
(2013) 12 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 290 of 1998

State of Maharashtra

APPELLANT

Vs

Motiram

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 1983

Hon'ble Judges : Z.A. Haq, J;A.B. Chaudhari, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

A.B. Chaudhari, J.—This appeal is against acquittal filed by the State of Maharashtra against the judgment and order of acquittal dated 13.04.1998 in Sessions Trial No. 40/95 passed by Additional Sessions Judge, Amravati acquitting the respondents accused nos. 1 to 15 of the charge levelled against them for an offence punishable under sections 147, 148, 452 read with section 149, 302 read with section 149 and 506 of the I.P.C. and Section 3(i)(x) and 2(v) of the SC & ST (Prevention of Atrocities) Act.

Facts:

The incident took place on 19.06.1995 at about 7.30 p.m. in the village Jalka Shahapur near Amravati, Police Station, Nandgaon Peth in Bouddhapura locality in the said village. The deceased Shamrao was residing with his wife in Bouddhapura locality where all the accused persons were also residing. Accused no. 1-Motiram Bhagat was Police Patil of village. The deceased Shamrao had met accused no. 4-Balya @ Padmakar Motiram Bhagat i.e. the son of Police Patil near the grocery shop in the village at about 7.00 p.m. and he asked accused no. 4-Balya to repay his Rs. 50/- which he had given him for bringing fish and which he did not bring. Accused no. 4-Balya instead of repaying, abused him in the filthy language and as a result, the deceased Shamrao gave him a slap and then he returned home. Accused no. 4-Batya made grievance openly in the village and

with his father Motiram (Police Patil) and others about it. At about 7.30 p.m. when the deceased Shamrao was at his home and started his dinner, accused persons and absconding accused Raju arrived at his house. They entered his house, abused Shamrao, dragged him outside holding his hands and legs. His wife PW1-Chanda followed, requesting them not to drag him. All the accused persons were armed with weapons. They assaulted Shamrao on his hands and legs and took him away from courtyard by dragging and also beating up to the School of the village where again they assaulted him and again dragged him to a field where they again assaulted him and finally by means of sharp weapon, cut his right palm which fell at a distance of about 5 ft from his dead body. He was left injured and unattended in the field. He died in the field due to profuse bleeding from right hand. The wife of the deceased, Chanda was frightened and had hidden herself somewhere. None in the locality wanted to help her but finally Harshwardhan Bhalekar took her on his motorcycle to Amravati. They met father-in-law of PW1-Chanda and, thereafter, went to the office of Superintendent of Police, Amravati at night. The S.P. Office personnel asked them to go back to Nandgaon Peth Police Station and lodge a report without bothering to provide any security to them though they were afraid. Somehow they reached Nandgaon and lodged FIR. In the morning, the police visited the village and traced out the body of Shamrao in the field with his right palm cut from the wrist and lying at a distance of 5 ft. Spot and inquest Panchanama were made. Investigation commenced, after completion of investigation, charge-sheet was filed against 16 persons including respondents and absconding accused no. 16-Raju, committed the trial and framed the charge. The learned trial Judge, after recording the evidence and after hearing the arguments, acquitted all the accused persons. Being aggrieved thereby, the State has preferred this appeal in this Court, which came up for final hearing.

Submissions:

2. In support of the appeal filed by the State, the learned A.P.P. Mr. Mirza, made following submissions:

(i) The prosecution examined eye witnesses in the instant case. PW1-Chanda wife of the deceased Shamrao, who tried to save her husband and witnessed everything right from the beginning of the incident and though there were no discrepancies in her evidence, the learned trial Judge, finding omissions in her police report or complaint Exh.-55, rejected her evidence. The other eye witness PW2-Narendra, PW3-Vinayak, PW4-Sudha, PW5-Maroti have all been disbelieved by the learned trial Judge for no reason whatsoever and the trial Judge recorded the judgment of acquittal which is nothing but miscarriage of justice to the victim and the State. The entire judgment shows total perversity and general discussion without even adverting to the specific evidence of eye witnesses. The learned A.P.P. then argued that the weapons were seized from the accused persons by recovery and discovery but the same has been ignored. The learned trial Judge ignored all the evidence produced and proved by the prosecution. Therefore, the

impugned judgment of acquittal deserves to be set aside.

3. Per contra, Mr. R.M. Patwardhan, learned counsel for the respondents, made the following submissions.

(i) The principles regarding interference by the High Court in an appeal against acquittal if taken into consideration, this Court should not and cannot interfere into the order of acquittal that too after about 18 years from the date of incident.

(ii) Perusal of the impugned judgment of the trial Court does not show any perversity on the part of the learned trial Judge in the matter of appreciation of evidence and therefore, this Court should not interfere in the order of acquittal.

(iii) The trial Judge had an opportunity to observe demeanor of the witnesses which is not available in the appeal against acquittal. Therefore, this Court should not interfere in the order of acquittal passed by the trial Court.

(iv) The discrepancy in the evidence of the eye witnesses and the major omissions and contradictions, if clearly seen, will show that the prosecution story is untrustworthy and unbelievable and therefore, the order of acquittal can be supported.

(v) The so called eye witnesses examined by the prosecution are all closely related to the deceased and his wife PW1-Chanda and all of them being closely related witnesses their testimony has rightly been discarded by the trial court, they being interested witnesses in roping the accused persons who are 15 in number and who are also closely related inter se amongst them. The rivalry or enmity between the two groups of accused persons on one hand closely related inter se and the witnesses on the other hand closely related inter se cannot be ignored and has been rightly considered by the trial Judge to discard the testimony of those alleged eye witnesses, therefore, even if second view is possible, on the basis of evidence on record, this Court ought not to interfere in the order of acquittal.

(vi) The offence u/s 3(i)(x) and 2(v) of the SC & ST (Prevention of Atrocities) Act is not at all made out since, it is not seriously pursued by the prosecution and no evidence was brought on record about the said offence.

