

(2021) 11 BOM CK 0081

In the Bombay High Court

Case No : Criminal Appeal No.739 Of 1999

State Of Maharashtra

APPELLANT

Vs

Vilas Narayan Jagtap And Others

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 318
Code Of Criminal Procedure, 1973 — Section 417

Citation : (2021) 11 BOM CK 0081

Hon'ble Judges : S.S. Shinde, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : G.P. Mulekar, Abhaykumar

Final Decision : Dismissed

Judgement

Abhay Ahuja, J

1. This is an Appeal preferred by the State against the order of acquittal dated 30th September, 1999 of the Respondents from the offences punishable under Section 302 read with Section 34 of the Indian Penal Code ("IPC") in Sessions Case No.367 of 1997 passed by learned Additional Sessions Judge, Pune.

2. The case of the prosecution is stated as under :-

(a) Briefly stated, this is a case of fight between two brothers where elder brother assaulted the younger brother. According to the prosecution, on 7th June, 1997, the accused attacked the deceased with iron rod, wooden nail and stick due to which the deceased sustained head injury and died in hospital on 16th June, 1997. Sunil (PW-2) and Jalinder Gaikwad (PW-1) are eyewitnesses. Jalinder Gaikwad (PW-2) who is an agriculturist was closest to the place of incident and, therefore, a star witness. The statement of Sunil (PW-2) was recorded on 16th June, 1997 after the death. The postmortem was also conducted on 16th June, 1997 which states the cause of death as "Head Injury" and the NC was lodged on 14th June, 1997, which was converted into FIR after the death of the injured.

(b) The deceased Jalinder Jagtap was the real brother of accused No.1 Vilas Jagtap. His land and the land of Accused No.1 were adjacent to each other and were cultivating the strips separately and there is a stony boundary wall in between each strip considered as a bandh.

(c) The deceased was possessing certain bullocks. Sunil Jagtap (PW-2) was also possessing two bullocks. Both, the deceased and Sunil (PW-2) used to plough the land of the others with four bullocks under an agreement between them locally known as 'Vargul'.

(d) On 7th June, 1997 the deceased went to the house of Sunil (PW-2) and apprised him that they have to plough the land of one Jamdade. Thereafter, both of them went to the land of Jamdade and were ploughing the land. When bullock entered in the land of accused No.1 thereby damaging the crop, accused No.1 started abusing by saying as to whose bullocks entered in his land. Thereupon, exchange of words started initially between Sunil (PW-2) and accused No.1 and then between the deceased and accused No.1, which escalated into a scuffle between both of them.

(e) The accused No.1, who was holding the iron rod and the wooden nail, started assaulting the deceased, due to which the deceased fell down, sustaining invisible injuries. The companion of deceased, viz., Sunil (PW-2) tried to intervene, but due to the threat, he became frightened and went to the land locally known as 'Ranmala' and apprised about the incident to Karan and Lala. Meanwhile, another person by name Jalinder Balu Gaikwad (PW-1), who was working at palace, Rajwada, visited the spot and he too tried to intervene, but in vain. Ultimately, because of gathering of persons, the accused left the spot.

(f) Thereafter, deceased Jalinder Jagtap was taken to the local hospital. His wife was apprised about the incident by Sunil (PW-2). Then Jalinder was shifted to Sassoon Hospital where he was under treatment and succumbed to the internal injuries on 16th June, 1997.

(g) When the deceased was taking treatment, on 14th June, 1997, the complaint (Exhibit-19) was lodged by Lata, wife of the deceased, which was registered as a non-cognizable case (NC) bearing No.360 of 1997 and she was advised to approach the Court for redressal of her grievance. But as the injured succumbed to the injuries, the NC was converted into an offence under Section 302 of the IPC and registered as C.R. No. 37 of 1997 on 16th June, 1997.

