
(1980) 02 BOM CK 0007

In the Bombay High Court

Case No : Confirmation Case No. 3 of 1980 (With Criminal Appeal No. 708 of 1980)

State of Maharashtra

APPELLANT

Vs

Manohar Kashinath Ghodake and another

RESPONDENT

Date of Decision : 17-02-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 432
Penal Code, 1860 (IPC) — Section 149, 302, 303, 34, 55

Citation : (1980) 02 BOM CK 0007

Hon'ble Judges : Sawant, J;Mehta, J

Bench : Division Bench

Judgement

Sawant, J.—This is a little unusual case being an off-shoot of the companion case. The present accused Nos. 1 and 2 are accused Nos. 8 and 7 respectively in the companion case. The theatre of the offences is the same village Ambe of District Solapur. The present offences are a sequel to and were committed within about three months of those which are a subject-matter of the companion case and were the result of the enmity between the same two families of the said village.

2. One Ganpat Shinde of the said village had six sons, Bhagwan, Gajendra, (murdered in the companion case), Mahada, Shiva (injured in the companion case) Bhiva (murdered in the present case) and Balkrishna, (injured in the present case) and all of them were residing separately in their respective houses, in the same village. These brothers belonged to the Janata Party. One Baban Gaikwad, the deceased in the present case was a leader of the Congress Party and the accused were his supporters. There was political rivalry between the two groups which was also responsible for criminal cases being filed by one of the said brothers Shiva against the deceased Baban and members of his group. The deceased Baban was the Village Sarpanch for about 10 years prior to the date of the incident. On 10-9-1979, on account of an attack made by the deceased Baban, the present accused and six others, the hands and legs of one of the said

brothers Shiva were chopped off while another brother Gajendra was murdered. In that connection, the Pandharpur Taluka Police Station registered a crime against the said accused for offences under Sections 120-B, 147, 148, 307 read with 149 and 302 read with Section 149 of the Indian Penal Code. However, the present accused and the deceased Baban who were the principal culprits in that offence, were absconding. The villagers and particularly the witnesses in the said case were terrorised by the absconding accused and a near-panic situation prevailed in the village ever since the said incident. Hence, a police party headed by H. C. Bhanudas Godse (P.W. 11) and two Constables attached to the said Police Station as well as an Armed Police Party consisting of one Head Constable and three constables from Solapur Headquarters came to be posted in the village from the next day i.e. 11-9-1979, for giving protection to the witnesses and the family members of the victims. Despite a diligent search made by the investigating officer in the case, the absconding accused were not traced. Hence a Proclamation for their appearance and attachment of their immovable properties was issued by the Judicial Magistrate, Pandharpur. Shiva, the injured brother in the case was discharged from Solapur Hospital on 21-11-1979 and continued to stay at Pandharpur for treatment till he was brought to the village on 11-12-1979 and kept in the house of his deceased brother Gajendra for considerations of security. This precaution to lodge Shiva in the said house was necessitated by the fact that the absconding accused were threatening the villagers that they would destroy the evidence by killing Shiva who was obviously a material witness in the said case. After Shiva was thus lodged in Gajendra's house, the police party which was already in the village as well as the relatives of Shiva became more alert and in order to ensure proper security to Shiva, they kept a watch on the house, from the Mosque known as "Barabhai Masjid" which was almost opposite the house of Gajendra and was separated from it only by a distance of about 25 feet. Krishna Pawar (P.W. 23) is a social worker and hails from another village Marawade and is also the maternal nephew of Ganpati Shinde the father of the targeted brothers. He used to visit village Ambe and stay there often after the said incident of 10-9-1979. Since Shiva was brought to the village, Krishna Pawar was halting there. On 12-12-1979, Krishna Pawar met the Additional Superintendent of Police, Solapur and apprised him of the danger to Shiva's life as well as to the entire progeny of Ganpat Shinde, on account of the constant threats received from the accused, and requested him to secure the arrest of the absconding accused. He was one of the persons who used to sit in the said mosque along with others viz., Head Constable Godse (P.W. 11), Dariba (P.W. 13) i.e. a son of the deceased Gajendra, Shatrughna (P.W. 14), Ganpat (P.W. 18), Balkrishna (P.W. 20), Mahadeo Sagar and the deceased Bhiva to keep a security-watch on the house of the deceased Gajendra where Shiva was lodged.