(vii) The trial Court has considered the standard of proof and theory of proving beyond doubt and that the benefit of doubt must be extended to the accused persons. No interference can be made, if the trial Judge has made an order of acquittal based on the said settled principles of law.

(viii) The FIR was lodged at 8.15 a.m. on the next day i.e. about 12 hours after the incident when admittedly PW1 Chanda had reached the Police Station in the night itself for which there is no explanation. The delay in lodging the FIR clearly shows suspicion about the prosecution story.

(ix) The prosecution failed to hold test identification parade of the accused persons when the evidence shows that all the accused persons were not known

either by face or by names to the eye witness and that being so, failure to hold test identification parade must result into confirmation of the order of acquittal.

(x) The evidence of the alleged eye witnesses is unbelievable because there are no marks of injury on the body of the deceased when he was allegedly dragged for a distance of about 1.5 km. from his house and still there are no injuries on the back or front portion of the body of Shamrao, the deceased.

(xi) The prosecution has miserably failed to prove that there was electricity in the village or on the fateful night there was electricity in the village. The evidence of PW1-Chanda and other witnesses about having electric line for observing assault on the deceased is clearly by way of omission and brought for the first time before the Court and therefore, it was dangerous to rely on the said evidence. The time of incident being said to be of night it was impossible to see all the persons together assaulting the deceased by each eye witness and then to expect them to depose about their names before the Court as assailants.

(xii) The eye witnesses have described weapons with which the deceased was assaulted by each of the accused person which itself is total exaggeration and tutoring of the prosecution witnesses brought before the Court as eye witnesses.

(xiii) The eye witnesses claimed that there were 20 to 25 persons but then the figure was brought to 16 persons which itself shows variance. The medical evidence clearly falsifies the ocular testimony of the witnesses. Therefore, the testimony of the eye witnesses was rightly rejected by the trial Court.

(xiv) The doctor has admitted that there were no injuries on the vital parts of the body which clearly shows that there was hardly any intention or motive on the part of the accused persons to commit murder. In the alternative, the offence could be held to be not of murder but culpable homicide not amounting to murder, which is without prejudice to the submission that the order of acquittal is legal, correct and proper.

(xv) The prosecution did not examine grocery shop keeper Shri Ramteke at which place it is stated that the genesis of the prosecution story lay. The other witnesses who were independent witnesses namely; Charandas and Anant were not deliberately examined by the prosecution.

(xvi) In the absence of any source of light, it was impossible to believe that the eye witnesses had seen the incident. There is clear suspicion that the prosecution created the evidence for bagging conviction of the accused persons. The clothes of accused persons were seized on different dates from different persons after some period and, therefore, the entire recovery of clothes and weapons which did not have any blood was of no consequence.

(xvii) The prosecution failed to establish any motive or common object for unlawful assembly and in the absence thereof, none of the offence for which respondents were charged were proved.

(xviii) In the absence of any injury on the vital parts of the body, it can be easily seen that there was hardly any intention to commit murder and, in fact, as admitted by Doctor, had the medical help been provided to the deceased Shamrao, he could have been saved, that itself shows that there was no murder as alleged. In support of his submissions, the learned counsel for the respondents relied on the following decisions:

- (i) Baldeo Singh and Others Vs. State of Bihar,
- (ii) Sevi and Another Vs. State of Tamil Nadu and Another,
- (iii) Deoraj Deju Suvarna and etc. Vs. State of Maharashtra,
- (iv) Ram Swaroop and Others Vs. State of Rajasthan,
- (v) The State of Tamil Nadu rep. by Secretary to Government Vs. Subair @ Mohamed Subair and Others,

Finally Mr. Patwardhan prayed for confirmation of the order of acquittal of the respondents.

Consideration:

4. At the outset, we must state that this appeal against acquittal when called out for hearing and looking to the span of 18 years from the date of incident and keeping in view the principles laid down by the apex Court from time to time for the High Courts while dealing with the appeals against acquittal filed by the State, we proceeded to hear the appeal. After hearing of the appeal on the first date, we found it appropriate that the counsel for the accused should argue with full preparation. On the next date, the earlier counsel Mr. Kasat took discharge and Mr. R.M. Patwardhan, learned counsel for the respondents entered the appearance for all the respondents before this Court in this appeal and then we adjourned the appeal for giving sufficient time to Mr. Patwardhan for preparation.

5. Upon going through the entire evidence tendered by the prosecution before the trial Court including that of eye witnesses and upon reading judgment of acquittal of the trial Court, we were shocked to find out that the trial Judge did not at all bother to discuss the evidence of eye witnesses and recorded the reasons in totally strange manner, generally and without any seriousness. We have, therefore, carefully considered the entire record, evidence of witnesses and various submissions made by learned counsel for the rival parties. It is, in this background, we proceed to record our reasons in the instant appeal.

6. PW1-Chanda wd/o Shamrao Gharde deposed that the incident took place on 19.06.1995 and identified at the time of her examination-in-chief that all the accused persons nos. 1 to 15 before the Court were the same assailants who had assaulted her husband. She deposed that on the day of incident, her husband came back from the grocery shop and told her that he had slapped Balya, accused no.-4 since Balya abused him when the deceased Shamrao asked for repayment of Rs. 50/- from him which was given to Balya for bringing fish, since