(h) The inquest panchanama was drawn on 16th June, 1997. The dead body was sent for postmortem where the doctor, who performed autopsy on the corpse of the deceased, opined that the cause of death was "Head injury; associated with Multiple injuries; associated with septicemia". The necessary investigation was conducted and the accused came to be arrested.

(i) At the instance of accused No.1, the weapons were discovered and seized under the seizure panchanama (Exhibit-26).

(j) The seized articles were sent to Chemical Analyser and after completion of necessary investigation, the accused came to be chargesheeted for having committed murder of deceased Jalinder Jagtap on 7th June, 1997 by assaulting him with deadly weapons, such as iron rod and wooden nail.

(k) The Judicial Magistrate First Class, Saswad committed the case to the Additional Sessions Judge, Pune on 22nd September, 1997 and then the charge was framed against accused persons on 2nd December, 1998 (Exhibit-3) and explained to the accused. The accused pleaded not guilty. The accused contended that the deceased diverted the bullocks in the land of accused No.1 with the intention of causing damage to crop and that the deceased had not paid any heed to the requests made by the accused. That thereafter the deceased started fighting with accused No.1 near the stony wall and during the scuffle the deceased as well as accused No.1 fell on the stony wall and that might be the reason for the deceased sustaining of injuries. With respect to Sunil (PW-2), it was contended that Sunil (PW-2) was a companion/colleague of the deceased and his testimony could therefore not be believed.

(l) After recording of evidence and completion of trial, the Additional Sessions Judge holding that prosecution had failed to prove, bring home the guilt beyond reasonable doubt, gave benefit to the accused and acquitted the accused for the offence punishable under Section 302 read with Section 34 of the IPC.

3. Being aggrieved and dissatisfied by the aforesaid Judgment and Order dated 30th September, 1999, the Appellant-State of Maharashtra is in Appeal.

4. Learned APP for the Appellant-State submits that the lower court has erred in acquitting the accused and rendering a judgment de hors the principles of law. The court ought to have appreciated that the evidence led by Jalinder Gaikwad (PW-1) was supported by other prosecution witnesses and documentary evidence. Jalinder Gaikwad (PW-1) is an eyewitness and therefore his evidence ought to have been appreciated. The evidence of Dr. Nanandkar (PW-3) ought to have been taken into consideration in view of his opinion on the cause of death being Head Injury, associated with multiple injuries, associated with septicemia, on the basis of injuries. It is submitted that the lower court has erroneously come to the conclusion that the deceased fell down on the stones, so that the possibility of sustaining injuries due to scuffle and the consequent fall as one can fall at one time, but not repeatedly and if a person fell on the stone, there will be one or two injuries, but not so many and that Sunil (PW-2) was an illiterate person.

5. It is also submitted by the learned APP that Lata (PW-4), i.e., wife of the deceased, is an illiterate lady, not supported by anyone and with a small child of only two months and, therefore, she lodged the complaint after six days when her husband (now deceased) started talking.

6. Balasaheb (PW-5) is the panch witness for spot panchama and Prakash (PW-6) is also the panch witness for memorandum and seizure panchanama. That the

corroborative evidence of the Prakash (PW-6), panch witness of discovery of weapon, who had deposed in detail should not be disbelieved.

7. Learned APP therefore urges that the acquittal be set aside and the accused be convicted as per law.

8. On the other hand, learned counsel for the Respondents relies upon the impugned judgment raising objections about the evidence relied upon by the prosecution. Learned counsel for the Respondents has taken us through the evidence of the witnesses in support of his contentions.

9. It is submitted that because of land dispute between two brothers and as Sunil (PW-2) was companion of the deceased, no offence against Respondents is made out and the acquittal deserves to be sustained as the death is not homicidal. That the causa causans of Jalinder Jagtap sustaining injuries is his fall on the stony wall. There is no evidence that Jalinder died upon being struck by the iron rod or wooden nail. It is because of negligence, septicemia was developed and if that was the cause then death cannot be said to be homicidal nor can the accused be held responsible. The complaint is belated. The injured was conscious and despite that his complaint was not obtained nor the prosecution has examined the material witnesses. It is submitted that therefore the prosecution had failed to bring home the guilt and therefore the acquittal ought to be sustained.

