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**(2015) 06 BOM CK 0244**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 352 of 2004**

State of Maharashtra

APPELLANT

Vs

Sudhakar Maroti Girde and Others

RESPONDENT

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**Date of Decision :** 23-06-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 378  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

**Citation :** (2015) 06 BOM CK 0244

**Hon'ble Judges :** B.P. Dharmadhikari, J;P.N. Deshmukh, J

**Bench :** Division Bench

**Advocate :** N. Mehta, A.P.P., for the Appellant; M.B. Naidu, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.N. Deshmukh, J—This appeal is preferred by State of Maharashtra under Section 378 of the Code of Criminal Procedure against the judgment and order passed in Sessions Trial No. 104 of 1999 on 20th February, 2004 by 3rd Ad-hoc Additional Sessions Judge, Wardha, thereby acquitting accused/ respondent no.1 Sudhakar Maroti Girde, accused no.2 Ankush Janbaji Umate, accused no.3 Rangdeo Deoraoji Mahure, accused no.4 Anil Barkuji Mahure, accused no.5 - Bharat Nanaji Umate, accused no.6 Charansing Nandlal Nagpure, accused no.7 - Namdeo Deoraoji Mahure and accused no.8 - Madhukar Tukaramji Mahure of the offence punishable under Sections 147, 148, 323, 307 and 149 of the Indian Penal Code.

2. In brief, it is the case of prosecution that on 12th of February, 1999 at about 5.30 p.m., PW 2 Narayan Sawarkar, the complainant, lodged his report (Exh.43) with Police Station Selu contending therein that on that day at about 3 to 3.15 p.m. while he was proceeding from village to his house near the school, he was given call by Marotrao Bele, Sarpanch of village Kanhapur and one Engineer working in Panchayat Samiti in the presence of PW 3 Ramkrishna Umate and

directed him to come to school. Accordingly, PW 2 Narayan went to school where PW 3 Ramkrishna, who was then Sarpanch of village Morchapur, Distt.Wardha informed him that accused no.3 - Rangdeo, accused no.6 Charan Nagpure, and accused no.7 Namdeo Mahure had rushed with intention to commit assault on him. After being informed as above, Narayan left to his house. Ten to fifteen minutes thereafter when he came out of his house he found that PW 3 Ramkrishna, Marotrao Bele and Engineer working in Panchayat Samiti were returning after having observed construction work of grampanchayat drainage. Thereafter, Marotrao Bele and Engineer went towards the house of accused no.6 Charan to see the construction of drainage, when PW Narayan was returning to home along with PW 3 Ramkrishna, PW 6 Sunil, and one Bandu Umate and Dilip Umate, accused no.8 Madhukar Mahure, suddenly arrived before them having gupti in his hand. At the same time, accused no.3 Rangdeo arrived having armed with knife and indulged in altercation with them. Accused no.8 Madhukar and accused no.3 Rangdeo attempted to give blow of gupti and knife on PW 3 Ramkrishna, respectively, which was obstructed by PW 6 Sunil by his hand. At that point of time, accused no.2 Ankush Umate, accused no.5 Bharat and accused no.6 Charan arrived from back side and tried to assault PW 3 Ramkrishna which he defended and got himself rescued and went away. PW 6 Sunil Umate also got frightened and left the spot. Accused no.7 Namdeo, accused no.1 Sudhakar and accused no.4 Anil were also present on the spot having armed with Ubharis and they assaulted PW 3 Ramkrishna.

Based on information received from PW 2 Narayan, PW 10 Damodhar Katne, A.P.I. rushed to the spot and brought PW 3 Ramkrishna and PW 2 Narayan back to the Police Station and on the basis of report (Exh.43) registered offence vide Crime No. 30 of 1999 and investigated the same, during the course of which he prepared spot panchanama (Exh.38) and seized clothes of PW 3 Ramkrishna on the following day under seizure memo (Exh.53) and effected arrest of accused on 12th of February, 1999.