3. At about 1-30 p.m. on 13-12-1979, the aforesaid persons were sitting as usual chit-chatting with each other. An armed Constable Hole was at the Gram Panchayat Office. One of the members of the police party had gone out of the village without permission and the other Constables had gone on sick leave.

Balkrishna fell asleep and was lying on the ground. All of a sudden, the deceased Baban and both the present accused appeared on the scene, Baban and accused No. 1 Manohar being armed with swords and accused No. 2 Atmaram with an axe. No sooner they arrived, Baban gave a blow of his sword on the legs of Balkrishna who was sleeping. The others sitting there were bewildered by this sudden attack and got up. Shatrughna (P.W. 14) and Dariba (P.W. 13) got frightened and ran towards the house of Gajendra. Mahadeo Sagar also ran away. Thereafter, Baban gave a blow by the sword to Krishna Pawar (P.W. 23) who swiftly moved behind and avoided the blow. Baban again tried to hit Krishna Pawar with the sword but Krishna Pawar caught hold of his hand and grappled with him from behind. Head Constable Godse (P.W. 11) jumped and caught hold of accused No. 2 Atmaram and tried to remove the axe from his hand. There was a scuffle between the two and ultimately Godse succeeded in snatching away the axe from the hands of accused No. 2. In the process, he received an injury on his right hand. As soon as he was disarmed, accused No. 2 Atmaram ran away from the spot. Accused No. 1 Manohar then gave blows by his sword on the right thigh and forehead of Balkrishna who was already injured on his leg by Baban. While Baban was still in the grip of Krishna Pawar, Baban shouted to accused No. 1 Manohar, to come to his help and release him. Accused No. 1 rushed and hit his sword on the hands of Krishna Pawar and chopped off his right palm from the wrist. Accused No. 1 then gave a second blow on the right leg of Krishna Pawar. However, the pointed sword touched the floor and the blow lost its force causing only a slight injury to the right leg of Krishna Pawar. When the grip of Krishna Pawar, on Account of the injuries received by him, became loose, Baban released himself, and Krishna Pawar ran towards the Gram Panchayat Office to summon the police constable stationed there. Baban, on becoming free, rushed with the raised sword in his hand, towards Bhiwa. Head Constable Godse managed to catch hold of Baban and there ensued a scuffle between the two. During the course of the scuffle, Bhiwa managed to snatch away the sword from the hands of Baban while Head Constable Godse held Baban. Baban then gave a forceful jerk to Godse as a result of which Godse tumbled away, dashed against an electric pole, fell down and reeled under the impact. Baban who thus became free moved towards Bhiwa but the latter who had now Baban's sword in his hand, gave him blows on his legs by the sword as a result of which Baban fell down. Bhiwa however continued his assault and gave two to three further blows to him. Godse who had in the meanwhile recovered from the momentary giddiness, told Bhiwa not to assault Baban any more. While the attention of Bhiwa was thus attracted towards Godse, accused No. 1 came from behind and gave a blow by the sword on the head of Bhiwa. Bhiwa fell down. Accused No. 1 however persisted in inflicting blows and gave two to three more blows and then ran away towards the side of Mariai Temple, carrying the sword with him. This incident was witnessed by Dariba (P.W. 13) and Shatrughna (P.W. 14) from the house of Gajendra and by Ganpat (P.W. 18) who was nearby.

4. As soon as accused No. 1 quite the scene, the witnesses assembled on the

sport and found Baban dead and Bhiwa breathing his last. After a few minutes. Bhiwa also succumbed to the injuries. They also found Balkrishna and Head Constable Godse lying in an injured condition. Anna Shinde (P.W. 9) and one Vilas Shinde had also arrived on the scene. Godse told them about the incident, expressed his inability to go to the Police Station and requested them to go to Pandharpur Taluka Police Station to lodge a complaint. Accordingly, these two persons went to Pandharpur, and there Anna Shinde lodged the complaint (Ex. 31) at 4 p.m. on the basis of which P.S.I. Thite (P.W. 21) registered an offence against the accused. Balkrishna and Krishna Pawar the two injured witnesses, were sent in a truck to the Municipal dispensary, Pandharpur. Head Constable Godse then kept the armed constable Hole and another Constable Abdul Farid to guard the scene of offence and after some time he also went to Pandharpur in a State Transport Bus and got himself admitted there for treatment, P.S.I. Thite arrived in the village at about 7 p.m. and commenced his investigation. On the next morning, he drew up the inquest panchanamas of the two dead bodies, (Ex. 27 in respect of Bhiwa and Ex. 28 in respect of Baban). P.S.I. Kurhade (P.W. 26) then took over the investigation from P.S.I. Thite. He drew up the panchanama of the scene of offence (Ex. 29) and seized various articles including the sword and the axe lying at the scene of offence. On the next day, i.e. on 14-12-1979, Sonabai, the mother of the deceased Baban lodged a complaint with P.S.I. Kurhade in respect of the murder of her son, against Mahada, Dariba, Ganpat, Vilas Shinde and Anna Shinde. On the basis of the said complaint, P.S.I. Kurhade registered a crime against the said five persons for the offence under S. 302 of the I.P.C. and took up the investigation of that case also. However, after making due inquiry, he found that the said complaint was without substance and hence the said persons, who were earlier arrested, were released u/s 169 of the Cr.P.C. by the Judicial Magistrate, Pandharpur.