10. We have heard Ms.G.P. Mulekar, learned APP for the Appellant-State and Mr.Abhaykumar Apte, learned counsel appointed for Respondent No.1. We have also perused the record and proceedings in the matter.

11. Before proceeding further let us first appreciate the principles involved in hearing the appeal from judgment of acquittal.

12. In Muralidhar @ Gidda & Anr. Vs. State of Karnataka in Criminal Appeal No.551 of 2011, the Hon'ble Supreme Court while considering criminal appeals, adverted to the fundamental principles to be kept in mind by an appellate court while hearing the appeal against acquittal. Paragraphs 10, 11 and 12 of the said decision are relevant and are usefully quoted as under :-

"10. Lord Russell in Sheo Swarup Vs. King Emperor; AIR 1934 Privy Council 227, highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh Vs. State; AIR 1952 SC 52,

while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*; AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*; AIR 1954 SC 637, *Atley Vs. State of U. P.*; AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*; AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*; AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*; AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*; AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*; (1970) 2 SCC 450, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*; (1973) 2 SCC 793, *Lekha Yadav Vs. State of Bihar*; (1973) 2 SCC 424, *Khem Karan Vs. State of U.P.*; (1974) 4 SCC 603, *Bishan Singh Vs. State of Punjab*; (1974) 3 SCC 288, *Umedbhai Jadavbhai Vs. State of Gujarat*; (1978) 1 SCC 228, *K. Gopal Reddy Vs. State of A.P.*; (1979) 1 SCC 355, *Tota Singh Vs. State of Punjab*; (1987) 2 SCC 529, *Ram Kumar Vs. State of Haryana*; 1995 Supp (1) SCC 248, *Madan Lal Vs. State of J & K*; (1997) 7 SCC 677, *Sambasivan Vs. State of Kerala*; (1998) 5 SCC 412, *Bhagwan Singh Vs. State of M.P.*; (2002) 4 SCC 85, *Harijana Thirupala Vs. Public Prosecutor, High Court of A.P.*; (2002) 6 SCC 470, *C. Antony Vs. K.G. Raghavan Nair*; (2003) 1 SCC 1, *State of Karnataka Vs. K. Gopalakrishna*; (2005) 9 SCC 291, *State of Goa Vs. Sanjay Thakran*; (2007) 3 SCC 755 and *Chandrappa Vs. State of Karnataka*; (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of

acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

13. With the aforesaid principles in mind, let us now examine whether or not the impugned judgment of acquittal is justified or not.

14. In all, the prosecution has examined seven witnesses to prove its case. Jalinder Balu Gaikwad (PW-1) and Sunil Kisan Jagtap (PW-2) are the eyewitnesses of the incident. Jalinder Gaikwad (PW-1) is the carpenter, who was working at Palace, Rajwada and went to rescue the deceased. Sunil (PW-2) is the star witness, the companion of the deceased. Dr. Sudhir Digambar Nanandkar (PW-3) is the medical officer/doctor who did the autopsy on the dead body of the deceased. Lata Jalinder Jagtap (PW-4) is the wife of the deceased, who lodged complaint (Exhibit-19) against the accused persons. Balasaheb Arun Jagtap (PW-5) is the panch witness of spot panchanama (Exhibit-21). Prakash Mahadeo Phalke (PW-6) is the panch witness of discovery (Exhibit-25) and seizure panchanama (Exhibit-26). PSI Vijaysingh Ramsingh Gaikwad (PW- 7) is the investigating officer who conducted investigation of this crime.