3. During the course of interrogation of accused no.8 Madhukar, his memorandum statement came to be recorded vide Exh.58 and in pursuance to it one gupti came to be recovered from bathroom of his house and is seized under seizure panchanama (Exh.59). During the course of interrogation of accused no.7 Namdeo, his memorandum statement is recorded vide Exh.60 and one Ubhari came to be recovered at his instance from his house which came to be seized under seizure panchanama (Exh.61). Under the memorandum statement of accused no.3 Rangdeo vide Exh. 62, one knife came to be recovered from his house, and is seized under seizure panchanama (Exh.63). On the basis of memorandum statement of accused no.1 vide (Exh.64), one Ubhari came to be seized from his house under seizure panchanama (Exh.65). On the strength of memorandum statement of accused no.2 Ankush at (Exh.66), one Ubhari came to be recovered from his house and seized under seizure panchanama (Exh.67) and on recording memorandum statement of accused no.5 Bharat Umate vide (Exh.68), one Ubhari came to be recovered and seized from his house under

seizure panchanama (Exh.69). After recoding statements of witnesses and forwarding seized muddemal articles to Chemical Analyzer, further investigation was carried out by PW 11 Nale, P.I. during the course of which he recorded statement of witnesses and forwarded weapons involved in this crime for its analysis to Chemical Analyzer under requisition Memo (Exh.97) and on completion of investigation filed chrgsheet.

4. In the course of time, case came to be committed for trial to the Court of Sessions at Wardha. Charge is framed against the accused to which they pleaded not guilty and claimed to be tried. It is the specific defence of accused that as PW 3 Ramkrishna has lost Panchayat Samiti elections, to take revenge he and other witnesses being his relatives falsely implicated them in this case.

5. To establish the charge levelled against the accused, prosecution has in all examined eleven witnesses and commenced its evidence by examining PW 1 Tanbaji Burade, PW 2 Narayan Sawarkar, the complainant and eye witness, PW 3 Ramkrishna, the injured, PW 4 Yeshoda Urade, an eye witness, PW 5 Rambhau Pohane, panch witness on seizure panchanama of clothes of PW 3 Ramkrishna, PW 6 Sunil Umate, another injured, PW 7 Dhyneshwar and PW 9 Prem Chhatre, both panch witnesses on memorandum statements of accused, and consequent seizure panchanama of weapons, however, they did not support the case of prosecution, PW 8 Dr.Vivek Pande, who has answered the queries made by Investigating Officer with reference to injuries sustained by PW 3 Ramkrishna if possible by weapon Gupti and concluded its evidence on examining PW 10 Damodhar, API. and PW 11 Murlidhar Nale, the Investigating Officers.

6. Heard Ms.N.Mehta, learned Additional Public Prosecutor for the appellant/State and Mr.M.B. Naidu, learned Advocate for the respondents/accused.

7. To effectively evaluate the submissions advanced by learned Advocates for both the sides, with their assistance, we have scrutinized the evidence and documents on record.

8. Admittedly, case of prosecution is based on ocular evidence of PW 1 Tanba, PW 2 Nameo, PW 3 Ramkrishna, an injured, PW 4 Yeshoda Urade and PW 6 Sunil Umate, another injured. In that view of the matter, we have first considered the evidence of PW 1 Tanba who has stated that the incident took place on 12th of February, 1999 at 3.30 p.m. when he was in his house, and heard shouts of accused no.3 - Rangdeo, accused no.7 - Namdeo and accused no.8 - Madhukar due to which he came out of the house and found these accused abusing PW 2 Narayan, PW 3 Ramkrishna and PW 6 Sunil as He further stated that accused no.3 - Rangdeo and accused no.7 - Namdeo were armed with Ubharis (wooden stick used for the purpose of fixing on bullock-cart) while accused no.8 Madhukar was armed with gupti, to whom he requested to not to quarrel when accused no. 8 Madhukar inflicted blow by gupti on PW 3 Ramkrishna, while accused no.3 Rangdeo and accused no.7 Namdeo assaulted him by sticks. He has further stated that at that time other accused came out of the house of accused no.8

Madhukar and assaulted PW 3 Ramkrishna, PW 6 Sunil, PW 3 Narayan by sticks when PW 6 Sunil snatched gupti from accused no.8 Madhukar and ran away from the spot along with PW 2 Narayan. He further stated that accused no.6 Charan and accused no.2 Ankush committed assault on PW 3 Ramkrishna by stones even after he fell down on the ground. According to his further evidence, PW 3 Ramkrishna was thus lying unconscious in the pool of blood where from he took him into his house and closed the door from inside but accused persons coming to his home were pushing the door.