5. The dead bodies of Bhiwa and Baban were examined by Dr. Khiste (P.W. 17) attached to the Pandharpur Municipal Hospital, and he prepared his post-mortem notes in that respect. The post-mortem report of the dead body of Bhiwa is Ex. 48 on record while that of the dead body of Baban is Ex. 49 on record. Dr. Hingamire of the Pandharpur Municipal Dispensary examined the injuries on witnesses Krishna Pawar, Balkrishna and Head Constable Godse and issued his certificates which are Exs. 37, 38 and 39 respectively. Krishna Pawar and Balkrishna were also further examined by Dr. Karande (P.W. 19) of the Solapur Civil Hospital.

6. On 19-12-1979, P.S.I. Kurhade succeeded in arresting the absconding accused at another village Kasegaon. They were arrested with blood-stained clothes. On 20-12-1979, accused No. 1 made a statement (Ex. 33) which led to the discovery of the sword (Art. 35) from one field on Ranjani-Chale Road and panchanama (Ex. 34) to that effect was drawn up. In the meantime, P.S.I. Kurhade and requested the Sadar Bazar Police Station, Solapur, to record the dying declaration of injured Balkrishna (P.W. 20) and Krishna Pawar (P.W. 23), and accordingly the same were recorded by the Special Executive Magistrate

Ekbote (P.W. 24). The accused were got medically examined and their blood samples were collected. After the receipt of the Chemical Analyser's reports (Exs. 72 and 73), the accused were charge-sheeted before the Judicial Magistrate, Pandharpur, who committed them for trial to the Court of Sessions at Solapur, for the charges under Sections 302 read with 34, 307 read with 34 and 326 read with 34 of I.P.C. The charge under S. 302 read with S. 34 of the I.P.C. was for the offence of committing the murder of Bhiwa. The charge under S. 307 read with S. 34 of the I.P.C. was for attempting to commit the murder of Balkrishna. The charge under S. 326 read with S. 34 of the I.P.C. was for voluntarily causing grievous hurt by means of dangerous weapons to witness Krishna Pawar.

7. At the trial, both the accused pleaded not guilty. According to them, deceased Baban was the arch-enemy of witnesses Balkrishna, deceased Bhiwa and their brothers. They themselves had no role to play except that of supporting the deceased Baban in the Gram Panchayat Elections. According to them, on the day in question the deceased Baban had come to the Mosque to surrender himself before Head Constable Godse. At that time, the deceased Bhiva, witnesses Balkrishna, Krishna Pawar, Dariba, Shatrughna, Ganpat and others were armed with swords, axes and sticks and waiting there with the intention of killing Baban in case he came to surrender. According to them, when Baban went to surrender, the aforesaid person attacked him, and then Baban killed Bhiva and caused injuries to Balkrishna and Krishna Pawar, and in that incident, Baban was also murdered by the said persons. They also submitted that they were not absconding from 10-9-1979 and that they voluntarily surrendered before the police on 19-12-1979. According to them, they were falsely implicated not only in this case but also in the companion case, because they were Baban's supporters.

8. (x x x x x x)

9. After appreciating the prosecution evidence on record and taking into consideration the defence of the accused, the learned trial Judge came to the conclusion that the prosecution had established beyond reasonable doubt the guilt of the accused in respect of all the said three offences and convicted them of the said offences. For the offence under S. 302 read with S. 34 of the I.P.C. he sentenced them to death subject to confirmation by this Court. They were sentenced to imprisonment for life for the offence under S. 307 read with S. 34 of the I.P.C. and to rigorous imprisonment for five years for the offences under S. 326 read with S. 34 of the I.P.C. The sentences were directed to run concurrently. It is aggrieved by this order of their conviction and sentence that the accused have preferred Criminal Appeal No. 708 of 1980 which is being heard along with Confirmation Case No. 3 of 1980.