15. We observe that on behalf of the Respondents three major objections to the case of the prosecution have been raised. The first is that there was an extreme delay in filing the complaint by the widow of the deceased. Lata (PW-4) is the wife of deceased who registered the complaint (Exhibit-19), after 6-7 days of the incident. On 7th June, 1997 when the injured was taken to the hospital and when on that day the wife came to know about the incident from Sunil (PW-2), in normal course, she could have filed the complaint on that day only or at the most on second day. But when she took her own time to register the complaint and registered the same after seven days, then the delay becomes fatal to the prosecution's case. Sunil (PW-2) had apprised her about the incident and thereupon she lodged the complaint in the police station. Her evidence is hearsay. Therefore, her evidence may not assist the case of the prosecution.

16. These are infirmities in the evidence which go to the root of the matter. The alleged incident took place on 7th June, 1997 and on the same day the injured was taken to Sassoon Hospital. Sunil (PW-2) the companion of the deceased, had apprised the wife of the deceased, viz., Lata (PW-4) about the incident. However, despite the receipt of information on 7th June, 1997, the complaint came to be filed on 14th June, 1997 after a period of seven days; the prosecution has not been able to explain this delay for lodging the complaint. Even in the complaint, which was registered as NC, the cause of delay has not been explained. This throws a shadow of doubt on the trustworthiness of the prosecution case, though it may not be fatal, but the possibility of concoction of the case and false implication of the accused cannot be ruled out, particularly when it can be gathered from the complaint that the relation between the deceased and accused were not cordial and they were having differences. Further it is believable that in normal course, complaint could have been filed earlier and not waited to file the

complaint after seven days. Besides the wife of the complainant, viz., Lata (PW-3) has stated in the complaint that the health of the injured was normal and improving. She has stated that when the injured started talking after 6-7 days, she filed the complaint indicating that he was conscious. If that was the case, then it should have been imperative for the police personnel to obtain his statement/complaint, which has not been done. Despite the patient being conscious and in a talking condition, no statement/complaint was obtained. This reflects on the case of the prosecution and also creates doubts. In fact, in a police case like this as soon as the victim is brought to the hospital in the normal course, the police should have inquired into the matter and obtained the complaint of the injured to register an offence in the concerned police station.

17. Further, the panchanama was done on 18th June, 1997, which was after the death of Jalinder Jagtap. Also, it is submitted that the iron rod, the wooden nail and the stick, etc. were seized after 15 days of the incident. It is submitted that since the recovery has taken place 15 days after the incident and even if human blood was found on these articles by the Chemical Analyser, it would be difficult to connect these recoveries with the murder of Jalinder Jagtap. Learned counsel for the Appellant has sought to rely on the decision of the Rajasthan High Court in the case of *The State Vs. Motia & Ors.*; 1955 CriLJ 835 in support of his submissions. Further, it is important to note that the Chemical Analyser's report is also not beneficial to the prosecution, as even though the Chemical Analyser has noticed the blood on the wooden nail and iron rod, yet he was unable to give the grouping results, which were inconclusive and as there is no evidence regarding blood group of deceased, that evidence too is not beneficial and does not inspire any confidence. It is submitted that the blood stains that can be seen are due to abrasions all over the body as noted in the postmortem report (Exhibit-17). In the case of *The State Vs. Motia* (supra), the Rajasthan High Court in an Appeal by the State against the acquittal concerning the offence under Sections 302 and 318 of the IPC, has considered the evidence with respect to the blood stains. The Court observed that though it would not be difficult to sprinkle few human blood stains on the articles recovered, if somebody wants to do so and, therefore, the reliance on the discovery of blood stains on the various articles cannot be placed.

18. The delay in the recovery of the weapons, in our opinion, would adversely impact the prosecution case and in our view its late recovery would not inspire us to consider this as a strong piece of evidence.