9. In the cross-examination, PW 1 Tanba has admitted that he is having good relations with PW 3 Ramkrishna and admitted that police have arrived in the village after the incident and made enquiry. He also admitted that on the day of incident police had visited his residence and contacted him and also admitted that he was interrogated by police and that he has stated before police entire incident and they have recorded his statement then and there. It is material to note that there is no any statement of PW 1 Tanba on record dated 12th of February, 1999 as the statement filed with the chargesheet is dated 19th of February, 1999. No reason is putforth by the prosecution for not filing any such statement of this witness on record. PW 1 Tanba has further admitted that police were visiting their village for 12 days after the incident and police officials were also deputed in the village. He further stated that police again recorded his statement in the police station. However, except for his statement dated 19th of February, 1999, no other statement of this witness is on record. PW 1 Tanba further stated that his statement was also recorded three days after the incident and admitted to have not stated to police anything about incident after they arrived in their village. Having considering above stated evidence of alleged eyewitness relied by prosecution, there is no explanation put forth as to what prevented PW 1 Tanba to not to disclose the police about the incident though he claimed to be an eye witness of assault on PW 3 Ramkrishna and PW 6 Sunil.

As such, evidence of this witness does not appear to be convincing to be acted upon since he has materially improved his version. When he claims to have stated in police statement under Section 161 of Code of Criminal Procedure that while he was in the house at about 3.30 p.m., he heard that accused no.7 Namdeo and accused no.3 Rangdeo were abusing PW 2 Narayan, PW 6 Sunil and PW 3 Ramkrishna as and on hearing this, he reached on the spot when he found accused no.8 Madhukar to have inflicted blow by gupti on PW 3 Ramkrishna and all the accused to have have assaulted PW 2 Narayan, PW 6 Sunil when PW 6 Sunil snatched gupti from the hands of accused no.8 Madhukar. He also claims to have stated before police in his statement that accused no.6 Charan and accused no.2 Ankush laid PW 3 Ramkrishna on the ground to whom he then took to his house while PW Ramkrishna was unconscious, and closed the door from inside when accused arrived to his house and were giving kick blows to the door.

Learned counsel for the respondents have got these material omissions proved from PW 11 Murlidhar Nale, Investigating Officer, who has admitted that he has

recorded statement of PW 1 Tanba on 19th of February, 1999 wherein he had not stated as above.

10. Moreover, evidence of PW 1 Tanba, which is not at all convincing to be acted upon, further creates doubt when he has deposed that due to assault PW 3 Ramkrishna sustained injuries and was lying in the pool of blood to whom he, in unconscious state, took to his house, as on perusal of spot panchanama (Exh.38) there is specific reference about no blood found on the spot. Similarly, he admits that at the time of incident there were two ladies from Pawnsar present on the spot who were working in his field. However, no investigation appears to be carried out with reference to these females. In that view of the matter, we find much substance when it is suggested to PW 1 Tanba that PW 3 Ramkrishna is a political leader of their village, contesting various elections of whose candidature was supported by him and thus on his say he has falsely implicated the accused, though said suggestion is denied by him. From the evidence of this witness, in fact, we find that the probable case of accused of their false implication has been sufficiently established.