10. Shri Mistry, the learned counsel appearing for the accused took us through the entire evidence on record. In fairness to the learned counsel, it must be stated that he did not seriously challenge either the incident or the manner in

which it occurred as narrated by the eye-witnesses. He also did not challenge the convictions of the accused. However he vehemently disputed the sentence of death imposed by the learned Judge. According to him, the circumstances and the manner in which the assault on Bhiwa had taken place did not warrant the ultimate penalty. He submitted that in awarding the maximum sentence the learned Judge was carried away by the facts of the earlier case as well as extraneous considerations such as the necessity to maintain the purity of political life. The learned Judge, according to him, had failed to take into account the requisite features of the attacks and counter-attacks that ensued in the incident which alone ought to have guided his discretion to award the sentence. It is for this reason that the learned counsel focussed our attention of the details of the incident as they had come on record and tried to show that the ultimate murder of Bhiwa for which the maximum punishment was awarded was not a brutal act as is painted in the judgment of the trial Judge but was the result of a retaliatory action motivated by the attacks by Bhiwa and Baban who ultimately met with death in the incident although in the process accused No. 1 Manohar had exceeded the right of private defence. We must state that on account of the line of argument adopted by the learned counsel our task has become easier since it is not necessary to discuss threadbare the entire evidence on record. Nevertheless, we consider it necessary to discuss briefly the salient feature of the evidence on record.

11 to 17. (x x x x)

We are therefore more than satisfied that the prosecution has established beyond reasonable doubt its case that it was the absconding Baban and the present accused who had attacked the guarding party stationed in the mosque on the date and at the time in question and had injured Balkrishna, Krishna Pawar and Godse and murdered Bhiwa by their brutal assaults. The learned trial Judge has therefore rightly convicted the accused for all the offences with which they were charged viz. the offence under S. 302 read with S. 34 of the I.P.C. for murdering Bhiwa; the offence under S. 307 read with S. 34 of the I.P.C. for attempting to murder Balkrishna and the offence under S. 326 read with S. 34 of the I.P.C. for causing grievous hurt with deadly weapons to Krishna Pawar.

In support of his plea for the modification of the sentence of death, the learned counsel for the accused submitted that the object of Baban and the accused was not to kill any of the victims but only to maim and disable them. According to him, this is clear from the pattern of the injuries inflicted by the accused and Baban in the companion case on Shiva and Gajendra as well as in the present case on Balkrishna and Krishna Pawar. He submitted that were it not for the ferocious attack by Bhiwa on Baban, possibly Bhiwa also would have received no different injuries from those of Balkrishna and Krishna Pawar. He submitted that this aspect of the incident is worth considering because till that time Bhiwa had not received any injury at the hands of either Baban or any of the accused. This argument though looks plausible at first sight fails to take into account the fact