19. In our view the following paragraphs in the case of *The State Vs. Motia* (supra) are relevant and are quoted as under :-

"8. Learned Counsel for Motia accused has raised a number of objections about this evidence against Motia. In the first place,, he points out that there is no evidence to show that after the various articles had been recovered from the possession of Motia, they were kept sealed so that it was not possible for any one to sprinkle blood stains on them while they were in the custody of the police

and before they were sent for examination by the Chemical Examiner. We must point out that this lacuna in the prosecution evidence is there. Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the Chemical Examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused. It is, therefore, necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of course, not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken, the argument raised on behalf of the accused that this might have been done remains unrefuted. Under these circumstances, we find that we cannot place the same reliance on the discovery of blood stains on these various articles as we would have done if necessary precautions had been taken.

10. Besides these two formal defects, we have still to see whether the evidence that remains against Motia is sufficient for his conviction. We have already said that Hema's statement is unreliable, and we rule it out of consideration. All that remains is that certain articles belonging to Harka and his wife were recovered from the possession of Motia seven days after the murder. The question is whether this is sufficient evidence to prove that Motia must have committed the murder. It may be remarked that Motia lives in the same village and his presence in the village on that night is not of particular significance. The matter would have been different if he had belonged to some other village. The mere possession of articles belonging to the murdered person, even supposing that they were blood stained, would not, in our opinion, be sufficient to prove a case of murder against Motia accused beyond all reasonable doubt. The prosecution has even failed to show in this case that these particular ornaments, which were recovered from the possession of Motia, were with Harka and his wife up to the 7th of December, and were stolen only that night. There is no evidence to show that, Harka's wife was wearing even one of these ornaments on the 7th of December. It may be that the probability is that the ornaments were stolen at the same time as the murder was committed. But in a case depending upon circumstantial evidence, all possibility of the innocence of the accused should be excluded, and in the case before us it has not been shown that these ornaments could not have been missing from the house of Harka before the 7th December. In the absence of proof of this fact, it cannot be said for certainty that the person in possession of these ornaments must be the murderer.

12. The recovery in this case took place a week after, and there was, in our opinion, ample time for the stolen articles to have passed from the thief or murderer to a receiver. We, of course, do not believe the statement of the accused that he found these articles lying buried in the sand. But, the recovery of these articles from the possession of Motia would not, in our opinion, necessarily lead to the inference that he must be the person who committed the theft and murder. The presence of blood stains, even if we were to accept their presence in spite of the formal defects pointed out above, also does not necessarily connect Motia with the murder, for the things might have been passed on to him blood stained as they were, and he might not have washed them. As to the blood stains on the coat and turban of the accused, it is enough to say that the presence of these blood stains after a period of seven days does not necessarily indicate that they must have been received in this murder. In this connection, we may refer to *Nand Singh Vs. Emperor*; AIR 1943 Lali 101 (B), where it was held that the presence of a few blood stains on the shirt of the accused 11 days after the occurrence is not a strong piece of evidence.

20. The second major objection raised on behalf of the Appellant is that material witnesses were not examined. It is submitted that the medical officer who treated Jalinder Jagtap, while he was alive after the incident has not been examined. Even the dean of Sassoon Hospital where Jalinder Jagtap was shifted, has not been examined. The father of the complainant has also not been examined. Ashok Jagtap, Lala Jagtap and Bala Jagtap were the persons, who carried injured Jalinder in a bullock cart to the hospital. None of them have been examined by the prosecution nor any attempt has been made. Even the father of the complainant, viz., father in law of the deceased as well as the brother in law of the complainant have not been examined. The widow Lata (PW-4) has stated that there were 7-8 other persons with them when they went to the hospital, but none of them have been examined. Non-examination of such material witnesses in these circumstances creates doubt regarding the case of the prosecution.

21. Not only that, as mentioned above in the NC complaint, which was fled on 14th June, 1997, Lata (PW-4), wife of the deceased, has alleged that the health of the injured/deceased was normal and/or improving where she has stated on oath that when the injured started talking after six to seven days, she had fled the complaint, in the case papers on record which reveal that the patient was conscious, and he started talking with his wife, viz., Lata (PW-4), it is pertinent to note that despite conscious condition of the patient, when he was in talking condition, his complaint was not obtained and that itself reflects on the prosecution case and is sufficient to doubt the prosecution case.