he had not brought fish. At about 7.30 p.m., thereafter, Shamrao sat for the dinner and she served him dinner. When Shamrao was about to start his dinner, accused nos. 4, 5, 12, 13, 14 and 15 and the absconding accused Raju arrived and entered her house, abused her husband, dragged him by holding his hands and legs out of the house in the courtyard. She followed and requested not to take him and came in the Courtyard. She witnessed accused No. 11-Prabhakar with axe, accused no. 13-Dilip with sword, accused no. 16-Raju with iron pipe and rest of the accused with sticks and all of them were 15 assailants. They dragged him up to the house of Vinayak Bhalekar, which is at a distance of 4-5 houses from her house. She followed them. All the assailants-accused nos. 1 to 15 again started beating her husband in courtyard of Vinayak. She again requested not to beat her husband but accused no. 4-Pramod raised a stick on her and she rushed to the house of Sudha i.e. wife of Vinayak and in the process, the stick hit the leg of Sudha. She ran towards cattle shed. Accused no. 11-Prabhakar stated that he would kill those who give evidence. She did not come out for two hours and, thereafter went to the house of Harshwardhan and narrated the incident to him and requested him to go to the Police Station. Harshwardhan and herself went on motorcycle to Amravati to her father-in-law and under the instructions of Superintendent of Police, went to Nandgaon Police Station and lodged the report Exh.-55. She remained in the Police Station. On the next morning she reached the village, searched her husband. She was informed by one Anant that the her husband Shamrao was lying in the field of one Yashvant. She went there and found her husband lying. His right hand was amputated. She deposed that she saw the incident in the light in the courtyard of Laxman, who is neighbour in the sense that their courtyards are one and the same. There was electric light at a distance of 10 ft from the spot of assault.

The submission of Mr. Patwardhan, learned counsel for the respondents, about non availability of any evidence on record to show that there was electricity in the village is unacceptable furthermore in view of deposition of PW2-Narendra. This witness has stated that he was present in his house on 19.06.1995 at about 9.00 p.m. and he was watching television in his house. PW2-Narendra has been cross-examined on behalf of the accused. It has come in the cross-examination that he was watching television in his house and the serial "Alif Laila" was going on the television.

7. We have carefully perused the cross-examination of the witnesses. The main submission made by Mr. Patwardhan that the witnesses are related to the deceased seems to be correct and so also the accused persons inter se and that has come in her evidence. We reproduce relevant portion of paragraph 8 as under:

8...All the accused nos. 1 to 14, who are sitting before the Court, are inter se related to each other. Some of the accused reside in one home and the rest are residing separately...

....Harshwardhan is the brother of my son-in-law.

8. We are aware that when the testimony of interested witness or the relatives is to be scrutinized, the same should be scrutinized with care and caution. Though, the witnesses are related to each other, from the entire evidence, we nowhere found that the defence brought any rivalry between the group of witnesses and group of accused persons. Be that as it may, even then we decided to look into the testimony of these witnesses with care and caution.

9. Coming to the evidence of PW1-Chanda, we find that the map proved by the prosecution shows that the houses are nearby and the house of Vinayak is at the end of the village and the house of PW1-Chanda is beyond 23 houses. We, however, find from the cross-examination or from the map that nothing has been brought on record to show that the eye witnesses could not see the incident because of any obstruction. On the contrary, it is the case of PW1-Chanda that she followed her husband when he was being dragged out on the road and, therefore, there is no reason for us to believe that she did not see the incident till the departure of her husband after the house of Vinayak. We, therefore, do not agree with the learned counsel for the respondents that she could not see the incident.

10. The next argument that there are omissions in her evidence, does not at all appeal to us. The incident took place on 19.06.1995. Thereafter, FIR Exh.-55 was lodged, her supplementary statement was recorded on 20.06.1995 itself. The defence brought the omissions in her evidence from her report Exh.-55 but could not bring a single omission from her statement, which was immediately recorded i.e. on the very next day of the incident. We quote the portion of the omissions brought by the respondent in the cross-examination as under:

.....The accused no. 4 Balya had addressed abuses to my husband. I did not state in my complaint the fact that accused no. 4 addressed abuses to my husband when my husband had demanded money to accused no. 4. I cannot assign any reason if the fact of abuses to my husband is not written in my complaint. I did not state the police while giving my report the fact that accused no. 13 and accused no. 15 arrived and they entered into my house. I cannot assign any reason if this fact is not written in the complaint. I did not state in my report the fact that the accused dragged my husband but it is not stated in my report that the accused by catch holding hands and legs dragged my husband. When my husband was dragged, the assailants and spectators were in front of my house continuing mob of 25 to 30 persons. It does not happen that all these members of 25 to 30 persons assaulted my husband. It is in my report Exh.-55 the fact that the mob of 25 to 30 persons assaulted my husband.

12....I had requested the assailants not to beat my husband. I had stated this fact of my request to the police while reporting the incident. I did state in my complaint that fact accused no. 11 was armed with an axe. I cannot assign any reason if the said fact does not find place in FIR Exh. 55. I did state in my complaint the fact that accused no. 13 was holding sword. I cannot assign any reason for the omission if any. I did state in my complaint the fact that accused

no. 16 was holding a pipe. I cannot reason for the omission if any. I did state in my complaint Exh.-55 the fact that rest of the assailants-accused were armed with sticks. I cannot assign reason for the omissions if any. I did state in my complaint Exh.-55 the fact that the accused-assailants had beaten to my husband Shamrao in the courtyard. I cannot assign any reason for the omission if any. I did state in my complaint Exh.-55 the fact that accused dragged my husband to the court-yard, but the names of accused specifically has not been written in complaint. I did state in my complaint Exh.-55 that the rest of the accused-assailants followed them. But I did not state specifically the word "followed them".

13. I did state in my complaint the fact that the accused have beaten my husband in front of house of Vinayak. But, it is not written in complaint Exh.-55 that the accused beaten my husband in front of house of Vinayak. It does not happen that I entered in my home after beating the accused to my husband in the court-yard. I did not state the fact that I entered into my house in my police report. I did state in my report Exh.-55 as per portion marked "A" the fact that as one person had given a stick blow to my leg. I entered into the house. The assailants had taken away my husband by catch holding his legs. I did state in my complaint Exh.-55 the fact that I had been to the house of Vinayak and requested the accused not to beat my husband. I cannot any reason if this fact does not find place in complaint Exh.-55. I did state in my complaint the fact that accused no. 14 Pramod raised stick against me. In order to defend myself I rushed to the house of Sudha Bhalerao and as such the stick struck to the leg of Sudha Bhalerao. I did state in my complaint the fact that accused no. 14 had raised stick against me, therefore, in order to defend myself I rushed to the house of Sudha. The stick, therefore, struck the left of Sudha Bhalekar. I cannot assign any reason if this fact does not find place in my complaint Exh.-55. I did state in my complaint that I had rushed to the cattle shed. I did state in my complaint the fact that I had rushed to cattle shed and the fact that accused no. 11 Prabhakar had threatened by expressing that, "he would kill him who would dare to give witness of the incident." I cannot assign any reason for the omission if any, I did state in my complaint that I was hidden myself in the cattle shed for about two hours. I cannot assign any reason if this fact does not find place in FIR Exh.-55.

