on 17th July, 1995 muddemal articles including the blood samples of the accused were sent to CA for analysis along with the requisition letter. He produced the carbon copy of the requisition letter which bears his signature, which is at Exhibit - 37. On 18th July, 1995 after due investigation he submitted charge-sheet. Thereafter, CA reports were received which were submitted later on in the Court, which are at Exhs. 38 to 42.

39. This witness further stated that, he has recorded the statement of Pralhad Shyamrao on 13th June, 1995, which is attested by him. He has stated as per the contents of portion marks "A", "B", "C" and "D" in his statement. They are at Exhibits 43, 44, 45 and 46. He has recorded statement Gayabai Sakole on 13th June, 1995 which is attested by him. She has stated as per the portion marks "A" and "B" in her statement. They are at Exhibits - 47 and 48. He has recorded the statement of Madhavrao Pawar on 13.06.1995, which is attested by him. He has stated as per the portion marks "A" and "B" in his statement. It is at Exhs. 49 and 50. This witness have stated that, he recorded the statement of Vithal Kokate on 13th June, 1995, which is attested by him. He has stated as per the portion marks "A" to "D". They are at Exhs. 51 to 54. He then recorded the statement of Babu Gaikwad on 13th June, 1995 which is attested by him. He has stated as per the contents of portion marks "A" to "D" in his statement. They are at Exhs. 55 to 58. He also identified the Muddemal articles shown to him. He also identified the accused sitting in the dock.

40. During his cross-examination, he stated that, there was electric light in the hotel of Pralhad. So also in the country liquor shop as well as in the Forest Naka. He firstly reached at the spot at about 1.45 to 1.50 a.m. on 13th June, 1995. He stated that, he did not arrest the accused Maheboob and Faruq at village Sangvi at about 12 midnight as suggested by the defence. He has denied other suggestion given in the cross-examination. He specifically denied suggestion that, he did not seize iron chain from accused Faruq. He denied suggestion that, there was accidental death. The evidence of PW-11 in examination-in-chief remained unshattered even in the cross-examination.

41. The trial Court held that, the death of Yadav was homicidal and the evidence of PW-4 Medical Officer corroborates with postmortem notes at Exhibit 76. The trial Court while appreciating the evidence of eye witnesses, discarded their evidence in its entirety on the ground that, they turned hostile. In our opinion, the trial Court has committed error in law in discarding the entire evidence of prosecution witnesses, which remains unshattered during cross-examination by defence, and which is useful to the prosecution. The Supreme Court in the case of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, held thus:-

"The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found

to be dependable on a careful scrutiny thereof.

In the present case the presence of the eyewitnesses in the company of the deceased at the place of occurrence could not be doubted. One of the witnesses was injured in the incident. Immediately after the incident within less than an hour, before there was any extraneous intervention he went to the police station, narrated the incident and lodged the FIR. Since the FIR was a detailed document, it is not possible to believe that the investigating officer imagined those details and prepared the document. The detailed narration about the incident in the FIR goes to show that the subsequent attempt of the witness to disown the document while admitting his signature thereon, is a shift. The only area where the witnesses had not supported the prosecution and resiled from their earlier statements is regarding the identity of the assailants. The evidence of the eye-witnesses was challenged by the prosecution in cross-examination because they refused to name the accused as the assailants of the deceased. The trial court made no efforts to scrutinise the evidence of these two witnesses even in regard to the factum of the incident."

Yet in another exposition in the case of Prithi Vs. State of Haryana, the Supreme Court held that, when a witness is declared hostile and cross-examined with permission of court, his evidence remains admissible and there is no legal bar to record a conviction upon his testimony, if corroborated by other reliable evidence. Therefore, the trial Court was not correct in discarding the entire evidence of some of the witnesses on the ground that, they turned hostile without keeping in view the legal position stated by the Supreme Court in aforesaid cases.