22. The third major objection on behalf of the Respondents, we note that the impact of iron rod, etc. was not the cause of death. With respect to the injuries as the cause of death, the counsel for the Appellant has raised objection to the case of the prosecution. It is submitted that the cause of death in the postmortem report does not state that the impact due to the assault on the

deceased with the iron rod, stick and the wooden nail is the cause of death. In fact, the cause of death is mentioned as "Head injury; Associated with multiple injuries; associated with septicemia". With respect to head injury No. 10, there is no report of the injury on the brain or on vitals. With respect to the injuries No.1 to 9 it is submitted that these injuries are only superficial and not deep and that the death could have been due to negligence as there was septicemia.

23. Dr. Sudhir (PW-3) stated in his evidence that on 16th July, 1997, he did the autopsy on the dead body of deceased Jalinder. He noticed some external as well as internal injuries, which he noted in his postmortem report (Exhibit-17). He stated the cause of death as 'Head injury; Associated with Multiple injuries; Associated with septicemia'. He stated in his cross-examination that injuries No.1 to 9 in the postmortem report are not sufficient to cause death. Learned counsel submits about the possibility of sustaining of injury like hematoma to the head in the case of fall on a hard substance. The doctor even though has opined that the cause of death was head injury associated with multiple injuries but the nature of the multiple injuries itself indicate that those cannot be the cause of death. It would therefore be difficult to believe the opinion given by the doctor. That septicemia has played role in cause death and one of the reasons for septicemia may be due to negligence, which may be on the part of the patient or doctor. We observe from the postmortem report (Exhibit-17) that there are external and internal injuries; that injuries No.1 to 9 were superficial in nature and that the same has been admitted by the doctor in his cross-examination. There was no corresponding damage to the major blood vessels as well as the organs. The doctor has admitted that the said injuries No.1 to 9 have not resulted in neurogenic shock nor those are sufficient to cause the death. All injuries were on non-vital parts. The finding of the learned Additional Sessions Judge that superficial injuries are possible during scuffle and that during the scuffle the deceased fell down on the stones, due to which there is possibility of sustaining those injuries cannot be ruled out, is a probable view. Whether or not those injuries had a nexus with the death of the deceased cannot be said for sure. The other injuries are superficial and on non-vital parts and may not be responsible for the death. The doctor's view with respect to injury No.10 regarding contusion, swelling of left fronto temporal region and his opinion with respect to the cause of death as being head injury associated with multiple injuries associated with septicemia, does not in any way lead to a conclusion that the death was caused due to the impact from the iron rod and the other implements. The incident took place on 7th June, 1997 and the injured expired on 16th June, 1997 after a period of nine days, during which period he was hospitalised, was conscious and under treatment. Despite that septicemia developed and has played a role in causing the death. It is therefore possible that the cause of death could be due to septicemia, which cannot be said to be homicidal death. With respect to the head injury, i.e., injury No.10, it is the doctor's opinion that the hematoma may not be because of the spot impact and the contusion swelling to left fronto temporal region could be because of fall on the hard substance.