that Baban as well as the accused had emerged on the spot abruptly at the relevant time armed with the deadly, unusual weapons like swords and a battle-axe. Baban and accused No. 1 had swords and accused No. 2 had the battle-axe. A look at the said three weapons convinces us that they were no ordinary weapons but were specially procured for committing the crime. The evidence on record, particularly of Godse and Krishna Pawar, not to speak of the other witnesses such as Dariba, Shatrughna and Ganpat further shows that ever since Baban and the two accused were absconding, there was a tension prevailing in the village. All the villagers and particularly the relations of the deceased Gajendra and injured Shiva, and the prosecution witnesses in the companion case, were under an apprehension that their lives were in danger. It also appears from the evidence that the said persons were receiving threats that these absconding accused would take every step to destroy evidence in that case which meant, among other things, danger to the life of Shiva as well as the other witnesses. The evidence of Krishna Pawar further shows that threats were being administered also to wipe out Shiva and his other brothers including Bhiwa and Balkrishna. Although further, the mystery of the sudden disappearance of some members of the police party from the village in the nick of hour has not been satisfactorily accounted for, that according to us is one of the circumstances which will have to be taken into account for holding that Baban and the two accused were planning for some time for launching the attack in question. The whole manner in which the incident took place further leaves no doubt in our mind that the apprehension of the villagers and particularly of Shiva and his brothers was well-founded. The attack was made only two days after Shiva was brought to the village and lodged in the house. Baban and the accused had thus made the brutal cold-blooded attack with all preparations and planning the avowed object of which was to wipe out Shiva and for that purpose to cause fatal injuries to the members of the guarding party and in particular to Shiva's brothers. That is why as soon as the attacking party came, one of them viz. Baban straightway rushed at Balkrishna even when he was sleeping, and gave him sword blows on his leg. Accused No. 1 also contributed his mite and in spite of the fact that Balkrishna was already grievously hurt by the blows of Baban, gave him blows by his sword on his right thigh and forehead. Now as it happens in such incidents, it was only by an adventitious circumstance that Head Constable Godse could, after a struggle, succeed in snatching away the axe from the hands of accused No. 2 Atmaram which made him abandon the scene. However, if Godse had not succeeded in disarming Atmaram, there is no knowing how many more persons would have been injured and even killed. If further the idea was only to disable Shiva's brothers, then it is very difficult to understand as to why after Baban gave a server blow on the left leg of Balkrishna cutting the bones of the leg, accused No. 1 should have thought it necessary to inflict a blow on the forehead and another on his right thigh by his sword. These further injuries inflicted by accused No. 1 on Balkrishna do not show that the intention was only to disable the victims. Further, as the prosecution version shows, after injuring Balkrishna, Baban rushed at Krishna Pawar and tried to hit him with the

sword which was avoided by Krishna Pawar again by a fortuitous accident. Krishna Pawar then succeeded somehow in grappling with Baban. At this stage, Baban called accused No. 1 to release him from the grip of Krishna Pawar as a result of which accused No. 1 gave a blow by the sword on the right hand of Krishna Pawar and thus Baban got released. Although at this stage Krishna Pawar ran away from the scene, Baban rushed towards Bhiwa with the sword in his hand, and were it not for Godse who at that stage caught Baban from behind, Bhiwa might have been injured at the hands of Baban. Taking advantage of Godse's grip on Baban, Bhiwa managed to snatch away the sword from the hands of Baban. Baban, however, gave a forceful jerk to Godse whirled and dashed against the electric pole. Without the weapon in his hand, Baban thus freed, rushed at Bhiwa and it is at this stage that Bhiwa gave a blow to Baban on his leg and Baban fell down. It must be remembered in this connection that the evidence on record shows that Baban was a very strongly built man and as described by the witnesses he was a match for ten men at a time. One can imagine what would have happened if Baban had a sword in his hand when he rushed at Bhiwa. The very fact that he rushed at Bhiwa unarmed and even when Bhiwa was armed with the sword shows the dare-devil that he was. Had Bhiwa would certainly have been a victim at the hands of Baban himself. It is after Baban as fiercely as he could and gave blow after blow on his person which ultimately put an end to Baban's life. It is at this stage that Godse shouted and accused No. 1 gave a fatal blow cleaving the head of Bhiwa and then mercilessly continued to assault the fallen victim. This sequence of events makes it difficult for us to accept the learned counsel's contention that the intention was only to dismember the victims and not to cause fatalities. It also further appears that the persons who were there including all the eye-witnesses had no arms, for nothing has come in evidence to show that there were any such arms or that Krishna Pawar, Head Constable Godse, Balkrishna or Bhiwa made use of any arms of their own. In fact, the only arm which was used for causing injuries to Baban (who was the only person to be attacked from the side of the assailing party) was the sword snatched away from his hands by Bhiwa. Godse who snatched away the axe from the hands of Atmaram, does not seem to have wielded it for any purpose. It also does not appear that any other witness made use of the said axe. Therefore, it is evident that this pre-planned and calculated attack was directed against the unarmed assembly of persons, two of whom viz. Dariba and Shatrughna ran away from the scene. Were they armed at the time at least by sticks, there is every reason to believe that they or the other witnesses would have made some attempt to resist the attack by their arms. We are therefore more than satisfied that the present attack was not only a recalculated but a cold-blooded one, and it was directed against the unarmed gathering with the object of causing fatal injuries on the victims to cause the disappearance of the evidence in the companion case as well as to do away with all the brothers of Shiva. That they did not succeed fully in their plan was because of the unforeseen developments in the incident which compelled accused No. 2 to retreat and Baban to lose his life. It is for this reason that we cannot also lose

sight of the fact that not a single member of the armed constabulary was present at the spot and excepting Godse, none from the police party was available to give protection to Shiva and his brothers at the relevant time.