42. If the evidence of Madhav PW-9 is considered in the light of the evidence of other prosecution witnesses and also evidence of the Investigating Officer, it is abundantly clear that, three accused persons were seen lastly in the company of the deceased Yadav. If the evidence of Madhav is taken as it is, he saw quarrel between the accused and deceased Yadav and he went to S.T.D. Booth as he wanted to give telephone call. When he returned from STD booth after about 5 to 10 minutes Yadav was lying on the ground, and when he attempted to give him water for drinking, there was no response and P.W. 9 realised that, Yadav is no more. At the cost of repetition, it needs to be observed that, the prosecution has proved beyond reasonable doubt the spot of incident, witnesses knew the accused as well as deceased and also the complainant, there was quarrel, Yadav was lying on the floor, the presence of the accused persons near the spot of incident, some of the witnesses have stated about the quarrel between accused Maheboob and Yadav at about 9.00 p.m. and then PW-7 Vithal Kokate intervened and separated the quarrel. The incident at 10.30 p.m. did not happen as of sudden, and earlier approximately one hour before the incident, there was quarrel between accused Maheboob and deceased Yadav. PW-1, complainant, in his evidence stated that, Uttam Malhari Rathod is his maternal uncle. The prosecution has brought on record through PW-8 that, accused Faruq even

assaulted Uttam on same day of incident. PW-11 in his evidence stated that, in respect of beating by accused to Uttam N.C. was registered. Inquest panchanama clearly shows injuries on the body of deceased Yadav caused due to beating. The medical officer noticed as many as 15 external injuries and five internal injuries on the dead body, and the medical evidence unerringly pointed out homicidal death of deceased Yadav. It is seen from the medical evidence adduced that, multiple contusions contributed to the death. Due to the beating by iron chain injuries are caused and seen on the body of the deceased. PW-3, Medical Officer in his deposition stated that, if the beating is given by the iron chain, which was before the Court then injuries mentioned in column No. 15 and 17 could be caused. As it is evident from perusal of arrest panchanama and seizure of shirt of accused Maheboob Khan showing blood stains on shirt said shirt was sent to C.A. (Exhibit "V"). The C.A. report shows few blood stains on Exh. V (shirt) of about 0.3 cm in diameter on front right and left sleeves of shirt. There is recovery of iron chain from the waist portion of body of accused Faruq. Arrest panchanama at Exh. 36, proved through Investigating Officer also shows below shoulder border of shirt, blood stains appearing. Mud was found on various part of pant. Two buttons of shirt also missing. The First Information Report was promptly lodged by the brother of Yadav and the Investigating Officer visited the spot within few hours from the occurrence of incident also rules out possibility of false involvement of the accused persons. It has come in the evidence of the Investigating officer that, though he tried to search the accused at their residence, they were not available and it appears that, they were absconding. The subsequent conduct of the accused is also one of the circumstance, which can be added in the chain of circumstances. All three accused were sharing common intention to kill Yadav (deceased). If all circumstances are taken together, it unerringly indicates guilt of the accused.

43. We are aware that, we are dealing with appeal against acquittal. At this juncture, it would be worthwhile to refer the observations of the Supreme Court in case of State of U.P. vs. Babu and Ors. 2003 ALL MR(Cri.) 2356 (S.C.);, in paragraph 10 of the judgment, which reads thus:

"10. Recently in State of Punjab Vs. Karnail Singh, it was observed that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of

ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and Others Vs. State of Madhya Pradesh, . The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , Ramesh Babulal Doshi Vs. State of Gujarat, and Jaswant Singh Vs. State of Haryana, ."

(Underline supplied)

44. In the light of discussion hereinabove and upon reappreciating the entire evidence on record, we are of the opinion that, the prosecution has proved the guilt of the accused beyond reasonable doubt. Hence the following order:-

(i) The impugned judgment and order dated 22nd December, 1995 passed by the 3rd Additional Sessions Judge, Nanded in Sessions Case No. 129 of 1995 thereby acquitting the Respondents for the offence punishable under section 302 read with 34 of the Indian Penal Code is hereby quashed and set aside.

(ii) Accused (1) Maheboob Khan S/o Galib Khan, (2) Faruqkhan S/o Galib Khan and (3) Rashid Khan S/o Galib Khan are hereby convicted for the offence punishable under section 302 read with section 34 of the I.P. Code and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/- each, in default, to suffer further rigorous imprisonment for a period of two years.

(iii) The accused will be entitled for set off under section 428 of Cr.P.C. for the period already spent in jail.

(iv) The accused to surrender forthwith to undergo the sentence.

(v) Accordingly Criminal Appeal No. 124 of 1996 is allowed and stands disposed of.