24. That apart, it would appear that the entire prosecution case rests on the testimony of two witnesses, viz., Jalinder Gaikwad (PW-1) and Sunil (PW-2). The first witness of the prosecution is Jalinder Gaikwad (PW-1). He stated in his examination-in-chief that on 7th June, 1997, when he was working at the Palace, he heard some altercation and, for the purpose of intervening in the scuffle, which took place between the deceased and the accused, he went to the spot and noticed that the accused persons were assaulting the deceased Jalinder with the iron rod, wooden nail and wooden stick and deceased Jalinder was lying on the ground and that he intervened in the dispute. He further stated that accused No.1 was holding the iron rod and stick and accused No.2 also holding a wooden nail. As per his statement, deceased Jalinder had sustained injuries on his head, face and legs. In his cross-examination, Jalinder Gaikwad (PW-1) admitted that he was at a distance of 1000 ft. from the spot and he could not see the persons who were quarreling. He heard some quarrel, hue and cry and then went to the spot of incident. The trial court was of the view that therefore, it could very well be said that the quarrel must have started before Jalinder Gaikwad (PW-1) reached on the spot and he must not have witnessed the actual incident. This is quite possible. Jalinder Gaikwad (PW-1) has further stated in his cross-examination that he did not disclose anything about the incident for eight days nor inquired about Jalinder with anybody nor anyone informed him about Jalinder. According to the trial court, this is against human nature and which is abnormal and imprudent conduct of the witness. We see a point in the view of the trial court. Jalinder Gaikwad (PW-1) has stated that when he was at the distance of 50 ft., he noticed that the injured/deceased was lying on the ground facing sky and accused were raising weapons and were giving the blows one after another and after receiving each blow, deceased Jalinder was raising hue and cry. The trial court observed that if this is the case, then certainly Jalinder would have sustained number of injuries on vital parts as also bleeding injuries. But that was not the case as per the reports. All injuries were reported to be superficial. This raises doubts on the credibility of the evidence by Jalinder Gaikwad (PW-1) as an eyewitness.

25. Sunil (PW-2) is the witness who is the companion of the deceased. He stated in his evidence that the scuffle took place between the accused and the deceased and that when Jalinder fell down as he became frightened and because of threat, he ran away from the spot. He further stated that Jalinder was assaulted with the iron rod and wooden nail, that the accused, with their minor sons, were assaulting the deceased. In his evidence, he stated that accused No.1 was holding the wooden nail and accused No.2 was holding the iron rod, that thereafter he became frightened and started running towards Ranmala, went to that place, apprised about the incident to Kalyan and Lala and thereafter returned with persons and even at that time noticed that the accused were assaulting. He admitted in his cross-examination that Ranmala is at a distance of 2/3 kilometers from the spot. It took half an hour to go to Ranmala and half an hour for return with the same speed. It is to be stated here that one would

require more than one hour to go and come on the spot of incident and as per his statement, during this time, continuous beating was going on, which according to the trial court, itself becomes false in view of the nature of injuries on the person of the deceased as pointed out in the postmortem report. When all injuries were superficial and simple in nature, it is hard to believe that such injuries are possible despite continuous beating with the iron rod and wooden nail for more than one hour. Moreover, the number of weapons which were used in the scuffle, are stated to be different by each of the above witness, viz., Jalinder Gaikwad (PW-1) and Sunil (PW-2), who were stated to be present on the spot at the time of incident. The evidence of both these witnesses do not corroborate with each other.

26. The learned Additional Sessions Judge has also brought out the contradictions in the testimony of the witnesses with respect to Jalinder Gaikwad (PW-1) who had witnessed the assault by the accused upon the deceased and that he had also witnessed that accused No.1 and his wife were assaulting deceased with iron rod, wooden nail and wooden stick and that the deceased was lying on the ground when he intervened in the dispute. However, Sunil (PW-2), the companion of the deceased has given a contrary version stating that the iron rod, the stick and the wooden nail was in the hand of accused No.2. These contradictions create doubt in the prosecution's case.

27. It is therefore possible that the head injury is caused due to the fall of the deceased on the stones in view of the accounts of the witnesses regarding the incident of scuffle, due to which the deceased fell on the stones. This, therefore, does not appear to be a case of homicidal death. We are therefore of the view that the prosecution has failed to prove beyond reasonable doubt that the death in question was homicidal.