11. We find from the above omissions that in the first place, these are omissions brought from the FIR. It is well settled that the FIR is not an encyclopedia and is an information of a cognizable offence. Though, her statement was recorded immediately on the next day, we find no omission in her statement u/s 161 of Cr. P.C. in respect of the facts which have been brought as omission in the FIR. That apart, even in Exh.-55, the FIR, the omissions which are shown to us are not relevant in the material particulars about the incident proper, about the entry of the accused persons in the house and his dragging out of the house and the assault on him. We have still found that the omissions in the FIR are not of much significance. We considered them carefully. We do not find them so significant so

as to reject her sworn testimony.

12. Insofar as the electricity and light in the house of neighbour-Laxman is concerned, again we find that the omission has been brought from the FIR Exh.-55 and there is no omission in the statement u/s 161 of the Cr. P.C. That apart, insofar as the submissions regarding the availability of light is concerned, we find that the incident took place at about 7.30 p.m. in the village in the month of June and looking to the availability of light in the month of June in Vidarbha region, we have no hesitation in holding that the eye witnesses had sufficient light to identify the accused persons. All the more so because all the accused persons and the witnesses have been residing in the same locality namely Bauddhapura locality of the village since beginning. According to us, lodging of the FIR Exh.-55 and then testimony of PW1-Chanda before the Court is fully corroborative of the evidence of PW1-Chanda and we do not find any discrepancy therein.

13. Thereafter, there is evidence of other witness, PW2-Narendra who deposed about the incident in para 4. Instead of repeating the same, we quote his evidence from para 4 in the examination-in-chief as under.

4. I was present at my house on 19.6.1995 at about 9 p.m. I was watching Television in my house. I heard noise of commotion. I, therefore, came out from my house. I witnessed that deceased Shamrao Gharde was being beaten. The accused nos. 1 to 15 now present before the Court, and accused no. 16 Raju Mohod were seen beating to deceased-Shamrao Gharde. The accused were beating deceased-Shamrao with the weapon axe, pipe, sword and sticks. The accused were beating the deceased-Shamrao in the courtyard of my house. Motiram Bhagat was the police patil of village Jalka Shahapur. The accused no. 1, who is present before the Court, is the same police patil Motiram Bhagat. The accused no. 1 instigated rest of the accused by addressing the accused to beat deceased Shamrao till his death. The absconding accused no. 15 Raju Mohod was armed with iron pipe. The accused no. 1 Prabhakar Bhagat was armed with an axe. The accused no. 13 Dilip Mankar was armed with sword. The accused no. 4-Padmakar Bhagat alias Balya was armed with Bamboo. The rest of the accused were armed with sticks. The accused no-4-Padmakar, accused no. 11-Prabhakar, accused no. 14-Pramod and accused no. 16-Raju Mohod then dragged deceased-Shamrao towards the school. These accused were pulling deceased-Shamrao towards school. The rest of the accused were with the accused no. 4, no. 11, no. 14 and no. 16 while they were dragging Shamrao towards school. I did not go towards school. I was frightened, therefore, I did not go towards school.

5 & 6.....

7. I can identify the muddemal weapon axe, pipe, sword and sticks those were in the hands of the accused. The sword which is now shown to me, was in the hand of accused no. 13, Dilip Mankar. The muddemal axe was in the hand of accused no. 11-Prabhakar Bhagat.

14. Perusal of the above evidence, to our mind, shows that there is graphic description of the incident by this witness who is the immediate neighbor of the deceased Shamrao. We have perused the cross-examination of these witnesses in entirety and except for the fact that Shamrao had fallen down while accused were beating him, there is no omission in his statement. The further omission is about dragging of Shamrao towards the School. We quote the said portion from para 11 as under.

11. I state to the police during my statement that Shamrao was dragged towards Gay-Gaothan and not stated towards school. I did state during my police statement the fact that the rest of the accused also proceeded, I cannot tell any reason if this fact is not written in my police statement.

We do not find that the said omission is so material that his sworn testimony about the assault on the deceased Shamrao can be rejected as contended by learned counsel for the respondent.

15. The next witness is PW3-Vinayak Bhalekar, the neighbour of deceased Shamrao and whose house is last in the mohalla. There are no houses after his house. We would quote his evidence from para 3 and 4 as under:

3. Sixteen assailants chased deceased-Shamrao. The assailants who were chasing deceased-Shamrao had beaten deceased Shamrao. Marotirao, Bahskarao, Balya, Vishnu, Maroti Kosare, Laxman, Maroti Bhagat, Bhagwanta Bhagat, Prahakar, Babanrao, Dilip Mankar, Gajanan whose surname I do not remember, Raju Mohod, Narendra Bhagat i.e. accused no. 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 5 absconding accused no. 16 and Narendra Bhagat were those assailants. Narendra Bhagat is the son of Ganesh Bhagat. These assailants to whom I have referred as assailants are present today in the Court. The accused who are present before the court are the same except one accused. One accused i.e. absconding accused no. 16 Raju Mohod is not present before the Court. The accused Narendra Bhagat is present before the Court who is sitting fourth in number in the array of the accused (The witness pointed out the accused whose name is Ravindra Ganeshrao Bhagat i.e. accused no. 3)

4. The accused beaten deceased-Shamrao by using sticks, swords and axe iron pipes. My wife Sudha Vinayak Bhalekar was present there. She was present in front of house. The accused Pramod Khelkar i.e. accused no. 14 gave a stick blow on my wife Sudha at her thigh. My elder brother Bhaurao was present in front of their house. Wife of deceased-Shamrao PW1-Chanda was present at the time of incident. The assailants has severely beaten deceased-Shamrao by using weapons sticks, swords and iron pipes and axe. Motiram Bhagat (accused no. 1) was the police patil of my village. Raju Mohod (accused no. 16), Gajanan (Accused no. 15), Prabhakar (accused no. 11) have dragged deceased-Shamrao towards school. The rest of the assailants-accused followed them. I did not go towards school. I did not go towards school because of fear.