11. Evidence of PW 2 Narayan, the complainant, when perused reveals that he knows PW 3 Ramkrishna and PW 6 Sunil, both the injured, and stated that on the day of incident on 12th of February, 1999 at about 3.30 p.m. when he was going to his house, he was given call by PW 3 Ramkrishna and therefore, he went to Ramkrishna and he was informed that accused no.6 Charan, accused no.3 Rangdeo and accused no. 7 Namdeo rushed on his person. He further stated that thereafter he went to his house and returned back after ten minutes when he found PW 3 Ramkrishna along with Sarpanch Shri Bele and Engineer of Panchayat Samiti, supervising the construction work. He has stated that at that time along with him PW 3 Ramkrishna, one Dilip Umate and Bandu Umate were also present when accused no.8 Madhukar arrived having armed with gupti and in the meantime accused no.3 Rangdeo and accused no.7 Namdeo also arrived from the house of accused no.8 Madhukar having armed with knife and Ubhari, respectively. Accused no.4 Anil and accused no.1 Sudhakar also arrived from the house of accused no.8 Madhukar having stones wrapped in a cloth (Dupatta) while accused no.6 Charan, accused no.2 Ankush and accused no.5 Bharat were also present when accused no.8 Madhukar assaulted PW 3 Ramkrishna by gupti which blow was obstructed by PW 6 Sunil and in that process he sustained injuries in his abdomen. He further stated that accused no.7 Namdeo committed assault by Ubhari on PW 3 Ramkrishna and when he went to rescue him, accused no.2 Ankush, accused no.5 Bharat and accused no.6 Charan caught hold of him from whom he got himself rescued and ran away from the spot. He has further stated that he went to some distance and further witnessed the incident when he found that accused were beating PW 3 Ramkrishna by sticks and stones where PW 4 Damodhar arrived and rescued PW 3 Ramkrishna. According to PW 2 Narayan, then he went to the Police Station Selu and lodged his report (Exh.42).

12. Though we find that contents of his report corroborates with the version of

PW 2, it is necessary to scrutinize his evidence whether it inspires confidence to be acted upon. From his cross-examination, it has come on record that PW 2 Narayan has good relations with PW 3 Ramkrishna and PW 6 Sunil is cousin of PW 3 Ramkrishna. He has admitted that prior to incident PW 3 Ramkrishna had contested elections in which he lost and also admitted that residents of their village have lodged report against him, PW 3 Ramkrishna, PW 6 Sunil and others in respect of their assaulting the villagers and causing damage to their houses. He has admitted that on one occasion he had filed report against accused persons for having committed criminal trespass in his house and that he is not on talking term with the accused persons since 1996. All above admissions of PW 2 Narayan clearly establish his strained relations with accused persons and cordial relations with PW 3 Ramkrishna and his cousin PW 6 Sunil. Keeping these facts in mind, when his evidence is further considered, we find that his evidence is not consistent at all as in the cross-examination he has admitted that immediately after the incident he rushed to police for lodging report along with PW 6 Sunil on motorcycle while in the second breadth he has stated that thereafter he returned back to village along with police where from he again went to police station and lodged his report at about 7 to 8 p.m. According to the case of prosecution, the incident has occurred on 12th of February, 1999 at around 3.15 p.m. of which report is lodged by PW 2 Narayan as per printed FIR at 5.30 p.m., contrary, to the case of prosecution and FIR (Exh. 42), PW 2 Narayan has stated that on that day he has lodged his report at about 7 to 8 p.m. On perusal of FIR (Exh.42) same appears to be registered on 12th of February, 1999 at 5.30 p.m. No explanation is put forth by the prosecution as to how FIR came to be registered at 5.30 p.m. on that day when report was lodged with police at 7 to 8 pm. We further find it material to mention that though it is specific case of prosecution that PW 2 Narayan has lodged report and also deposed by this witness as aforesaid, PW 6 Sunil has also admitted that he has lodged report with police on the day of incident at around 4.30 p.m. PW 6 Sunil has further admitted that he has lodged said report which was scribed by him on the say of PW 3 Ramkrishna and obtained his signature upon it and lodged it with police by going with PW 2 Narayan. Evidence of PW 6 Sunil on the point of lodging report thus falsifies the evidence of PW 2 Narayan of his lodging report. So also, his evidence is not satisfactory to be relied upon stating that he has scribed report on the say of PW 3 Ramkrishna and lodged the same in the police Station, as no such document is on record. In that view of the matter, case of prosecution on the point of lodging of report also is not convincing and thus raises sufficient doubt to establish involvement of accused. Even otherwise PW 2 Narayan who admittedly is an interested witness appears to have sufficiently improved his version when he has stated that he alone went to the police Station and lodged report. On considering contents of Exh.42, same does not find in corroboration with the evidence of complainant PW 2 Narayan as he has admitted to have stated in his report that accused no.6 Charan and accused no.7 Namdeo had arrived on the spot where PW 3 Ramkrishna along with Sarpanch Bele were inspecting the drainage when accused no.8 Madhukar obstructed them in front of his house and that accused