18. Assuming however that the object of the assailants was only to maim the victims by cutting their arms and legs following the pattern of the injuries on Shiva and Gajendra in the companion case, the question is does the gravity of the offence become less on that account ? The assailants' idea of maiming, as per this argument, consists of chopping off the hands and legs of the victims. That is what they did to Gajendra and Shiva earlier and to Balkrishna and Bhiwa in the present case. Does chopping off hands and legs, constitute less than fatal offence ? The accused knew that Gajendra had met instantaneous death on account of such chopping and Shiva had survived either by sheer luck or on account of his robust constitution. According to medical evidence in the present case, Balkrishna and Krishna Pawar were in a critical condition, the former on account of the injuries on his legs and forehead and the latter because his right palm was severed from the hand. The injuries, according to the medical opinion, were dangerous to life. Had they not received proper medical treatment in time, death was certainty. The injuries on these two witnesses, not to speak of those on Bhiwa, were such as the accused knew were likely to result in death and they had inflicted the said injuries knowingly and deliberately even according to this argument. We therefore fail to appreciate the argument that merely because the injuries were effected on hand and legs, the accused had no knowledge that the same would not be fatal or that they had no intention to cause such injuries as would prove fatal. That the said injuries did not result in fatalities of the two witnesses, is not because of the intentions of the assailants, but because of the medical treatment.

Shri Mistry then submitted that Bhiwa would not have met his death had he not indulged in vengeful attacks on the fallen Baban. In this connection, he pointed out that accused No. 1 attacked Bhiwa only to save the life of Baban, although in the process he might have exceeded his right of private defence. Shri Mistry argued that till Bhiwa attacked Baban, Bhiwa had not received any injury. This argument ignores several factors. Firstly, as has been pointed out above, the object of the attack was also to kill Shiva and his brothers. Bhiwa and Balkrishna were admittedly Shiva's brothers. Secondly, Bhiwa would have been assaulted even earlier had it not been for the purely accidental circumstances that first Atmaram and then Baban were disarmed. Thirdly, if the assailants did not spare even Balkrishna who was asleep, it must be only an accident that Bhiwa had not received injuries at the earlier stage of the incident. Fourthly, accused No. 1 gave his first blow on the head of Bhiwa and that too so severely as to break the skull into two parts vertically. This does not show that even the first assault was in exercise of the right of private defence. What is more, even after this blow, the accused continued to assault mercilessly the fallen Bhiwa, a conduct which speaks for something other than the exercise of such right. The argument further ignores the most basic fact that the assailants cannot claim a right of private

defence. There is therefore no mitigating circumstance in favour of the accused.

19. That takes us to the question of proper sentence to be imposed on the accused. The sentences for the offences under S. 307 read with S. 34 of the I.P.C. and S. 326 read with S. 34 of the I.P.C. cannot in the circumstances be said to be either severe or improper. Nor did Shri Mistry make a grievance about them. Hence it is not necessary to reconsider them. However, since almost all the arguments advanced by the learned counsel were directed against the ultimate penalty imposed on the accused for the offence under S. 302 read with S. 34 of the I.P.C. for causing the death of Bhiwa we gave our anxious consideration to the same. The learned Judge in support of the ultimate penalty has given his reasons. According to him the accused along with Baban who were charged for the offence of murder of Gajendra and for mutilating Shiva, were absconding, at the relevant time. They were so absconding with the object of doing away with Shiva who was a material witness to the said incident. The object was also to kill or mutilate as many brothers of Shiva as possible. The learned Judge has also taken further into consideration the fact that the victims of the case viz. Balkrishna and Krishna Pawar were unarmed and Bhiwa came to be armed only when he managed to snatch the sword from Baban for the protection of his own life. There was no provocation from the side of the victims and the witnesses, and on the other hand Baban and the accused had come armed with deadly weapons in broad daylight with the avowed object of injuring Shiva and his brothers. They were reckless and unmindful of any consequence and showed scant regard for law and life. They had also adopted in-human and brutal methods of dismembering and killing the victims. If Baban and Atmaram had not been disarmed and controlled, it would be anybody's guess as to how many more persons would have lost their lives and/or limbs. The whole conduct of the accused and Baban showed callousness and cruelty. According to the learned Judge further there was no room for morbid pity on account of the youth of the accused. He also felt that there was no redeeming feature in the case to show any leniency in the sentence.