The above evidence, to our mind, is ocular account of the incident which he saw.

The only omission in his evidence brought by the defence is about his claim that he saw the incident from plinth of his house. However, we do not find that it would be material whether he saw the incident from the plinth in his courtyard or from the courtyard since the assault took place on road near his courtyard. We have perused the cross-examination of this witness and we do not find any infirmity in his evidence.

16. The next witness is PW4-Sudha w/o Vinayak Bhalekar. She deposed in para 2 as under:

2....The assailants are present in the Court-hall sitting in the rear side of the court-hall. Fifteen assailants are present before the Court. One assailant is not present in the court-hall. I do not know names of some of the assailants. The names of the assailants whose names I do know are Dilip Mankar (accused 13), Padmakar Bhagat (accused no. 4), Pramod Khelkar (accused no. 14), Prabhakar Bhagat (Accused no. 11), Motriam Bhagat (accused no. 1). The names of rest of the assailants I do not know. Raju Mohod (absconding accused no. 16) was amongst them. The accused no. 13 Dinesh Mankar was holding sword, absconding accused no. 16 Raju Mohod was holding pipe, accused no. 11 Prabhakar Bhagat was holding axe, rest of the accused were holding sticks in their hands. The accused have beaten deceased-Shamrao by using these weapons, swords, pipe, axe and sticks. I was standing in the door of my house. The accused no. 14-Pramod Khedkar gave a stick blow at my thing. I do not know where Shamrao was taken.

Reading of the evidence of this witness, to our mind, shows that she also described the incident graphically about the assault by all the accused persons. We have perused the cross-examination and there is absolutely nothing in the cross examination which would, to our mind discredit her testimony in any manner. We have no reason to doubt the testimony of this eye witness.

17. PW5-Maroti Bhalekar is another witness. He is the real brother of PW2-Narendra. He has deposed before the Court in para 2 about the incident, which reads thus:

2....I had seen the deceased-Shamrao being beaten. Padmakar, Motiram Bhagat, Bhagwanta Bhagat, Vinshu Bhagat, Laxman Bhagat, Bhaskar Bhagat, Maroti Bhagat, Ravindra Bhagat, Prabhakar Bhagat, Raju Mohod, Dilip Mankar, Pramod Khedkar, Babarao Adhau, Bhanudas Adhau, Maroti Kosare Gajanan Chinchalkar, i.e. accused no. 1, accused no. 10, accused no. 5, accused no. 8, accused no. 2, accused no. 9, accused no. 3, accused no. 11, absconding accused no. 16, accused no. 13, accused no. 14, accused no. 12, accused no. 6, accused no. 7, accused no. 15, were these persons beating to deceased-Shamrao. Accused Padmakar is known as "Balya" in the village i.e. accused no. 4. The accused are not present today in the Court who have beaten deceased-Shamrao.

We have perused the cross-examination of this witness minutely and we find that the incident proper as described by him has not been found to be shaken at all.

The portions marked "A" and "B" from his evidence are not material to discredit his testimony.

18. We, thus, have an ocular account of the incident proper from PW1 to PW5 and the testimony of all these witnesses in the cross-examination has not at all been shaken. On the contrary, all these witnesses have fully supported and proved the prosecution case. The statement of these witnesses were recorded immediately on the next day. There is nothing in the cross-examination of all these witnesses as to why the ocular account of the incident graphically given by them should be disbelieved. We, therefore, accept the evidence of all these eye witnesses PW1 to PW5, they being the most natural witnesses and have honestly deposed before the Court about the incident proper.

19. We, then find that the inquest panchanama Exh.-90 gives a description of the manner in which the dead body was found. We quote the relevant portion from the inquest Panchanama as under:

.....The dead body is lying in prone condition with its both the hand and face closed to the earth and the back facing the sky. On inspecting the dead body of the deceased by turning its upside down, it is seen that both the eyes are partly open. The mouth is partly open and the jaws are seen locked. The right palm is cut-off from the writ by means of a sharp weapon and the right hand up to the writ is bent from the elbow and resting near the right ear. The left hand is bent from the elbow and its four fingers are clenched in to fist and the thumb is straight. The abrasion marks are visible on the back and the left and right armpits. An horizontal mark of injury caused with a sharp weapon is visible on the bone on the front side of a calf below of right knee and blood is also visible thereat. A swelling caused with a stick-blow is visible on the calf of left leg also. At a distance of about 3 feet from the dead body of the deceased, the piece of right palm which is cut-off from the writ is seen lying and its five fingers are straight and it is smeared with blood. On inspecting the dead body by turning its upside down, it is seen that the contusion marks caused with the stick and blunt object are visible at various places on the back. The skin at the dorsal portion of right thigh and near the right arm is peeled-off and the injury marks are visible thereat....

20. The evidence of Doctor who performed the post mortem and reported about the injury is relevant. We quote injuries suffered by the deceased and found by the Doctor in para 4 of his evidence as under:

1. Incised wound over dorsal aspect of right amputated wrist joint horizontal sized 2"X 3/4" X 1/2".
2. Incised injury would over dorsal aspect of right amputated forearm, horizontal 2" X 3/4"X1/2".
3. Abrasion right chest wall 4"X 1" vertical 3" below nipple.
4. Abrasion right chest wall 4"X1" vertical 3" below nipple 1" away from no. 3.