no.7 Namdeo arrived from the house of accused no.8 Madhukar armed with Ubhari when accused no.4 Anil and accused no.1 Sudhakar also arrived from the house of accused no.8 Madhukar having stones tied in cloths and accused no.6 Charan, accused no.2 Ankush and accused no.5 Bharat also arrived and stood behind them. He also stated to have mentioned in his report that accused no.8 Madhukar committed assault by gupti on PW 3 Ramkrishna which was obstructed by PW 6 Sunil due to which he sustained abdominal injury and that accused no.7 Namdeo assaulted PW 3 Ramkrishna by Ubhari and when he went to rescue PW 3 Ramkrishna, accused no.6 Charan, accused no.2 Ankush and accused no.5 Bharat caught hold of him and pushed him. He also claims to have stated in his report about arrival of PW 4 Yeshoda on the spot and of assault by accused no.2 Ankush, accused no.3 Rangdeo, accused No. 5 Bharat and accused no.6 Charan on PW 3 Ramkrishna by Ubhari, however, PW 2 Narayan admits that he cannot assign any reason why above facts do not find place in his report. This witness has admitted that number of persons had assembled on the spot of incident at the time of incident. However, none of independent witnesses is examined by prosecution. Though he claimed that due to assault PW 3 Ramkrishna sustained bleeding injuries and was lying in the pool of blood and also denied that PW 3 Ramkrishna had not sustained any bleeding injuries nor any blood was fallen on the ground, there is no reference of blood on spot as per spot panchanama (Exh.38) as already stated aforesaid. Having considering above evidence, we do not find safe to rely upon evidence of PW 2 Narayan also.

13. Coming to evidence of PW 3 Ramkrishna, the injured, it reveals that on 12th of February, 1999 at around 3 p.m. he being sarpanch of village Morchapur was verifying the construction work of drainage. He stated that after verifying the construction work, he sat near one temple where accused no.7 Namdeo and accused no.3 Rangdeo arrived along with their wives and abused him, which information was given by him to the police telephonically. He has further stated that thereafter while he was observing the work along with Marotrao Bele and Engineer of Panchayat Samiti, all accused who were in the house of accused no.3 Rangdeo arrived. He further stated that while he was proceeding with PW 2 Narayan, PW 6 Sunil and one Bandu and Dilip near the house of PW 1 Tanba, accused no.8 Madhukar obstructed having armed with gupti along with accused no.7 Namdeo, accused no.3 Rangdeo and accused no. 4 Anil. PW 3 Ramkrishna has stated that at that moment PW 1 Tanba attempted to convince accused persons, however, accused no.8 assaulted him by gupti on his head due to which he sustained bleeding injuries while accused no. 7 Namdeo inflicted a blow of Ubhari on his head and accused no.3 Rangdeo also gave a blow of knife on his leg due to which he sustained injury on his leg. He further stated that accused no. 4 Anil committed assault on his head. He has further stated that accused no.2 Ankush, accused no.6 Charan, accused no.5 Bharat and accused no.1 Sudhakar arrived when accused no.6 Charan assaulted him by stones and accused no.5 Bharat and accused no.1 Sudhakar assaulted him by Ubharis. He has further stated that at the time of assault, as aforesaid, he was lying on the

ground and some accused rushed to PW 6 Sunil and committed assault on him.

When above evidence of PW 3 Ramkrishna is considered along with earlier evidence of PW 1 Tanba and PW 2 Narayan, it does not corroborate with their version as both above witnesses are silent about PW 3 Ramkrishna having been present at temple and about accused no.7 Namdeo and accused no.3 Rangdeo arriving there with their wives and abusing him. So also, evidence of PW 2 Narayan is also silent on assault on the head of PW 3 Ramkrishna. Evidence of PW 3 Ramkrishna is further contradictory to the evidence of PW 1 Tanba and PW 2 Narayan when he has stated that while he was trying to proceed to house of PW 1 Tanba, accused no.4 Anil was pulling his leg and at that time wife of PW 1 Tanba and other female workers took him inside the house.