We have no doubt in our mind that the present case is an unusual one and requires an exemplary punishment. The unusual features of the case flow from the fact that these accused and the deceased Baban were required in a trial for the murder of Gajendra and for amputation of limbs of Shiva in an earlier incident between the same parties. The said offences were committed almost in broad-daylight and within the view of all and with the callousness and audacity which showed scant respect for law and life. After committing the said heinous crime, Baban and the two accused were absconding from 10-9-1979 till 13-12-1979 i.e. the day of the fateful incident in the present case. During this period instead of being repentant for what they had done, they were terrorising the brothers of the victims Gajendra and Shiva and also the prosecution witnesses for the said incident, the declared object of which was to destroy the prosecution evidence including Shiva and also to wipe out the other brothers of Shiva and Gajendra. It is with this object and no other, that they appeared on

the scene at an opportune hour when the members of the armed constabulary were away and the unarmed witnesses were doing their work of guarding Shiva's life. When this unarmed gathering was in its unguarded moment, the three culprits came on the scene armed with lethal weapons - two swords with blades of 46 inches each and a battle-axe. The time and the manner of attack shows that there was a good deal of cold-blooded planning and preparation beforehand. After descending on the scene, they commenced their attack all of a sudden with sword blows on a sleeping man and gave him near fatal blows on the leg, the right thigh, the left thigh and the forehead. Then they tried to rush at others equally ferociously. As stated earlier, were it not for some saving graces viz. the accidents such as that of Godse snatching the axe from the hands of Atmaram, Krishna Pawar and thereafter Godse holding Baban and Bhiwa snatching away the sword from Baban there would have been more injured and dead. Further, the fact that accused No. 2 ran away after he was disarmed does not lessen the gravity of his offence a whit because he had avowedly come for the purpose of causing fatal injuries to the victims and others and would have, true to what he had done in the past, also indulged in the same horrendous assaults in which indeed his other companions did indulge. We have also to bear in mind that the present offence of murder was committed by the accused while they were needed for the earlier offence of murder. Although technically they will not be covered by S. 303 of the I.P.C. for which offence death is the only penalty, the substantial nature of the offence is the same. Not only therefore there is no redeeming feature in the case but all the circumstances on record go to aggravate the nature of the offence pointing out that a sentence of mere life imprisonment will not meet the ends of justice.

We are however of the view that the ultimate penalty is not necessarily the only appropriate sentence in such cases, gallows may avenge the dead. They may also permanently remove from the scene desperadoes such as the accused who indulge in crimes out of vendetta or rivalry. However, they do not necessarily benefit the society in general in the long run. Rivalries are not suppressed, and vendettas perpetuate themselves from generation to generation. More often than not they are counter-productive. Death sentences in such cases are also not known to have proved a strong deterrence for others. It has at best a retributive value in the common sense. But as stated earlier, retribution is a never ending chain.

Death sentences do have their use when society in general requires protection, which protection cannot be afforded except by permanently removing the criminal from amidst it. Far from being counter-productive, death sentence in such cases restores the normal even flow of the societal life by removing the temporary distortions, and eliminating the passing deformities and perversities. These cases are of blood-thirsty, irreclaimable, hardened criminals and murder maniacs. To spare such gentry from the gallows is to expose the society to an unknown number of murders of innocent lives. It is not to be humane but to be callous to allow such criminals to return to the society, for they are a certain and

a constant menace to the society in general.

Things are however different with offenders such as the present ones. They are a menace to an individual or a family, and not to the society at large. They do not live on and for crimes. Their crimes are on account of a temporary possession of them by lust for women, wealth or power, or by animalism, vengeance or false notions of valour. They are not beyond reformation nor are they lost to the society permanently. The heinousness or gravity of their offence may show that they deserve a longer period of suffering, a longer period to meditate and repent, and a more than usual period to recant and reform. The passage of time, the growth in age with consequent physical, mental and moral change, and the reformatory and rehabilitatory methods in the prison whenever adopted, have their own salutary effect on such offenders. If, therefore, in such cases, a sufficiently long period of imprisonment is awarded, it serves a triple purpose. It gives a chance to the offender to reform himself and to return to his family and society as a useful member thereof. It serves as a deterrent to others. It also does justice to the victims, their relations and well wishers and to the society at large, and protects them from the accused since they are incarcerated in prison till they are rendered physically and mentally harmless to them.