28. From the evidence as well as the impugned judgment, the motive of the accused to cause death cannot be gathered with certainty and, therefore, the death cannot be said to be homicidal. It is possible that during the scuffle, the stated fall of the deceased on the stony wall could have caused the injuries on the head, and other parts which would have degenerated into septicemia. Therefore, the cause of death also cannot be stated with certainty. The entire prosecution case rests primarily on the testimony of two witnesses, one is Sunil (PW-2) the companion of the deceased and the other is Jalinder Gaikwad (PW-1), who went to the spot and witnessed the incident. However, their testimony is not adequate enough to nail the accused for murder. The evidence of the widow, Lata (PW-4), who filed the complaint, was apprised of the incident by Sunil (PW-2). So her evidence is also not direct evidence of the incident. The spot panch and the discovery panch cannot be prime witnesses.

29. The observations of the trial court, which we are in agreement with, bring us to an undeniable conclusion that the case against the accused has not been proved beyond reasonable doubt by the prosecution. It is also true that the material witnesses, i.e., the medical officer, who had treated the deceased when

he was injured and the father of the complainant nor the witnesses who took Jalinder Jagtap to the hospital were not examined. There has been an extreme delay in reporting of the incident. The medical record indicates contusion and abrasion, which show superficial injuries, which were not deep. There is no report of the injuries on the brain or vital parts. The medical officer has not pinpointed the cause of death. The postmortem report (Exhibit-17) does not indicate the cause of death as only head injury. The cause of death also suggests septicemia. The assault by the elder brother upon the younger brother resulted in the death of younger brother. The history of enmity between brothers cannot be lead to an implication of the accused for murder. It is an established principle that unless the case of the prosecution establishes beyond reasonable doubt, the accused is presumed to be innocent.

30. Taking, therefore, the entire evidence against the accused into consideration and that the same being circumstantial, we find it impossible to come to the unhesitating conclusion that the accused must have committed the murder. Under these circumstances, it cannot be said that the Learned Sessions Judge erred in acquitting the accused for the offence punishable under Section 302 read with Section 34 of the IPC. There may be a suspicion that the accused took part in this murder but suspicion cannot take the place of proof, particularly when the entire case depends upon circumstantial evidence.

31. We once again refer to the four aspects as highlighted by the Hon'ble Supreme Court in its decision in the case of Muralidhar (*supra*) which are to be kept in mind in an Appeal against acquittal, viz., (i) the presumption of innocence is strengthened by an order of acquittal passed by the trial court in favour of an accused, (ii) the accused is entitled to the benefit of reasonable doubt while dealing with merits in a case of appeal against acquittal, (iii) the appellate court should generally be loath in disturbing the finding of facts recorded by a trial court as the trial court has had the advantage of seeing the demeanor of the witnesses and if a reasonable view has been taken by the trial court of the facts before it, unless the conclusions are palpably wrong or erroneous and likely to result in injustice, the appellate court should be reluctant to interfere and (iv) re-appreciation and re-evaluation of evidence leading to a possible view and its change of opinion is not called for. In the instant case, the trial court has passed an order of acquittal in favour of the accused persons which as observed above strengthens the presumption of innocence in favour of the accused. The prosecution has not been able to prove its case beyond reasonable doubt and therefore, the accused are entitled to the benefit of reasonable doubt. In this case also it is the trial court that has had the benefit of seeing the demeanor of the witnesses; and in our view it has taken a reasonable view in the facts of the case. We also do not believe that trial court has in any manner taken a wrong or an erroneous view of the facts that would result in injustice. We are therefore of the view that re-appreciation or reevaluation of evidence in a case like this is not called for.

32. Having tested the facts of this case on the benchmark of the aforesaid principles, we are not inclined to disturb/interfere with the views/judgment of the trial court. On a careful consideration of the entire evidence and the circumstances, we see no reason to interfere with the order of acquittal passed by the learned Additional Sessions Judge, Pune.

33. The Appeal is hereby dismissed. No order as to costs.

34. Parties to act on an authenticated copy of this order.