Evidence of PW 3 Ramkrishna also appears to be materially improved by him when he has further deposed to have stated in his statement recorded by police that when he was present in the village observing the construction work, wives of accused no.7 Namdeo and accused no.3 Rangdeo arrived and abused him and that all the accused were present at the house of accused no.3 Rangdeo. He further claims to have stated in his statement to police that while he along with PW 2 Narayan, PW 6 Sunil and one Bandu and Dilip reached near the house of PW 1 Tanba, accused no.8 Madhukar obstructed them having armed with gupti and though PW 1 Tanba tried to convince accused no.8 Madhukar, he committed assault on his head by gupti due to which he sustained bleeding injury. He further claims to have stated that accused no.3 Rangdeo and accused No. 7 Namdeo inflicted blows on his head by Ubhari and accused no.3 inflicted blow by knife on his leg causing injury. He further claims to have stated that accused no.4 Anil inflicted blow on his back by Ubhari when accused no.2 Ankush and accused no.6 Charan arrived and they also assaulted on his back by stones and accused no.5 Bharat and accused no.1 Sudhakar assaulted on his back by Ubhari while PW 2 Narayan tried to save them. He further claims to have stated in his statement to police that while he was lying on the ground, accused persons rushed towards PW 6 Sunil while wife of PW 1 Tanba and his wife came to save him. He also claims to have stated that while he was attempting to go to house of PW 1 Tanba, accused no.4 Anil was pulling his leg when wife of PW 1 Tanba and female workers took him inside the house.

Having considering these omissions which are duly proved by PW 10 Damodhar Katne, I.O., PW 3 Ramkrishna, the injured witness, also appears to have materially improved his case so as to falsely implicate the accused and in that view of the matter, we find much substance when it is suggested to him that none of the accused assaulted him and due to enmity he is deposing false against them, though said suggestions are denied. It is material to note that even otherwise evidence of PW 3 Ramkrishna does not hold good for any reason as, admittedly, prosecution has not placed on record injury certificate of PW 3 Ramkrishna.

14. In the absence of injury report of PW 3 Ramkrishna, learned Additional Public

Prosecutor for this purpose has relied upon evidence of PW 8 Dr.Vivek Pande and has submitted that his evidence established fact of PW 3 Ramkrishna's sustaining injuries. However, we do not find any substance in her argument as what is stated by Dr.Vivek (PW 8) is that on 31st of March, 1999 i.e. almost after 11/2 months of the incident when he was attached to Rural Hospital at Selu he received a query from police vide Exh.75 along with weapon gupti and on examining the weapon in the light of injuries referred in the medical certificate of PW 3 Ramkrishna, he had opined that the injuries would be possible by Article 6 gupti and accordingly he issued certificate (Exh.76). Though no medical certificate of PW 3 Ramkrishna is placed on record, as aforesaid, in the cross-examination Dr.Vivek has clearly admitted that in his certificate (Exh.76) he has nowhere mentioned that his opinion is based on medical certificate of PW 3 Ramkrishna. He has even otherwise admitted that the injuries are possible by handle of the weapon, however, in the absence of medical certificate of PW 3 Ramkrishna and for want of any reason to not to produce the same on record, evidence of PW 8 Dr.Vivek do not substantiate the case of prosecution any further.