5. Incised wound right lower leg 2" X 3/4" X muscle deep vertical.
6. Abrasion left leg 1/2" X 1/4" vertical.
7. Multiple abrasion left chest wall some oblique some linear 3" below nipple, size about 1 to 1 1/2 X 1".
8. Multiple abrasion over back some vertical some oblique size 3 to 4" X 1.

Besides the aforesaid external injuries, I found internal injury as follows:

1. There was a fracture to both bones of right upper 1/3" leg.
2. Fracture sternum at the level of 4th rib. With formation of haematoma underneath 3" X 2".

All the injuries stated above external injuries as well as internal injuries were found to be antemortem injuries. These injuries are described in column no. 17 of P.M. report.

21. The Doctor has deposed in the cross-examination that the deceased died due to the loss of blood and that's why the heart chambers of the deceased were found empty. He did not have any injury on the vital parts of the body and the hands and legs are not the vital parts of the body. A person may not die because of amputation of hand.

22. The submissions made by Mr. Patwardhan, in this behalf, have been carefully considered by us.

The Background is that in all 16 people formed an unlawful assembly in the village under the leadership of accused No. 1-Motiram, who was Police Patil at the relevant time only because his son accused no. 4-Balya was given a slap by Shamrao. Thereafter, they entered the house of deceased-Shamrao while he was taking food. The unlawful assembly was armed with weapons. They dragged Shamrao from the house holding his hands and legs. Then they took him by pushing, dragging and also assaulting near the house of Vinayak Bhalekar by dragging from the road of the village up to the school. Then they assaulted him and took him to the field and there was the final assault on him by the members of unlawful assembly and right hand palm of Shamrao was cut by sharp weapon and the amputated wrist is found at about 5 ft distance from the dead body. It is the same right hand with which accused no. 4-Balya was slapped because accused no. 4-Balya had filthily abused the deceased Shamrao. The assembly then left the injured and bleeding Shamrao to lie in the field overnight. The entire blood from the body went out of the body through the cut wrist. There was no question of giving any medical help at that time since the entire village must have been terrified due to the act of the unlawful assembly. The unlawful assembly knew that nobody would dare to bring any medical help to Shamrao. In this background, we must hold that the argument that Shamrao could have been saved, had the medical treatment reached him in time is preposterous. On the contrary, it is the unlawful assembly which prevented anybody from reaching the

medical help to Shamrao. It is the unlawful assembly which left Shamrao in seriously injured condition in the field by cutting his palm for abandoning this world. It is the unlawful assembly which is responsible for the death of Shamrao. The unlawful assembly spread terror in the village as to what happens if the son of Police Pati 1, accused no. 1 Motiram is slapped by any person in the village. The surname of Police Patil is Bhagat and majority of the accused persons are having surname Bhagat. We, thus, find that there was a clear intention and motive to commit murder.

We must hold that all the respondents-accused persons created terror in the village by assaulting Shamrao and committed his murder in the most brutal manner that too for a petty reason that the son of Police Patil who is accused no. 1-Motiram, was slapped by deceased Shamrao because accused no. 4-Balya had abused Shamrao. These evidences and facts are tale telling and we are shocked to see that PW 1-Chanda was totally helpless and none was ready in the village even to help her for lodging the report to Police Station for quite some time. That also indicates the terror of respondent nos. 1 to 15 that was spread in the village by their unlawful assembly. We are further surprised to see that though PW1-Chanda had gone to the Superintendent of Police, Amravati, the officials present in the office of S.P. Office, merely asked her to go to the Police Station, Nandgaon without providing her any security or without bothering about her safety that the accused persons could obstruct her somewhere and also kill her. This shows irresponsible conduct on the part of the office of S.P., Amravati in treating the citizens for their security when such a serious offence was committed by an unlawful assembly of 16 persons.

23. We find total perversity on the part of the trial Judge in the judgment. We quote following paragraphs from the judgment of the trial Court in the matter of appreciation of the evidence which shows that the judgment of the trial Court is wholly without any substance and totally perverse resulting into miscarriage of justice to the State. The judgment does not show application of mind and consideration of the ocular testimony of several eye witnesses whose evidence we have discussed. We quote following paragraphs from the judgment of the trial Court as to why the prosecution evidence was rejected by him:

...The PW1-Chanda has deposed that she did state in her complaint the fact that accused no. 4-Balya addressed abuses to her husband when her husband had demanded money to accused no. 4-Balya. The said fact, however, do not find place in FIR Exh.-55. It therefore, reveals that the PW1-Chanda who is wife of deceased-Shamrao has improved this fact of former quarrel in between accused no. 4-Balya and deceased-Shamrao. It is pertinent to note that the said quarrel, according to the prosecution, has taken place in front of grocery shop of Ramteke, who would have been the best witness, to prove former quarrel, has not been examined by the prosecution. The evidence of PW1-Chanda about such former quarrel in between deceased and accused no. 4 is hearsay evidence. Moreover, the said statement is improved statement. In view of aforesaid two

infirmities, i.e. non examination of shop keeper Ramteke and improvement of this fact no reliance can be placed upon the said first circumstance of former quarrel. It is the case of the prosecution that because of such quarrel the accused were motivated to form an unlawful assembly to cause death of the deceased. The prosecution, however, could not prove motive which plays important role in case which is based upon circumstances. (1998 AD (Cr.) Delhi 437). It is further difficult to appreciate that because of such casual so called dispute and violence, the accused sixteen in number may form an unlawful assembly and would decide to terminate life of the deceased.

25.....