20. We are therefore of the view that in the present case death sentence is unnecessary and therefore not a proper one. At the same time, usual life imprisonment which in practice means not more than 14 years' incarceration in prison will be too inadequate and a travesty of justice. This is a case which lies in the murky area between the sentence of death and of the usual life imprisonment. The accused have betrayed a tendency to settle their score by violence. They have no compunctions in using inhuman methods to achieve their ends. Respect for law and life is alien to them. It will taken sufficiently long time to reorient their outlook towards society and its affairs, to instill in them respect for law and life, and social discipline, and to make them repent for the reprehensible crime perpetrated by them. It is also necessary that they are made to suffer for a sufficiently long time to bring home to them and others and unpleasant consequences of their brutal behaviour. At the same time, the relations and sympathisers of the victims and above all the members of the society must feel that justice has been done, that inhuman acts are adequately punished and crimes however audacious and horrendous are not dealt with lightly. The sentence of imprisonment has therefore to be both deterrent and exemplary. It is also necessary to keep such accused away from society for a sufficiently long period so that when they rejoin it, the society does not feel insecure again by their presence amidst it. It is for this reason that we are of the view that mere life imprisonment which does not last for more than 14 years in normal cases would not meet the ends of justice in the present case. It is necessary that the accused should remain in jail for a sufficiently long period and according to us, that period should not be less than 25 years in any case. While determining this period we are guided by the fact that as stated earlier, under S. 303 of the I.P.C., an accused who is undergoing a sentence of imprisonment for

life for the offence of murder has to go to gallows if he commits another murder while undergoing such a sentence. In the present case, the accused had committed the murder of Gajendra and had inflicted almost fatal injuries on Shiva and it is when they were absconding from the arms of law that they chose to commit the offences which are the subject-matter of the present case, including the offence of murder of Bhiwa. In the said case they have already been convicted by us and sentenced to life imprisonment for the offence of murder of Gajendra and also for the offence under S. 307 read with S. 149 of the I.P.C. for mutilating Shiva. In that case also, the learned Judge had awarded a sentence of death which we have reduced to sentence of imprisonment for life. It will therefore be both unrealistic and mechanical if in the present case also the accused are merely sentenced to life imprisonment. For the sentences of life imprisonment given in both the cases are bound to run concurrently and hence in spite of the two sets of similar offences, the accused would come out of jail, like any other offender, only after 14 years. It is therefore necessary that we give a direction in the present case that although we are reducing the sentence from death to life imprisonment for the offence under S. 302 read with S. 34 of the I.P.C., in no case the present accused should be allowed to come out of jail unless they put in a minimum of 25 years of imprisonment. With this direction, the reduction of the sentence from death to life imprisonment would serve the ends of justice in the present case.

21. We are aware that the direction we are giving is unprecedented. But want of precedent need not prevent us from passing an order which is just and legal. There is nothing in law to bar such direction. The nature of the sentence of life imprisonment is incarceration until death. It is only by virtue of the provisions of S. 432 of the Cr.P.C. read with those of S. 55 of the I.P.C. that the prisoners sentenced to life imprisonment, are able to come out of the prison at all. Therefore in a case such as the present one where the sentence is being given in lieu and instead of the sentence of death, a direction such as the present one is neither illegal nor unjust.

22. Accordingly we order as follows :-

The conviction of both the accused under S. 307 read with S. 34 of the I.P.C. for attempting to murder Balkrishna is confirmed. So also the sentence of life imprisonment imposed upon them for the said offence. We also confirm the conviction of both the accused for the offence under S. 326 read with S. 34 of the I.P.C. for causing grievous hurt with deadly weapons to Krishna Pawar as well as the sentence of rigorous imprisonment for five years given by the learned Judge on that account. We further confirm the conviction of both the accused u/s 302 read with S. 34 of the I.P.C. for committing the murder of Bhiwa. We however do not approve of the sentence of death and instead and in lieu of the ultimate penalty, award to each of the accused life imprisonment on the condition that none of the accused will be released from jail unless and until each of them serves a minimum period of 25 years" imprisonment. We make it clear that each

of the accused will remain in jail at least for a period of 25 years notwithstanding the remissions and concessions, if any, granted to him under the relevant rules.

All sentences to run concurrently with each other as well as with the sentences in Confirmation Case No. 4 of 1980.

Order in Confirmation Case No. 3 of 1980 as well as in Appeal no. 708 of 1980 accordingly.

23. Ordered accordingly.