15. Last witness whose evidence needs to be considered and is relied by prosecution is PW 6 Sunil who has stated that he knows all accused as well as PW 3 Ramkrishna and PW 2 Narayan and that incident took place on 12th of February, 1999 when he along with PW 3 Ramkrishna, one Marotrao Bele and Shri Dudhane Engineer was observing the construction work of drainage and when they reached near the house of Tanba, accused no.8 Madhukar obstructed them having gupti in his hand and accused no.3 Rangdeo also arrived having knife, accused no.4 Anil arrived with stones and sticks and accused no.7 Namdeo arrived having Ubhari and accused no.8 Madhukar was at that time saying that when accused no.6 Charan, accused no.5 Bharat, accused no.2 Ankush, accused no.1 Sudhakar also arrived. He also stated that PW 1 Tanba tried to convince them, however, they did not listen. The evidence of this witness that accused no.8 Madhukar committed assault on PW 3 Ramkrishna which was obstructed by him due to which he sustained injuries to his abdomen, is totally in contrast to the evidence of PW 3 Ramkrishna as PW 3 Ramkrishna in his evidence claims to have sustained injuries to his head due to assault by PW 8 Madhukar with gupti on his head. PW 6 Sunil has further stated that accused No. 3 Rangdeo and accused no.7 Namdeo assaulted him on his head and back by Ubhari and said accused also assaulted PW 3 Ramkrishna by Ubharies, stone and knife due to which PW 3 Ramkrishna was thus lying in the pool of blood. Said evidence also do not corroborate with the evidence of PW 3 Ramkrishna which even otherwise is not convincing and legally accepted since is found by way of material improvement. PW 6 Sunil claims to have stated in his statement recorded by police about the entire incident as aforesaid, however, he is unable to assign any reason as to why all those facts do not find place in his statement. The entire material omissions are got duly proved from the evidence of PW 11 Murlidhar, PSI.

Similarly, though prosecution has also relied upon evidence of PW 4 Yeshoda as

an eye witness, who has stated about assault by all the accused on PW 3 Ramkrishna in front of her house when accused no.8 Madhukar was armed with gupti and others with Ubhari and stones due to which PW 3 Ramkrishna fell down on the ground, her evidence is also by way of material omissions which are proved by PW 11 Murlidhar. Her evidence even otherwise is not convincing to be acted upon when in the cross-examination she has admitted that police had arrived in the village and she had shown the spot to police where blood was lying and her statement was recorded on the same day. However, as already stated aforesaid, there is no reference of any blood on the spot in the spot panchanama.

16. In view of above contradictory and unreliable evidence of eye witnesses and in view of failure of prosecution to place on record injury certificate, in the present crime, prosecution cannot said to have established involvement of any of the accused beyond reasonable doubt. Prosecution though had examined PW 5 Rambhau on seizure of clothes of injured PW 3 Ramkrishna and PW 7 Dnyaneshwar, PW 9 Prem Chhatre, both panch witnesses on Memorandum statement and consequent recovery of weapon at the instance of accused, they did not support the case of prosecution and has thus got proved memorandum statement and seizure panchanama of gupti from the house of accused no.8 Madhukar at Exhs.58 and 59, memorandum statement and seizure panchanama of Ubhari from the house of accused no.7 Namdeo at Exhs.60 and 61, memorandum statement and seizure panchanama of knife from the house of accused no.3 Rangdeo at Exhs.62 and 63, memorandum statement and seizure panchanama of Ubhari from the house of accused no. 1 Sudhakar at Exhs.64 and 65, memorandum statement and seizure panchanama of Ubhari from the house of accused no. 2 Ankush at Exhs.66 and 67 and memorandum statement and seizure panchanama of Ubhari from the house of accused no. 5 Bharat at Exhs.68 and 69, from the investigating Officer this evidence by itself is too short to establish the involvement of accused persons.

17. Having considering above evidence in its totality and as the scope for interference in an appeal against acquittal is very limited to the effect that unless this Court finds that the view taken by the trial court is either impossible or perverse, it is not permissible for this Court to interfere with the finding of acquittal. No impossibility or perverseness is found in the judgment and order of learned Trial Judge warranting interference. The learned Trial Judge by well reasoned order has found that the prosecution has miserably failed to prove the charge levelled against the accused. Hence, we pass the following order.

18. Criminal Appeal No. 352 of 2004 is dismissed.

Bail bonds furnished by the respondents are cancelled.

Seized properties i.e. two stones, Ubhari and clothes being worthless be destroyed after appeal period is over.

Sized muddemal i.e. knife and Gupti be sent to District Magistrate, Wardha for disposal, as per law, after expiry of appeal period.