26. According to the case of prosecution, the aforesaid accused nos. 1 to 15 along with accused no. 16 had formed an unlawful assembly, i.e. number of members of unlawful assembly was sixteen. The PW1 Chanda, however, has admitted that she had written the mob of 25 to 30 persons in her first information report Exh.-55. As per the FIR Exh.-55 the accused nos. 4, 14, 15 and 16 had entered in her house. About 25 persons were present in front of her house. She has stated that when her husband was dragged, assailants and spectators were in front of her house constituting mob of 25 to 30 persons. The witness has admitted that she had written in her report Exh.-55 that the mob of 25 to 30 persons had assaulted her husband. It is thus crystal clear that the complainant PW1-Chanda herself is not definite and firm about the number of members of such assembly. She could not distinguish who were spectators and who were assailants amongst 25 to 30 persons. The PW2-Narendra, on the contrary, has deposed that there might be more than 20 person in the court-yard when the incident was going on.

27. The prosecution could not firmly establish identify of assailants. The complainant PW1-Chanda has deposed that she was knowing the names of all the assailants even on the date of the incident. It is however, pertinent to note that the names of the accused except accused nos. 2, 14, 15 and 16 do not find place in FIR. There is no explanation on record as to how PW1-Chanda could not list the names of all the assailants in FIR, particularly when she could list the names of aforesaid four accused only.

28. PW4-Sudha Bhalekar has deposed that she did not know names of all sixteen assailants. She can identify the assailants by their faces. The witness has, however, admitted that her identification parade was not taken. No doubt PW4-Sudha has identified the assailants to be the accused in the Court, but said identification made by the witnesses for the first time in the Court is valueless for all practical purposes.

29. PW3-Vinayak has deposed that the accused nos. 1 to 16 were the assailants. The witness, however, pointed out accused no. 3-Ravindra Bhagat as Narendra Bhagat. The witness later on has admitted that the name of accused no. 3 is not Narendra Bhagat.

30.....No doubt, PW1-Chanda has deposed that she did state in her police report Exh.-55 about such source of light, but the PW10-Shrikrishna, who recorded FIR, has deposed that PW1-Chanda did not state in her report about source of light. The FIR Exh.-55 and Panchanama of scene of offence are silent about the source of light. The PW1-Chanda has thereby improved her statement with respect to source of light which marks difficult to the witness to identify the assailants.

31 to 35.....

36. The PW1-Chanda has further stated that accused no. 1 was armed with axe, accused no. 13 was armed with sword, accused no. 16 was armed with iron pipe, the rest of the assailants were holding sticks. It, however, reveals that the witness has made improvements on aforesaid all these facts. No doubt, the PW1-Chanda firmly deposed that she did state these facts in her first information report but the PW10-Shrikrishna, who recorded the first information report has admitted that PW1-Chanda did not state these facts in her FIR Exh.-55. He has stated that PW1-Chanda in her report Exh.-55 did state the fact that the accused no. 11 was armed with an axe, accused no. 13 was holding sword, accused no. 16 was holding pipe and rest of the accused were holding sticks in their hands. The PW1-Chanda has stated that accused had beaten her husband in the court-yard of her house, but the said fact also does not find place in FIR. Moreover, PW10-Shrikrishna has admitted that PW1-Chanda did not state in her report the fact that the accused had beaten her husband in the court-yard or the fact that the accused dragged her husband in the court-yard. The PW1-Chanda could not explain for the omission of these material facts....

Perusal of the above reasons given by the trial Court clearly shows that the trial Court has found that the omissions in the FIR Exh.-55 were fatal to the prosecution case, clearly ignoring the settled legal position that the FIR is not an encyclopedia. On the contrary, we find that the statements of the witnesses were recorded immediately on the next day. There are no omissions much less material omissions in the statements of the eye witnesses u/s 161 of the Cr. P.C. On the contrary, evidence of the eye witnesses who have given ocular account before the Court from PW1 to PW5 is trustworthy, consistent and without any discrepancy. On the contrary, as earlier stated, the trial Judge found some of the omissions which were also not material from the FIR Exh.-55 and held that the prosecution case or ocular testimony of the witnesses was not reliable. We strongly deprecate the reasons given by the trial court which are contrary to law.

24. We, therefore, hold that the judgment of the trial Court is clearly perverse, illegal and does not at all satisfy any fundamental aspects of the appreciation of evidence in criminal jurisprudence. The trial Judge has made a complete departure in respect of the legal principles which are applicable.

25. We have already set out in the preface of the judgment that looking to the period of 18 years that has gone and looking to the fact that the appeal was against acquittal, we are loath in interfering but then the entire discussion made

by us clearly shows that it would be a miscarriage of justice if we do not interfere in the instant appeal against acquittal.

26. The next question is about the intention and object of formation of unlawful assembly. From the ocular evidence of eye witnesses aforesaid, it is clear that the accused persons entered the house of Shamrao and the courtyard with a common object to finish Shamrao merely because he had given a slap to the accused no. 4-Balya, half an hour before. All the 16 accused persons were members of unlawful assembly with a common object to teach a lesson to Shamrao. Accused No. 1-Motiram, who was Police Patil of the village took lead and instigated the members of the unlawful assembly to finish Shamrao. In order to make a terror in the village, all the accused persons in the unlawful assembly pushed, dragged and threw the deceased Shamrao up to some distance up to the School by beating, assaulting and thereafter they took him to the field and cut his right palm, with which he had slapped the accused no. 4-Balya and then left him in the field for meeting such a type of death. PW1-Chanda tried to save her husband by repeated requests but no use and on the contrary, she was given a stick blow. Finally, she had to hide somewhere and to find her husband's dead body on the next day. All the eye witnesses named had identified 15 respondents-accused persons who were residents of the same area. We find that the accused no. 1-Motiram who was Police Patil of the village had formed unlawful assembly with 10 persons who are "Bhagat" in the unlawful assembly out of 16. Though, the period of 18 years has lapsed, we do not see that the same would be of any relevance when we have found that there is miscarriage of justice and clear insult to the rule of law.

27. Mr. Patwardhan, learned counsel for the respondents, has relied on the judgment reported in Baldeo Singh and Others Vs. State of Bihar, and has submitted that when in a melee several people gave blows to the victim at one and the same time, it is impossible to particularise the blows. If any witness attempts to do it, his veracity is doubtful. Relying on the above judgment, he has further submitted that where the eye witnesses are not able to give correct version as to when the deceased was given Lathi blows and their evidence was seriously disputed on important points, there is reason to doubt their evidence.

In our view, the evidence on the record is specific and clear and there is no discrepancy in the testimony of the eye witnesses on the material points. Moreover, we have found that the respondents along with absconding accused Raju have formed an unlawful assembly in prosecution of the common object and being found the respondents liable for conviction for an offence punishable u/s 149 of the I.P.C. In view of this, the above referred judgment does not help the respondents.

Learned counsel for the respondents has further relied on the judgment in Sevi and Another Vs. State of Tamil Nadu and Another, and has submitted that the facts of this case are also similar and the testimony of the witness is monotonous and shows that the account given by the witness is invented to rope in all the

respondents because of the old rivalry.

We are not convinced by the submissions made on behalf of the respondents. The scrutiny of the evidence of PW1 to PW5 shows that they have given the account of the incident as witnessed by them and according to us, the testimony of PW1 to PW5 cannot be doubted or discarded.

So far as judgment in Deoraj Deju Suvarna and etc. Vs. State of Maharashtra, is concerned, it is also not helpful to the respondents as the said judgment was rendered in the peculiar facts of that case.

Reliance placed on the judgment in Ram Swaroop and ors. vs. State of Rajasthan; AIR 2004 SC 2943 is misconceived. In this case, the testimony of PW1-Chanda cannot be said to be different than her statement in the FIR on material points.

Learned counsel for the respondents has relied on judgment in The State of Tamil Nadu rep. by Secretary to Government Vs. Subair @ Mohamed Subair and Others, and has submitted that failure on the part of PW1-Chanda who lodged the complaint immediately after the incident and the delay in making of the complaint by PW1-Chanda makes the testimony non reliable as laid down in the above mentioned judgment. However, we do not agree with the submission made on behalf of the respondents. There is only an overnight delay of 12 hrs. The delay in lodging of complaint has occasioned because of the circumstances which are mentioned in the earlier part of the judgment. Hence, we do not think there is really any delay in making of the complaint that too of such a nature so as to discredit the testimony of PW1-Chanda.

28. The submissions made by the learned counsel for the respondents that Test Identification Parade should have been held, does not appeal to us since all the accused nos. 1 to 15 are the residents of the same locality namely "Bouddhapura" in the village and have been very well known to all the eye-witnesses who are residents of the same locality. All the accused persons were identified in the court and there is no cross-examination about it. The next submission about absence of injury to the deceased or absence of medical evidence about dragging also will have to be rejected since it is nobody's case that he was dragged on the ground; but he was dragged, pushed by the accused towards school and the field and also was being beaten.

29. In the light of the above, we find the respondents guilty of the offence for which they were charged except for an offence punishable u/s 3(i)(x) and 2(v) of the SC & ST (Prevention of Atrocities) Act since there is no iota of evidence to support the charge of the said offence. We, therefore, confirm the acquittal of all the accused persons of the offence u/s 3(i)(x) and 2(v) of the SC & ST (Prevention of Atrocities) Act. In respect of other charges i.e. for the offences punishable under sections 147, 148, 452 read with section 149, 302 read with section 149 and 506 of the I.P.C. we hold all/ oil the accused nos. 1 to 15 guilty of the said charge levelled against them.

30. Since, we have found all the accused persons; except respondent no. 6, who is reported to have expired during the pendency of appeal; guilty for an offence punishable under sections 147, 148, 452 read with section 149 of IPC, section 302 read with sections 149 and 506 of the I.P.C., we now proceed to hear all the accused persons on the question of sentence, which we do. We have heard all the respondents-accused persons so also Mr. Patwardhan, learned counsel for the respondents, on the question of sentence. All the accused persons and their counsel prayed for leniency while awarding sentence.

We find that this not a rarest of rare case in respect of the offence for which the accused persons have been found guilty and hence we do not think that the respondents-accused persons could be sentenced to death. We, however, find that the respondent nos. 1 to 15, except respondent no. 6 (dead), will have to be sentenced for imprisonment for life. Hence, we make the following order.

ORDER

(i) Criminal Appeal No. 290/1998 filed by the State of Maharashtra is partly allowed.

(ii) The impugned judgment dated 13.04.1998 in Sessions Trial No. 40/1995, acquitting respondent nos. 1 to 15 of the offence punishable u/s 3(i)(x) and 2(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, is confirmed. (iii) The impugned judgment dated 13.04.1998 in Sessions Trial No. 40/1995, acquitting respondent nos. 1 to 15 of the offence punishable under Sections 147, 148, 452 r/w section 149; section 302 r/w section 149 and section 506 of the IPC is set aside. Respondent Nos. 1 to 15, except respondent no. 6 (dead) are convicted for the offence punishable under Sections 147, 148, 452 r/w section 149; section 302 r/w section 149 and section 506 of the IPC.

(iv) Respondent nos. 1 to 15, except respondent no. 6 (dead), are sentenced to undergo imprisonment for a period of two years for the offence punishable u/s 147, 148 and 452 of the IPC.

(v) Respondent nos. 1 to 15, except respondent no. 6 (dead), are sentenced to undergo imprisonment for life for the offence punishable u/s 302 r/w section 149 of the IPC and to pay a fine of Rs. 5,000/- each, in default of payment of fine, to undergo imprisonment for one year.

(vi) Respondent nos. 1 to 15, except respondent no. 6 (dead), are sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs. 500/- each, in default of payment of fine, to undergo imprisonment for one month, for the offence punishable u/s 506 of the IPC.

(vii) All the sentences shall run concurrently for all the aforesaid offences.

(viii) All the accused are entitled to set off u/s 428 of the Code of Criminal Procedure.

(ix) All the accused persons-respondent nos. 1 to 15, except respondent no. 6

(dead), are informed that they are entitled to appeal to the apex Court for challenging this judgment. Registry is directed to give copy of this judgment to each of the accused person, free of costs.